

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai**

**Before Shri C.N. Prasad, Judicial Member
and Shri A.L. Saini, Accountant Member**

ITA No. 5378/Mum/2016
(Assessment Year: 2013-14)

DCIT, Circle-13(1)(2) Room No. 218, 2nd Floor Aayakar Bhavan, M.K. Road Mumbai 400020	Vs.	M/s. Premier Opticals P. Ltd. 4, Kirti Manor, S.V. Road Santacruz (W), Mumbai 400054
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PAN – AAACP2280L

Appellant

Respondent

Appellant by: Shri V. Vidhyadhar
Respondent by: Shri Pankaj Jain

Date of Hearing: 19.02.2018
Date of Pronouncement: 21.02.2018

ORDER

Per C.N. Prasad, JM

This appeal has been filed by the Revenue against the order of the CIT(A)-21, Mumbai dated 26.06.2016 for A.Y. 2013-14.

2. The only grievance in the appeal of the Revenue is that the CIT(A) is not justified in deleting the disallowance of expenditure claimed on account of royalty payment relying on the decision of the Tribunal in assessee's own case for assessment years 2008-09 and 2009-10.

3. The learned counsel for the assessee at the outset submits that the issue in appeal is decided in assessee's own case by the Tribunal for assessment years 2008-09 to 2011-12 holding that royalty payment made by the assessee is revenue expenditure. The learned counsel for the assessee, referring to the order of the Tribunal in assessee's own case for A.Y. 2011-12, which is placed at page 14 of the paper book, submitted that the Tribunal held that royalty payment made by the assessee is revenue

expenditure following the order of the Tribunal for assessment years 2008-09 and 2009-10.

4. The learned D.R., on the other hand, vehemently supported the order of the Assessing Officer.

5. We have heard the rival submissions and perused the orders of the authorities below and the decision of Coordinate Bench in assessee's own case for assessment years 2008-09 to 2011-12 which are placed in the paper book. The only issue in the appeal of the revenue is whether the royalty payment made by the assessee is capital expenditure or revenue expenditure. The assessee made payment of royalty to Lawrence and Mayo India Pvt. Ltd. and the said amount was claimed as revenue expenditure by the assessee contending that it was doing the business of dispensing opticians and royalty at 1% of the turnover has to be paid to Lawrence and Mayo India Pvt. Ltd. for using their brand name and therefore is an allowable expenditure. However, the AO during the current assessment year as well as in the assessment years right from 2008-09 negated the claim of the assessee and treated such expenditure as capital expenditure and allowed depreciation. When the matter was carried to the CIT(A) as well as the Tribunal in earlier years the Coordinate Bench held that royalty payment made by the assessee is revenue expenditure. Therefore, respectfully following the said decision of the Coordinate Bench we uphold the order of the CIT(A) in holding that the payment made by the assessee towards royalty to sister concern Lawrence and Mayo India Pvt. Ltd. is revenue expenditure.

6. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 21st February, 2018.

Sd/-
(A.L. Saini)
Accountant Member

Sd/-
(C.N. Prasad)
Judicial Member

Mumbai, Dated: 21st February, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -21, Mumbai*
4. *The Pr. CIT - 13, Mumbai*
5. *The DR, "G" Bench, ITAT, Mumbai*

By Order

//True Copy//

*Assistant Registrar
ITAT, Mumbai Benches, Mumbai*

n.p.