

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SMT. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. Nos. 1190 to 1192/Ahd/2018
(निर्धारण वर्ष / Assessment Years : 2012-13 to 2014-15)

A.C.I.T. Circle-4(1)(2), Ahmedabad	बनाम/ Vs.	M/s. Vishnu Pouch Packaging Pvt. Ltd. Plot Nos. 49 & 50, Block A, Maha Gujarat Estate, Village Moriya, Tal: Sanand, Ahmedabad - 382210
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADCV6860B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Mudit Nagpal, Sr.D.R.
प्रत्यर्थी की ओर से /Respondent by :	Shri G. C. Pipara, A.R.

सुनवाई की तारीख / Date of Hearing	21/10/2019
घोषणा की तारीख /Date of Pronouncement	18/12/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeals have been filed at the instance of the Revenue against the common orders of the Commissioner of Income Tax (Appeals)-8, Ahmedabad ('CIT(A)' in short), dated 21.03.2018 arising in the respective assessment orders dated 10.03.2015, 01.01.2016 & 22.09.2016 passed by the Assessing Officer (AO)

under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AYs 2012-2013 to 2014-15.

2. As claimed on behalf of the Revenue, the facts are similar and common issues are involved in all assessment years and therefore all three appeals were heard together and disposed of by common order.

3. We shall take note of facts and issue involved in ITA No. 1190/Ahd/2018 concerning AY 2012-13 for adjudication purposes for the sake of convenience.

ITA No. 1190/Ahd/2018 - AY 2012-13

4. The grounds of appeal raised by the Revenue read as under:

“that the ld. CIT(Appeals) has erred in law and on facts in deleting the addition amounting to Rs.2,44,82,272/- made on account of disallowance of Trademark License Utilization fees.”

5. Briefly stated, the assessee company has been incorporated under the provisions of Chapter IX of the Companies Act, 1956 by converting the partnership firm namely M/s. Vishnu Packaging into Vishnu Pouch Packaging Pvt. Ltd. w.e.f. 21.06.2011. The assessee company is engaged in the business of manufacturing of Pan Masala without tobacco and Pan Masala containing tobacco. The assessee filed return of income for AY 2012-13 in question declaring total loss at Rs.4,00,76,491/-. The return of income filed by the assessee was subjected to scrutiny assessment. In the course of assessment, the AO observed that during the year under consideration, the assessee has claimed expenses of Rs.2,44,82,272/- as revenue expenditure for trademark license utilization fees under the head ‘sale and distribution expenses’. The assessee has paid the license

utilization fee to sister concern M/s. Vishnu & Company Trade Mark Pvt. Ltd. The AO took note of the license user agreement dated 11.05.2007 entered into by the erstwhile partnership firm with the licensor viz. Vishnu & Company Trade Mark Pvt. Ltd. and observed that licensor had granted the assessee a license for unlimited period to use trademark 'Vimal' and the agreement shall remain valid for all time to come. It was further noticed that in terms of the agreement, the assessee was prohibited from entering into competitive business by manufacturing, selling or otherwise dealing in item, such as, Pan Masala, Gutkha and Chewing Tobacco and any other items of like nature. It was further observed that the licensee (assessee) has equal right to terminate the user agreement in terms of the agreement. The AO took a view that the assessee has obtained secret formula for manufacturing tobacco products as well as acquired trademark from the so-called licensor. The licensor has no name of its own in the market and it is the assessee which has earned the name and brand value of 'Vimal' in the market. On these brand parameters, it was concluded by the AO that expenditure incurred by the assessee towards license utilization fee is incurred in the capital field and is not revenue in character. The AO accordingly disallowed the claim of the assessee towards license fees in Revenue account and reduced the declared loss to the extent of the license fees.

6. Aggrieved, the assessee preferred the appeal before the CIT(A).

7. The CIT(A) followed a view taken in the case of the erstwhile partnership firm concerned AYs. 2010-11, 2011-12 & 2012-13 and passed a consolidated order for AYs. 2012-13, 2013-14 & 2014-15

in question in favour of the assessee. The relevant operative part of the order of the CIT(A) is reproduced hereunder:

“6. I have carefully considered the facts of the case and submission made by the appellant as well as arguments taken by the AO. I find that it is a recurring issue in the case of appellant (earlier in the capacity of firm) and on the very same disallowance appeal has been allowed by my predecessors in A.Y.2010-11, 2011-12 & 2012-13. For A.Y. 2012-13 my predecessor allowed the appeal on this ground vide Appellate Order No.CIT(A)-3/ward3(2)(2)/01/15-16 dated 12.05.2016. Also departmental appeals on this issue in A.Y.2010-11 & 2011-12 have been dismissed by Hon'ble ITAT in ITA No. 2046/Ahd/2013 & 1218/Ahd/2015 order dated 06.04.2017. Facts of the case continue to be same hence respectfully following the order of Hon'ble ITAT in the appellant's case and the order of my predecessor the disallowance made by AO towards payment of license fee amounting to Rs.2,44,82,272/-, Rs.3,03,95,408/- & Rs. 3,23,94,530/- in A.Y.2012-13, 2013-14 & 2014-15 respectively are deleted. The related grounds of the appellant are allowed.”

8. Aggrieved by the aforesaid action, the Revenue preferred appeal before the Tribunal.

8.1 The learned DR for the Revenue reiterated various observations made by the AO and relied upon the conclusion drawn by the AO. It was thus submitted that the CIT(A) has wrongly admitted the claim of the assessee as revenue expenditure which in reality has been incurred in the capital field and the assessee is deriving benefit of enduring nature. The learned DR accordingly urged that the action of the CIT(A) be reversed and the action of the AO be restored.

8.2 The learned AR for the assessee, on the other hand, submitted that the issue is no longer *res integra* and the license agreement was under judicial scrutiny of the co-ordinate bench in the hands of the erstwhile partnership firm in the preceding AYs. in *ITA Nos. 2046/Ahd/2013 & 1218/Ahd/2015* order dated 06.04.2017.

9. We have carefully considered the rival submissions. The short controversy relates to the maintainability of expenditure incurred by way of license fees to the licensor of the trademark as revenue expenditure. Whereas, it is the case of the assessee that license fees paid as specified percentage of sales (6%) is revenue expenditure for use of trademark owned by the licensor, the Revenue, on the other hand, contends that license is being used by the assessee for indefinite period and the expenditure incurred is bringing enduring advantage to the assessee and therefore incurred in the capital field and consequently liable to be disallowed. We find that issue has been earlier examined by the co-ordinate bench in the hands of the erstwhile partnership firm (now converted into Private Limited Company i.e. assessee). The relevant operative para of the order of the Tribunal is reproduced hereunder:

- “8. *The second grievance of the revenue relates to the deletion of the addition of Rs. 5,32,83,949/- made on account of payment paid to Vishnu & Company Trade Mark Pvt. Ltd. for use of trade mark which was treated as capital expenditure by the A.O.*
9. *While scrutinizing the return of income, the assessee has incurred expenses of Rs. 5,32,83,949/- for Trade Mark License utilization fees. The assessee was asked to justify payment of the same. The assessee filed the copy of the agreement with M/s. Vishnu & Company Trade Mark Pvt. Ltd. that (“Vimal” Brand Pan Gutakha and Pan Masala) are license on Trade Mark of M/s. Vishnu & Company Trade Mark Pvt. Ltd and since the assessee has used the license Trade Mark of Vishnu & Company Trade Mark Pvt. Ltd. The license fee paid by the assessee is an allowable expenditure u/s. 37 of the Act. This submission of the assessee did not find any favour with the A.O. who was of the opinion that the Trade Mark license utilization fees treated to M/s. Vishnu & Company Trade Mark Pvt. Ltd. have to be considered as a capital expenditure and accordingly disallowed the same and at the same time allowed depreciation @ 25%.*
10. *Aggrieved by this, the assessee carried the matter before the Id. CIT(A) and reiterated its claim.*
11. *After considering the facts and the submissions, the Id.CIT(A) found that the “Vimal” Trade Mark is owned by M/s. Vishnu & Company Trade Mark Pvt. Ltd. and the assessee has paid royalty @ 6% of its turnover as per the terms and conditions of license/registered user agreement dated 11.05.2007. The Id.*

CIT(A) further observed that the CBDT circular relied upon by the A.O. does not apply on the impugned payment since there is no acquisition of any technical knowhow; therefore, there is no reason to treat the impugned payment as capital expenditure. The ld. CIT(A) accordingly directed the A.O. to delete the impugned addition.

12. *Before us, the ld. D.R. strongly relied upon the findings of the A.O.*

13. *We have carefully gone through the orders of the authorities below and the relevant documentary evidences brought on record in the form of a paper book. There is no dispute that the "Vimal" Trade Mark is owned by Vishnu & Company Trade Mark Pvt. Ltd. It is also true that the assessee has paid the royalty as per the terms and conditions of the registered agreement. It is equally true that the CBDT circular No. 10/69/61-IT(AI) dated 04.09.1962 is not applicable in the instant case. We further find that in the immediately preceding assessment year, similar payments were allowed by the A.O. in scrutiny assessment. Considering the facts in totality, we do not find any reason to interfere with the findings of the ld. CIT(A). Ground no. 2 is accordingly dismissed."*

10. In the light of the decision of the co-ordinate bench, the claim of the assessee for payment of user license fees based on turnover is deductible as revenue expenditure. In our view, where the licensor continues to be owner of the capital asset i.e. trademark 'Vimal', the assessee cannot be said to have acquired any capital asset by making payment of user license fee. The interpretation of certain restrictive covenants by the AO is totally misplaced. The contractual obligations are ordinary in commercial parlance and does not grant any valuable right to the licensee. The advantage earned by the assessee by use of the license is neither permanent nor ephemeral but is linked to the use of the trademark owned by the licensor. The expense towards use of trademark was clearly laid out for the purpose of ongoing business carried on by the assessee and fee paid for use of such trademark is clearly deductible as revenue expenditure. The assessee herein has been merely granted a license to use trademark on payment of license fee determined on the basis of a formula laid down in the agreement. The right to use can

neither be assigned at the wishes of licensee nor is the licensor prohibited to terminate the user license agreement executed with licensee. Thus, licensor retains the inherent control over the manner of use of trademark. Thus license fee paid for mere use of capital asset which continues to belong to someone else thus cannot be regarded to be in the capital field in the hands of licensee. We thus see no error in the conclusion drawn by the CIT(A) in favour of the assessee. Hence, we decline to interfere.

11. In the result, appeal of the Revenue in ITA No.1190/Ahd/2018 concerning AY 2012-13 is dismissed and other captioned appeals of Revenue concerning AYs. 2013-14 & 2014-15 (ITA Nos. 1191 & 1192/Ahd/2018) in similarly placed facts are also dismissed in view of identical issue involved.

This Order pronounced in Open Court on 18/12/2019

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER
Ahmedabad: Dated 18/12/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।