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

BEFORE SHRI AMARJIT SINGH, JM AND SHRI S. RIFAUR RAHMAN, AM

आयकर अपील सं/ I.T.A. No. 964/Mum/2021

(**निर्धारण वर्ष** / Assessment Year: 2017-18)

Ashish Life Science Pvt. Ltd. 213, Laxmi Plaza Industrial Estate, New Link Road, Andheri, Mumbai-400053.	**बनाम**/ Vs.	ACIT-CIR, 9(1)(2) 210, 2nd Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCB4093N		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by:	Shri Dhaval Shah
Revenue by:	Shri K.P.R.R. Murty

सुनवाई की तारीख / Date of Hearing: 22/03/2022

घोषणा की तारीख /Date of Pronouncement: 26/04/2022

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 15.04.2021 passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the "(NFAC)"] in the relevant A.Y.2017-18.

2. The assessee has raised the following grounds: -

> *"1. The Ld. CIT(A) has erred in law and in facts in passing the order u/s. 250 of the Act through National Faceless Appeal Center which is bad in law and invalid.*
>
> *2. The Ld. CIT(A) has erred in law and in facts confirming the assessment order passed u/s. 143(3) of the Act without. considering the written submissions filed by the appellant. As such, the order is*

passed by the Ld. CIT(A) without complying with the principles of natural justice and hence is void ab initio.

3. The Ld. CIT(A) has erred in law and in facts in confirming the disallowance of product registration expenses of Rs.47,21,095/- made by the Assessing Officer allegedly treating the same as capital expenditure as against the revenue expenditure claimed by the appellant.

4. The Ld. CIT(A) ought to have appreciated that education cess on the tax payable on the assessed income was allowable as deduction while computing the income of the appellant.

5. The appellant craves leave to add to, alter, amend and/or delete in all the foregoing grounds of appeal."

3. The brief facts of the case are that the assessee filed its return of income on 28.11.2017 declaring total income to the tune of Rs.6,25,44,880/-. Subsequently, the assessee filed its revised return of income on 18.05.2018 declaring the same income which he had filed earlier. The return was processed u/s 143(1) of the Act. The case was selected for scrutiny under CASS. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee company was engaged in the business of manufacturing, trading and marketing of healthcare products especially for Veterinary. The company was in the business of veterinary pharmaceuticals since 2002. The assessee claimed the products registration expenses to the tune of Rs.47,21,095/- which was declined by AO. Feeling aggrieved, the assessee filed an appeal before the

CIT(A) who dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us.

ISSUE NOS. 1 TO 4

4. Under these issues the assessee has challenged the disallowance of Products Registration Expenses of Rs.47,21,095/-. The Ld. Representative of the assessee has argued that the Products Registration Expenses of Rs.47,21,095/- is revenue in nature, therefore, the same is liable to be allowed in the interest of justice. In support of this contention, the Ld. Representative of the assessee has placed reliance upon the decision in the case of **CIT Vs. Cadila Healthcare Ltd. (263 CTR 683), DCIT Vs. M/s. Shreechem Pharmaceuticals Pvt. Ltd. (ITA. No.7080/Mum/2013) dated 26.10,2016 and the DCIT Vs. Sharda Corp Chem Pvt. Ltd. (ITA. No.2631/Mum/2018) dated 08.08.2019.** However, on the other hand, the Ld. Representative of the revenue has strongly relied upon the order passed by the CIT(A) in question. Keeping in view the argument advanced by the Ld. Representative of the parties and perusing the record, we observed that the matter of controversy has already been adjudicated by the Hon'ble High Court in the case of **CIT Vs. Cadila Healthcare Ltd. (263 CTR 683).** The relevant finding has been given in para no.6 which is hereby reproduced as under: -

> *"**5.** The findings of the Tribunal are justified on both the issues. The garden expenditure was for the purpose of maintaining garden to control the pollution. The company had put up an affluent treatment plant and pollution used to generate because of release of pollutants. The maintaining a garden helped in controlling pollution arising from*

the pollutants. It cannot be gainsaid that the expenses for garden had nexus with business activity. It can well be treated for business purpose and can be claimed as revenue expenditure. Similarly, the expenses for foreign country registration was for business purpose only, because the same helped the assessee in marketing its products in the foreign countries and promoting the sales.

6. *For the aforesaid reasons, the Tribunal committed no error. Its findings are proper and in no way are perverse. No substantial question of law arises for consideration."*

5. Subsequently, the matter of controversy has been adjudicated by the Hon'ble ITAT in the case of **M/s. Shreechem Pharmaceuticals Pvt. Ltd. (ITA. No.7080/Mum/2013) dated 26.10,2016.** The relevant finding has given in para no.6 which is hereby reproduced as under: -

"4. All the issues are interconnected, therefore are being taken up for adjudication. Under this issues the revenue has challenged the sole point that the CIT(A) has wrongly allowed an amount of Rs.43,06,904/- as revenue expenditure whereas the same should be considered as capital in nature. Before going further it is necessary to advert the finding of the CIT(A) on record:-

"2.3 I have carefully considered the submission of the appellant and the impugned assessment order. The AR of the appellant had filed copies of Registration Certificate issued by Health and Drug administration of various countries such as Zambia, Ghana, Georgia, Vietnam, Nigeria, Ukrain, etc. with the registration number and the details of product and expiry period of the license. The fees is paid towards vendor registration, quality control checks, testing and

verification of such products for human consumption impact over environment over disposal, etc. Once the product passes through above tests, the concerned Government allows sale of such products in the County. In support of the contention that such product registration expenditure is of revnue in nature, the AR has relied on the decision of Hon'ble High Court of Delhi in the case of Panacea Biotech Ltd. The Hon'ble High Court was of the view that test of enduring benefit cannot be the sole criterion and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case. In this case, such expenditure was allowed by the AO in A.Y.2003-04 and 2004-05. The addition were deleted by the CIT(A) and revenue did not prefer any appeal before the Hon'ble ITAT. For A.Y.2005-06, against the order of the CIT(A), the department had filed an appeal before the Tribunal which was dismissed and the department did not prefer any appeal before the High Court. Hence, in this background, the Hon'ble High Court has given relief to the appellant.

2.4 However, I would like to reply on the decision of Gujarat High Court in the case of Cadilla Healthcare Ltd. in Tax appeal No.752 of 2012 dt. 20.03.2013.

The question referred to the Hon'ble court was Whether the Appellate Tribunal has substantially erred in holding the Trademark Registration fee and Patent fee (Rs.37,92,606/0 and Rs.1,15,49,880/-) are revenue expenses, when the expense were incurred for registration of Trademark in that country and also for registration of Patent, which are intangible assets under section 32(1)(ii) of the Act?

These questions pertain to the expenditure incurred by the assessee towards product registration before the Drug Regulatory Authorities and registration of trademark and patent fees. It is the case of the Revenue that such registration gives enduring benefits and therefore should have been treated as capital expenditure and not revenue in nature. The Tribunal clubbed these expenditure for common consideration and in the impugned judgment held that pharmaceutical products manufactured by the assessee are to be registered with the local authorities as also medical association in India. Such products were in existence and nothing new were acquired by the assessee in the process. The Tribunal, therefore, held that the expenditure only enable the assessee to run the existing business smoothly and therefore, it cannot be stated that the assessee acquired any tangible or intangible assets. With respect to patent and trademark registration, the Tribunal held that for protection of result of the research of the assessee, such patent had to be registered. It was observed that enduring benefit is not the only criteria. The same must be coupled with acquisition of asset. The finding of the Hon'ble court is as under:

"With respect to the expenditure incurred for production registration charges, we agree with the view of the Tribunal that the assessee did not acquire my new asset. As per the rules and regulations, it was essential that the product, before marketing, would be registered with the regulating authorities. Any expenditure in the process would not be stated to ensure procurement of a new asset to the assessee. We are informed that a Division Bench of this Court in the case of CIT V. Torrent Pharmaceuticals Ltd. (2013) 29 taxmann.com 405 (Gujarat)

also in somewhat similar facts had upheld the decision of the Tribunal." The facts are identical in appellants case. Going by the ratio laid down by the Hon'ble court the Product Registration would not create any new asset to the appellant as the products are the existing one. Further in my opinion test of enduring benefit alone cannot be a deciding factor that the expenditure incurred in capital in nature. Hence, I do not accept the finding of the AO. I direct the AO to treat the expenditure incurred towards registration charges as revenue and in view of this, the addition made by the AO is hereby deleted. This ground of appeal is allowed."

5. On appraisal of the above said order it came into the notice that the assessee filed the copies of registration certificate issued by the Health and Drug administration of various countries such as Zambia, Ghana, Georgia, Vietnam, Nigeria, Ukrain, etc. with the registration number and the details of products and expiry period of the license. The fees were paid towards vendor registration, quality control checks, testing and verification of such products for human consumption, impact over environment over disposal, etc. After passing the said tests, the concerned Government allows sale of such products in the Country. On the said facts and circumstances the CIT(A) has relied upon the case decided by the Hon'ble High Court of Delhi in the case of Panacea Biotech Ltd. and Hon'ble High Court of Gujarat in the case of Cadilla Healthcare Ltd. in tax appeal no.752 of 2012 dated 20.03.2013. No distinguishable facts and law has been placed on record by the revenue at the time of arguments. Additional evidence which relevant to the facts of the case, can be taken into consideration during appellate proceeding in accidence with law. The

CIT(A) has passed the orders judiciously and correctly which does not require to be interfere with at this appellate stage."

6. The matter of controversy has also been adjudicated by the Hon'ble ITAT in the case of **Sharda Corp Chem Pvt. Ltd. (ITA. No.2631/Mum/2018) dated 08.08.2019.** The relevant finding has given in para no.6 which is hereby reproduced as under: -

***"**8. We have heard the authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record. We find that our indulgence in the present appeal has been sought by the revenue to adjudicate upon the validity of the order passed by the CIT(A), wherein he had concluded that the product registration expenses are in the nature of a revenue expenditure. We have perused the records and find that the assessee had claimed the product registration expenses as a revenue. However, the A.O being of the view that product registration expenses incurred by the assessee vested an enduring benefit with the assessee, thus the same were held by him as being in the nature of a capital expenditure. On the basis of the aforesaid observations, the A.O restricted the entitlement of the assessee only to the extent of depreciation on the amount of the capitalized value of product registration expenditure. We have deliberated at length on the issue under consideration, and find that the issue involved in the present appeal is squarely covered by the order passed by a coordinate bench of the Tribunal viz. ITAT "F" Bench, Mumbai in the assesses own case for A.Y. 2011-12 and A.Y. 2012-13 i.e. DCIT-13(2)(2), Mumbai Vs. M/s Sharda Worldwide Exports Pvt. Ltd. (now known as Sharda Cropchem Ltd., Mumbai)*

[ITA No. 3804 & 3805/Mum/2016; dated 16.03.2018]. We find that the Tribunal while disposing off the aforementioned appeals concurred with the view taken by the CIT(A), and had concluded that the product registration expenditure was rightly allowed by him as a revenue expenditure, observing as under :

"5.1.1.We find that one of the major objections of the AO was that the assessee was getting enduring benefit by incurring PRE. We have taken note of the fact that assessee is a trader and not a manufacturer of the products exported by it. It is not having any brand or patent rights over the exported commodities. The expenses incurred by it were in the field of selling and marketing activity rather than manufacturing. Without incurring PRE the assessee could not have exported the products. Thus, essentially the expenses were in the field of day to day business activities of the assessee. After registration process was over, the sale of product would depend upon the procurement of goods from third parties and the prices prevailing in the respective markets. In short, the PRE would not bring any benefit of enduring nature. Besides, the data exercises paid by it were for a right to access the data-it did not give right over the data. It is also found that assessee was incurring such expenditure is year after year. It had incurred PRE of Rs.17.46 crores,Rs.23.73 crores,Rs.39.82 crores and Rs. 28.05 crores for the AY.s 2011-12 to 2014-15 respectively. So, it can safely be held that the PRE was of recurring nature. As far as quantum of expenditure is concerned we would like to mention that the full bench of Hon'ble Apex Court has decided the issue long back in the case of MK Brothers Private Ltd.(supra).The relevant portion of the judgment the as under:

"The answer to the question as to whether an amount paid is a revenue expenditure or capital expenditure depends not so much upon the fact as to whether the amount paid is large or small or whether it has been paid in lump sum or by installments, as it does upon the purpose for which the payment has been made and expenditure incurred. It is the real nature and quality of the payment and not the question or the manner of the payment which would prove decisive. If the subject of making the payment is to acquire a capital asset, the payment would partake of the character of a capital payment even though it is made not in lump sum but by installments over a period of time. On the contrary, payment made in the course of and for the purpose of carrying on business or trading activity would be revenue expenditure even though the payment is of a large amount and has not to be made periodically."

Respectfully following the above, we hold that to solve the knotty issue of capital/revenue expenditure the aim and object of the expenditure is to be considered not the quantum. As far as entries in the books of accounts and claiming depreciation in the earlier years is concerned, it is suffice to say that entries made in the books of accounts do not decide the true nature of expenditure. We would like to rely upon the case of Bhor Industries of the Hon'ble Bombay High Court (264 ITR 180).

5.2. The Hon'ble Courts are of the view that the issue of capital versus revenue expenditure has to be seen from the angle of an assessee rather than an AO. In the case of Edward Keventer (P) Ltd., the honourable Calcutta High Court has held as follows :

"The legitimate business needs of the company must be judged from the view-point of the company itself and from the view-point of a prudent businessman. It is not for the Income-tax Officer to dictate what the business needs of the company should be. The term "benefit" to a company in relation to its business has a very wide connotation and may not necessarily be capable of being accurately measured in terms of pounds, shillings and pence in all cases. Both these points have to be considered judiciously and dispassionately from the view-point of a reasonable and honest person in business without any bias of any kind....."

5.3.We find that in the cases of Panacea Biotech Ltd. (supra)and Cadila Healthcare Ltd (263 CTR 686) the Hon'ble Delhi High Court and the Hon'ble Gujarat High Court has clearly held that PRE had to be allowed as revenue expenditure. We are reproducing the relevant portion of judgment of Cadila Healthcare Ltd. and it reads as follow:

"9. With respect to the expenditure incurred for production registration charges, we agree with the view of the Tribunal that the assessee did not acquire any new asset. As per the rules and regulations, it was essential that the product, before marketing, would be registered with the regulating authorities. Any expenditure in the process would not be stated to ensure procurement of a new asset to the assessee. We are informed that a Division Bench of this Court in the case of CIT v. Torrent Pharmaceuticals Ltd, (2013) 263 CTR(Guj)683 :[2013] 87 DTR (Guj) 54 (2013) 29 taxmann.com 405 (Gujarat) also in somewhat similar facts had upheld the decision of the Tribunal."

We would also like to rely upon the following portion of the judgment of the Hon'ble Apex Court in the matter of Empire Jute Mills:

"There may be cases where expenditure, even if incurred for obtaining an advantage of enduring benefit, may, none the less, be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test. 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 assessee's business to be carried on more efficiently or more profitability 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."

Considering the above, we are of the opinion that the order of the FAA does not suffer from any legal or factual infirmity. So, we are not inclined interfere with it. Effective ground of appeal is decided against the AO" We have perused the aforesaid order passed by the Tribunal, and finding ourselves as being in agreement with the view therein taken, thus respectfully follow the same. We thus in terms of our aforesaid observations are of the considered view that no infirmity emerges from the well-reasoned order of the CIT(A), who

had rightly concluded that the product registration expenses were allowable as a revenue expenditure. We thus, uphold the order of the CIT(A) and dismiss the appeal of the revenue."

7. In view of the above mentioned decision, the Products Registration Expenses is revenue in nature, therefore, we set aside the finding of the CIT(A) on these issues and allowed the claim of the assessee.

8. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 26/04/2022

Sd/-	Sd/-
(S. RIFAUR RAHMAN)	**(AMARJIT SINGH**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य/JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 26/04/2022
Vijay Pal Singh, (Sr. PS)

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//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**