IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'C', NEW DELHI

BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA No. 5558/Del/2014
A.Y. 2011-12

DCIT, Circle 12(1) New Delhi	**vs.**	G4S Facility Services (India) P.Ltd. Pachwati 82 A, Sector 18 Gurgaon 122 016 PAN: AABCG8346B
(Appellant)		**(Respondent)**

Appellant by	Sh. Arun Kr.Yadav, Sr.DR
Respondent by	None
Date of Hearing	11th Sept., 2017
Date of Pronouncement	03rd October, 2017

ORDER

PER L.P. SAHU, ACCOUNTANT MEMBER

This appeal is filed by the Revenue against the order of the Ld.CIT(A)-XV, New Delhi dated 22.07.2014 on the following grounds of appeal.

"1. Whether Ld. CIT(A) was correct on facts & circumstances of the case and in law in treating the royalty payment of Rs.1,28,60,000/- as revenue expenditure instead of capital expenditure.

2. The appellant craves leave to add, alter or amend any ground of appeal raised above at the time of hearing."

2. The brief facts of the case are that the assessee is engaged in the business of providing facility services. The assessee filed return of income on 29th November,2011 declaring an income of Rs.12,72,81,485/-. The case was picked up for scrutiny and statutory notices were issued to the assessee. During the course of scrutiny proceedings the Assessing Officer observed that the assessee has made payment of Rs.1,28,60,000/- towards royalty payment and it has been claimed as revenue expenditure. In this regard the assessee asked to submit the agreements. The assessee submitted in response to the notice of the Assessing Officer agreement and other documents as required by the Assessing Officer the royalty was payment to the licensors named G4S Regional Consultancy NAMESA WLL, Manama, Bahrain against royalty for use of trademarks and trade names. The gist of the agreement is as under.

In this agreement, the following words and expressions shall have the meanings hereby assigned to them:

'Effective date' means January 1, 2007,

'License business' means the business carried on by the license as described in Schedule 2, to which this agreement applies.

'Royalty agreement' means the agreement dated December 26, 2007 made between G4S and the licensor, relating to the use by the licensor of the trade marks and trade names in the territory.

'Trade names' means the trade names listed in schedule 3.

'Trade marks' means the trademarks and logos listed in schedule 1.

In consideration of the sub license the license shall throughout the term of this agreement after the end of each quarter pay to the licensor (in the manner as provided in clause 3.2) a fee of 1% (one per cent) of the net sales in that quarter (the quarterly fee).'

2.1. When reply is submitted by the assessee the A.O. did not accept and after relying on various case laws treated it as a capital expenditure and allowed depreciation of 25% on the above payments.

2.2. Aggrieved by the addition made by the A.O. the assessee went in appeal before the First Appellate Authority. The Ld. First Appellate Authority after considering the submissions and order of the A.O. allowed the appeal of the assessee.

2.3. Aggrieved by the order of Ld. CIT(A) the Revenue came in appeal before this Tribunal.

3. Ld. DR relied on the order of the A.O. and submitted that the Ld. CIT(A) has given a well reasoned order by treating the above payments as capital expenditure. The case law relied upon by the assessee are not applicable in the present case.

4. On the other hand the Ld.AR reiterated submissions made before the First Appellate Authority and relied on the order of the Ld. CIT(A).

5. After hearing both the sides and perusing material available on record, we find that the First Appellate Authority has dealt with the issue in regard to treatment of royalty payment as capital or revenue has been discussed as under.

"6. I have carefully considered the facts of the case, order of the A.O. and the detailed submission made by the learned AR in the light of several judicial pronouncements in this regard, Vide my order dated 29.11.2 12 in appeal No.113/11-12/CIT{A)XV, Hon'ble Delhi High Court in the case of another group company, i.e. M/s G-4S Securities Services, on identical facts, has already dismissed the depart rental appeal in earlier years and held the royalty payment as revenue expenditure, after considering the facts and legal position.

6.2 The facts of that case are similar to the following facts of appellant, which as per the term of the present agreement, provide that:

(i) The appellant company was engaged in the service Industry instead of engaged in the manufacturing activities.

(ii) Since in the service industry, technology changes at rapid pace than manufacturing activity therefore it is immaterial to emphasize that appellant company would be able to use the technical know how even after the termination of the agreement.

(iii) In the present case, appellant company was giving the royalty more for enjoying trade name and trade mark whose value NIL after termination of the contract.

(iv) Appellant company have non-exclusive right to use the trademarks within the territory of India.

(v) The royalty is determined on the basis of percentage of turnover and it is not paid as lumpsum, therefore the same can increase or decrease on the basis of turnover.

6.3 I find that various decisions relied on by the AO for disallowance of royalty have been rendered on distinguishable sets of fact and are not applicable to the issue in question. I agree that the appellant has not acquired any benefit of enduring nature and it will not constitute acquisition of any assets. Hence, respectfully following the ratio of various decisions cited by the appellant and particularly and following the decisions of the Hon'ble Delhi High Court in the case of M/s G4S Security Services, 'on similar facts, I hold that the payment of royalty in the present case is not a capital expenditure. Therefore ground no.1 of the appellant is allowed in favour of the appellant."

5.1. Keeping in view the aforesaid findings given by the Ld. First Appellate Authority on the issue involved in the appeal filed by the department, we are of the considered view that the Ld. First Appellate Authority has rightly deleted the addition made by the A.O. because these royalty payments are paid for use of trademark licences. After going through the impugned order the Ld. CIT(A) has observed that in case of group companies (G4S Security Systems) in the A.Y. 2002-03, 2003-04 and 2005-06 has been rightly allowed by Hon'ble High Court after appreciating the legal and factual position and in case of G4S Pvt.Ltd. in the A.Y. 2008-09 and 2009-10 the Ld. CIT(A) himself has allowed the appeal of the assessee and in this regard the Ld. DR could not controvert the finding that whether against the order of Ld. CIT(A) for A.Y. 2008-09 and 2009-10 for G4S Pvt.Ltd. the appeal has been filed in upper forum or not. The Ld. CIT(A) has also observed that for the A.Y. 2008-09 and 2009-10 in the assessee's own case on identical facts and circumstances had allowed the appeal of the assessee. But the Ld.DR could not controvert

whether revenue has filed any appeal against such order. In the case of group companies the Hon'ble High Court has allowed the royalty payment as revenue expenditure in the case of assessee group companies. Therefore we find no infirmity in the impugned order on the deletion of Rs.1,28,60,000/- made by the A.O., therefore we decide the issue against the revenue.

6. In the result the appeal of Revenue is dismissed.

Pronounced in the Open Court on 03rd October, 2017.

Sd/-	Sd/-
(H.S.SIDHU)	**(L.P. SAHU)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: the 03rd October, 2017

**** gmv***

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches
New Delhi