



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

203-26

ITA-325-2016

Date of Decision: 04.02.2026

PR COMMISSIONER OF INCOME TAX-2

...Appellant

Vs.

M/S SMITHKLINE BEECHAM CONSUMER HEALTHCARE LTD.

...Respondents

**CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL
HON'BLE MR. JUSTICE AMARINDER SINGH GREWAL**

Present:- Ms. Urvashi Dugga, Advocate
for the appellant

Mr. Rohit Jain, Advocate (*through V.C.*) and
Mr. Abhishek Sharma, Advocate for
Mr. Vishal Gupta, Advocate
for the assessee

JAGMOHAN BANSAL, J. (ORAL)

1. The appellant through instant appeal under Section 260A of the Income Tax Act, 1961 (for short '1961 Act') is seeking setting aside of order dated 05.04.2016 passed by Income Tax Appellate Tribunal, Chandigarh (for short 'ITAT').

2. The appellant has raised following questions for adjudication by this Court:-

- (i) Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in deleting the addition of Rs. 4.5 cr. made on account of treating the compensation received by the assessee on account of termination of trademark 'ENO' and 'Fruit Salt' as revenue receipts as against the assessee's

- claim as capital receipts particularly when the assessee was not owner of the patents but was only user on account of agreement with the owner?
- (ii) Whether on the facts and in circumstances of the case and in law, the Hon'ble ITAT is right in holding that Effluent Treatment Plant has been commissioned and put to use during the year under reference and directing the AO to allow depreciation @ 100% thereon?
- (iii) Whether on the facts and in circumstances of the case and in law, the Hon'ble ITAT is right in allowing the assessee's claim of deduction u/s 80-I of the I.T. Act as no new industrial Unit has come into existence in the year under consideration?
- (iv) Whether on the facts and in circumstances of the case and in law, the Hon'ble ITAT is right deleting the addition of Rs. 1,41,58,549/- by excluding the excise duty in the valuation of closing stock?
- (v) Whether on the facts and in circumstances of the case and in law, the Hon'ble ITAT is right in allowing the relief of Rs. 83,97,899/- by directing the AO to value the closing stock on the direct cost method as adopted by the assessee subject to inclusion of certain expenses?
- (vi) Whether on the facts and in circumstances of the case and in law, the Hon'ble ITAT is right in law in permitting the change in method of accounting with regard to valuation of closing stock from absorption cost method to direct cost method?

(vii) Whether on the facts and in circumstances of the case and in law, the Hon'ble ITAT was right in holding that the change in the method of accounting with regard to the valuation of stock is bonafide and not with an intention to defeat the Revenue, when the issue of determining items of direct cost is highly debatable?

(viii) Whether on the facts and in circumstances of the case and in law, the Hon'ble ITAT is right in not upholding the disallowance of deduction of Rs. 11,94,97,875/- on account of balance of excise duty lying in PLA and RG23 as the payment was made before incurring the liability to pay such levy?

3. Learned counsel for the parties are *ad idem* that questions No.3, 4, 5, 6, 7 & 8 stand answered by this Court or by Hon'ble Supreme Court. Questions No.4 and 8 stand answered against Revenue and questions No.5, 6, 7 may be answered in terms of order dated 27.11.2025 passed by this Court in *ITR No.62 to 65 of 1995*. Ordered accordingly.

4. **Question No.1:-** Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is right in deleting the addition of Rs. 4.5 cr. made on account of treating the compensation received by the assessee on account of termination of trademark 'ENO' and 'Fruit Salt' as revenue receipts as against the assessee's claim as capital receipts particularly when the assessee was not owner of the patents but was only user on account of agreement with the owner?

5. The appellant is claiming that receipt of compensation of Rs.4.5 crore by respondent on account of denial of use of brands 'ENO' and 'Fruit

Salt' should be treated as revenue receipt.

6. The respondent is an Indian subsidiary of M/s Smithkline Beecham Private Limited. Holding company is owner of different brands/trademarks including 'ENO' and 'Fruit Salt'. Holding company and respondent-assessee entered into Trademark Agreement dated 28.06.1979. As per said agreement, respondent became eligible to manufacture and sell goods bearing trademark 'ENO' and 'Fruit Salt'. Holding company decided to repudiate said Agreement w.e.f. 22.09.1996. It decided to permit its another subsidiary company to use aforesaid trademarks. Second subsidiary i.e. M/s Smithkline Beecham Asia (P) Ltd. agreed to pay a sum of Rs.4.5 crore to respondent-assessee in lieu of investment made by respondent in promoting trademark 'ENO' and 'Fruit Salt'. The said company paid a lumpsum amount of Rs.4.5 crore to respondent-assessee as fair and reasonable compensation for the goodwill which was created by respondent-assessee. The Assessing Officer formed an opinion that aforesaid compensation should be treated as revenue receipt and accordingly added in the income of the assessee. The respondent preferred an appeal which came to be allowed by CIT (Appeals). The Revenue preferred appeal before ITAT which rejected contention of the Revenue and upheld order of CIT(Appeals).

7. From the perusal of record, it is evident that respondent-assessee was not owner of trademark 'ENO' and 'Fruit Salt'. It utilized aforesaid trademarks from 1979 to 1996. It incurred expenses on the promotion of said trademarks. The trademark owner decided to permit its another subsidiary company to utilize aforesaid trademarks. The respondent-assessee was deprived from use of aforesaid trademarks and beneficiary

company which was another subsidiary of assessee's holding company agreed to compensate assessee by way of compensation of Rs.4.5 crore. The Tribunal has rejected appeal of Revenue while relying upon Section 28(va) of 1961 Act which is reproduced as below:-

“28. Profits and gains of business or profession.

The following income shall be chargeable to income-tax under the head “Profits and gains of business or profession”

28(i) to (v) xxxx xxx xxx

(va) any sum, whether received or receivable, in cash or kind, under an agreement for—

(a) not carrying out any activity in relation to any business or profession; or

(b) not sharing any know-how, patent, copyright, trademark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services:

Provided that sub-clause (a) shall not apply to—

(i) any sum, whether received or receivable, in cash or kind, on account of transfer of the right to manufacture, produce or process any article or thing or right to carry on any business or profession, which is chargeable under the head "Capital gains";

(ii) any sum received as compensation, from the multilateral fund of the Montreal Protocol on Substances that Deplete the Ozone layer under the United Nations Environment Programme, in accordance with the terms of agreement entered into with the Government of India.

Explanation.—For the purposes of this clause,—

(i) "agreement" includes any arrangement or understanding or action in concert,-

(A) whether or not such arrangement,

understanding or action is formal or in writing; or

(B) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;

- (ii) *"service" means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial nature such as accounting, banking, communication, conveying of news or information, advertising, entertainment, amusement, education, financing, insurance, chit funds, real estate, construction, transport, storage, processing, supply of electrical or other energy, boarding and lodging"*

The aforesaid sub-section was inserted w.e.f. 01.04.2003 and in the case in hand, assessment year was 1997-98. As per aforesaid Section, compensation received on account of non-utilization of trademark, patent, licence, franchise, copyright etc. is revenue receipt. The aforesaid amendment was prospective. As per said amendment, the amount received by assessee was liable to be treated as revenue receipt, however, it was inapplicable to assessee because Assessment Year in question was 1997-98 whereas amendment was applicable w.e.f. 01.04.2003. Thus, Tribunal has rightly declared said receipt as capital receipt.

8. **Question No.2:-** Whether, on the facts and in circumstances of the case and in law, the Hon'ble ITAT is right in holding that Effluent Treatment Plant has been commissioned and put to use during the year under reference and directing the AO to allow depreciation @ 100% thereon?

8.1 The respondent incurred a sum of Rs.53,00,000/- on setting up of effluent treatment plant. The respondent claimed 100% depreciation in

the Assessment Year 1997-98. The Revenue was of the opinion that depreciation should be allowed in the Assessment Year 1998-99. The Revenue is not disputing that assessee was entitled to 100% depreciation. The dispute is confined to particular assessment year. The Revenue has not placed on record any material disclosing that respondent gained undue advantage by claiming depreciation in 1997-98. The Revenue could be correct had assessee gained undue benefit in the form of lower tax by availing depreciation in 1997-98. In the absence of any such material, claim of Revenue is academic and revenue neutral, thus, we do not find any reason to return findings on the said issue. The issue is left open.

- 9. Disposed of.
- 10. Pending application(s), if any, stands disposed of.

(JAGMOHAN BANSAL)
JUDGE

(AMARINDER SINGH GREWAL)
JUDGE

February 04, 2026
Deepak DPA

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No