

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.1921/Mds/2016

निर्धारण वर्ष /Assessment year : 2005-06

The Deputy Commissioner
of Income Tax,
Corporate Circle 3(1)
Chennai 600 034

Vs.

M/s. TTK Health Care Limited,
No.6, Cathedral Road,
Chennai 600 086

(अपीलार्थी/Appellant)

[PAN AABCT 3312J]

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri. Shiva Srinivas, IRS, JCIT.

प्रत्यर्थी की ओर से /Respondent by

: Shri. R. Vijayaraghavan, Advocate

सुनवाई की तारीख/Date of Hearing

: 08-09-2016

घोषणा की तारीख /Date of Pronouncement

: 08-09-2016

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

The Revenue has filed an appeal against the order of the
Commissioner of Income Tax (Appeals)-11, Chennai, dated 28.03.2016
for the assessment year 2005-2006.

2. The only grievance of the Revenue in this appeal is that Id. Commissioner of Income Tax (Appeals) erred in allowing the assessee appeal treating the logo charges as revenue in nature.

3. The Brief facts of the case are that the Id. Assessing Officer did not accept the contention of the assessee that the logo charge was of revenue in nature and observed that the intention of the Legislature to treat such expenditure as capital in nature was evident from the introduction 25% depreciation on intangible assts such as technical know-how, patents, copyrights, trademarks, licences, franchise and business/ commercial rights of similar nature acquired after 01.04.1998. The Id. Assessing Officer further observed that the assessee company by utilizing the strong image and awareness in the minds of public created by the monogram 'ttk' would create an identity of its own in their minds regarding the quality of their product and other services which would strengthen their business in the long run. The assessee company was entitled to use the monogram in their stationery, trade literature, packing of

goods, labels, wrappers and advertisement of TIK Healthcare Ltd. and therefore the AO observed that the usage of the monogram would precisely create a strong image and awareness in the minds of the public which would increase the business and profits of the assessee company continuously with enduring benefits. Hence, the Id. Assessing Officer treated the payment of royalty of ₹58,54,167/- as capital expenditure as it provided enduring benefit to the assessee and allowed 25% of the same as depreciation and disallowed the balance of ₹43,90,623/- and added the same to the total income of the assessee. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Commissioner of Income Tax (Appeals) deleted the addition. Against this, the Revenue is in appeal before Tribunal.

5. We heard the rival submissions and perused the material on record. We are of the opinion that similar issue was considered by this Tribunal in assessee's own case in ITA Nos. 1791 to 1796/Mds/2011 &

1826 to 1830/Mds/2011 vide order dated 31.10.2012 observed as under:-

“20. We have given our thoughtful consideration to the issue and also perused the relevant findings, contents of paper book referred and case law cited. Undisputed facts are that vide agreement in question, the assessee had agreed to pay another entity vide agreement dated 31.3.00/6.5.00 for using the monogram, namely “ttk”. The relevant extract of the said agreement as available in the paper book reads as under:-

“WHEREAS TTK has been in the business of various consumer and pharmaceuticals products and has been marketing and distributing the consumer and pharmaceuticals products for over five decades and has earned a wide reputation and has created a strong image and awareness on the minds of public and has also evolved an original artistic work in the form of a monogram entitled ‘ttk’ (hereinafter referred to as the said monogram) which has established an identity of its own in the public minds relating to the quality of the products and other services, as well as the stature of the organization.

WHEREAS TTK is the owner of the copyright of the said monogram having secured a registration of the said copyright under No.A- 39006/83 under the Copyright Act, 1957.

WHEREAS TTK – LIG, a company already in the business of Manufacture of Rubber Contraceptives is desirous of promoting and strengthening its business base by establishing a proper identity in the minds of public at large which will create a strong marketing base for the products of the company and reflect an immediate identity in the minds of the public with reference to the products services and stature of the Licenses and for the purpose has approached TTK for license and permission to use the said monogram on or in relation to the goods manufactured and marketed by TTK – LIG and in relation to other business activities of TTK –LIG.

WHEREAS TTK had acceded to the request of TTK – LIG to grant license and permission to TTK –LIG to

use the said monogram, subject to certain terms and condition, which terms and conditions in writing by this Deed of Agreement.

WHEREAS both the parties hereto consider it necessary and expedient to record such terms and conditions in writing by this Deed of Agreement.

NOW THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL COVENANTS AND OBLIGATIONS HEREIN CONTAINED, THE PARTIES HERETO AGREE AS FOLLOWS:

1. TTK hereby confirms having licensed and permitted the use of the said monogram by TTK-LIG for a period of three years with effect from 1st April 2000, as per approval accorded by the Government of India vide letter No.2/M-7964 dated 3rd May, 2000. Copy of Government approval is annexed to this Agreement.

2. The License and permission granted by TTK in favour of TTK-LIG as aforesaid, shall entitle TTK-LIG, so long as this agreement in force, to use the said monogram on or in relation to the goods of TTK-LIG and in relation to the business activities of TTK-LIG, including the use of the said monogram on stationery, trade literature, packing of goods, labels, wrappers and advertisements of TTK-LIG. TTK-LIG shall not under any circumstances transfer or assign any of their rights under this agreement.

3. TTK-LIG accepts that the said monogram shall be used by TTK-LIG under this agreement in a manner indicative of the fact that the copyright in the said monogram is owned by TTK. Illustrative of the words to appear in close proximity to the said monogram, for the purpose of carrying out the requirements of this clause are:

<i>1981 .T.Krishnamachari & Co</i>	<i>When the said monogram is used on or in relation to the goods of TTK-LIG</i>
<i>A Unit 1981 T.T.Krishnamachari & Co</i>	<i>When the said monogram is used otherwise in relation to the name of TTK-LIG</i>

4. The agreement shall be in force for a period of three years effective from 1st April, 2000 and may be renewed thereafter by the consent of both the parties, subject to Government approval.

5. The renewal of this agreement may be effected by both the parties hereto by exchange of letters signed by persons duly authorized in this behalf.

6. In consideration of the said License and permission granted by TTK., TTK-LIG shall pay to TTK as non-refundable license fee, a sum equivalent to two percent of the total sales of the company on quarterly rest."

The above said agreement for using the monogram in question, was also approved by Department of Company Affairs, Ministry of Law, Justice and Company Affairs, Government of India vide letter dated 03.05.00, which is reproduced hereunder below:-

"1. In exercise of the powers delegated to the undersigned by the Government of India under section 637 of the Companies Act, 1956 in Notification No.GSR 563 E dated 19.08.93,I, the Regional Director, Department of Company Affairs, Chennai-6, do hereby approve under proviso to sub section (1) of section 297 of the Companies Act, for entering into contract with M/s.T.T.Krishnamachari & Co. for licensing use of trade name and logo thereof in consideration of payment of 2%license fee calculated on the total sales of the company for a period of 3 years with effect from 1.4.2000.

2. The approval accorded in para 1 above is subject to the following conditions:

(i) The contract shall be for a period of 3 years with effect from 1.4.2000 to 31.3.2003.

(ii) The total value of services to be availed from the contractee party herein shall not exceed the limit mentioned in para 1 above during the contract period.

(iii) The prices to be payable for the services to be obtained from the contractee party shall be reasonable

and shall not be higher than the prevailing market rates.

(iv) The company shall ensure that the contract with the contractee party is competitive and is not less advantageous to it as compared to similar contracts with other parties.”

3. This approval has been accorded without prejudice to any action that may be required to be taken by the company under any other provisions of the Companies Act, 1956 or any other law in force.

Dated at Chennai the 27th day of April 2000.”

There is hardly any dispute between the parties about the factum of payment made by assessee of logo charges @ 2% of the gross sales. The only strife is that per revenue, it is capital expenditure whereas the assessee's plea of treating it as a revenue expenditure stands accepted by CIT(A). We find that in exactly the similar circumstances, the Hon'ble Delhi High Court in the case of G4S Securities System had held as under:-

“the ownership rights of the trade mark and know-how throughout vested with the foreign company and on the expiration or termination of the agreement the assessee was to return all the know-how obtained by it under the agreement. The payment of royalty was also to be on year to year basis on the net sales of the assessee and at no point of time was the assessee entitled to become the exclusive owner of the know-how and trade mark. Hence, the expenditure incurred by the assessee as royalty was revenue expenditure and was deductible under section 37(1) of the Income-tax Act, 1961.”

20.1. Similarly, the Co-ordinate Bench of Delhi ITAT in the case of DCM Benetton(supra) has also held usage of such brand name etc. to be revenue expenditure by observing as follows:-

“From the agreement it is clear that the assessee was only granted non-assignable licence, right and privilege with reference to the licensed marks to manufacture on the mark and distribute the licensed product in India and to use the expression 'Benetton'.

The assessee did not become the owner of the licensed marks or the holder of the trade-marks. Such license marks at all times remain the property of the licensor. The license was initially granted for a period from October, 1992 till fall/winter season of 1999-2000. However, to continue to use the license mark for manufacturing of the licensed products, the assessee was to pay royalty @ % % of the amount of net sales. By paying the royalty the assessee did not acquire any right in the licenses trade-marks. Only the products manufactured by the assessee i.e. garments will bear the licensed marks for which the license has been granted. Accordingly, it can be said that the assessee has not acquired any capital asset but has merely paid to the licensor for use of such trade-marks. Therefore, expenses are to be treated as revenue expenditure and not capital expenditure. The assessee was required to pay royalty every year. But for payment of royalty, every year the assessee could not continue receiving the license to use the licenses marks on the products manufactured by it. Thus making payment every year it cannot be said that the assessee received advantage of enduring nature primarily to bring it as capital expenditure.”

Taking cue from the same, we hold that in the instant case also, title of the ‘logo’ in question has not passed over to the assessee. Further, there is no acquisition of assets or part of any capital asset. Usage of logo by the assessee is only for displaying it on the product manufactured i.e. rubber contraceptives. That too, for a limited period as provided in the agreement in lieu of payment @ 2% of the gross sales. When we apply the tenor of the case law above cited to the facts of the instant case, we hold the instant ‘logo’ charges are also revenue expenditure within the meaning of Sec.37 of the Act in the nature of wholly and exclusively for the purpose of assessee’s business. Consequently, we see no reason to interfere in the findings of the CIT(A). Therefore, the same are hereby upheld”.

Further, the same order was followed by this Tribunal in the assessment years 2004-05, 2008-09 & 2009-2010 in assessee’s own case in ITA No.1897, 1898, 2029 & 2030/Mds.2011 and

ITANo.1783/Mds/2012 vide order dated 02.06.2013. In view of the above order of the Tribunal, we are inclined to decide the issue against the Revenue. The appeal of the Revenue is dismissed.

6. In the result, the appeal of the Revenue in ITA No.1921/Mds/2016 of assessment year 2005-06 is dismissed.

Order pronounced on Thursday, the 8th day of September, 2016, at Chennai.

Sd/-
(जी. पवन कुमार)
(G. PAVAN KUMAR)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
चंद्र पूजारी)
(CHANDRA POOJARI)
लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:08.09.2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |