

आयकर अपीलीय अधिकरण "F" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

श्री प्रशांत महर्षि, लेखा सदस्य एवं श्री पवन कुमार गदाले, न्यायिक सदस्य के समक्ष।

BEFORE SRI PRASHANT MAHARISHI, AM AND SRI PAVAN KUMAR GADALE, JM

आयकर अपील सं./ ITA Nos. 28 & 29/Mum/2020

(निर्धारण वर्ष / Assessment Years 2010-11 & 2011-12)

Dy. Commissioner of Income Tax, 7(3)(1), Room No. 142 G , 1 st Flr Aayakar Bhavan M.K. road, Mumbai-400 020	बनाम / Vs.	M/s Omni Active Health Technologies Ltd. T8B A Wing Phoenix House Phoenix Mil compound 62 Senapati Bapat Road Lower Parel West, Mumbai-400 013
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AADCP29149		

अपीलार्थी की ओर से / Appellant by	:	Shri Ketan Ved, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri R.A Dhyani, DR

सुनवाई की तारीख / Date of hearing:	03.01.2022
घोषणा की तारीख / Date of pronouncement :	07.01.2022

आदेश / ORDER

प्रशांत महर्षि, लेखा सदस्य के द्वारा /

PER PRASHANT MAHARISHI, AM:

01. These are two appeals filed by the learned Dy. Commissioner of income Tax, Circle-7(3)(1), Mumbai[The Id AO] in case of one assessee for Assessment Years 2010-11 and 2011-12 involving similar issue against the order of the Commissioner of Income Tax (Appeals)-13, Mumbai [In short CIT(A)] dated 17.10.2019 and for both assessment years



02. Only issue in this appeal is with respect to the disallowance of expenditure incurred by the assessee towards legal fees.
03. We first set out the facts for Assessment Year 2011-12 which shows that assessee is a company engaged in the business of manufacturing and trading of Nutraceuticals products and filed its returned of income on 15.10.2011 declaring total income of Rs.3,48,97,413/-. During the course of assessment proceedings, the learned Assessing Officer noted that the assessee has claimed a sum of ₹ 6,65,43,002/- under the head Exceptional items which included as legal and professional charges amounting to Rs. 8,73,34,686/-. Some other credits were also exceptional items and therefore, there was a net debit of Rs.6,65,43,002/-. The learned Assessing Officer noted that in view of quantum of expenditure and note 16 of schedule 18 of the annual accounts, the claim needs to be examined. Assessee submitted that the legal fees of Rs.8,73,34,686/- was paid on account of normal routine maintenance of patents, settlement amount paid and legal fees paid to defend existing rights of assessee. Assessee submitted that the above payment were made to legal firms and sum of ₹1,32,98,025/- is towards settlement, the assessee also explained the nature of litigation and the nature of payments along with details of such payment. Assessee claimed that payments were made with relation to litigation of patents owned by the assessee and further the assessee has incurred expenditure to safe guard its

patent product. Ld AO examined the increasing profits of the assessee in subsequent years and therefore held that assessee have the benefit of enduring nature. He therefore held that the expenditure has been given a colour of Revenue expenditure where the same is falling into the category of capital expenditure. Therefore, he disallowed a sum of ₹11,85,24,076/-. Consequently, the assessment order was passed under section 143(3) of the Act on 14.03.2014 determining the total income of the assessee at ₹17,56,43,170/-.

04. Assessee preferred appeal before learned CIT(A), who deleted the disallowance. He firstly, held that during that year, the assessee has claimed the deduction of only ₹8,73,34,686/-. He held that a sum of ₹3,11,89,390/- is a legal and professional fees incurred and debited in the books of account of the assessee for Assessment Year 2009-10 and therefore, it is not pertaining to this year. With respect to the balance sum of ₹8,73,34,686/- he held that a sum of ₹6,39,50,543/- was legal fees paid to legal firm and further a sum of ₹1,32,98,025/- is settlement amount paid to legal firm who further paid to the another US entity, who filed suit against the company. He held that the deduction for expenditure incurred on litigation as well as the settlement amount paid by the assessee is a Revenue expenditure. He further referred to the several judicial precedents on that issue. Accordingly, he deleted the entire disallowance made by the Assessing



Officer. Therefore, the Assessing Officer is aggrieved by that order and has preferred this appeal.

05. The learned Departmental Representative supported the orders of the learned Assessing Officer held that the expenditure of Rs.8,73,34,686/- incurred by the assessee is correctly held to be an capital expenditure.
06. The learned authorized representative relied upon the order of learned CIT(A) stated that expenditure incurred by the assessee is to protect its patent right, to maintain its IPR. Therefore, this expenditure are not capital expenditure but revenue in nature. He also referred to Paragraph No. 3.1 of the order of the learned CIT(A) wherein in paragraph No. 1.3 the nature o expenditure are explained. He also referred to several judicial precedents relied up on by the learned CIT(A) for deleting the addition disallowance. He further stated that a sum of Rs. 3,11,89,390/- has not been claimed by the assessee as deduction in this year but in earlier years and therefore the same could not have been disallowed by the learned Assessing Officer, therefore the learned CIT(A) has deleted the disallowance to that extent.
07. We have carefully considered the rival contentions and orders of the lower authorities. We also considered the several judicial precedents relied upon by the lower authorities. Briefly, the assessee is in the business of trading of healthcare and Nutraceuticals Products. The assessee is being granted patents for the one of its

process in United States. A US based company filed suit against the appellant in July, 2008 for infringement of the patents rights. The assessee was also made a party to the suit. It impacted adversely sale of assessee's product. Therefore, to defend the suit the assessee engaged a law firm in US. The total fees paid on that account is to the tune of ₹6,39,50,543/-. Ultimately, the patent suit resulted into a settlement agreement and the assessee paid settlement amount of Rs. 1,32,98,025/- to the plaintiff. This sum was also paid by legal firm which in turn was paid to USA entity who filed the suit against the appellant. Further, a sum of Rs. 1,86,118/- is fees paid for routine maintenance of Patents. Therefore, all these above expenditure have been incurred by the assessee for the protection of its business and intellectual rights. These expenditure has been incurred mostly on account of defending the right of the assessee, therefore the same cannot be held to be an expenditure which resulted into any enduring benefit to the assessee. Any expenditure incurred by the assessee company for protection of IPR rights and for normal maintenance of its intellectual property are revenue expenditure. Further, the increase in the sales resulting into the higher profit could not be the reasons to hold that such expenditure are capital in nature. In fact the better protection of the intellectual property rights of the property would naturally result into higher profits and turnover but that does not make such expenditure as capital expenditure. Accordingly, ground No.1 and 2 of the appeal of the learned Assessing Officer is dismissed to



hold that expenditure of ₹8,73,34,684/- incurred by the assessee towards legal fee is Revenue in nature.

08. Further with respect to sum of ₹3,11,83,390/- which is challenged as per ground No.3 of the appeal has also been correctly deleted by the learned CIT(A) for the reason that such expenditure were not claimed as allowable expenditure during this year but in earlier years. In view of this ground No.3 of the appeal is also dismissed.
09. Ground Nos.4 to 6 are merely supporting the ground No. 1 and 3 of the appeal and therefore, the same are dismissed.
010. In the result, ITA No.28/Mum/2020 filed by the learned Assessing Officer for Assessment Year 2010-11 is dismissed.

ITA Nos. 29/Mum/2020

AY 2011-12

011. The appeal filed for Assessment Year 2011-12 is also on the similar grounds whether similar nature of expenditure have been disallowed by the learned Assessing Officer holding the same to be capital expenditure. For this year the Assessing Officer disallowed a sum of ₹3,34,14,989/-. The learned CIT(A) deleted the disallowance. Both the parties confirmed that there is no change in the facts and circumstances of the case and CIT(A) has also followed his own order for Assessment Year 2010-11.



012. We have carefully considered the rival contentions and also perused the orders of the lower authorities. For the reasons given by us while confirming the order of learned CIT(A) for Assessment Year 2010-11, for similar reasons we also confirm order of learned CIT(A) deleting the disallowance of ₹3,34,14,989/- on account of legal fees and settlement amount for this Assessment year . Thus, order of the learned CIT(A) is confirmed and ground No.1 to 4 of the appeal of the learned Assessing Officer are dismissed.

013. Accordingly, the ITA No. 29/Mum/2020 for Assessment Year 2011-12 filed by the learned Assessing Officer is dismissed.

014. In view of the above, both the appeal filed by the learned Assessing Officer for Assessment Years 2010-11 and 2011-12 are dismissed.

Order pronounced in the open court on 07.01.2022

Sd/-

(पवन कुमार गदाले / PAVAN KUMAR GADALE)

(न्यायिक सदस्य / JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 07. 01.2022

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

Sd/-

(प्रशांत महर्षि / PRASHANT MAHARISHI)

(लेखा सदस्य / ACCOUNTANT MEMBER)



आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

**सत्यापित प्रति //True Copy व. निजी सचिव/ Sr. Private Secretary
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**