आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'बी' मुंबई

IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

श्री बी.आर. मित्तल, न्यायिक सदस्य एवं श्री राजेन्द्र, लेखा सदस्य के समक्ष

BEFORE SHRI B.R. MITTAL, JUDICIAL MEMBER, AND
SHRI RAJENDRA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITAs no. 3159, 3277 & 3278 and 3280 to 3283/Mum./2011
(निर्धारण वर्ष / Assessment Years : 1999–2000 to 2005–06)

Medley Pharmaceuticals Ltd.
D–2, MIDC Area, 16th Road
Andheri (E), Mumbai 400 093

……………….. अपीलार्थी / Appellant

बनाम v/s

Dy. Commissioner of Income Tax
Central Cicle–44, Aayakar Bhavan
101, M.K. Road, Mumbai 400 020

……………….. प्रत्यर्थी / Respondent

स्थायी लेखा सं./जीआइआर सं./PAN/GIR no.AAACM2764J

आयकर अपील सं. / ITAs no. 4029 to 4035/Mum./2011
(निर्धारण वर्ष / Assessment Years : 1999–2000 to 2005–06)

Dy. Commissioner of Income Tax
Central Cicle–44, Aayakar Bhavan
101, M.K. Road, Mumbai 400 020

……………….. अपीलार्थी / Appellant

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स्थायी लेखा सं./जीआइआर सं./PAN/GIR no.AAACM2764J

निर्धारिती की ओर से / Assessee by : Mr. Arvind Dalal
राजस्व की ओर से / Revenue by : Mr. Pravin Verma

सुनवाई की तारीख / Date of Hearing – 27.06.2012	आदेश घोषणा की तारीख / Date of Order – 06.07.2012

आदेश / **ORDER**

PER BENCH

These cross appeals are directed against common impugned order dated 31st January 2011, passed by the Commissioner (Appeals)–XXXVIII, Mumbai, for assessment years 1999–2000 to 2005–06 respectively on the common grounds. Hence, we have heard these appeals together and are being disposed off by this consolidated order for the sake of convenience and brevity.

2. The relevant facts giving rise to these appeals are that the assessee is in the business of manufacture and sale of pharmaceutical products. The assessee made royalty payment to M/s. Medley Laboratories Pvt. Ltd. (for short *"MLPL"*) the sister concern and its one of the directors Mr. Sami Khatib, @ 1% of the sales value of certain products for use of trade marks owned by the sister concern of the assessee MLPL and Mr. Sami Khatib. For the purpose, the assessee entered into an agreement with the recipients of royalty payments. In addition to royalty payment, the assessee company also made payment on account of technical knowhow in assessment years 1999–2000 to 2001–02 to MLPL @ 1% of the total sales. The details of the amounts of royalty payments made to MLPL and Mr. Sami Khatib, and technical knowhow paid to MLPL in the relevant assessment years under consideration are tabulated by the learned Commissioner (Appeals) at Page–3 of the impugned order.

A.Y.	*ROYALTY PAYMENTS*		*TECHNICAL KNOWHOW*	*TOTAL (₹)*
	MEDLEY LAB. P. LTD.	*SAMI KHATIB*	*MEDLEY LAB P. LTD.*	
99–2000	*3,29,695*	*26,41,567*	*17,46,791*	*47,18,053*
2000–01	*3,70,714*	*25,84,693*	*20,09,741*	*49,65,148*
2001–02	*4,53,645*	*29,61,023*	*23,86,987*	*58,01,655*
2002–03	*5,08,019*	*22,94,749*	*– –*	*28,02,768*
2003–04	*– –*	*17,74,267*	*– –*	*17,74,267*
2004–05	*– –*	*20,69,485*	*– –*	*20,69,485*
2005–06	*– –*	*20,12,700*	*– –*	*20,12,700*
			Total:–	*2,41,44,076*

3. The assessee claimed the above expenditure as revenue expenditure. The Assessing Officer completed the assessment for all the assessment years under consideration accepting the claim as made by the assessee.

4. The Commissioner passed order under section 263 of the Income Tax Act, 1961 (for short *"the Act"*) and set aside the assessment orders for all the assessment years under consideration with a direction to the Assessing Officer to frame a fresh assessment order in accordance with law after verification and enquiry warranted as to whether the payment to MLPL and Mr. Sami Khatib, is revenue or capital in nature. The Assessing Officer passed the assessment orders under section 143(3) r/w 263 of the Act and treated the said royalty payments as well as technical knowhow payments in respect of all the assessment years under consideration in the nature of capital expenditure and, accordingly, disallowed the entire amounts claimed by the assessee. It is relevant to state that the Assessing Officer, after considering the said expenditure as capital in nature did not allow any depreciation to the assessee thereon. Being aggrieved, the assessee filed appeals before the learned Commissioner (Appeals).

5. On behalf of the assessee, it was contended that the above payments are revenue in nature. However, the assessee also took an alternative ground before the learned Commissioner (Appeals) that without prejudice to its contentions that the royalty payment and fee for technical knowhow are allowable as revenue expenditure if the stand of the Assessing Officer is accepted such expenditure is of capital in nature, the assessee should be allowed depreciation @ 25% as per Income Tax rules.

6. The learned Commissioner (Appeals), after considering the submissions of the assessee, confirmed the action of the Assessing Officer that the payment made by the assessee to MLPL and Mr. Sami Khatib, on account of trade mark and royalty are capital in nature and relied on the decision of the Tribunal, Delhi Bench, being ITA no.3195/Del./2000, order dated 22nd December 2004, in JCIT v/s Hilton Roulunds Ltd, [2006] 152

7. Taxman 6 (Del.) (Mag.). However, the learned Commissioner (Appeals) held that the claim of depreciation as admissible under the Income Tax Rules, is to be allowed to the assessee on the amount capitalized by the assessee of the above payments. Hence, the assessee as well as the Department are in appeal before the Tribunal.

8. In the appeals filed by the assessee, the assessee has contended that the payments made by it to MLPL and Mr. Sami Khatib, towards royalty and technical knowhow fee is revenue expenditure and whereas the Department in its appeal has disputed the order of the learned Commissioner (Appeals) to allow depreciation to the assessee by capitalizing the payment made by the assessee.

9. At the time of hearing, the learned Counsel for the assessee submitted that if the order of the learned Commissioner (Appeals) is being confirmed that the payments made by the assessee on account of royalty and technical fee is capital in nature, the assessee should be allowed depreciation as per Income Tax rules on the capitalized amount, as held by the learned Commissioner (Appeals). He further submitted that in that case, assessee does not press its ground of appeal that payments made by the assessee are revenue in nature. The learned Departmental Representative submitted that he relies on the order of the Assessing Officer in regard to ground of appeal taken by the Department. However, the learned Counsel for the assessee submitted that the Department has accepted in the subsequent assessment years i.e., 2006–07 onwards that above payments are revenue in nature. The learned Departmental Representative submitted that the principle of res judicata does not apply to the income tax proceedings and, therefore, the view taken by the Department in subsequent assessment years i.e., 2006–07 onwards need not to effect the findings of the learned Commissioner (Appeals) for assessment years under consideration.

10. We have considered the submissions of the learned Representatives of the parties and the orders of the authorities below. Since the learned Counsel for the assessee has submitted that he has no objection if the order of the learned Commissioner (Appeals) is confirmed that the payments made by it to MLPL and Mr. Sami Khatib, on account of royalty and fee for technical knowhow as capital in nature provided the assessee be allowed depreciation as per income tax rules on the capitalized amount, we uphold the order of the learned Commissioner (Appeals) that the payments made by the assessee in the assessment years under consideration to MLPL and Mr. Sami Khatib, on account of royalty and fee for technical knowhow details mentioned herein above in Para–2 as capital in nature and also hold that assessee is entitled for depreciation accordingly and the assessee is entitled for depreciation on the capitalized amount as per income tax rules. Therefore, the ground of appeal taken by the assessee as well as by the Department for all the assessment years under consideration i.e., assessment years 1999–2000 to 2005–06 are rejected by confirming the order of the learned Commissioner (Appeals).

11. परिणामतः राजस्व की अपीलें एवं निर्धारिती की अपीलें (निर्धारण वर्ष 1999–2000 to 2005–06) खारिज की जाती है ।

11. In the result, Revenue's appeals as well as assessee's appeals for all the assessment years i.e., A.Ys 1999–2000 to 2005–06 are dismissed.

आदेश की धोषणा खुले न्यायालय में दिनांकः 6th July 2012 को की गई ।
Order pronounced in the open Court on 6th July 2012

Sd/-	**Sd/-**
राजेन्द्र	**बी.आर. मित्तल**
लेखा सदस्य	**न्यायिक सदस्य**
RAJENDRA	**B.R. MITTAL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 6th July 2012

Copy to:

(1) The Assessee;

(2) The Revenue;

(3) The CIT(A), Mumbai, concerned;

(4) The CIT, Mumbai City concerned;

(5) The DR, "B" Bench, ITAT, Mumbai.

सत्यापित प्रति / True Copy

आदेशानुसार / By Order

Pradeep J. Chowdhury
Sr. Private Secretary

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

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai