IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

I.T.A. No.1001/Ahd/2023
(Assessment Year: 2017-18)

Arvind Envisol Limited, Arvind mills Premises, Naroda Road, Ahmedabad-380025	Vs.	A.C.I.T Circle 1(1)(1), Ahmedabad
[PAN No.AAGCA9687A]		
(Appellant)	..	**(Respondent)**

Appellant by :	Shri Dhrunal Bhatt, A.R.
Respondent by:	Shri Ashok Kumar Suthar, Sr. DR

Date of Hearing	28.08.2024
Date of Pronouncement	11.09.2024

O R D E R

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short "Ld. CIT(A)"), National Faceless Appeal Centre (in short "NFAC"), Delhi vide order dated 05.10.2023 for Assessment Year 2017-18.

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

1. In law and on the facts and in the circumstances of the case, the ld. CIT (Appeal) NFAC has erred in passing the appellate order after completion of more than two and a half years from the date of last date of hearing of appeal. This is contrary to CBDT Instruction No. 20/2003, dated 23rd December, 2003 and proves beyond doubt that impugned appellate order is bad in law and deserves to be quashed.

2. In law and in facts and circumstances of the appellant's case, the Ld. CIT(A)- NFAC has erred in confirming disallowance of Rs. 12,78,713/- on account of patent related expenses without appreciating that the said expenditure is of revenue nature and hence, allowable in accordance to the provisions of section 37 of the Act.

3. The appellant craves leave to add to alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.

2. The issue for consideration before us is the assesee's claim related to patent expenses amounting to Rs.15,36,948/- during the impugned year under consideration. The assessee is engaged in the business of rendering technical consultancy services, execution of project on turnkey basis, sale of components of equipment and operation and maintenance services for water treatment plants. During the course of assessment proceedings, the Assessing Officer(AO) observed that the assessee had claimed patent related expenses of Rs.15,36,948/- in its profit and loss account. In this regard, the assessee was asked to explain as to why these expenses should not be capitalized considering they are of an enduring nature. In response, vide submission dated 27.12.2019, the assessee submitted that the patents related expenses have been incurred merely for the purpose of renewal of registration of patent in various countries outside India. Hence, these expenses are of a recurring nature and expenditure is not capital in nature. The assessee submitted that the expenditure has been incurred for the purpose of "maintenance" of patent in various/respective countries. The assessee further submitted that the expenses incurred towards acquisition of patent have already been capitalized in the year of its acquisition. However, this expenditure amounting to Rs.15,37,000/- is merely for renewal of registration of patents in various countries. However, the Assessing Officer was of the view that the patent related expenses are non- recurring in nature and have provided enduring benefit to the assesee and therefore, the same needs to be capitalized. The AO accordingly allowed 25% depreciation u/s.32 of the Act, in relation to such expenses.

3. The assessee filed appeal before the Ld.CIT(A), who dismissed the appeal of the assessee, with the following observations:

> *6.0 Second ground of appeal relates to disallowance of Patent related expenses of Rs.12,78,713/-treating the expense as capital in nature. During the course of assessment proceedings, the Assessing Officer observed that the appellant company has claimed patent related expenses amounting to Rs.15.37 lakhs by debiting the same to the P & L account. In this regard, the Assessing Officer has asked the appellant company to show cause as to why the same should not be capitalized considering the enduring nature of the said expenditure. In this connection, the appellant company has submitted, that the detailed break-up of the patent related expenses along with the explanation that the same has been incurred merely for the purpose of renewal of the registration of patents in various countries and hence, it being the expense of recurring nature, it has correctly been debited to profit and loss account.*
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> *6.1 Admittedly, the appellant has incurred the expenses for the service fees, application fees and for the renewal of registration of Patent in various countries. Clearly, these expenses provide appellant with an enduring value spread ever several years and is non-recurring in nature and accordingly it needs to be treated as capital expenditure. Therefore, in my view Ld AO has correctly treated the expenses as revenue expenditure. Ground of the appellant is dismissed.*

4. The assessee is in appeal before us against the aforesaid order passed by the LdCIT(A). The Ld.Counsel for the assessee submitted that the assessee is a company engaged in providing Industrial water treatment with its patented "Polymeric Flim Evaporation" technology. The assessee provides these services both in India as well as overseas jurisdictions. To protect its patented technology, the assessee gets its patent registered in various countries wherein it provides these services. During the year under consideration, the assessee incurred certain patent related expenses which were primarily in relation to (i) Fee for Official filing & related fees (ii) Professional services in connection with such patent filing. The Ld.Counsel for the assessee submitted that all the capital expenditure on acquisition of patents had already been capitalized under the block of intangible assets and tax depreciation has been claimed

thereon. However, the present expenses amounting to Rs.15,37,000/- are towards renewal of patents and related professional fees paid to consultants, which are not capital in nature. The Ld.Counsel for the assessee submitted that the patent renewal expenses are recurring in nature and the assessee-company needs to pay this renewal fee as per the local regulation in respective countries. The Ld.Counsel for the assessee submitted that the Ld.CIT(A), while accepting that these expenses have been incurred for renewal of registration of patent in various countries has held that this expenditure provides the assessee an enduring benefit over several years. However, the Ld.Counsel for the assesee submitted that the Ld.CIT(A) failed to appreciate that these expenses are recurring in nature and do not provide any enduring benefit to the assessee, as such. These expenses have to be incurred by the assessee on a periodical basis to protect the assessee against the infringement of IPR and no new asset comes into existence. The Ld.Counsel for the assessee relied on the case of ACIT v/s. Reckit Benckiser Healthcare India Ltd. in ITA No.126/Ahd/2014 which has held that expenditure incurred on product registration enables the assessee to sell the products and hence product registration expenditure does not give any enduring benefit. Further, the Ld.counsel for the assesee relied on the case of Hon'ble Gujarat High Court in the case of PCIT vs. Zydus Wellness Ltd.[2017] 81 taxmann.com 159 for the proposition that trade mark expenditure which is incurred for facilitating the business of the assessee, is a revenue expenditure.

4.1 The Ld.Counsel for the assessee drew our attention to pages 18,19,20,26 and 27 of the paper book to demonstrate that the aforesaid expenditure was essentially towards renewal fees for patents in respective countries and also service fee paid to the local consultant in connection with

the same. The Ld.Counsel for the assessee submitted that the validity of the renewal of patent ranges from two years to five years depending upon the jurisdiction where the patent is renewed. Further, the Ld.Counsel for the assessee submitted that the Department has not disputed the proposition that the expenses have only been incurred towards the renewal of patent and not on acquisition of any new patents. Therefore, in these facts, the said expenditure is clearly allowable as revenue expenditure in the hands of the assessee.

5. In response, the Ld.DR placed reliance on the observations made by the Ld.AO and the Ld.CIT(A), in their respective order.

6. We have heard the rival contentions and perused the material available on record. From the content of order passed by the AO and the Ld.CIT(A), it has not been disputed by the Department that the nature of expenses is towards expenses incurred for service fee, application fee and payment towards renewal of registration of patents in various countries. Therefore, evidently this is not a “one time” expenditure but this expenditure has to be incurred on a periodical basis by the assessee in order to protect the assessee against the infringement of its intellectual property rights. In our considered view, looking into the instant facts, no new capital asset came into existence by way of incurring of such expenditure and no enduring benefit has been received by the assessee by way of incurring of the above expenditure. On going through the sample invoices filed before us, we observe that these expenses have incurred primarily towards renewal of patents in various countries for protecting its IPR amd towards associated fees of consultant providing professional services/ assistance to the assessee in overseas jurisdiction. In order to protect the IPR, the patents have been renewed as per the local laws of overseas jurisdiction on

a periodical basis. Therefore, in our considered view, the assessee has neither received any enduring benefit, nor has any new capital asset came into existence and further the allegation of the Department that these are non-recurring expenses is also incorrect looking into the instant facts. In the case of **DCIT v/s. M/d.Omni Active Health Technology Ltd in ITA Nos.28 & 29/Mum/2020** the Tribunal has made the following observations on this issues:

> *07. We have carefully considered the rival contentions and orders of the lower authorities. We also considered the several judicial precedents relied upon by the lower authorities. Briefly, the assessee is in the business of trading of healthcare and Nutraceuticals Products. The assessee is being granted patents for the one of its process in United States. A US based company filed suit against the appellant in July, 2008 for infringement of the patents rights. The assessee was also made a parity to the suit. It impacted adversely sale of assessee's product. Therefore, to defend the suit the assessee engaged a law firm in US. The total fees paid on that account is to the tune of ₹6,39,50,543/-. Ultimately, the patent suit resulted into a settlement agreement and the assessee paid settlement amount of Rs. 1,32,98,025/- to the plaintiff. This sum was also paid by legal firm which in turn was paid to USA entity who filed the suit against the appellant. Further, a sum of Rs. 1,86,118/- is fees paid for routine maintenance of Patents. Therefore, all these above expenditure have been incurred by the assessee for the protection of its business and intellectual rights. **These expenditure has been incurred mostly on account of defending the right of the assessee, therefore the same cannot held to be an expenditure which resulted into any endure benefit to the assessee. Any expenditure incurred by the assessee company for protection of IPR rights and for normal maintenance of its intellectual property are revenue expenditure**. Further, the increase in the sales resulting into the higher profit could not be the reasons to hold that such expenditure are capital in nature. In fact the better protection of the intellectual property rights of the property would naturally result into higher profits and turnover but that does not make such expenditure as capital expenditure. Accordingly, ground No.1 and 2 of the appeal of the learned Assessing Officer is dismissed to hold that expenditure of Rs.8,73,34,684/- incurred by the assessee towareds legal fee is Revenue in nature.*

6.1 The Co-ordinate Bench of ITAT Ahmedabad in **Reckit Bencikiser Healthcare India Ltd vs. ACIT in ITA No.3098/Ahd/2014** has made the following observations on this issue:

10. During the course of assessment proceedings, the assessing officer noticed that assessee has incurred an amount of Rs. 66,26,795/- for registering PPL products in foreign countries. The assessee company explained that these expenses have been incurred to enable assessee to register and sell its products In specified territories. The assessing officer observed that the process of getting the product registered is a long drawn process wherein the goods have to pass through series of tests and studies on bio-equivalence and clinical research to the satisfaction of the authority of those countries. Once, the product is registered and approval is granted by the particular country, the assessee can continue to export its goods over a long period of time. Therefore, the assessing officer was of the view that registration of the product clearly entitled the assessee to a benefit of enduring nature in the form of marketing right (intangibilo assets) to that country. Therefore, the assessing officer has treated these expenses as capital in nature and added to the total income of the assessee.

11. Aggrieved assessee filed appeal before the Id. CIT(A). The Id. CIT (A) Ita allowed the appeal of the assessee stating that product registration expenses are nothing but the registration expenses incurred to get pharmaceutical product registered with local health authorities, association and their counterparts at the foreign destinations.

12. During the course of appellate proceedings before us we have heard both V the sides on this issue and perused the material on record. It is noticed that assessee has incurred these expenses for registering its product in various countries to enable the assesee to sell the product in such counties. ***We observed that in absence of registration, the assessee would not be able to soil the product in the foreign countries as per the regulatory requirement of different countries, it is mandatory to get the product of the assessee registered in respect of counties for the purpose of selling in the overseas markets. Therefore, the finding of the assessing officer that assessee is getting benefit of enduring nature of registration of product has no merit.*** *In the light of the above facts and circumstances we observed that Id. CIT (A) has correctly deleted the impugned addition, therefore, the appeal of the revenue is dismissed on this issue.*

6.2 In the case of **ITC Ltd. Vs ACIT 162 taxmann.com 734 (Kolkata Tri)** ITAT held that registration expenses incurred on existing as well as new patents wholly exclusively incurred for the purpose of business were revenue in nature. While passing the order, the ITAT has made the following observations:

5. *After hearing the rival contentions and perusing the material on record, we find that the assessee has incurred these expenses as stated above for registration for existing patents as well as the new patents. The existing patents were registered in order to protect the assessee's interest in the said patents so that there is no infringement patents from any quarters. Similarly new patents were registered by the assessee to ensure the same are not used by any third party without any authorization and therefore these expenses has also been incurred by the assessee in order to protect the business interest. In our opinion, both these expenses were wholly and exclusively incurred for the purpose of business and are allowable u/s 37 of the Act. We are unable to understand as to how the expenses were split inot relating to existing and new patents. The case of the assessee finds support from the decision of Hon'ble Supreme*

*Court in the case of Dalmia Jain and Co. Ltd. v. CIT [1971] 81 ITR 754, wherein similar issue has been held in favour of the assessee. Further the case of the assessee is also supported by the decision of Hon'ble Apex Court in the case of CIT v. Finlay Mills Ltd. [1951] 20 ITR 475, wherein the Hon'ble Apex Court has held that expenses are incurred on registration of new patents are not capital expenditure. We also note that above decision of Hon'ble Apex Court in the case of Finley Mills Ltd. (supra) has been followed by co-ordinate Bench of Ahemedabad in the case of Cadila Healthcare Ltd. v. Addl. CIT [2012] 21 taxmann.com 483/[2015] 67 SOT 110, which has been affirmed by Hon'ble Gujarat High Court in the case of CIT v. Cadila Healthcare Ltd. [2013] 31 taxmann.com 300/214 Taxman 672. Similarly the aforesaid decision was followed by Bangalore Bench in OnMobile Global Ltd. v. Addl. CIT [2014] 45 taxmann.com 346, which has been affirmed by Hon'ble Karnataka High Court in CIT v. Onmobile Global Ltd. **[2021] 129 taxmann.com 254**. **Considering the facts of the case in the light of the aforesaid decisions, we are inclined to hold that the registration expenses incurred on the existing as well as new patents are wholly and exclusively incurred for the purpose of business and are revenue in nature.** Consequently ground no. 1 in the assessee's appeal is allowed and ground no. 5 in revenue's appeal is dismissed.*

7. Accordingly looking into the facts of the case, we are of the considered view that the Ld.CIT(A), has erred in facts and in law in confirming the order of the Assessing Officer holding that these expenses are capital in nature.

8. In the result, the appeal of the assessee is allowed.

This Order pronounced in Open Court on 11/09/2024

Sd/-	**Sd/-**
(ANNAPURNA GUPTA)	**(SIDDHARTHA NAUTIYAL)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 11/09/2024
Manish, Sr. PS ***(True Copy)***