Legal exp. incurred on feasibility report preparation for acquisition of a new brand was revenue exp.

Summary – The Mumbai ITAT in a recent case of Pan India Food Solutions (P.) Ltd., (the Assessee) held that where legal expenses incurred by assessee was to ensure proper acquisition of brand which was in existing line of assessee's business and same was in nature of consultancy, therefore said expenditure was to be treated as revenue in nature

Facts

- The assessee was in the business of running a chain of restaurants and food joints.
- It was noticed by the Assessing Officer that out of total amount of expenditure debited on account of legal and professional fees a sum was shown to be incurred on consultation fees paid to 'JS' Associates. From further details it was found that the assessee had acquired a "brand" from Blue Foods which was capitalised in the books of account and on which a depreciation was claimed in the block "trademarks and patents". It was also noticed by the Assessing Officer that the fees paid to 'JS' Associates, advocates and solicitors was on account of rendering legal and professional services to the assessee in connection with acquisition of Blue Foods. Since the assessee had capitalised acquisition of Blue Foods, the amount was also treated by the Assessing Officer as actual cost which was also required to be capitalised. Accordingly, after granting benefit of depreciation at the rate of 12.5 per cent, the balance amount was disallowed on account of the same being capital expenses and added the same to the total income of the assessee.
- On appeal, the Commissioner (Appeals) had observed that the expenditure was in relation to obtain feasibility report connected with the acquisition of the brand from Blue Foods and the expenditure was connected to the existing business of the assessee. The Commissioner (Appeals) had allowed the claim of the assessee by observing that expenses incurred in investigation, research and feasibility studies were only revenue expenditure and not capital. The department is aggrieved and has filed the aforementioned grounds of appeal.
- On second appeal:

Held

- The "brand" expenditure incurred by the assessee has been treated as capital expenditure. The expenditure incurred on the feasibility report paid constitutes legal expenses incurred by the assessee to ensure the proper acquisition of the "brand". This is in the nature of consultancy. The assessee is already in the line of chain of restaurants and food joints. The acquisition relating to "brand" of Blue Foods P. Ltd. is also with respect to a food chain, therefore, expenditure is incurred by the assessee in the existing line of its business. The expenditure incurred on consultancy have been held by the Delhi High Court in the case of *CIT* v. *Shell Bitumen India (P.) Ltd.* [IT Appeal No. 815 of 2010, dated 11-8-2010] to be on account of revenue expenditure. Therefore, there is no infirmity in the order of the Commissioner (Appeals) *vide* which it has been held that the expenditure were in the nature of revenue and could not be disallowed as capital expenditure.

- In the result, the appeal of the revenue is dismissed.