

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री जगदीश, लेखा सदस्य के समक्ष ।
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri Jagadish, Accountant Member

आयकर अपील सं./I.T.A. No.2254/Chny/2024
निर्धारण वर्ष/Assessment Year: 2015-16

The Income Tax Officer,
Corporate Ward 3(1),
Chennai.

Vs. TTK Healthcare Limited,
No. 6, Cathedral Road,
Gopalapuram, Chennai 600 086.

[PAN:AABCT3312J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri C. Murugesan, Addl. CIT
: Shri Vikram Vijayaraghavan, Advocate
: (virtual)

सुनवाई की तारीख/ Date of hearing
घोषणा की तारीख /Date of Pronouncement

: 26.11.2024
: 27.11.2024

आदेश /O R D E R

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order dated 27.06.2024 passed by the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi for the assessment year 2015-16.

2. We note that the return of income filed by the assessee was selected for scrutiny and assessment order was passed assessing income of ₹.35,75,45,407/-. The Assessing Officer reopened the

assessment by issuing notices. After considering the submissions of the assessee against the show-cause notice, the Assessing Officer completed the assessment under section 147 of the Income Tax Act, 1961 ["Act" in short], inter alia making additions towards disallowance under section 14A of the Act, disallowance of logo charges and disallowance of depot service charges. On appeal against the disallowance of log charges, the Id. CIT(A), by following the decision of the Coordinate Bench of the ITAT in assessee's own case for earlier assessment years, deleted the addition made by the Assessing Officer on account of logo charges.

3. At the outset, the Id. AR Shri Vikram Vijayaraghavan, Advocate submits that the issue is squarely covered in favour of the assessee by the order of the Tribunal, wherein, the logo charges was treated as revenue expenditure. He brought on record the decision of the Tribunal vide order dated 08.08.2024 for the assessment years 2013-14, 2014-15 & 2016-17 as well as latest decision in ITA No. 1772/Chny/2024 for AY 2020-21 dated 25.10.2024 and prayed to follow the same.

4. The Id. DR Shri C. Murugesan, Addl. CIT submits that the Department has not accepted the decision of the Tribunal and preferred

further appeal before the Hon'ble High Court of Madras and thus prayed to set aside the order of the Id. CIT(A).

5. Having heard both the parties, we find that the Coordinate Bench of the Tribunal in assessee's own case for earlier assessment years held that the logo charges are revenue in nature and by following the order of the Tribunal in ITA Nos. 1826 to 1830 & 2011/Mds/2011 dated 31.10.2012 and in ITA Nos. 1587 to 1589/Mds/2015 dated 13.11.2015, the Id. CIT(A) deleted the addition made by the Assessing Officer. We find that in a latest decision of the Tribunal dated 25.10.2024 in ITA No. 1772/Chny/2024 in the case of ITO v. TSL Techno Services Limited [TTK Healthcare Private Ltd.) for AY 2020-21 also the Tribunal held that the logo charges incurred by the assessee is revenue expenditure by following the order of the Tribunal vide order dated 08.08.2024 in ITA Nos. 1459 to 1461/Chny/2024, wherein, the Tribunal held as under:

7. We have heard the rival submissions and gone through the material available on record and the orders of the authorities below. We note that these issues are covered by the Tribunal's decision in assessee's own case in ITA No.1459, 1460 & 1461/Chny/2024 for the assessment years 2013-14, 2014-15 & 2016-17, vide order dated 08.08.2024, wherein the tribunal held as under:

"4.At the outset, the ld. counsel for the assessee stated that this issue is fully covered by the Tribunal's decision in assessee's own case in ITA No.2030/Mds/2011 for the assessment year 2008-09, vide order dated 02.07.2013, wherein exactly on identical facts, the Tribunal by following its earlier decision in assessee's own case in ITA Nos.1791 to 1796/Mds/2011 & 1826 to 1830/Mds/2011 held that the logo charges incurred by the assessee is revenue expenditure by observing as under:-

33. The last issue in the grounds of appeal of the Revenue is that the Commissioner of Income Tax (Appeals) erred in holding that the expenditure incurred towards payment of logo charges is revenue in nature. At the time of hearing, the counsel for the assessee submits that this issue has been decided in favour of the assessee by the co-ordinate Bench of this Tribunal in ITA Nos. 1791 to 1796/Mds/2011 and 1826 to 1830/Mds/2011 dated 31.10.2012 in the case of TTK LIG Ltd., a group concern of the assessee on identical facts and circumstances. Copy of the said order is placed on record.

34. The Departmental Representative supports the order of the Assessing Officer.

35. We have gone through the order of the co-ordinate Bench of this Tribunal in ITA Nos. 1791 to 1796/Mds/2011 and 1826 to 1830/Mds/2011 dated 31.10.2012 and find that ITA Nos. **1897, 1898, 2029 & 2030/Mds/2011, 1783/Mds/2012** this Tribunal has decided this issue in favour of the assessee holding that logo charges paid by the assessee are revenue expenditure within the meaning of section 37 of the Act. While holding so, the Tribunal observed as under:-

20. We have given our thoughtful consideration to the issue and also perused the relevant findings, contents of paper book referred and case law cited. Undisputed facts are that vide agreement in question, the assessee had agreed to pay another entity vide agreement dated 31.3.00/6.5.00 for using the monogram, namely "ttk". The relevant extract of the said agreement as available in the paper book reads as under:-

WHEREAS TTK has been in the business of various consumer and pharmaceuticals products and has been marketing and distributing the consumer and pharmaceuticals products for over five decades and has earned a wide reputation and has created a strong image and awareness on the minds of public and has also evolved an original artistic work in the form of a monogram entitled 'tk' (hereinafter referred to as the said monogram) which has established an identity of its own in the public minds relating to the quality of the products and other services, as well as the stature of the organization.

WHEREAS TTK is the owner of the copyright of the said monogram having secured a registration of the said copyright under No.A- 39006/83 under the Copyright Act, 1957.

WHEREAS TTK LIG, a company already in the business of Manufacture of Rubber Contraceptives is desirous of promoting and strengthening its business base by establishing a proper identity in the minds of public at large which will create a strong marketing base for the products of the company and reflect an immediate identity in the minds of the public with reference to the products services and stature of the Licenses and for the purpose has approached TTK for license and permission to use the said monogram on or in relation to the goods manufactured and marketed by TTK LIG and in relation to other business activities of TTK LIG.

WHEREAS TTK had acceded to the request of TTK LIG to grant license and permission to TTK LIG to use the said monogram, subject to certain terms and condition, which terms and conditions in writing by this Deed of Agreement.

WHEREAS both the parties hereto consider it necessary and expedient to record such terms and conditions in writing by this Deed of Agreement. NOW THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL COVENANTS AND OBLIGATIONS HEREIN CONTAINED, THE PARTIES HERETO AGREE AS FOLLOWS:

1. TTK hereby confirms having licensed and permitted the use of the said monogram by TTK-LIG for a period of three years with effect from 1st April 2000, as per approval accorded by the Government of India vide letter No.2/M-7964 dated 3rd May, 2000. Copy of Government approval is annexed to this Agreement.

2. The License and permission granted by TTK in favour of TTK-LIG as aforesaid, shall entitle TTK-LIG, so long as this agreement in force, to use the said monogram on or in relation to the goods of TTK-LIG and in relation to the business activities of TTK-LIG, including the use of the said monogram on stationery, trade literature, packing of goods, labels, wrappers and advertisements of TTK-LIG. TTK-LIG shall not under any circumstances transfer or assign any of their rights under this agreement.

3. TTK-LIG accepts that the said monogram shall be used by TTK-LIG under this agreement in a manner indicative of the fact that the copyright in the said monogram is owned by TTK. Illustrative of the words to appear in close proximity to the said monogram, for the purpose of carrying out the requirements of this clause are:

<i>1981 T.T.Krishnamachari & Co</i>	<i>1. When the said monogram is used on or in relation to the goods of TTK-LIG</i>
<i>A Unit 1981 T.T.Krishnamachari & Co</i>	<i>When the said monogram is used otherwise in relation to the name of TTK-LIG</i>

4. The agreement shall be in force for a period of three years effective from 1st April, 2000 and may be renewed thereafter by the consent of both the parties, subject to Government approval.

5. The renewal of this agreement may be effected by both the parties hereto by exchange of letters signed by persons duly authorized in this behalf.

6. In consideration of the said License and permission granted by TTK., TTK-LIG shall pay to TTK as non-refundable license fee, a sum equivalent to two percent of the total sales of the company on quarterly rest.

The above said agreement for using the monogram in question, was also approved by Department of Company Affairs, Ministry of Law, Justice and Company Affairs, Government of India vide letter dated 03.05.00, which is reproduced hereunder below:-

1. In exercise of the powers delegated to the undersigned by the Government of India under section 637 of the Companies Act, 1956 in Notification No.GSR 563 E dated 19.08.93,I, the Regional Director, Department of Company Affairs, Chennai-6, do hereby approve under proviso to sub section (1) of section 297 of the Companies Act, for entering into contract with M/s.T.T. Krishnamachari & Co. for licensing use of trade name and logo thereof in consideration of payment of 2%license fee calculated on the total sales of the company for a period of 3 years with effect from 1.4.2000.

2. The approval accorded in para 1 above is subject to the following conditions:

(i) The contract shall be for a period of 3 years with effect from 1.4.2000 to 31.3.2003.

(ii) The total value of services to be availed from the contractee party herein shall not exceed the limit mentioned in para 1 above during the contract period.

(iii) The prices to be payable for the services to be obtained from the contractee party shall be reasonable and shall not be higher than the prevailing market rates.

(iv) The company shall ensure that the contract with the contractee party is competitive and is not less advantageous to it as compared to similar contracts with other parties.

3. This approval has been accorded without prejudice to any action that may be required to be taken by the company under any other provisions of the Companies Act, 1956 or any other law in force. Dated at Chennai the 27th day of April 2000. There is hardly any dispute between the parties about the factum of payment made by assessee of logo charges @ 2% of the gross sales. The only strife is that per revenue, it is capital expenditure whereas the assessee's plea of treating it as a revenue expenditure stands accepted by CIT(A). We find that in exactly the similar circumstances, the Hon'ble Delhi High Court in the case of G4S Securities System had held as under:-

“ the ownership rights of the trade mark and know-how throughout vested with the foreign company and on the expiration or termination of the agreement the assessee was to return all the know-how obtained by it under the agreement. The payment of royalty was also to be on year to year basis on the net sales of the assessee and at no point of time was the assessee entitled to become the exclusive owner of the know- how and trade mark. Hence, the expenditure incurred by the assessee as royalty was revenue expenditure and was deductible under section 37(1) of the Income-tax Act, 1961.”

20.1. Similarly, the Co-ordinate Bench of Delhi ITAT in the case of DCM Benetton(supra) has also held usage of such brand name etc. to be revenue expenditure by observing as follows:-

“From the agreement it is clear that the assessee was only granted non-assignable licence, right and privilege with reference to the licensed marks to manufacture on the mark and distribute the licensed product in India and to use the expression Benetton. The assessee did not become the owner of the licensed marks or the holder of the trade-marks. Such license marks at all times remain the property of the licensor. The license was initially granted for a period from October, 1992 till fall/winter season of 1999-2000. However, to continue to use the license mark for manufacturing of the licensed products, the assessee was to pay royalty @ % % of the amount of net sales. By paying the royalty the assessee did not acquire any right in the licenses trade-marks. Only the products manufactured by the assessee i.e. garments will bear the licensed marks for which the license has been granted. Accordingly, it can be said that the assessee has not acquired any capital asset but has merely paid to the licensor for use of such trade-marks. Therefore, expenses are to be treated as revenue expenditure and not capital expenditure. The assessee was required to pay royalty every year. But for payment of royalty, every year the assessee could not continue receiving the license to use the licenses marks on the products manufactured by it. Thus making payment every year it cannot be said that the assessee received advantage of enduring nature primarily to bring it as capital expenditure”.

Taking cue from the same, we hold that in the instant case also, title of the logo in question has not passed over to the assessee. Further, there is no acquisition of assets or part of any capital asset. Usage of logo by the assessee is only for displaying it on the product manufactured i.e. rubber contraceptives. That too, for a limited period as provided in the agreement in lieu of payment @ 2% of the gross sales. When we apply the tenor of the case law above cited to the facts of the instant case, we hold the instant logo charges are also revenue expenditure within the meaning of Sec.37 of the Act in the nature of wholly and exclusively for the purpose of assessee's business. Consequently, we see no reason to interfere in the findings of the CIT(A). Therefore, the same are hereby upheld.”

36. Since the facts and circumstances being similar, respectfully following the above said order of the co- ordinate Bench of this Tribunal, we hold that the logo charges incurred by the assessee are revenue expenditure.”

4.1 Since the Co-ordinate Bench of this Tribunal has allowed this issue in favour of assessee in earlier years on similar facts and circumstances and the CIT(A) has also deleted the addition made by the AO towards logo charges by following the Tribunal's order in assessee's own case for earlier assessment years, we find no reason to interfere with the order of the CIT(A). Therefore, we confirm the order of CIT(A) and dismiss this ground raised by the Revenue.

6. We note that the Id. CIT(A), by following earlier decisions of the Tribunal in assessee's own case held that the expenditure incurred towards logo charges is allowable as revenue expenditure. Under the

above facts and circumstances, we find no infirmity in the order passed by the Id. CIT(A) and thus, the grounds raised by the Revenue are dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 27th November, 2024 at Chennai.

Sd/-
(JAGADISH)
ACCOUNTANT MEMBER

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Chennai, Dated, 27.11.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.