



#3,4 &amp; 5

% 09.12.2010

Present : Mr.Sanjeev Sabharwal, Advocate for the appellant.  
Mr.Piyush Kaushik, Advocate for the respondent.

(Common Orders)

+ ITA Nos.1935/2010,1937/2010 &1938/2010

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The respondent assessee had claimed certain expenditure allowable as revenue expenditure. This claim of the assessee was disallowed in the assessment proceedings by Tribunal holding the expenditure to be capital in nature. On this basis penalty proceedings were also initiated by the Assessing Officer under Section 271(1)(c) of the I.T.Act. This penalty, however, has been set aside by CIT (A) as well as by the ITAT, holding that the claim made by the assessee that expenses incurred were revenue in nature, is debatable and therefore it could not attract penalty. Following observations are made in this behalf:

“So far as the claim of the assessee, the issue involved takes on various hues, as to whether the proprietary rights in the know-how were invested in the technical know-how fee; whether the assessee was only a licensor having only the right to use the technical know-how during the currency of the event; whether there was or not an intention to transfer or create ownership of the technical know-how in the assessee; whether such intention, if present, was explicit or implied; whether the assessee derives any other right so as to indicate ownership; whether the technical know-how always remained the property of SNIC, whether the expenditure incurred was related to the carrying on of the business of the assessee; whether the assessee had any right to retain, the technical know-how after the termination of the agreement; as to what was the object of the expenditure; as to what were the services rendered; as to what was the nature of the advantage obtained by the



assessee; as to what was the impact of the contents of the agreement on the nature of the claim of expenditure."

We agree with the aforesaid conclusions. No question of law arises. These appeals are accordingly dismissed.

CM Nos. 21637/2010 & 21638/2010 in ITA No.1935/2010  
CM No.21640/2010 in ITA 1937/2010  
CM Nos.21641/2010 & 21642/2010 in ITA No.1938/2010

In view of the dismissal of the appeal, these applications are disposed of.

  
A.K.SIKRI, J.

  
INDERMEET KAUR, J.

**DECEMBER, 09, 2010**  
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