

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA Nos.1696 to 1698/Bang/2019, 2089/Bang/2019 & 757/Bang/2016
Assessment years : 2013-14 to 2016-17 & 2012-13

Sogefi Engine Systems India Private Limited [formerly Sogefi-MNR Engine Systems India Pvt. Ltd.], 54/3/B, Ejipura Main Road, Vivek Nagar, Bangalore – 560 047. PAN: AAFCM 6821K	Vs.	The Assistant Commissioner of Income Tax, Circle 6(1)(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Venkatesh Kumar, Advocate
Respondent by	:	Shri Priyadarshi Mishra, Addl.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	25.06.2021
Date of Pronouncement	:	15.07.2021

ORDER

Per Chandra Poojari, Accountant Member

These appeals viz., ITA Nos.1696 to 1698/Bang/2019 and 2089/Bang/2019 are appeals by the assessee against different orders of CIT(Appeals) for the assessment years 2013-14 to 2016-17.

2. ITA No.757/Bang/2016 for AY 2012-13 dated 22.12.2017 is a recalled appeal which is listed for hearing in view of the order of the Tribunal in MP No.36/Bang/2018 dated 18.5.2018 to adjudicate ground No.2 of the appeal, which reads as follows:-

“2. The learned CIT(A) has failed to appreciate that the professional & Legal charges incurred attributable to product development and which has been consistently claimed and allowed as ‘revenue expenditure’ in the previous assessment years 2010-11 & 2011-12 and therefore, the finding of the CIT(A) is totally contrary to the settle law of ‘Principle of Consistency’.”

3. At the time of hearing, the assessee filed the common consolidated grounds of appeal, which are taken up for adjudication in lieu of original grounds of appeal raised by the assessee in its appeals in ITA Nos.1696 to 1698/Bang/2019 and 2089/Bang/2019. The common consolidated grounds in these appeals are as follows:-

“1. The CIT(A) erred in not holding that the expenses incurred on design and technical consultancy towards improving the existing product in the same line of business as 'revenue expenditure'.

2. That on the facts and in the circumstances of the case, the learned CIT(A) has erred in holding that the expenditure of design and technical services incurred towards improving the existing product which has the effect of long-term or enduring benefit to the appellant and therefore, it needs to be capitalized as 'capital expenditure'.

3. The CIT(A) ought to have appreciated that the expenditure of designing and technical consultancy services is not made for the purpose of bringing into existing any asset or advantage but for running the business or working it with a view to produce the profit it is revenue expenditure.

4. The CIT(A) has failed to appreciate the principle accepted by the revenue for earlier A.Y. 2010-11 & 2011-12 was that the

entire expenditure of product development was allowed as revenue expenditure and no expenditure is to be allocated to the capital in nature.”

4. The facts of the case for AY 2013-14 are that the appellant company engaged in the manufacture of automotive filters for two and four-wheelers and other filtration products and systems, filed its return on 18.9.2013. The return was processed u/s 143(1) and selected for scrutiny. The AO treated lease hold improvement expenditure as capital expenditure and allowed depreciation thereon. This addition has not been contested in appeal.

5. The second addition made by the AO pertains to the expenditure of Rs.51,67,652/- on R&D activities claimed by the appellant as revenue expenditure. The AO observed that the amount was capitalized in the books but in the computation of income, it was reduced as admissible with the narration “*development expenses credited to P&L account for capitalization allowed under I T now considered.*” The AO, following the order of the CIT(A) for the preceding year, disallowed the product development charges of Rs.51,67,652/- as being capital in nature and allowed depreciation thereon. Similarly in the other assessment years the disallowance on this count is as follows:-

AY	Amount (Rs.)
2012-13	89,47,220
2014-15	61,89,234
2015-16	53,28,482
2016-17	68,13,452

6. On appeal, the CIT(Appeals) confirmed the order of AO on this issue.

7. The Id. AR submitted that the assessee company 'Sogefi MNR Filtration India Private Limited' (formerly M.N. Ramarao Filters Private Limited) ("the Company") was incorporated on 22 July 2008 as a private limited company under the provisions of Chapter IX of the Companies Act, 1956 on conversion of a partnership firm, M N Ramarao and Company. The registered office of the Company is situated in Bangalore, India.

8. The Company is engaged in the business of manufacturing different types of filters primarily for Automotive Industries more particularly for two and four wheelers and filters for clean rooms, pollution control, and industrial requirements.

9. M/s.Filtrauto, SA of France had acquired 70% equity shares from shareholders of M.N. Ramarao Filters P Ltd in the year Nov 2008 under automatic route with due approval from Reserve Bank of India. Consequent to investment, the name of the company was changed to M/s. Sogefi MNR Filtration India Private Limited. The company has manufacturing facilities in Bangalore and in Pune. The major customers to include M&M, Bajaj, TVS and other two wheeler manufacturers.

10. The Id. AR further submitted that the assessee company is into manufacturing, distribution and sale of products such as Air intake and Cooling Systems, filters (oil filters, engine air filters, fuel filters, etc.,) suspensions and precision springs and other components for cars, trucks and other vehicles which operates, *inter alia*, in Europe, South America, United States, China, India and worldwide. The assessee company has developed through its R & D platform, all the necessary expertise, experience, organization and means in the development of products. It entered into 'intercompany service agreement' with the subsidiaries of Sogefi SAS, France, for taking assistance and advice in the above field and

to meet its client's expectations in India. The copy of the Intercompany services agreement is filed.

11. In the previous year 2013-14 relevant to the Assessment year 2014-15, 'Sogefi SAS, France (Group Concern)' has provided its services and assistance which are in the nature of FTS - 'cost of the personnel and other linked costs' per project basis, belonging to the R & D Platform and linked to Product development projects of the assessee company. These costs are duly followed on time, materials and other expenses basis through a specific project. The copies of the invoice are filed.

12. It is submitted that the services provided by the 'Group Concern' are in the nature of 'fees for technical services' [FTS] and it is for development/improvising of existing products of the assessee company, in respect of which TDS has been deducted u/s.195 and details in the form 15CA & 15CB for the remittance made outside India had been dully filed before the AO. It is submitted that FTS is in the nature of personnel cost directly employed for product development of the assessee company. All these expenses are revenue in nature which is for modification of existing products or for development of new products with the assets under the same management, with the same work force & expertise, with the same existing machinery including the building. It was further submitted that the assessee company has not added any new machinery or new capital asset and these expenses are only on the day-to-day running of the existing business. These expenses are to facilitate the existing business of the company leaving the fixed assets untouched. Hence, eligible to charge to profit and loss account as 'revenue expenditure allowable u/s.37 of the Act.

13. It is further submitted that the AO considered the Professional and legal charges incurred in respect of product development activities carried

on in the previous assessment years 2010-11 & 2011-12 and allowed u/s. 37 of the Act.

14. It was further submitted that the assessee is engaged in the business of manufacture of oil, diesel, air filters and filter assemblies and parts related to engine meant for automotive industries. As a part of its existing business, the company is engaged in design services, mainly meant for captive consumption, for improvisation of existing products of the company and development of new products for the automotive customers. The company is also into export sale of design services to its group companies situated outside India. The costs related to design services *inter-alia* to include :-

- a) Salaries & wages of design engineers and other employees involved in development;
- b) Minor materials like prototypes and other testing materials;
- c) All other direct costs related to employees like travelling and lodging;
- d) Rent and electricity for the design department;
- e) Depreciation on fixed assets directly used for development;
- g) Other direct expenses to include printing and stationery, consumables, office expenses; and
- h) All other indirect and allocable common costs like expenses of purchase employees; salaries of common employees.
- i) Costs of design services imported from group companies situated outside India.

15. All the above expenses are development expenses incurred by the company in anticipation of future income and to meet the matching principle, the company is capitalizing 70% of the above expenses under "Intangible Asset" and the balance 30% is expensed out in the income statement as revenue expenses.

16. Every development of a new product or improvisation with reference to existing product is called project and assigned with specific name and number. Projects will be identified on the basis of control and future economic benefits. The costs incurred in the development phase of the identified projects are capitalized only after detailed study in terms of:-

- (1) the technical feasibility of completing these projects;
- (2) the intention to complete these projects to the commercial advantage of the company;
- (3) the ability to use or sell products by making use of these projects;
- (4) the manner with which these projects will generate probable future economic benefits;
- (5) the availability of technical, financial and other types of resources appropriate in completing the development of these projects; &
- (6) the ability to reliably evaluate the cost attributable to these projects;

17. The costs capitalized under **Intangible Assets** are reviewed in frequent intervals and same are allocated to the projects which are in progress in proportion to their expected sales. Also, projects are reviewed in frequent intervals to identify their progress, likely success or failure. Appropriate treatment for the expenses accounted under intangible assets

are provided in the books on the basis of related success or failure. If the project is successful, the company is assured of future income generation and the costs accumulated on this successful project will be expensed out in P&L account in 36 months under "Amortisation Charges". However, if the project is unsuccessful at a given point of time, the total costs accumulated for such unsuccessful project are expensed out in the same month as "Projects written off".

18. The softwares that are being used for development activities are as below:-

1. STAR CCM
2. ANSYS Design Modeler
3. PTC Software CREO Parametic
4. FLOEFD

19. During year under review, the company has passed the following journal entries in its books for treatment of Development Expenses.

Particulars	DR	CR
To Intangible Assets	3,80,81,099	
Professional & Legal expenses		91,13,452
Minor Materials		16,49,214
Travelling & Conveyance		53,75,596
Salaries & wages		2,19,42,837

Particulars	DR	CR
Amortisation charges	2,37,98,801	
To Intangible		2,37,98,801

Particulars	DR	CR
Development expenses (W/off)	81,35,401	
81,35,401		81,35,401

20. It is once again retreated that the assessee company had bifurcated sum out of total expenditures, salary & wages ,telephone, traveling expenses, other administration expenses and allocated to the modification of existing product / development new product with the asset under the same machinery, with the same work force and expertise with the same machinery including the building.

21. The amount on account of the above treated as Capital expenditure under intangible assets cannot be treated as capital expenditure on disallowance under the Income tax Act. The Company on account of the above, had not purchased any new machinery or created any new capital assets and the expenditures incurred by the company is only on day to day running business. The bifurcation has been made separately for the products under which ,certain items were to be modified and certain new items were to be manufactured to earn more profits or advantage in the long run.

22. On the allowability of the above intangible asset under the Income tax Act, keeping in view the decision of the Hon'ble Supreme Court in the case of *Empire Jute Co. Ltd.*, it was submitted that the nature of the advantage has to be seen in a commercial sense. The Hon'ble Supreme Court has held that whereas in the capital field only that the expenditure would be disallowable on an application on the tests, whereas expenditure has been incurred for obtaining an advantage of enduring benefit; but whereas the expenditures is incurred for obtaining an advantage of enduring benefits on revenue account, the position will be different i.e.,if the advantage consists merely in facilitating the assessee's trading operations or enabling it to carry on the business to be carried out more efficiently or more profitably while leaving the fixed assets untouched, the expenditure would be on revenue account, even though the advantage may endure for

an indefinite future. Looking from this angle, the expenditure incurred by the company was with a view to earn more profits, while leaving its fixed capital untouched. It is further submitted that in some of the items the project has been abandoned also and some were even completed or continued and therefore, although the assessee company intended to obtain advantages or enduring benefit, it was in the revenue field. In support of this argument, reliance was placed on the Hon'ble High Court of Punjab & Haryana in *CIT v. M/s. Escorts Auto Components Ltd. (2011) 197 Taxman 42 (P&H)* wherein it was held as under:-

“By no stretch of imagination, the expenditure incurred by the assessee could be regarded as capital expenditure. Merely because the assessee had declared by giving a note in its original return that it was an expenditure pertaining to new project and was capital in nature, the Assessing Officer could not have treated the same as the capital expenditure. Moreover, when the Commissioner (Appeals) asked for the comments of the Assessing Officer, he neither commented on the nature of the expenditure incurred nor did he comment on the treatment of the accounting entries in the books of account. The Assessing Officer simply placed reliance upon the note given by the assessee in its original return, which had been regarded as insufficient. Moreover, under section 139(5), the assessee was entitled to file the revised return rectifying the error committed in showing the expenditure. Moreover, the finding of the Tribunal that the expenditure incurred was revenue expenditure and/or for business purpose, had neither been challenged, nor there was any challenge to the finding that no capital asset had come into existence. The Tribunal had recorded in its order that the revenue did not ever doubt that the expenditure incurred was exclusively and wholly for the purpose of business. Therefore, no question of law arose for determination of the High Court. [Para 7]”

23. It was therefore submitted that disallowance of any intangible assets claimed by assessee u/s. 37 of the Act was not justified and the same was allowable.

24. The Id. AR also drew our attention to Notes on clauses in respect of R&D expenses which reads as follows:-

“p) Research and development expenses

Revenue expenditure pertaining to research is charged to the statement of profit and loss. Development costs of products are also charged to the statement of profit and loss unless a product's technical feasibility has been established, in which case such expenditure is capitalised. The amount capitalised comprises expenditure that can be directly attributed or allocated on a reasonable and consistent basis to creating, producing and making the asset ready for its intended use. Fixed assets utilised for research and development are capitalised and depreciated in accordance with the policies stated for Fixed Assets.”

25. He also relied on the following judgments:-

- PCIT V. Vijayeshwari Textiles Ltd. (2020) 121 taxmann.com 20 (Madras)

Held that, product development expenses are deductible even though said expenditure was to be amortised over a period of 3 years as per accounting practice adopted by assessee.

- CIT v. Arvind Products Ltd. (2018) 93 taxmann.com 454 (Guj)

Held, where assessee incurred expenditure on product development and claimed deduction for same under section 37(1), in view of fact that expenditure so incurred did not involve development of a new product or even a new technique or technology to manufacture existing product more efficiently rather it was aimed at improving quality of existing products of assessee, assessee's claim for deduction was to be allowed.

- CIT v. Tejas Networks India (P) Ltd. (2014) 52 taxmann.com 513 (Kar)

Held, Where assessee company claimed product development expenses for upgrading existing products, same was to be treated as revenue expenditure as due to severe competition, constant upgradation was required.

- Kedarnath Jute Mfg. Co. Ltd. v. CIT (1971) 82 ITR 363 (SC)

Held, Whether the assessee is entitled to a particular deduction or not will depend on the provision of law relating thereto and not on the view which the assessee might taken of its right nor can the existence or absence of entries in the books of account be decisive or conclusive in the matter.

- Empire Jute Co. Ltd. v. CIT (1980) 124 ITR 1 (SC)

What is material to consider is the nature of the advantage in a, commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. The test of enduring benefit is, therefore, not a certain or conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case.

What is an outgoing of capital and what is an outgoing on account of revenue depends on what the expenditure is calculated to effect from a practical and business point of view rather than upon the juristic classification of the legal rights, if any, secured, employed or exhausted in the process. The question must be viewed in the larger context of business necessity or expediency.

- Radhasoami Satsang v. CIT (1992) 193 ITR 321 (SC)

Held that, in the absence of any material change justifying the Department to take a different view from that taken in earlier proceedings, the question of the exemption of the assessee appellant should not have been reopened. Strictly speaking *res judicata* does not apply to income-tax proceedings. Though, each assessment year being a unit, what was decided in one year may not apply in the following year; where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

[The Court emphasized that the decision is confined to the facts of the case and may not be treated as an authority on aspects which have been decided for general application].

- PCIT v. Quest Investment Advisors (P) Ltd. (2018) 96 taxmann.com 157 (Bom)

Held, Where entire expenditure of assessee for earlier years and subsequent years was set off against professional income and no expenditure was allocated to capital gain, in absence of any change in circumstances, following rule of consistency, Tribunal was justified allowing same in relevant assessment years also.

- Perfect Engineering Products Ltd. v. Addl. CIT (2013) 36 taxmann.com 502 (Mum)

Held, Where expenditure in question are relatable to business of assessee then simply for reasons that these have given some enduring benefit to assessee, same cannot be regarded as capital expenditure.

26. On the other hand, the Id. DR submitted that assessee has availed technical assistance from its AE situated in foreign country, thereby obtained enduring benefit and also fixed capital has been increased by

incurring this expenditure. The assessee has consolidated its market which is for more than a year and its brand value has increased in Indian market. It was stated that each assessment year is an independent assessment year. In the earlier AY 2010-11 & 2011-12, the AO has not applied his mind and he just chose to pass the assessment order without considering the issue in proper perspective. That order cannot bind the appellate authority and it cannot be considered as a binding precedent in subsequent assessment year and the subsequent Assessing Officer can draw a different conclusion if there is adequate justification for default of the earlier view. In the present case, according to the Id. DR, new and fresh facts & material was gathered by the AO and has taken a different view treating the R&D expenditure as capital expenditure which cannot be faulted with.

27. We have heard both the parties and perused the material on record. The assessee is engaged in the manufacture of automotive filters for two and four wheelers and other filtration products and systems. In these assessment years the assessee incurred and claimed R&D expenditure which was disallowed by the AO as follows:-

AY	Amount (Rs.)
2012-13	89,47,220
2013-14	51,67,652
2014-15	61,89,234
2015-16	53,28,482
2016-17	68,13,452

28. The assessee has capitalized 70% of R&D expenditure in its balance sheet as capital expenditure and charged 30% as R&D expenditure to P&L account in these assessment years. However, while filing the return of income, the assessee claimed the entire R&D expenditure as a deduction by treating it as revenue expenditure which was

disallowed by the AO. The claim of assessee before us is that the said expenditure to be treated as revenue expenditure though a portion has been claimed by assessee as capital expenditure in the balance sheet by placing reliance on the judgment of Supreme Court in the case of *Empire Jute Co. Ltd. (supra)*.

29. Now the question is, whether this expenditure incurred by the assessee towards R&D should be treated as revenue or capital expenditure? It is a well-accepted legal proposition that no test of universal application can be laid down to determine the question whether an expenditure incurred by the assessee is revenue or capital. It depends on the overall facts and circumstances of each case. Such matters have to be decided from a practical view and on application of the proper principles of law. Courts are of the view that keeping in mind the ground realities of business, AO should consider the purpose of a particular expenditure. A few principles in this regard can be enumerated as under:--

- (i) One of the guidelines for distinguishing revenue expenditure from capital expenditure is that if the expenditure is incurred for obtaining an advantage of enduring benefit it would be capital expenditure. But, the test of enduring benefit is not a certain or conclusive test and it is not to be applied blindly and mechanically. In other words every advantage of enduring nature acquired by an assessee is not covered by the said concept. In a given case, the test of enduring benefit might break down. The idea of once for all payment and enduring benefit are not something akin to statutory conditions; nor are the notions of capital or revenue a judicial fetish. Concepts of capital/revenue expenditure are not eternal verities, but are flexible ones.
- (ii) What is material in this regard is to consider the type, nature and character of the advantage in a commercial sense on one hand and on the other to look in to the aim, intended object, effect of the expenditure and in the larger

context of necessity and expediency. Legal rights secured in the process are also relevant in deciding the issue.

- (iii) If the expenditure is related to the carrying on or conduct of the business or is intrinsically connected with the running of a business the expenditure is to be regarded as revenue expenditure even though the advantage may endure for some indefinite future.
- (iv) A payment made with a view to obtain the benefit of technical assistance for running the assessee's business more efficiently so as to earn more profits and 'not by way of transfer of fruits of research once and for all', can be treated as an item of revenue expenditure.
- (v) Expenditure incurred in connection with the profit earning apparatus would be revenue expenditure.
- (vi) Where the advantage is on the capital fixed the expenditure would be treated a capital Expenditure. If the advantage leaves the fixed capital untouched, the expenditure would be on revenue account.
- (vii) Expenditure in the acquisition of a concern would be capital expenditure; expenditure in carrying on the concern would be revenue expenditure.
- (viii) An expenditure cannot be considered to be capital expenditure merely on the ground that the amount involved is large. The quantum of expenditure involved cannot alter the nature and character of the expenditure.
- (ix) The source or manner of the payment are of no consequence in deciding the issue.
- (x) The question whether a particular payment made by an assessee under the terms of an agreement forms a part of capital expenditure or revenue expenditure, would depend upon several factors., namely, whether the assessee obtained a completely new plan with a complete new process and completely new technology for manufacture

of the product or the payment was made for the technical know-how which was for the betterment of the product in question which was already being produced; whether the improvisation made is part and parcel of the existing business or a new business was set up with the so-called technical know-how for which payments were made; whether on expiry of the period of agreement the assessee is required to give back the plans and designs which were obtained, but the assessee could manufacture the product in the factory that has been set up with the collaboration of the foreign firm; the cumulative effect on a construction of the various terms and conditions of the agreement; whether the assessee derived benefits coming to its capital for which the payment was made. If from the terms of the agreement between the parties it transpires that the purpose be the acquisition of an asset/a right of a permanent character was a pre-requisite to the commencement or continuance of the business, the expenditure would be a capital expenditure.

- (xi) If the amount spent was for the purpose of bringing into existence a new asset or obtaining a new advantage, then obviously such an expenditure would fall in the category of capital expenditure.
- (xii) If the amount is spent for preserving and maintaining the present asset in existence, it cannot be said that the expenditure so incurred is capital in nature.
- (xiii) Where the object of incurring an expenditure is to effect a capital structure as a result of which certain incidental advantage flows, the expenditure will be of capital nature. Capital expenditure can be incurred after a company is floated or after it starts its business.
- (xiv) Ordinarily, the word capital expenditure refers to the expenditure which is of a permanent nature or for securing tangible or intangible property, corporeal or incorporeal right.

30. We have carefully gone through the significant accounting policies adopted by the assessee in these years.

Fixed Assets (for all AYs)

“Fixed assets are carried at cost of acquisition or construction less accumulated depreciation and provision for impairment of assets. The cost of fixed assets includes taxes, duties, freight and other incidental expenses related to the acquisition and construction of the respective assets.

Expenditure on research activities, undertaken with the prospect of gaining new scientific or technical knowledge and understanding, is recognised in profit or loss as incurred.

Development activities involve a plan or design for the production of new or substantially improved products and processes. Development expenditure is capitalised only if development costs can be measured reliably, the product or process is technically and commercially feasible, future economic benefits are probable, and the Company intends to and has sufficient resources to complete development and to use or sell the asset. The expenditure capitalised includes the cost of materials, direct labour, overhead costs that are directly attributable to preparing the asset for its intended use, and capitalised borrowing costs. Other development expenditure is recognised in profit or loss as incurred.”

NOTES TO ACCOUNTS : INTANGIBLE ASSETS are enclosed as **Annexure-I to this order.**

31. The argument of the Id. AR is that it has not resulted in any enduring benefit to the assessee and even if it is enduring benefit, the said expenditure is in the nature of revenue and deduction to be allowed.

32. This argument of the Id. AR holds no field. The assessee itself has treated the said expenditure as capital expenditure in its books of account and reiterated the same in its annual report that it is capital expenditure.

Contrary to this, the assessee is trying to establish that the expenditure is in revenue field. However, the expenditure is not incurred in the conduct of day to day affairs of the assessee company. On the other hand, it was incurred for securing enduring benefit which is for a longer period not pertaining to a single year when it was incurred for. In other words, the benefit of R&D is not for running business, but for securing advantage in the capital field and it was not established by the assessee that it was incurred out of circulating capital. In these circumstances, we are not in a position to apply the ratio laid down by the Hon'ble Supreme Court in the case of *Empire Jute Co. Ltd.* cited *supra*. Further, the assessee has also not established that the expenditure was incurred to face severe competition so as to carry out constant upgradation. Being so, we are not in a position to consider the ratio laid down by the Hon'ble jurisdictional High Court in the case of *Tejas Network India (P) Ltd.* (*supra*). As such, by no stretch of imagination, the expenditure can be treated as incurred in the revenue field. As seen from the facts of the case and from accounting policies followed by the assessee, it is observed that the expenditure was incurred for conducting technical feasibility report and completing the project and the purpose of incurring the expenditure is to secure commercial advantage to the company.

33. We have also gone through the Directors Report specifically for the year ended 31st March 2016 relating to AY 2016-17 which reads as follows:-

“1) RESEARCH AND DEVELOPMENT:

a) Specific areas in which R & D carried out by the Company.

Continuous improvements in all filters with the technology from parent company and associated companies; Installation of state of the art technology in-house R&D for continuous improvements in

existing products and development of new products; Continuous investment plans on R&D areas.

b) Benefits derived as a result of the above R & D

The results are in the form of increase in business from the existing customers and addition of new customers and reduction in rejection on account of quality issues.

c) Future plan of action

The company plans to invest continuously in development of new products which are environmental friendly with the help of its group Sogefi who are pioneers in automotive filters and filter assemblies.

d) Specific expenditure on R & I) — Refer to the audited financials.”

34. A reading of the above makes it clear that the assessee has been incurring this expenditure for improving existing products as well as developing of new products, thereby existing business from the existing customers has been increased as well as new additional customers added. It has also resulted in reduction in rejection on account of quality issues. As such, it cannot be held as expenditure incurred in the ordinary course of carrying day to day business of assessee. On the other hand, it is for deriving enduring benefit in the long run business plan.

35. The other contention of the Id. AR is that to meet the matching principle, the company has capitalized 70% of R&D expenditure under the head “intangible assets” and balance 30% has been claimed as revenue expenses by charging it to P&L account. However, we observe that 70% shares of assessee company is acquired by M/s. Filtrauto, SA of France, as such the assessee charges only 30% of this expenditure to P&L account and 70% of R&D expenditure was considered as intangible assets by

showing it in the balance sheet and it is not because of matching principle the expenditure was bifurcated as above.

36. Being so, we hold that the expenditure is in the capital field and to be considered as not allowable. On other hand, the assessee is entitled only for depreciation at applicable rate. This ground of assessee is partly allowed for all the assessment years i.e., AYs 2013-14 to 2016-17.

37. For AY 2012-13, this issue was already considered by the Tribunal vide order dated 22.12.2017. Accordingly there is no requirement of adjudication of this ground and the appeal is recalled by the Tribunal vide MP No.36/Bang/2018 dated 18.5.2018 only to decide the issue on principle of consistency. Accordingly, now we will deal with regard to ground No.2 on allowability of expenditure on the principles of consistency in all these assessment years.

38. The contention of the Id. AR is that in AYs 2010-11 & 2011-12, the AO himself has allowed expenditure following the principles of consistency, this expenditure to be allowed in all these assessment years. For this purpose he relied on the judgment of Supreme Court in the case of *Radhasoami Satsang (supra)*. First of all, it is pertinent to mention that as held by the Hon'ble Supreme Court, this decision is confined to the facts of that case and cannot be treated as an authority on aspects which have been decided for general application. Hence, the assessee cannot take support of the decision in the case of *Radhasoami Satsang (supra)*. Further the decision taken by the AO in one assessment year do not constitute binding precedent in any subsequent assessment year. At the same time, if it is only a case of different opinion being held on the same facts, material and aspects already considered, the subsequent AO should not proceed on his own to take a contrary decision and instead, he shall take the same decision. However it is neither required nor applicable as a

rule to take the same decision when there is qualitative difference of facts, events and material considered between the earlier AO and the subsequent AO. In other words, the subsequent AO is entitled to take a different view of the matter if there is ample justification. Therefore, if while deciding the issue, if the first AO did not have particular material before him or did not take into consideration particular facts and if the second AO is satisfied that if this material facts had been taken into consideration, decision of the first AO would have been different which would justify the second AO in not adhering to the decision of the first AO. On applying the said legal principle to the facts of the present case, it was found that the first AO in earlier AYs 2010-11 & 2011-12 taken a decision in a routine manner, without going into the facts of the case properly, examining the nature of expenditure incurred by assessee with reference to the accounting policies disclosed by assessee and in a mechanical manner he has taken the decision, though it was wrong, it was not scrutinized by the higher forum. The Tribunal had no occasion to examine the issue because it reached finality by the order of AO only and there was no further proceedings either before CIT, CIT(A) or Tribunal.

39. In the present cases, the issue was decided by the AO against the assessee after going thoroughly with the facts of the case and examining the same with the accounting policies followed by assessee and he disallowed the claim by treating the R&D expenditure as a capital expenditure. It has travelled to CIT(Appeals) and he has also given a concrete finding that it is capital expenditure. We are also agreeing with the same after examining the issue in the light of facts enumerated before us. We find that there is considerable force in the reasons given by the lower authorities. In our opinion, going through the facts of the case, the entire complexion of the case has been changed compared to assessee's case in the earlier AYs 2010-11 & 2011-12. Being so, the lower authorities

are entitled to take a different view when altogether different case was presented before them. At this stage, it is appropriate to refer to the caselaws wherein it is held that Bench can draw different conclusion if there is adequate justification to depart from the earlier view i.e., where subsequently new or more facts come to light [*Raja Bahadur Visheshwara Singh v. CIT [1961]* 41 ITR 685 (SC); *CIT v. Brij Lal Lohia Mahabir Prasad Khemka [1972]* 84 ITR 273 (SC); *Namdang Tea Co. Ltd. v. CIT [1982]* 138 ITR 326 (Cal); *CIT V. Manaklal Porwal [1986]* 160 ITR 243 (Raj.) etc.] or if the earlier bench omitted to consider certain material aspects [*Raja Bahadur Visheshwara Singh v. CIT [1961]* (41 ITR 685 (SC); *Dwarkadas Kesardeo Morarka v. CIT [1962]* 44 ITR 529 (SC); *CIT v. Mohanlal Ranchhodas [1993]* 203 ITR 304 (Guj.); *CIT v. Kalpetta Estates Ltd. [1995]* 211 ITR 635 (Ker.). In the case of *CIT v. Kalpetta Estates Ltd.* (supra), Hon'ble Kerala High Court have further stated that the Tribunal is entitled to take a different view of the matter on a closer and more intelligent analysis.

40. Thus, from the judgments enumerated above, we are of the opinion that earlier decision of the AO cannot bind the Tribunal so as to follow the same. As such, we do not find any merit in the argument of the Id. AR that consistency has to be followed from year to year, since the AO allowed the expenditure in AYs 2010-11 & 2011-12. This ground in all the appeals is dismissed.

41. In the result, all the appeals are dismissed.

Pronounced in the open court on this 15th day of July, 2021.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 15th July, 2021.

/Desai S Murthy/

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.