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

Decided on 27th March, 2015

\+ ITA 112/2015 & C.M.No.2906/2015

THE COMMISSIONER OF INCOME TAX DELHI-IV .....Appellant

Through: Mr.Rohit Madan and Mr.Ruchir Bhatia, Advs.

versus

DAIKIN AIR-CONDITIONING INDIA PVT. LTD.

..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)
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1. The Revenue is aggrieved by the order of the Income Tax Appellate Tribunal (ITAT) dated 30.11.2012 in ITA No.1328/DEL/2011. The question of law sought to be urged is "*Whether the sum of ₹43.75 lakhs originally added by the Assessing Officer (AO) on account of technical fee is capital expenditure.*"

2. The relevant facts are that the assessee in Assessment Year (AY) 2005-06 reported business income of ₹81,772,968/-. The assessment was made for ₹ 98,338,928/- after bringing to tax a sum of ₹43.75 lakhs. The assessee had in this regard relied upon the technological collaboration agreement in terms of which it was granted an exclusive and non-transferable right and license to use technology relating to licensed products and existing products. Daikin was to provide technical information on the

manufacturing, assembly, sell, install, quality control, operation and maintenance of the products during the terms of the agreement. The assessee company paid, *inter alia,* technical access fee of USD 3 lakhs payable in three equal installments when the first installment of Rs.43.75 lakhs was paid. The AO felt that this was a capital expenditure and sought to bring it to tax by disallowing the whole amount. The CIT (Appeals) however accepted the assessee's contention and directed exclusion of that amount and held that it properly fell in to the revenue expenditure.

3. The ITAT, after appreciating the various terms and conditions of the technical know-how agreement and also the various decisions of this Court including *CIT vs. J.K.Synthetics* 309 ITR 371 and *CIT vs. Goodyear India Ltd.* 243 ITR 235 concluded as follows:

> *24 . From the aforementioned discussion, it is evident that assessee was entitled only access to the technical knowledge and information from Daikin for manufacturing of licensed and existing products and it was not a case of absolute transfer of Daikin Technology. The assessee's right to use license was being hedged with all sorts of conditions as noted above.*
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> *25 . The assessee had acquired the business of Siel Ltd. on a going concern basis vide business purchase agreement dated 8th August, 2000. The technological collaboration agreement with Daikin entered into on the same date primarily facilitated in improving the technical aspect of manufacturing but it did not essentially formed part of the revenue earning apparatus viz. plant and machinery of assessee. The expenditure incurred for acquiring technology which becomes part and parcel of revenue earning apparatus can only be said to be in capital field but where the technology only facilitated in improving the*

manufacturing process, it could not be said to be part and parcel of capital structure of company. We find that this issue is squarely covered by the decision of Hon'ble Jurisdictional High Court the case of JK Synthetics (supra), wherein Hon'ble Delhi High Court has inter-alia held as under: -

> *"(v) expenditure incurred for grant of License which accords 'access' to technical knowledge, as against, 'absolute ' transfer of technical knowledge and information would ordinarily be treated as revenue expenditure. In order to sift, in a manner of speaking, the grain from the chaff, one would have to closely look at the attendant circumstances, such as"……*

4. This Court has considered the material on record, especially the terms of the technical know-how agreement such as Article 14.3, 17, 17.1, 18, 18.2 and 22. The exercise of determining whether, regardless of nomenclature, any expenditure is in the revenue or the capital stream cannot be stereo typed into any formula. As noticed in *Alembic Chemicals Work Co. Ltd. vs. CIT* (1989) 177 ITR 377, *("in the infinite variety of situational diversities in which the concept of what is capital expenditure and what is revenue arises it is well nigh impossible to formulate any general-rule, even in generality of cases sufficiently accurate and reasonably comprehensive, to draw any clear line of demarcation.)"* The exercise, therefore, is necessarily fact dependant. In the present case, based upon the terms and conditions which the parties agreed upon, the ITAT held that the payment of USD 3 lakhs could not be treated as capital expenditure. This Court finds no infirmity with that finding or any reason to interfere with the Tribunal's decision. No substantial question of law arises under Section 260A of the

Income Tax Act. The appeal is consequently dismissed.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

MARCH 27, 2015
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