

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.8384/Del./2019
(ASSESSMENT YEAR : 2016-17)**

ACIT, Circle 2, LTU,
New Delhi.

vs.

GKN Driveline (India) Ltd.,
270, Sector 24,
Faridabad – 121 005 (Haryana).

(PAN : AAACG4276B)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri S.K. Aggarwal, CA
REVENUE BY : Ms. Indu Bala Saini, Sr. DR

Date of Hearing : 13.03.2023
Date of Order : 16.03.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the Revenue is directed against the order of Id. CIT (Appeals)-22, New Delhi dated 31.07.2019 pertaining to the Assessment Year 2016-17.

2. The Revenue has taken the following grounds of appeal :-

“On the facts and in the circumstances of the case and in law, Ld.CIT (A) has erred in allowing the expenditure incurred on trademark royalty of Rs.11,54,01,907/- as revenue in nature whereas assessee entered into a Trademark Sub-License Agreement on 25.03.10 with AP Newall and Company Ltd., UK which has acquired a degree of perpetuity as well as earned goodwill on the brand value for long time resulting into

expenditure being in the nature of capital expenditure and not revenue expenditure..”

3. Brief facts of the case are that assessee entered into an agreement dated 25.03.2010 with AP Newall and Company Ltd. UK. AO was of the opinion that issue of revenue vs. capital expenditure and that too in relation to royalty payment arises and he was of the opinion that royalty and trademark fee paid by the assessee after allowing depreciation of 25% on the intangible assets has to be disallowed. Hence, AO made disallowance of Rs.8,65,51,430/-.
4. Upon assessee’s appeal, ld. CIT (A) found that the issue is covered in favour of the assessee by the decision of ITAT in assessee’s own case for AY 2008-09 vide order dated 01.07.2016. We are gainfully referring the CIT (A)’s order as under :-

“8. Ground No. 4 and its sub grounds: relates to treating the expenditure incurred on trademark royalty of Rs.11,54,01,907/ - as capital in nature and disallowing Rs.8,65,51,430/ - after providing depreciation. The assessee has entered into Trademark Sub-license agreement dated March 25, 2010 with AP Newall and Company Ltd., U.K. (AP Newall, U.K.). The appellant has paid trademark fees amounting to Rs.11,54,01,907/- during the financial year relevant to the subject AY, to AP Newall and Company Ltd, UK (CAP Newall, UK) vide Trademark Sub-License Agreement dated March 25, 2010 as entered into between the Appellant and AP Newall, UK. The AO has made disallowance of royalty payment, relying on the decision of Hon'ble -Supreme Court in the case of Southern Switch Gear Ltd. Vs. CIT (232 ITR 359) and. Jonas Wood Head and Sons (India) Ltd. Vs. CIT (224 ITR 342).

8.1 During the appellate proceeding, the Ld. AR of the appellant is submitted that the AP Newall, UK has agreed to grant a non-exclusive right to use the Trademarks to G KN India in relation to the provision and promotion of the services, manufacture, promotion

and sale of products. As a consideration appellant shall pay an agreed fees per the aforementioned agreement to A P Newall, UK. It is submitted that the aforementioned trademarks are solely owned by GKN Holdings Plc which has granted AP Newall, UK a right to appoint the sub-licensee as per the license agreement entered into between them. The Ld. AR relied upon the order of the Hon'ble ITAT dated July 1, 2016 in Appellant's own case for AY 2008-09.

8.2 I have carefully examined the finding of the AO and submission of the Ld. AR. I have also carefully perused the finding of the ITAT in the appellant's case for A.Y. 2008-09: I have also examined the agreement with AP Newall, UK. It is a fact that the trademark fees paid by the appellant for A.Y. 2008-09 was under a separate agreement to a separate party GKN Automatic Plc. In the present case, GKN Automatic Plc is the licensor and AP Newall, UK has been appointed by GKN Automatic Plc as sub-licensor with a right to appoint the sub-licensee as per license agreement entered into between them. GKN Automatic Plc and AP Newall, UK are related parties and a group company. The clauses of the trademark sub-license agreement analyzed by the Hon'ble ITAT in the aforementioned order is identical to the clauses mentioned in the AP Newall, UK -agreement. Therefore, respectfully following the decision of the Hon'ble ITAT, the expenditure incurred by the Appellant during the subject AY for use of trademarks is allowed as revenue expenditure., Hence, these grounds of appeal are decided in favour of the appellant.”

5. Against this order, Revenue is in appeal before us. We have heard both the parties and perused the records.

6. Ld. Counsel of the assessee reiterated that the issue is covered in favour of the assessee by a series of orders in assessee's own case for AYs 2007-08, 2008-09 & 2009-10. Hence, he submitted that the issue is covered in favour of the assessee.

7. We note that the aforesaid decision of ld. CIT (A) is based upon ITAT order on similar facts. It is not the case that the ITAT order has been reversed by the Hon'ble jurisdictional High Court. Ld. DR also

could not rebut the proposition that the issue is squarely covered. Accordingly, we find that the order of Id. CIT (A) in this case, which is based upon ITAT order in assessee's own case, is well-reasoned one and it does not require any interference on our part. Before parting, we may note down the orders of ITAT in the case of assessee in which similar issue has been decided in favour of the assessee :-

- (i) ITA No.5669/Del/2011 for AY 2007-08 order dated 30.06.2016;
- (ii) ITA No.5923/Del/2012 for AY 2008-09 order dated 01.07.2016; and
- (iii) ITA No.1651/Del/2014 for AY 2009-10 order dated 28.09.2016.

8. Thus, since Id. CIT (A) has followed the order of ITAT, we do not find any infirmity in the same and uphold the order of Id. CIT (A).

9. In the result, the appeal of the Revenue stands dismissed.

Order pronounced in the open court on this 13th day of March, 2023.

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 16th day of February, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-22, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.