

(2002) 09 CAL CK 0028
In the Calcutta High Court
Case No : Income Tax A. No. 4 of 2002

Commissioner of Income Tax

APPELLANT

Vs

Flakt India Ltd.

RESPONDENT

Date of Decision : 20-09-2002

Acts Referred:

Income Tax Act, 1961 — Section 37

Citation : (2003) 179 CTR 322 : (2002) 258 ITR 622 : (2003) 131 TAXMAN 39

Hon'ble Judges : Indira Banerjee, J;Ajoy Nath Ray, J

Bench : Division Bench

Advocate : Deb, for the Appellant;

Judgement

1. This is an appeal intended to be preferred by the Revenue from an order of the Income Tax Appellate Tribunal, dated March 30, 2001.
2. After the first presentation of the appeal petition, we directed notice to be given to the assessee, and today the assessee has appeared and contested the admission of appeal.
3. The assessment year involved is 1985-86, the previous year of the assessee having ended with the expiry of December 31, 1984.
4. The only point involved is in regard to a sum of Rs. 22,83,890 and the sole question sought to be canvassed before us is whether this expenditure by the assessee was of a capital or a revenue nature. The Assessing Officer had held the expenditure to be of a capital nature and allowed depreciation but disallowed total deduction. The assessee won both before the Commissioner of Income Tax (Appeals) and the Tribunal.
5. The concurrent finding of facts before both the said departmental authorities is that the sum was paid by the assessee to its Japanese suppliers, who supplied the technical know-how to the assessee. The know-how related to a sophisticated system of paint finishing. This was of use in manufacturing motor

vehicles. The assessee passed on the information to its clients, Allwyn Nissan Ltd., Hyderabad, for a consideration which was identical to the above sum paid to the Japanese suppliers.

The assessee treated the sum as representing a mere sale.

6. The facts found disclosed that the assessee itself was not the manufacturer of any motor vehicles and it used the information for passing it on and obtaining reimbursement by way of consideration.

7. The agreement between the assessee and the Japanese suppliers, viz., Nippon Flakt K. K., shows under Clause 3 that the information obtained by the assessee could be passed on to other third parties only after a subsequent tripartite agreement amongst the assessee, the Japanese supplier and the said future prospective third party, together with a subsequent approval of the Government of India.

8. In these circumstances, the Commissioner of Income Tax (Appeals) and the Tribunal have both found that the information obtained by the assessee was of the same type as a mere stock-in-trade which the assessee simply sold off. Enduring benefit of any type could not be discerned by the Department.

9. That in these circumstances learned counsel on both sides have relied on several authorities and made detailed arguments cannot raise a simple point without doubt or dispute into one which is riddled with a substantial and unsettled question of law.

10. No doubt the controversy of an expense being of a capital or a revenue nature, surfaces in the reference court time and again and no doubt sometimes the controversy is difficult to resolve and is full of legal problems, but the present one is not such and it is too simple to require any admission of appeal on any point of law.

11. The Commissioner of Income Tax (Appeals) and the Tribunal were clearly right, on the facts and circumstances of the case to opine that the expenditure involved was of a revenue expenditure.

12. The assessment year involved being 1985-86, Section 35AB which was introduced from April 1, 1986, permitting deduction of know-how expenditure at six different stages at one-sixth of the amount in each year is not material. The section is mentioned in the questions in the appeal petition but Mr. Deb, appearing for the Revenue, fairly stated that that part of the appeal petition need not be considered by us.

13. We are still less concerned with the provisions introduced in 1998 in Section 32(1)(ii) of the Income Tax Act which relates to depreciation of know-how which is used for the purposes of the assessee's business.

14. Since these sections are not involved and the matter does not require any consideration of any still unsettled point of law, the appeal petition is summarily

rejected.

15. The order of the Tribunal is consequentially confirmed.

16. There will be no order as to costs.

17. All parties to act on a xerox signed copy of this dictated order on the usual undertakings.