(2006) 08 P&H CK 0507

In the Punjab And Haryana At Chandigarh

Case No : IT Appeal No. 321 of 2005 (O and M)

Commissioner of Income Tax APPELLANT

Vs

Swaraj Engines Ltd. RESPONDENT

Date of Decision : 21-08-2006

Acts Referred:
Income Tax Act, 1961 — Section 35AB

Citation : (2006) 08 P&H CK 0507

Hon'ble Judges : Rajesh Bindal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This order will dispose of ITA Nos. 321 and 322 of 2005, as both the appeals have been preferred by the revenue against a common judgment of the Tribunal dated 20-8-2004.

2. The assessee in its return claimed expenditure on royalty paid to M/s. Kirloskar Oil Engines Limited for use of technical know-how for manufacturing engines. This was not allowed by the assessing officer, holding that the payment was in the nature of capital expenditure.

3. On appeal, the CIT (Appeals) accepted the claim of the assessee following the order of the Tribunal for the earlier years. The Tribunal observed that the assessee did not acquire ownership of the technical know-how in view of restrictive provisions of the agreement which was for a limited period. The technical assistance was directly linked to the quantum of sales. The Tribunal dismissed the appeal of the revenue.

4. We have heard learned Counsel for the revenue and perused the record.

Substantial question of law proposed is as under:

Whether on the facts and in the circumstances of the case, the Hon''ble ITAT is right in upholding the decision of the Commissioner of Income Tax (Appeals) that the payment of royalty made by the assessee-company to M/s. Kirloskar Oil Engines Ltd. to acquire technology know-how under the agreement dated 19-10-1989, is a revenue expenditure and does not come within the ambit of provisions of Section 35AB of the Income Tax Act, 1961, whereas the payment is a capital expenditure in view of the following judgments:

A. Fenner Woodroffe and Co. Ltd. Vs. Commissioner of Income Tax, ;

B. Ram Kumar Pharmaceutical Works Vs. Commissioner of Income Tax, ;

C. Commissioner of Income Tax Vs. Warner Hindusthan Ltd., ;

D. CIT v. Southern Switch Gears Ltd. 148 ITR 272.

5. The issue raised in the appeal has been gone into by this Court in its judgment in the case of the same assessee in CIT v. Swaraj Engines Ltd. (2006) 154 Taxman 243 in respect of previous years, wherein also royalty was paid to Kirloskar Oil Engines Limited on the same pattern.

It was observed:

The effort of the revenue to bring the expenditure within the domain of Section 35AB of the Act is totally misplaced since the pre-requisites for application of Section 35AB of the Act is that the payment has to be as lump sum consideration for acquiring any know-how. This pre-condition is totally missing in case in hand as the payment being made to M/s. Kirloskar Oil Engines Ltd. is not lump sum payment for acquiring of know-how rather the same was payable periodically on the basis of percentage of invoiced price depending upon the number of engines manufactured. It is not a case of outright sale of technical know-how. So in our view it will not fall within the domain of Section 35AB of the Act." (p. 247)

6. Reliance was also placed on judgment of the Hon''ble Supreme Court in Commissioner of Income Tax Vs. Wavin (I) Ltd., , holding:

We have perused the order of the Tribunal and the High Court. We are in agreement with the reasons given by the High Court for holding the expenditure to be of revenue nature. The expenditures were incurred to obtain benefit of research and development made by the foreign company. The technical information given to the Indian company was ''nonexclusive'' and ''non-transferable''. In other words, this is not an out and out sale of technical know-how. The assessee was merely given a non-exclusive and non-transferable right of user of the technical information. Expenditures in these facts cannot be said to be for acquisition of any asset at all.

The appeals are, therefore, dismissed with no order as to costs." (p. 314)

7. In view of the above, we are of the view that no substantial question of law arises.

8. The appeals are dismissed.

