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

+ ITA 844/2010

THE COMMISSIONER OF  
INCOME TAX-XIII

..... Appellant

Through: Ms. Rashmi Chopra, Advocate

versus

SIERRA INDUSTRIAL  
ENTERPRISES P. LTD.

..... Respondent

Through: None

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Date of Decision: 14<sup>th</sup> July, 2010

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE MANMOHAN**

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not?                                    | No |
| 3. Whether the judgment should be reported in the Digest?                    | No |

**MANMOHAN, J (Oral)**

**CM APPL. 11727/2010**

This is an application for condonation of delay of 229 days in re-filing the appeal.

For the reasons stated in the application, delay of 229 days in re-filing the appeal is condoned.



Accordingly, application stands disposed of.

**ITA 844/2010**

1. Present appeal has been filed under Section 260A of Income Tax Act, 1961 (for brevity “Act 1961”) challenging the order in Appeal No. 3171/Del/2007 dated 18<sup>th</sup> December, 2008 passed by the Income Tax Appellate Tribunal (in short “ITAT”).
2. Briefly stated the facts of the present case are that the assessee had obtained a licence from Nike company for sourcing, marketing and sale of footwear and apparel of Nike brand in India. In accordance with the licence agreement, which had been approved by RBI, royalty @ 5% of domestic sale was paid for use of trademark Nike. The admitted position is that assessee was not entitled to use the technical know-how or trade name after termination of the aforesaid agreement.
3. Both the Commissioner of Income Tax (Appeals) and ITAT have held in favour of the assessee. The ITAT in the impugned order has observed as under:-

*“15. On considering the submissions of both the parties, perusing relevant material available on record and carefully going through the orders of tax authorities below, we are of the view that since the findings of CIT(A), wherein he observed that **“From the terms of agreement it is quite clear that the assessee was granted non transferable license to use the trade mark Nike in connection with sourcing, marketing and sale of goods. The technical know how and other information for manufacture of products was to be provided by Nike to the assessee. It was made clear as per clause 6 of license agreement that the trade marks, registrations, applications, good will associated with them would remain exclusive property of licensor. As per clause 15 it was further provided that in the***



*event termination of agreement the licensee (i.e. the assessee) was supposed to deliver within 20 days of termination notice all the goods and items bearing trade mark, the confidential information in the form of drawings, designs including the copies made to the license. It was made clear that the assessee would not have any right whatsoever to use the technical information and the trade mark for termination of the agreement”, could not be converted by the ld. D.R. for the Revenue before us, the CIT(A) in his well reasoned and well discussed order has rightly deleted the impugned addition made by the AO by holding that the royalty expenditure involved in the instant ground of appeal is revenue expenditure and not capital expenditure.....”*

4. Ms. Rashmi Chopra, learned counsel for revenue submitted that the ITAT erred in law and on merits in deleting disallowance of Rs.90,62,600/- made by the Assessing Officer on account of payment of royalty paid by the assessee to Nike International Limited.

5. Consequently, the only issue that arises for consideration in the present proceedings is whether payment of royalty fees by the assessee is revenue or capital expenditure.

6. It is settled law that if expenditure brings into existence a capital asset or gives any advantage of enduring nature to an assessee, it can be treated as capital expenditure. In the present case, both the CIT(A) and ITAT have concluded that royalty payable was in lieu of use of technical information provided by Nike Company for manufacture of products and for use of trademark Nike. According to CIT(A), royalty



payable was related to the sales made during a particular year accordingly the expenditure was of revenue nature.

7. Both the CIT(A) and ITAT have given cogent reasons for arriving at the conclusion that royalty payment was a revenue expense. Moreover, in our opinion as the assessee ceased to have any right to use technical information and/or trademark upon termination of agreement, there was no advantage of enduring nature derived by the assessee from the said agreement. Consequently, in our opinion, royalty fee is a revenue and not a capital expenditure. Accordingly, the present appeal being bereft of merits is dismissed in limine but no order as to costs.

**MANMOHAN, J**

**CHIEF JUSTICE**

**JULY 14, 2010**

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