
(1982) 03 BOM CK 0018

In the Bombay High Court

Case No : Income-tax Reference No. 14 of 1974

Commissioner of Income Tax

APPELLANT

Vs

Bajaj Electricals Ltd.

RESPONDENT

Date of Decision : 28-03-1982

Acts Referred:

Citation : (1983) 36 CTR 200 : (1984) 148 ITR 83 : (1983) 13 TAXMAN 50

Hon'ble Judges : M.N. Chandurkar, J;Khania, J

Bench : Division Bench

Judgement

Chandurkar, J.—The question referred to us in this reference under s. 256(1) of the I.T. Act, 1961 ("the Act"), at the instance of the Revenue is as follows :

"Whether, on the facts and in the circumstances of the case, the payment of the sum of Rs. 1,20,250 by the assessee to Westinghouse Electric International Co., is an expenditure of a revenue nature, and is allowable as a deduction in computing the total income of the assessee ?"

2. The assessee-company entered into a licence and technical assistance agreement with the Westinghouse Electric International Co. The agreement refer to the fact that the licensee, i.e., the assessee-company, "desires to obtain patent rights and rights under technical, manufacturing and other information and services necessary to enable it to manufacture, use and sell certain types of electrical and other apparatus and material manufactured by the Associated Companies in the United State of America." The agreement is for a period of 10 years. The licence granted is an exclusive licence to manufacture in India the apparatus and the material described in exhibit A to the agreement. The technical and manufacturing information was to consist of any or all of the following :

(a) Drawings.

(b) Process specifications.

- (c) Material specifications.
- (d) Performance specifications.
- (e) Purchasing specifications.
- (f) Test data.

3. The only material clause for the purposes of this reference is the clause regarding the first payment to be made by the licensee as consideration for the licences, information, rights and services granted, furnished and rendered and to be granted, furnished and rendered by the technical adviser. Clause (a) reads as follows :

"Upon signing of this agreement an Engineering Service Fee of Twenty Five Thousand Dollars(\$ 25,000) for the purpose of furnishing training, drawings specifications and other necessary information prior to the start of manufacture;"

4. In the assessment year 1965-66, a payment of \$ 25,000 equal to approximately Rs. 1,20,250 was claimed as revenue expenditure by the assessee. This claim was disallowed by the ITO. His order was upheld by the AAC. In appeal filed by the assessee, on a consideration of the terms of the agreement, the Tribunal took the view that what the assessee-company had obtained was the right to use of information, drawings, specifications, etc., for a limited period of 10 years and the payment was a part and parcel of the mode of payment in respect of use of information, rights, etc., Following the decision in Commissioner of Income Tax, Bombay Vs. Ciba of India Ltd., , the orders of the ITO and the AAC were set aside and the expenditure was held to be of revenue nature. The correctness of this view is put in issue in the question referred and reproduced earlier.

5. Mr. Joshi on behalf of the Revenue has contended that the payment of \$ 25,000 was the first payment under the agreement and must be treated as a payment for acquisition of a capital asset. The capital asset, according to him, consisted of drawings, specifications and other necessary information made available by the licensor prior to the start of manufacture. It is obvious that the parties themselves have described the payment of \$ 25,000 as a service fee for services to be rendered by the licensor, the services consisting of furnishing of training, drawings, specifications and other necessary information. If the payment is expressly provided for in lieu of the services, it is difficult for us to see what difference it make merely because (sic) the payment made is the first payment under the agreement. The nature of the expenses incurred in pursuance of such collaboration agreement has been considered by this court in Commissioner of Income Tax, Bombay City-I Vs. Tata Engineering and Locomotive Co. Pvt. Ltd., It has been pointed out in that case that technical know-how and technical advice cannot be treated as a capital asset and merely because the assessee who had entered into a contract with regard to know-how is entitled to use the know-how even after the agreement has expired, it does

not mean that he has acquired a benefit of an enduring nature. It has been expressly held in that case that an agreement of foreign collaboration, where foreign know-how is availed of in lieu of payment, is in substance a transaction of acquiring the necessary technical information with regard to the technique of production; and technical know-how made available by a party to such an agreement does not stand on the same footing as protected rights under a registered patent. It is clear, therefore, that the assessee-company had not acquired anything which could be described as a capital asset. Whether the payment is made before the start of the manufacture or is made because of the recurring liability under the agreement, makes no difference to the nature of the transaction. In our view, the Tribunal was justified in holding that the expenditure of Rs. 1,20,250 was of a revenue nature and was allowable as a deduction in computing the total income of the assessee.

6. In the view which we have taken, the question referred has to be answered in the affirmative and in favour of the assessee. The Commissioner to pay costs of the reference.