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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA Nos.617/2010 & 618/2010

COMMISSIONER OF INCOME TAX-VI Appellant
Through: Ms Rashmi Chopra

versus

TEI TECHNOLOGY PVT. LTD Respondent
Through: None**CORAM:****HON'BLE MR. JUSTICE BADAR DURREZ AHMED****HON'BLE MR. JUSTICE V.K. JAIN****ORDER**

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12.04.2010**CM No. 6373/2010 in ITA No. 617/2010**

Allowed subject to all just exceptions.

ITA Nos. 617/2010 & 618/2010

The revenue is in appeal against the order dated 28.07.2009 passed by the Income-tax Appellate Tribunal, which is a composite order in respect of the assessment years 2004-05 and 2005-06. The issue raised in both these appeals is identical and, therefore, both the appeals are being disposed of by this common order.

2. The question before the Assessing Officer was whether the technical support fee paid by the assessee to Tyco Asia Investments Limited as well as Elentec Company Ltd was capital in nature or was a revenue expenditure.



The Assessing Officer held the same to be of a capital nature. However, in appeal, the CIT (Appeals) reversed the decision of the Assessing Officer and held the same to be a revenue expenditure. The CIT (Appeals) relied upon the Tribunal's order in the case of the very same assessee for earlier years. Similarly, the Income-tax Appellate Tribunal, by virtue of the impugned order dated 28.07.2009, upheld the decision of the CIT (Appeals) and held the technical support fee to be of a revenue nature after relying upon its earlier decisions for the assessment years 2001-02 and 2003-04.

3. We find that the revenue had filed an appeal against the said orders for the earlier years and the same were dismissed by this court. In respect of the assessment year 2001-02 in ITA No.909/07 decided on 19.02.2008, a Division Bench of this court returned a finding to the following effect:-

“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 CIT (A) and the Tribunal, both authorities having gone



through the relevant documents, we are not inclined to disturb the conclusion arrived at.”

4. Following the said decision, we find that no substantial question of law arises for our consideration. These appeals are also dismissed.

Badar Durrez Ahmed
BADAR DURREZ AHMED, J

V.K. Jain
V.K. JAIN, J

APRIL 12, 2010

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