

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ई' मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

श्री आर. सी. शर्मा, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष
BEFORE SHRI R.C.SHARMA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.7080/Mum/2013

(निर्धारण वर्ष / Assessment Year: 2009-10)

The Dy. Commissioner of Income Tax 10(3) Room No.451, 4 th Floor, Aaykar Bhavan, Maharshi Karve Road, Mumbai - 400020	बनाम/ Vs.	M/s. Shreechem Pharmaceuticals Pvt. Ltd. 16/17, Shivkrupa Industrial Estate LBS Road, Vikhroli, Mumbai - 400083
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCS6260L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Mehul Shah
Department by:	Shri G. Nantha Kumar

सुनवाई की तारीख / Date of Hearing: 07.09.2016

घोषणा की तारीख /Date of Pronouncement:26.10.2016

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 16.09.2013 passed by the Commissioner of Income Tax (Appeals) 22, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2009-10.

2. The revenue has raised the following grounds:-

- “1.1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not treating product registration charges as capital expenditure.*
- 1.2 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that product registration charges are not creating any new assets, whereas it is nothing but license / business or commercial right which comes under definition of intangible assets.*
- 2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in admitting additional evidences in respect of purchases made from M/s. Harsh Chemicals which was not submitted before AO during course of assessment proceedings, and thus not observing / following provisions of Rule 46A(3) of the I.T.Rules.*

3. The brief facts of the case are that the assessee filed his return of income on 29.09.2009 by declaring total income to the tune of Rs.81,11,518/-. The return was processed u/s.143(1) of the Income Tax Act, 1961 (in short “the Act”). Thereafter, the case was selected for scrutiny. Notice u/s.143(2) of the Act was issued on 20.08.2010 and duly served upon the assessee on 06.09.2010. Further notices u/s.142(1) of the Act alongwith questionnaires calling for various details were issued on 23.08.2010, 16.08.2011, 20.10.2011 and 25.11.2011 and duly served upon the assessee. The assessee is engaged in the business of manufacturing of drugs and pharmaceuticals. During the year under consideration, sales and services have been shown at Rs.33,45,24,535/- and net profit has been

computed at Rs.37,58,554/-. The assessee has shown the office administrative expenses in his Profit & Loss Account and debited an amount of Rs.43,06,904/- under the head 'Product Registration Expenses' as compared to expenses debited under the above head of Rs.1,12,595/- in the earlier year. Thereafter, the notice was issued to the assessee and after considering the reply the said expenditure was treated as capital expenditure and added to the income of the assessee. Feeling aggrieved, the assessee has filed an appeal before the CIT(A) in which the said expenditure was treated as revenue expenditure and deleted the said addition, therefore, the revenue has filed the present appeal before us.

ISSUE NO.1&2:-

4. All the issues are interconnected, therefore are being taken up for adjudication. Under this issues the revenue has challenged the sole point that the CIT(A) has wrongly allowed an amount of Rs.43,06,904/- as revenue expenditure whereas the same should be considered as capital in nature. Before going further it is necessary to advert the finding of the CIT(A) on record:-

“2.3 I have carefully considered the submission of the appellant and the impugned assessment order. The AR of the appellant had filed copies of Registration Certificate issued by Health and Drug administration of

various countries such as Zambia, Ghana, Georgia, Vietnam, Nigeria, Ukrain, etc. with the registration number and the details of product and expiry period of the license. The fees is paid towards vendor registration, quality control checks, testing and verification of such products for human consumption impact over environment over disposal, etc. Once the product passes through above tests, the concerned Government allows sale of such products in the County. In support of the contention that such product registration expenditure is of revenue in nature, the AR has relied on the decision of Hon'ble High Court of Delhi in the case of Panacea Biotech Ltd. The Hon'ble High Court was of the view that test of enduring benefit cannot be the sole criterion and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case. In this case, such expenditure was allowed by the AO in A.Y.2003-04 and 2004-05. The addition were deleted by the CIT(A) and revenue did not prefer any appeal before the Hon'ble ITAT. For A.Y.2005-06, against the order of the CIT(A), the department had filed an appeal before the Tribunal which was dismissed and the department did not prefer any appeal before the High Court. Hence, in this

background, the Hon'ble High Court has given relief to the appellant.

- 2.4 However, I would like to reply on the decision of Gujarat High Court in the case of Cadilla Healthcare Ltd. in Tax appeal No.752 of 2012 dt. 20.03.2013.

The question referred to the Hon'ble court was Whether the Appellate Tribunal has substantially erred in holding the Trademark Registration fee and Patent fee (Rs.37,92,606/0 and Rs.1,15,49,880/-) are revenue expenses, when the expense were incurred for registration of Trademark in that country and also for registration of Patent, which are intangible assets under section 32(1)(ii) of the Act?

These questions pertain to the expenditure incurred by the assessee towards product registration before the Drug Regulatory Authorities and registration of trademark and patent fees. It is the case of the Revenue that such registration gives enduring benefits and therefore should have been treated as capital expenditure and not revenue in nature. The Tribunal clubbed these expenditure for common consideration and in the impugned judgment held that pharmaceutical products manufactured by the

assessee are to be registered with the local authorities as also medical association in India. Such products were in existence and nothing new were acquired by the assessee in the process. The Tribunal, therefore, held that the expenditure only enable the assessee to run the existing business smoothly and therefore, it cannot be stated that the assessee acquired any tangible or intangible assets.

With respect to patent and trademark registration, the Tribunal held that for protection of result of the research of the assessee, such patent had to be registered. It was observed that enduring benefit is not the only criteria. The same must be coupled with acquisition of asset.

The finding of the Hon'ble court is as under:

“With respect to the expenditure incurred for production registration charges, we agree with the view of the Tribunal that the assessee did not acquire my new asset. As per the rules and regulations, it was essential that the product, before marketing, would be registered with the regulating authorities. Any expenditure in the process would not be stated to ensure procurement of a new asset to the assessee. We are informed

that a Division Bench of this Court in the case of CIT V. Torrent Pharmaceuticals Ltd. (2013) 29 taxmann.com 405 (Gujarat) also in somewhat similar facts had upheld the decision of the Tribunal.”

The facts are identical in appellants case. Going by the ratio laid down by the Hon’ble court the Product Registration would not create any new asset to the appellant as the products are the existing one. Further in my opinion test of enduring benefit alone cannot be a deciding factor that the expenditure incurred in capital in nature. Hence, I do not accept the finding of the AO. I direct the AO to treat the expenditure incurred towards registration charges as revenue and in view of this, the addition made by the AO is hereby deleted. This ground of appeal is allowed.”

5. On appraisal of the above said order it came into the notice that the assessee filed the copies of registration certificate issued by the Health and Drug administration of various countries such as Zambia, Ghana, Georgia, Vietnam, Nigeria, Ukrain, etc. with the registration number and the details of products and expiry period of the license. The fees were paid towards vendor registration, quality control checks, testing and verification of such products for human

consumption, impact over environment over disposal, etc. After passing the said tests, the concerned Government allows sale of such products in the Country. On the said facts and circumstances the CIT(A) has relied upon the case decided by the Hon'ble High Court of Delhi in the case of Panacea Biotech Ltd. and Hon'ble High Court of Gujarat in the case of Cadilla Healthcare Ltd. in tax appeal no.752 of 2012 dated 20.03.2013. No distinguishable facts and law has been placed on record by the revenue at the time of arguments. Additional evidence which relevant to the facts of the case, can be taken into consideration during appellate proceeding in accordance with law. The CIT(A) has passed the orders judiciously and correctly which does not require to be interfere with at this appellate stage.

7. In the result, the appeal filed by the **revenue is hereby Dismissed.**

Order pronounced in the open court on 26th October, 2016.

Sd/-

(R.C.SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 26th October, 2016

MP

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai