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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + ITA 1251/2011
 + ITA 1252/2011
 + ITA 1253/2011

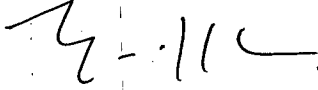
CIT Appellant
 Through Mr. Amit Shrivastava, Adv. for Mr.
 Kamal Sawhney, sr. standing counsel
 versus
 SAMTEL GLASS LTD Respondent
 Through Mr. Ajay Vohra and Mr. Somnath
 Shukla, Advs.

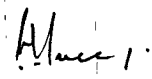
CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V.EASWAR

ORDER
12.12.2011

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The question raised in the present appeals, which pertain to assessment years 2003-04, 2004-05 and 2006-07, is whether royalty paid was capital or revenue expenditure. A similar issue was raised by the Revenue in ITA No.520/2010, which was dismissed on 26.11.2010. In ITA No.520/2010 it was held that the said expense was revenue in nature. For the reasons stated in ITA No.520/2010, the present appeals are also dismissed.


SANJIV KHANNA, J


R.V.EASWAR, J

DECEMBER 12, 2011/vld



% **26.11.2010**

Present: Ms. Rashmi Chopra, Adv. for the appellant.
Ms. Kavita Jha with Mr. Somnath Shukla, Advs. for the respondent.

+**ITA No.520/2010**

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Royalty paid by the assessee to its parent company M/s. Samsung Corning Co. Ltd. was treated as capital expenditure by the Assessing Officer and on that basis addition was made. The CIT (A) deleted the addition holding it a revenue expenditure. Order of the CIT(A) has been confirmed by the Income Tax Appellate Tribunal in the following manner:

"3. We have heard the parties and considered the rival submissions. In view of the restriction imposed by the agreement form transfer of assignment to a third party and the fact that the assessee had been merely granted a non-exclusive license for the use of technical information and there being no acquisition of any asset as such, the expenditure would be an allowable deduction and in view of the decision of the Hon'ble Supreme Court in the case of CIT vs. Wavin (India) Ltd., 236 ITR 314 (SC), referred to by the CIT (A), it would not be a case of acquisition of asset. It is case of running royalty paid on the basis of percentage of sales made by the assessee and would be of a revenue character. The royalty payment is for services in respect of stage after installation of the plant and on the sale of item manufactured with the help of the technical information. In such a case, the expenditure would be an allowable deduction even as per the decisions of the Hon'ble Gujarat High Court in the case of Jyoti Electric Motors Ltd., 258 ITR 345 and Gujarat Carbon Ltd., 254 ITR 294 and also in the case of Power Build Ltd., 244 ITR 19 and the decision of the Hon'ble Supreme Court in the case of Alembic Chemical Works Ltd., Vs. CIT, 177 ITR 377 and CIT vs. Aqua Pump Industries, 218 ITR 427 (Mad.). In such circumstances, in our opinion, the order of the CIT(A) is just and proper and does not call for any interference."



It is an admitted fact that the royalty was paid @ 3% of sales for technical assistance.

In these circumstances, having regard to the various judgments taken note of by the Tribunal in the aforesaid extracted portion, we are of the view that the Tribunal has rightly held it to be revenue expenditure. No question of law arises.

This appeal is accordingly dismissed.


A.K. SIKRI, J.


SURESH KAIT, J.

NOVEMBER 26, 2010

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