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% 29.08.2008

Present: Mr Sanjeev Sabharwal, Advocate for the Appellant.
Mr Ajay Vohra, Ms Kavita Jha and Mr Sriram Krishna,
Advocates for the Respondent.

+ ITR No. 167/2008

* This appeal pertains to the assessment year 2000-01. The revenue
has proposed the following questions:-

(a) Whether the ITAT was right in holding that the entire royalty payment made by the assessee is revenue expenditure and 25% no part of it can be regarded as capital expenditure?

(b) Whether Plant and Equipment purchased by the assessee and used on expenditure on scientific research and development is admissible expense under section 35(1)(iv) of the Act?

(c) Whether the assessee is entitled to depreciation @ 100% on alleged pollution control equipment though the said equipment only shifts pollution to another area?

(d) Whether expenditure under several heads of Rs 1,21,10,032/- is capital expenditure under the Act?

(e) Whether the Ld. ITAT was right in excluding excise duty and 'other income' from total turn over for the purpose of calculating/computing deduction under section 80HHC of the Act?

Insofar as question (a) extracted above is concerned, the same already stands settled in favour of the assessee in the assessee's own case for the assessment year 1980-81 in *ITR No. 70/1988* decided on




29.04.2008. The very same agreement in question in the present appeal was also in issue in that reference. Consequently, this question proposed at paragraph (a) does not require any further consideration and has already been decided in favour of the assessee.

With regard to the questions (b), (c) and (d) extracted above, the same had been sought to be raised by the revenue in respect of the assessment year 1998-99. However, the same were not admitted as substantial questions as would be apparent from the order dated 07.09.2006 passed in the *ITA No. 480/2003*.

As regards question (e) extracted above, the same stands settled in favour of the assessee in view of the Supreme Court decision in *CIT v. Lakshi Machine Works: 290 ITR 667*.

No other question has been sought to be raised in the present appeal. It is, therefore, clear that appeal does not survive and the same is dismissed.


BADAR DURREZ AHMED, J


RAJIV SHAKDHER, J

August 29, 2008
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