

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A', NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 6681/Del/2015
Assessment Year: 2011-12

DCIT, Circle-4(1), C.R. Building, New Delhi	Vs.	M/s. Baxter India Pvt. Ltd., 2 nd Floor, Building No. 8, Tower C, DLF Cyber City, Phase-II, Gurgaon
PAN :AAACB3906F		
(Appellant)		(Respondent)

Appellant by	Shri Manoj Kumar Mahar, Sr.DR
Respondent by	Shri S.P. Singh, Shri Manoneet Dalal & Shri Yishu Goel, ARs

Date of hearing	07.01.2019
Date of pronouncement	09.01.2019

ORDER

PER O.P. KANT, A.M.:

This appeal by the Revenue is directed against assessment order dated 30/11/2015 passed by the Assessing Officer in compliance to the direction dated 30/10/2015 of the Ld. Dispute Resolution Panel for assessment year 2011-12, raising following grounds:

- 1. On the facts and in the circumstances of the case and in law, the Hon'ble DRP has erred in deleting the addition made on account of payment of royalty of Rs.5,10,72,292/- held as capital expenditure.*
- 2. On the facts and in the circumstances of the case and in law, the Hon'ble DRP has erred on facts in ignoring that*

payment of royalty was made for procuring and usage of trademark and technical know-how which is clearly unambiguously an expenditure which is capital in nature.

3. *The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.*

2. Briefly stated facts of the case are that the assessee was engaged in the business of manufacturing and trading of pharmaceutical products. For the year under consideration, the assessee filed return of income on 30/11/2011 declaring income of Rs.1,13,95,310/-. The case was selected for scrutiny and in the draft assessment order dated 02/03/2015 the Assessing Officer proposed following additions:

1.	transfer pricing adjustment	Rs.43,15,85,254/-
2.	Payment of royalty	Rs.5,10,72,292/-
3.	Interest on IT refund	Rs.9,66,078/-

2.1 The Ld. DRP deleted the addition in respect of the royalty payment and reduced the transfer pricing adjustment to Rs.42,97,55,019/-. Aggrieved with the direction of the DRP, both the assessee and the Revenue have filed appeal before the Tribunal.

3. The appeal filed by the assessee has already been decided and the matter of the transfer pricing adjustment has been remanded back to the Ld. Transfer Pricing Officer (TPO) vide order dated 26/10/2016 in ITA No. 345/Del/2016.

4. The Revenue in ground No. 1 and 2 of present appeal has agitated the issue of royalty held by the learned DRP as revenue expenditure.

5. At the outset, the learned counsel of the assessee submitted before us that the royalty in the year under consideration has been paid under a license agreement dated 27/10/2003 entered into with “Baxter International inc. USA” (in short the ‘Baxter USA’) for the right to use the patents, trademarks, know-how and software which is owned by Baxter USA and no ownership rights have been acquired or purchase by the assessee in any of the above. The learned counsel further submitted that the royalty paid in earlier and subsequent years under the same agreement has been held as revenue by the Tribunal. Accordingly, submitted that issue in dispute being covered in favour of the assessee, the appeal of the Revenue might be dismissed.

6. The learned DR, on the other hand, submitted that royalty payments in the case are in the nature of the capital expenditure, however, he could not controvert the fact that issue in dispute in earlier and subsequent years has been decided in favour of the assessee.

7. We have heard the rival submission and perused the relevant material on record. It is undisputed that the royalty in the year under consideration has been paid under the license agreement dated 27/10/2003 with the company namely Baxter USA. The addition made in earlier years has been deleted by the Tribunal in favour of the assessee. The relevant finding of the Tribunal for assessment year 2006-07 in IT No. 3498/Del/2010 is reproduced as under:

“6.3 After perusing the aforesaid findings of the Coordinate Bench in assessee’s own case in earlier year and subsequent years, we are of the considered view that facts of the year under consideration are similar to the facts involved in the assessment years 2004-05, 2007-08 & 2008-09, therefore, respectfully following the precedents as referred above, we hold that the payments on royalty are revenue expenditure, hence, the addition in dispute is deleted and accordingly the grounds are allowed.”

8. Since there is no change in the license agreement in the year under consideration under which royalty has been paid as compared to the assessment year 2006-07, thus respectfully following of the decision of the Coordinate bench (supra), we uphold the finding of the learned DRP on the issue in dispute and dismiss the grounds No. 1 and 2 of the appeal of the Revenue.

9. The ground No. 3, being general in nature, we are not required to adjudicate upon.

10. In the result, the appeal of the Revenue is dismissed.

Order is pronounced in the open court on 9th January, 2019.

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

Sd/-
[O.P. KANT]
ACCOUNTANT MEMBER

Dated: 9th January, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi