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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****DECIDED ON: 24.07.2012**

+ ITA 397/2012 & CM APPL.11598/2012

CIT Appellant

Through: Mr. Sanjeev Sabharwal, Sr. Standing
Counsel with Mr. Puneet Gupta,
Jr. Standing Counsel.

versus

FEDERAL MOGUL TPR INDIA LTD Respondent
Through: Mr. Arta Tarana Panda, Advocate

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

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CM APPL.11598/2012

Allowed subject to all just exceptions.

ITA 397/2012

1. The Revenue is aggrieved by an order of the Income Tax Appellate Tribunal (ITAT) dated 30th September, 2011 whereby its Appeal against the order of the Ld. CIT (Appeals)-XIII, New Delhi was dismissed.

2. The impugned order upheld the view of the CIT (Appeals) vis-à-vis, the amounts calculated @ 3% of the net ex-factory sale price paid as royalty to Telkoku Piston Ring Company Ltd., in accordance with its agreement.



3. The reasoning of the Tribunal shows that it distinguishes the decision of the Supreme Court relied upon by the Revenue, in the case of *Southern Switchgears Ltd.* 232 ITR 359(SC). In that case the Supreme Court had disallowed expenditure of 25% of the royalty actually paid. The Tribunal relied upon the decisions of this Court in case of *CIT v. Sharda Motor Industries Ltd.* 319 ITR 109 (Del) and *CIT v. J.K. Synthetics Ltd.* 309 ITR 371 (Del).

4. In Para 6 of the impugned order, the Tribunal's reasoning can be found. The relevant extracts are as follows:-

“6. We have heard both the parties and gone through the material available on record. As per clause 5 of agreement between the assessee and Telkoku Piston Ring Company Ltd., Japan (supra), the royalty is to be paid at the rate of 3 per cent of the sale price of the licensed products subject to certain adjustments. The ld. CIT (A) has examined the agreement and had observed that the license granted by Telkoku Piston Rings Ltd. was non transferable and non-assignable. Under clause 6.1 the assessee had agreed that during the terms of agreement, for 3 years after termination thereof all the information disclosed by Telkoku Piston Rings Ltd. shall be maintained by the assessee in confidence and will not be disclosed to its employee or supplier only to the extent necessary to permit the assessee to design and manufacture its products and the assessee will take every precaution to ensure that no information is otherwise disclosed by its employees and suppliers to other parties. From the terms of the agreement the ld. CIT (A) came to the conclusion that technical information and patents provided by foreign collaborator to the assessee were in the nature of license which provided access to technical knowledge and it was not an absolute transfer of technical knowledge and information in favour of the assessee. Further the terms also contained prohibition in parting with the confidential information received by the assessee under license to third parties. Therefore, the technical information and patents provided by the foreign collaborator could not be treated to have been transferred to the assessee. The assessee received right to use the same for the purpose of business. Hon'ble Delhi High Court in the case of CIT v. Sharda Motor Industries Ltd. (supra) has held that the payment of royalty at the rate calculated per piece of production was revenue expenditure. Similarly Hon'ble Delhi High Court in the case of J.K.Synthetics (supra) has held that amounts paid for process and technical know-how, supply of technicians and training of personnel was in the nature of revenue expenditure. Since in the instant case assessee had right to access the technical knowledge as against absolute transfer of technical knowledge and information and the payment for which has been made on turnover basis, the expenditure has to be treated revenue in nature. Therefore, in our considered opinion, the ld. CIT (A) has rightly allowed the claim of the



assessee as revenue expenditure in both the years.”

5. In the present case, royalty amount is to be paid as 3% of the net ex-factory sale by the licensee/assessee. The Tribunal, however, came to the conclusion that for transfer of technical knowledge and information and on proper examination of this Court’s decision in CIT v. Sharda Motor Industries Ltd. the amounts were deductible. This Court is not persuaded that any question of law arises for consideration, the appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

R.V.EASWAR, J

JULY 24, 2012

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