

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SMT.SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.2342/AHD/2017
Assessment Year : 2014-15

DCIT, Cir.3(1)(1) Ahmedabad.	Vs.	Shri Jogendra L. Bhati 11, Kapidhwaj Bungalow Jodhpur Village Road Ahmedabad 380 015. PAN : AHCPB 0228 N
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/(Respondent)
Assessee by :	None
Revenue by :	Shri V.K. Singh, Sr.DR

सुनवाई की तारीख/Date of Hearing : 08/08/2022
घोषणा की तारीख /Date of Pronouncement: 26/08/2022

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the Revenue against order passed by the ld. Commissioner of Income-Tax(Appeals)-7, Ahmedabad [hereinafter referred to as "Ld.CIT(A)"] under section 250(6) of the Income Tax Act, 1961 ("the Act" for short) dated 29.8.2017 pertaining to the Asst.Year 2014-15.

2. None came present on behalf of the assessee nor any application seeking adjournment was filed before us. The appeal was filed in 2017 and since then we have noted that the assessee has remained unrepresented or sought adjournment on several occasions. Further on the past three occasions, despite direction by the Bench to issue notice through Registered Post, the assessee has not responded. It seems the assessee is not interested in

participating in the proceedings in its case. It was therefore decided to proceed with the hearing in the case.

3. At the outset, it was stated by the Ld.DR that the sole issue involved in the appeal related to disallowance of product registration expenses amounting to Rs.1,71,77,152/- which the assessee had claimed as revenue and the AO had denied the claim stating that it was capital in nature, which in turn was reversed by the CIT(A) noting that in the immediately preceding year i.e. Asst.Year 2013-14, the issue had been decided in favour of the assessee following Hon'ble jurisdictional High Court decision in the case of CIT Vs. Torrent Pharma Ltd., (2013) 29 taxmann.com 405 and Cadila Healthcare Ltd., in Tax Appeal No.752 of 2012.

4. On perusal of the order of the AO, we have noted that the assessee had explained the nature of expenses so claimed relating to product registration as being mandatorily required as per the laws of the country to which the products were exported, vide his reply to the AO dated 5.12.2016 reproduced at para-3.2 of the order as under:

"3.2. Assessee has vide its replies on this issue dated 05.12.2016 replied as under:

Assessee is a trader and engaged in business of export of pharmaceutical products mainly life savings drugs. In pharmaceutical industry it is always important that who is manufacturing the products as standard and quality is dependent on quality of machinery and other facility used by manufacturer. Almost all countries across the globe having a procedure where by their domestic manufacturer as well as foreign drug supplier need to get registered with respective health department of the country to enable sale or import of any pharmaceutical products. Main purpose of such product registration is to ensure their prescribed quality standard for a particular drug. The standards are vary from country to country. Thus, this expenditure is a mandate for any exporter of pharmaceutical products and registration is issued in favour of manufacturer. Such expenditure is qua the product and not qua the manufacturer. Moreover, once this registration is granted by respective health' department of the country then again you may

be required to re-register on subsequent export or may be after a period of one or two years depending on respective country regulation in this regard.

Considering the above fact p/ease find that registration is obtained by us but issued for a particular product list only and to a particular manufacturer. Now there is an equal possibility that listed products may not be exported at all or only one or two products may be exported as actual export is subject to many commercial consideration and market conditions in both the countries. It is also possible and in fact it is happening that manufacturer in whose name such registration is obtained may directly export it. Manufacturer can do this as registration is in his name only. IF the manufacturer does not supply the goods as per the agreed terms we have to re-register the same products with the other manufacturer and by that view our first product registration will be null and void. Moreover, such registration is always subject to review at all times by the respective health department of the country. Thus, enduring benefits are itself in doubt and fractured in nature and become conditional.

Considering the above fact and also a fact that we are not a manufacturer and also a fact that such registration is issued mainly in the name of manufacturer, the said expenditure is of revenue in nature only. There are no any enduring benefits available with us as discuss above.

Moreover, by obtaining the registration we are not creating any tangible or intangible assets in our balance sheet as no future benefits are certain.”

5. The same was denied by the AO holding that Marketing Intangible assets are created in favour of the assessee since the assessee would be entitled to enduring benefits on account of this expenditure. The Id.CIT(A) however noted that identical expenses had been held to be revenue in nature by the Hon’ble Jurisdictional High Court in the case of Torrent Pharma (supra) and Cadilla Healthcare Ltd. (supra) and following which decisions in the case of the assessee also, the claim in the preceding year was allowed. His finding at para 4.1.1 of the order are as under:

“4.1.1 It is seen that the identical ground was the subject matter of appeal in the appellant's own case for the immediately preceding year i.e. for Asst. Year 2013-14 and the CIT(A) vide order No. CIT[A]-9/10599/DCIT. Cir.3(l)(l)/15-16 dated 04.07.2011 relying on the decisions of the Hon. Gujarat High Court in the cases of CIT v/s. Torrent Pharma Ltd. (2013) 29 Taxmann.com 405 and Cadila Healthcare Ltd in Tax Appeal No 752 of 2012 has decided the issue in favour of the appellant by holding that the said expenses were in the nature of revenue expenses. The relevant part of the finding of the CIT(A) is reproduced as under:

"4.2 I have carefully considered the rival contentions, case law relied upon and observations of the A.O. in the assessment order. It is seen that

the A.O. had disallowed product registration expenses of Rs.27,57,838/- as in the opinion of the A.O. the benefit derived by the product registration expenses may benefit the appellant for many years and accordingly benefit of enduring nature had accrued to the appellant as a result of these expenses. Taking entirely of facts in view, I am not inclined to agree with the contentions of Ld. A.O. The product registration expenses are nothing but the registration expenses incurred to get the pharmaceutical products registered with the local health authorities, association and their counterparts at the foreign destinations. Without getting the products registered the appellant cannot sell the pharmaceutical product in a specific territory. In view of above, I hold that these expenses are enabling expenses and no new assets having enduring benefit have been created. In this regard reliance is placed on the decision of Cadila Healthcare Ltd. vide ITA No.3140/Ahd/2010. Further, the said case is also confirmed by the jurisdictional High Court in case of Cadila Healthcare Ltd (Tax Appeal No 752 of 2012). The Hon'ble Jurisdictional High Court in the case of CIT v/s. Torrent Pharma Ltd. (2013} 29 Taxmann.com 405 and Cadila Healthcare Ltd in Ta Appeal No 752 of 2012 held as under:

"Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of sales promotion expenses - A.Y. 1999-2000 - Whether expenditure incurred by assessee on foreign country Registration for marketing its products in foreign countries and promoting sales, was to be allowed as revenue expenditure-Held, yes" (in favour of assessee)

Following the above orders of Hon. Jurisdictional High Court, I allow the claim of appellant regarding Product Registration expenses of Rs.27,57,838/-. Accordingly the A.O. is directed to delete the said disallowance. This ground of appeal is allowed."

4.1.2 In view of the decision of the Id. CIT(A) in the appellant's own case and the facts during the year under consideration being identical, the product registration expenses are held to be revenue in nature. The addition of Rs.1,71,77,152/- made by the Assessing Officer is deleted. Grounds of appeal Nos. 1 & 2 are allowed."

6. We have noted from the above that the Ld.CIT(A) noted that identical claim of the assessee in the preceding year was found by the Ld.CIT(A) to be an enabling expenses to enable exports to other countries and no new asset giving enduring benefit was created. The Ld.CIT(A) relied on the order of the jurisdictional High Court on identical issue in the case of Cadilla Healthcare Ltd. (supra), and Torrent Pharma (supra), in support of his findings that the expenses were Revenue in nature.

7. Since the issue admittedly stands decided in favour of the assessee in the preceding year by the first appellate authority and the Revenue having not brought to our notice any decision of higher

authorities reversing the order of the Ld.CIT(A) or any other contrary decision of higher authorities in similar facts, we see no reason to interfere in the order of the ld.CIT(A).

The ground of the appeal of the Revenue is rejected.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the Court on 26th August, 2022 at Ahmedabad.

Sd/-
(SUCHITRA R. KAMBLE)
JUDICIAL MEMBER

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad, dated 26/08/2022