

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “B” BENCH, AHMEDABAD**

**BEFORE SHRI P.M. JAGTAP, VICE PRESIDENT AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.240/Ahd/2021
Assessment Year: 2017-18**

A.C.I.T., Circle – 4(1)(1),
Ahmedabad.

vs. Vishnu Pouch Packaging Pvt. Ltd.,
Plot No.49 & 50, Block No. A,
Mahagujarat Industrial Estate,
Village Moriya Dastroi,
Ahmedabad.
[PAN – AADCV 6860 B]

**ITA No.244/Ahd/2021
Assessment Year: 2017-18**

Vishnu Pouch Packaging Pvt. Ltd.,
Plot No.49 & 50, Block No. A,
Mahagujarat Industrial Estate,
Village Moriya Daskroi,
Ahmedabad – 382 210.
[PAN – AADCV 6860 B]
(Appellants)

vs. D.C.I.T., Circle – 4(1)(2),
Ahmedabad.

(Respondents)

Revenue by : Shri Ramesh Kumar, Sr. DR
Assessee by : Shri Suresh Gandhi, CA

Date of hearing : 04.07.2022
Date of pronouncement : 22.07.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

These cross appeals are filed by the Revenue and assessee against the order dated 09.08.2021 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2017-18.

2. The Revenue has raised the following grounds of appeal:

“1) *The Ld. CIT(Appeals) has erred in law and on facts in deleting the addition amounting to Rs.5,17,31,250/- made on account of disallowance of Trademark License Utilisation Fees.*

- 2) *On the facts and circumstances of the case, Ld. CIT(A) ought to have upheld the order of the Assessing Officer.*
- 3) *It is, therefore, prayed that the order of Ld. CIT(A) may be set aside and that of the Assessing Officer be restored."*

The assessee has raised the following grounds of appeal:

- 1) *The Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs.5,77,140/- on account of delayed payment of Employees' contribution to P.F. & E.S.I.C. u/s.36(1)(va) r.w.s. 2(24)(x) of the Act made by the AO, while observing that provisions of Section 43B are no longer applicable in respect of deduction allowed u/s.36(1)(va) of the Act. Considering the decision rendered by **Hon'ble Karnataka High Court in the case of Essae Teraoka (P.) Ltd. Vs. DCIT (2014) 43 taxmann.com 33 (Karnataka)**, the addition of Rs.5,77,140/- confirmed by the Ld. CIT(A) deserves to be deleted."*

3. The assessee company is engaged in the business of manufacturing of Pan Masala without tobacco and Pan Masala containing tobacco. The return of income was filed on 31.10.2017 declaring total income at Rs.Nil. Thereafter, revised return of income was filed on 17.07.2018 wherein total income was determined at nil after setting off losses of earlier years amounting to Rs.3,71,34,438/-. The assessee declared book profit of Rs.15,54,063/- under Section 115JB of the Act. The Assessing Officer made disallowance of Trademark Licence Utilization Fees amounting to Rs.5,17,31,250/- and also made disallowance In respect of delayed payment of employees contribution to the PF/ESIC fund amounting to Rs.5,77,140/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. At the time of hearing, Ld. AR submitted that in assessee's own case for A.Y. 2016-17 being ITA No.672/Ahd/2019 DCIT vs. Vishnu Pouch Packaging Pvt. Ltd., order dated 29.09.2021, the Tribunal has decided the issue in favour of the assessee and dismissed the appeal of the Revenue.

6. The Ld. DR submitted that the Tribunal's order is against the Revenue yet the Assessing Officer has rightly made the disallowance of Trademark Licence Utilization Fees. Thus, the Ld. DR relied upon the Assessment Order.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the issue related to addition on account of disallowance of Trademark Licence Utilization Fees was there in A.Y. 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17. The said observation was made by the CIT(A) in paragraph no.4.2 as well. The Tribunal in assessee's own case for A.Y. 2016-17 has decided the issue thereby relying the decision of the Tribunal in earlier years (ITA No.1190 to 1192/Ahd/2018 ACIT vs. Vishnu Pouch Packaging Pvt. Ltd., order dated 18.12.2019). In the present A.Y. the CIT(A) has observed that the assessee paid a sum of Rs.6,89,75,000/- as trade mark licence utilization fees and debited the said amount under the head 'selling and distribution expenses', the assessee company came into existence after conversion of erstwhile firm namely M/s Vishnu Packaging (firm) and the firm was also carrying out the same business of manufacturing the pan masala under the brand name Vimal which was taken over by the assessee company. The assessee company has been paying trade mark licence utilization fee to the licensor for utilization of the brand Vimal under agreement to this effect. The assessee company claimed the entire licence fees paid during the year as revenue expenses whereas the Assessing Officer treated the same as payment made for acquisition of trademark and licence within the meaning of capital assets as defined in Section 32(1)(ii) of the Act. Respectfully following the decision of the Tribunal, the CIT(A) has rightly deleted the addition as in earlier years also it has been observed that there is no dispute that the trade mark "Vimal" is owned by Vishu & Company Trademark Pvt. Ltd. It is also true that the assessee has paid royalty as part of terms and conditions of the registered agreement. These facts were not disputed before us by the Id. DR in this A.Y. as well. Therefore, appeal of the Revenue is dismissed.

8. As regards assessee's appeal, the same is covered against the assessee by the decision of Jurisdictional High Court in case of CIT vs. Gujarat State Road Transport Corporation (2014) 41 taxmann.com 100 (Guj). Thus, the appeal filed by the assessee is dismissed.

9. In the result, appeal filed by the Revenue & assessee are dismissed.

Order pronounced in the open Court on this 22nd day of July, 2022.

Sd/-
(P.M. JAGTAP)
Vice President

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 22nd day of July, 2022

PBN/*

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*