

**IN THE INCOME TAX APPELLATE TRIBUNAL "G"
BENCH, MUMBAI**

**BEFORE HON'BLE SH.SHAMIM YAHYA, AM &
HON'BLE SH. SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No. 4220/Mum/2016
(निर्धारणवर्ष / Assessment Year: 2007-08)

DCIT - 1(2) (2), R. No. 535, 5 th floor, Aayakar Bhavan, Mumbai-400 020	बनाम/ Vs.	M/s Mahyco Monsanto Biotech (I) Ltd. 5 th floor, Ahura Centre, 96 Mahakali Caves Rd, Andheri(east) Mumbai-400093.
स्थायीलेखासं ./जीआइआरसं ./PAN No. AABCM0176B		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri V. Vidhyadhar , DR
प्रत्यर्थीकीओरसे/Respondentby	:	Shri Kirit Kamdar,AR

सुनवाईकीतारीख/ Date of Hearing	:	07.06.18
घोषणाकीतारीख / Date of Pronouncement	:	04.07.2018

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The present Appeal filed by the revenue is against the order of Ld. CIT (Appeal) – 2, Mumbai dated 01.03.16 for AY 2007-08 on the grounds mentioned herein below:-

"1. "on facts and in the circumstances of the case and in Law, the CIT(A) erred in deleting the disallowance of Rs. 1,79,09,9391- pertaining to trial expenses in respect of Bollgard II ('BG II') Technology, without appreciating the Assessing Officer's findings that the same is nothing but a variety of new seed of cotton introduced by the assessee company during the year under consideration and trial expenses are part of normal business activities of introducing new seeds in the market, which needs to be capitalized u/s. 32 of the Income Tax Act, 1961?"

2. The brief facts of the case are that the assessee company is in the business of promotion, marketing and sub-licensing of trait technology and supporting the sub-licensees through market research and advertising for which it receives royalty and technology fees from sub-licensees. The Assessee company e-filed its return of income for the A.Y. 2007-08 on 31.10.2007 declaring total income of Rs. 1,23,40,49,044/-. The same was assessed at Rs. 1,23,62,79,000/- u/s. 143(3) of the I.T. Act, 1961 on 25.11.2009. Thereafter, the case of assessee was selected for scrutiny and after serving statutory notices and seeking reply of the assessee, the AO complete the assessment on 6.03.2013 u/s.

143(3) r.w.s. 147 of the Act declaring revised total income of Rs. 124,97,11,454/- wherein the AO had disallowed Rs. 1,79,09,939/- as Trial Expenses but granted depreciation u/s. 32 of the I.T. Act

Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties, partly allowed the appeal of the assessee and deleted the additions.

Now before us, the revenue has preferred the present appeal by raising the above grounds.

3. The solitary ground raised by the revenue relates to challenging the order of Ld. CIT(A) in deleting the disallowance of Rs. 1,79,09,939/- pertaining to trial expenses in respect of Bollgard II ('BG II') Technology, without appreciating the Assessing Officer's findings.

4. We have heard counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities.

Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(A). The Ld. CIT(A) has dealt with the above grounds raised by the revenue in para no. 4(4.1 to 4.3) of its order. The operative portion of the order of Ld. CIT(A) is contained in sub-para no. 4.3 of its order and the same is reproduced below:-

4.3. The submissions of the Appellant have been considered. As is evident from the submissions, the Appellant is not engaged in independently developing any technology. In fact, the Appellant is principally involved in promoting, marketing and sublicensing of the trait technology licensed to it by its JV partners. Accordingly, the trial expenses incurred by the Appellant which are merely for commercialization of Bollgard II technology provide no enduring benefit to the Appellant and ought not to be capitalized. Therefore, in my considered opinion, the action of the Assessing Officer is not found to be justifiable and the disallowance made by the Assessing Officer is hereby deleted.

After having gone through the facts of the present case as well as considering the orders passed by revenue authorities and

submissions made by both the parties, we find that Ld. CIT(A) after rightly appreciating the facts of the present case had concluded that assessee was not engaged in independently developing any technology and in fact, the assessee was principally involved in promoting, marketing and sublicensing of the trait technology licensed to it by its JV partners. It was thus rightly held that the trial expenses incurred by the assessee were merely for commercialization of Bollgard II technology provide no enduring benefit to the assessee and ought not to be capitalized. Therefore, Ld. CIT(A) correctly found that the action of the Assessing Officer was not justifiable and the disallowance made by the Assessing Officer was correctly deleted.

Moreover, no new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings so recorded by Ld. CIT(A). Therefore, there are no reasons for us to interfere into or deviate from the findings recorded by the Ld.CIT(A). Hence, we are of the considered view that the findings so recorded by the Ld. CIT (A) are

judicious and are well reasoned. Resultantly, this ground raised by the revenue stands **dismissed**.

5. In the net result, the appeal filed by the revenue stands **dismissed** with no orders as to cost.

Order pronounced in the open court on 4th July, 2018

<i>Sd/-</i> (Shamim Yahya) लेखासदस्य / Accountant Member मुंबई Mumbai; दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (Sandeep Gosain) न्यायिकसदस्य / Judicial Member 04.07.2018
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार
(Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai