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\* HIGH COURT OF DELHI : NEW DELHI

+ ITA No. 909 of 2007

% Decided on: February 19, 2008

Commissioner of Income Tax

Delhi-VI

C.R. Building

New Delhi.

...Appellant

Through Mr. R.D. Jolly, Adv.

Versus

T.E.I. Technologies (Pvt), Ltd.

F-40, NDSE Part-1

New Delhi.

...Respondent

Through None

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not?  | Yes |
| 3. Whether the judgment should be reported in the Digest?                    | Yes |

MADAN B. LOKUR, J. (ORAL)

The Revenue is aggrieved by an order dated 17<sup>th</sup> November, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench 'G' in ITA



2. The assessee had entered into a joint venture agreement with Tyco Asia Investment Ltd. and Elentec Co. Ltd. to carry out manufacturing operations of CRT sockets, electronic components like TV remote control etc. for the domestic market as well as for exports. The assessee paid an amount of Rs.9,23,733/- to Tyco Asia Investment Ltd. as well as Elentec Co. Ltd. as technical support fee. According to the Assessing Officer, the benefit received by the assessee was of an enduring nature and, therefore, the amount was treated as a capital expenditure and not as a revenue expenditure as claimed by the assessee.

3. Feeling aggrieved, the assessee took up the matter before the Commissioner of Income Tax (Appeals) [CIT (A)] who came to the conclusion that in fact the assessee was only being supplied with technical support to enable it to manufacture the products as required and that this was, therefore, not a capital expenditure but a revenue expenditure. There was no transfer of technical knowhow in the setting up of the plant and machinery but the payment was only to enable the assessee to manufacture the products. In other words, the technical support was in the form of technical advice rather than sharing of any technical knowhow, designs, drawings etc.

4. Feeling aggrieved by the order passed by the CIT (A), the Revenue preferred an appeal before the Tribunal which rejected the appeal and that is how the Revenue is now before us.



5. There is a finding of fact given by the Tribunal that all that the assessee received was technical assistance in the manufacture of the products. There was no transfer of technology or knowhow etc. which would enable the assessee to set up its plant and machinery.

6. In *Gannon Norton Metal Diamond Dies Ltd. v. Commissioner of Income Tax*, [1987] 163 ITR 606, the Bombay High Court held that if the knowhow acquired relates to the process of manufacture, then any payment made for this purpose would have to be considered as a revenue expenditure since the acquirer does not obtain any asset of an enduring nature - it is more in the nature of a payment for consultancy.

7. In so far as the present case is concerned, we find that the only service that was rendered to the assessee was in relation to the process of manufacture. Even assuming that this would give the assessee an advantage of an enduring nature, but as held by the Supreme Court in *Empire Jute Co. Ltd. v. Commissioner of Income Tax*, [1980] 124 ITR 1, it is not every advantage of an enduring nature that can be classified as a capital expenditure. One has to take a pragmatic and commercial view of the matter and if that is done, there can be no doubt that the assessee acquired technical knowhow to enable it to manufacture the products and this was more in the nature of information guidance or payment for consultancy.



8. In any event, in view of the concurrent finding of fact by the CFI (A) and the Tribunal, both authorities having gone through the relevant documents, we are not inclined to disturb the conclusion arrived at.
9. No substantial question of law arises.
10. Dismissed.

*Madan Lokur*  
MADAN B. LOKUR, J

FEBRUARY 19, 2008  
ncg

*V.B. Gupta*  
V.B. GUPTA, J