IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"F" BENCH, MUMBAI

BEFORE SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER AND SHRI PAVAN KUMAR GADALE, HON'BLE JUDICIAL MEMBER

ITA NO. 6853/MUM/2018 (A.Y: 2014-15)

M/s. Viacom 18 Media Pvt. Ltd., Zion Bizworld, Subhash Road-A Near Garware Office, Vile Parle (E) Mumbai - 400057 **PAN: AAACM9164E**	*v.*	ACIT – 16(1) 4th Floor, Room No. 439 Aayakar Bhavan M.K. Road Mumbai - 400020
(Appellant)		**(Respondent)**

Assessee by	**:**	**Shri Nimesh Vora**
Department by	**:**	**S.N. Kabra**
Date of Hearing	**:**	**05.10.2021**
Date of Pronouncement	**:**	**03.01.2022**

O R D E R

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals) – 4, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 06.09.2018 for the A.Y.2014-15.

2. Assessee has raised grounds on disallowance of trademark and registration charges which is the only ground raised in this appeal.

3. At the time of hearing, Ld. AR brought to our notice that similar ground which assessee has raised before the Coordinate Bench in ITA.No. 2055/Mum/2014 for the A.Y: 2009-10 and the Coordinate Bench has considered and adjudicated the issue in favour of the assessee and he brought to our notice Para No. 135 to 142 of the order.

4. Ld. DR fairly agreed that the issue is covered in favour of the assessee.

5. Considered the rival submissions and material placed on record, we observed that similar issue was considered and adjudicated by the Coordinate Bench in assessee's own case for the A.Y. 2009-10 and decided the issue in favour of the assessee. While holding so the Coordinate Bench held as under: -

> *"135. Ground no.12, relates to disallowance of legal and professional fees for registration of trademark of ₹.41,42,063.*
>
> *136. During the financial year relevant to assessment year 2009–10, the assessee incurred expenses of ₹. 55,22,750, in relation to registration / renewal of various trademarks / brand names of the assessee in various jurisdiction across the world. The assessee submitted that the said expenditure is incurred in connection with its business and is revenue in nature. Hence, the same should be allowed as deduction to the assessee in assessment year 2009-10.*
>
> *137. The Assessing Officer treated the same as one time expenditure incurred for registration of trademark which will give benefit to the assessee for more than a year and it being one time expenditure treated it as capital in nature and granted depreciation on the same @ 25%. Thereby he made net addition of ₹.41,42,062 (total expenditure of ₹.55,22,750 less depreciation @ 25% of ₹.13,80,688) to the total income of the assessee.*

138. The DRP confirmed the disallowance as in its view, the registration will create intangible rights and hence the expenses cannot be treated as revenue in nature.

139. The learned A.R. for the assessee submitted before us that the assessee has made payment to Lega Solve for providing services in connection with registration of various trademarks and trade names in various jurisdictions across the world. He submitted that the assessee is already owner of the trademark and trade names, and mere registration thereof, does not bring into existence any new asset. The learned A.R. further submitted that by registration, the owner is absolved from the obligation to prove its ownership of trademark. He submitted that it thus merely saves the assessee the trouble of leading evidence, in the event of a suit, in a Court of law, to prove its title to the trademark. The learned A.R. further submitted that there is no alteration in the trademark already owned by the assessee by mere registration thereof, hence, the expenditure is revenue in nature. The learned A.R. further submitted that the issue is no longer res integra and the Supreme Court has categorically held that expenses for registration of Trademark does not bring in any new capital assets and such expenses are revenue in nature. In support of his arguments, he relied upon the following decisions:–

- *i) CIT v/s Finlay Mills Ltd., 20 ITR 475 (SC);*
- *ii) PCIT v. Zydus Wellness Ltd., 247 Taxman 397 (Guj);*
- *iii) Cadia Healthcare Ltd (Ahd.);*
- *iv) Alembic Chemical Works Co. Ltd., 177 ITR 377 (SC);*
- *v) Empire Jute Co Ltd v/s CIT 124 ITR 1 (SC); and*
- *vi) USV Ltd v/s DCIT, 24 Taxmann.com 218 (Mum. Trib.).*

140. The learned Departmental Representative relied upon the observations of the authorities below. 141. Considered the rival submissions and perused the material on record in the light of the decisions relied upon. We find that the issue for our adjudication is covered by the decision of the Hon'ble Supreme Court in Finlay Mills Ltd. (supra), wherein the Hon'ble Supreme Court by dismissing the appeal of the Revenue observed as follows:–

> *Held– "The contention of the revenue was fallacious. The machinery which acquires a greater productive capacity by reason of its improvement by inclusion of some new invention naturally becomes a new and altered asset by that process. So long as the machinery lasts, the improvement continues to the advantage of the owner of the machinery. The replacement of a dilapidated roof by a more substantial roof stands on the same footing. The result however of the Trade Marks Act is only two-fold. By registration, the owner is absolved from the obligation to prove his ownership of the trade mark. It is treated as prima facie proved on production of the registration certificate. It thus merely saves him the trouble of leading evidence, in the event of a suit, in a court*

> > *of law, to prove his title to the trade mark. The registration is in the nature of collateral security furnishing the trader with a cheaper and more direct remedy against infringers. This is neither an asset nor an advantage so as to make payment for its registration a capital expenditure.*
> >
> > *The advantage derived by the owner of the trade mark by registration falls within class of revenue expenditure. The fact that a trade mark after registration could be separately assigned, and not as a part of the goodwill of the business only, does not also make the expenditure for registration a capital expenditure. That is only an additional and incidental facility given to the owner of the trade mark. It adds nothing to the trade mark itself.*
> >
> > *The appeal, therefore, failed and was dismissed."*
>
> *142. Since the issue before us is squarely covered by the aforesaid decision of the Hon'ble Supreme Court cited supra, there is no additional advantage for the assessee by getting the trademark registered. Respectfully following the aforesaid observations, we set aside the impugned order passed by the DRP and allow the ground no.12, raised by the assessee.*

6. Since the issue is exactly similar and grounds as well as the facts are also identical, respectfully following the above decision in assessee's own case for the A.Y. 2009-10, we allow the appeal filed by the assessee. Ground raised by the assessee is allowed.

7. In the result, appeal filed by the assessee is allowed.

Order pronounced on 03.01.2022 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-	Sd/-
(PAVAN KUMAR GADALE)	**(S. RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai / Dated 03.01.2022
Giridhar, Sr.PS

<u>Copy of the Order forwarded to</u>:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum