(2001) 01 GUJ CK 0002

In the Gujarat High Court

Case No : IT Reference No. 49 of 1988

Commissioner of Income Tax APPELLANT

Vs

Elecon Engg. Co. Ltd. RESPONDENT

Date of Decision : 18-01-2001

Acts Referred:

Citation : (2001) 117 TAXMAN 442

Hon'ble Judges : M.S. Shah, J;J.M. Panchal, J

Bench : Division Bench

Advocate : B.B. Naik and Manish R. Bhatt, for the Appellant; R.K. Patel, for the Respondent

Judgement

Panchal, J.—At the instance of the revenue, the Tribunal, Ahmedabad Bench ''B'', has referred the following two questions of law for the opinion of this Court in respect of the assessment year 1981-82 :

1. Whether, in law and on facts, the assessee is entitled to allowance of technical know-how fees of Rs. 7,16,654 paid to WCW, West Germany ?

2. Whether, in law and on facts, the assessee is entitled to allowance of Rs. 1,12,30,810 being payment as technical design fees to foreign collaborators ?

The assessee had paid an amount of Rs. 7,16,654 being the payment of the third instalment in pursuance of an agreement with WCW, West Germany for providing technical know-how, drawings, designs, documents, manufacturing and commissioning instructions and all other data for manufacture of vehicle gears. The agreement was entered into on 13-12-1978 and was approved by the Government of India on 29-3-1979. The total consideration of DM 4,74,000 was payable in three instalments and the third instalment of Rs. 7,16,654 was paid by the assessee during the year under-assessment. The assessee had claimed allowance of the same as revenue expenditure. The assessee had also paid a sum of Rs. 1,12,30,810 as fees for designs, calculations, manufacturing drawings, specifications, etc., to Weserhutte, West Germany, as per the agreement dated 6-8-1980. This payment was claimed as a deduction for the reason that know-how, etc., had been acquired on behalf of another company by the name of Negveli Lignite Corpn. This company had paid the amount to the assessee, i.e., Elecon Engineering, for this know-how and Elecon Engineering had only further paid the amount to the German company. Hence, the assessee had claimed that it is only an intermediary and, therefore, the payment to WAG was deductible in the computation of its total income. Both the claims were rejected by the ITO but upheld by the Commissioner (Appeals) and the Tribunal.

2. We have heard the learned counsels for the parties. In Commissioner of Income Tax Vs. Sayaji Iron and Engg. Co. Ltd., , the Division Bench of this Court has held that improvisation by acquisition of blue prints, drawings, technical know-how, etc., from the foreign collaborators in some areas of enterprise of the assessee is supplemental to the existing business and as this acquisition does not amount to a new or fresh venture, the assessee is entitled to allowance as revenue expenditure. Again in Commissioner of Income Tax Vs. Suhrid Geigy Ltd., , the Division Bench of this Court has taken a view that where expenses are incurred in areas which supplement the existing business and are not a fresh or new venture and the agreement for acquiring technical know-how pertains to a product already in the line of the established business and is intended to improve the operations of the existing business, its efficiency and profitability in the area of day-to-day business of the assessee''s established enterprise, the expenses must be treated as revenue and not capital.

In view of the principle laid down in the above referred to two decisions of this Court, we are of the opinion that the assessee is entitled to allowance of technical know-how fees of Rs. 7,16,654 paid to WCW, West Germany as revenue expenditure. Question No. 1 referred to us is, therefore, answered in the affirmative, i.e., in favour of the assessee and against the revenue.

So far as question No. 2 is concerned, we find that know-how was acquired by the assessee on behalf of another company by the name of Negveli Lignite Corpn. This company had paid the assessee-company for this know-how and the assessee had further paid the amount to the German company. The know-how was never utilized by the assessee. Therefore, in our view, the assessee is entitled to allowance of Rs. 1,12,30,810 being payments as technical design fees to foreign collaborators. Question No. 2 is answered in the affirmative, i.e., in favour of the assessee and against the revenue.

The reference, accordingly, stands disposed of with no order as to costs.

