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% 29.09.2011

Present: Mr. Kamal Sawhney, Sr. Standing Counsel with Mr. Amit Srivastava, Advocate for the Appellant.  
Ms. Kavita Jha, Advocate with Mr. Somnath Shukla, Advocate for the Respondent.

*(Common Order)*

+ ITA No.1120/2011  
ITA No.1121/2011

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The **first** issue involved in this case is whether the royalty paid by the Assessee to M/s. Samsung Corning Co. Ltd. would be treated as Revenue or Capital Expenditure.

Identical issue in the case of this very Assessee came up for hearing before this Court in ITA No.520/2010 and the orders of the Tribunal holding the payment of such royalty as Revenue Expenditure was upheld vide orders dated 26<sup>th</sup> November, 2011.

The **second** issue raised by the Revenue in this Appeal pertains to the interest paid to Small Scale Industries on delayed payment. This interest was disallowed by the Assessing Officer having regard to the Board's Circular No.631 dated 11.06.1993. The ITAT has, however, taken into consideration the provisions of Section 36(1)(vii) of the Act holding that once



the expenditure is incurred in the course of business and is a business expenditure, it has to be allowed. We do not find any infirmity in the order of the Tribunal on this aspect.

**Last** issue raised in this appeal is the expenditure incurred by the Assessee on renovation etc. of factory building. The Assessing Officer had treated the expenditure as capital in nature and on that basis the depreciation was allowed.

The CIT (A) as well as ITAT has taken the view that expenditure was revenue in nature. This is a pure finding of fact which does not call any interference of this Court. No substantial question of law arises.

The Appeal is dismissed.

A.K. SIKRI, J.

SIDDHARTH MRIDUL, J.

September 29, 2011  
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