

(2008) 02 DEL CK 0070
In the Delhi High Court
Case No : ITA No. 909 of 2007

Commissioner of Income Tax

APPELLANT

Vs

T.E.I. Technologies (Pvt) Ltd.

RESPONDENT

Date of Decision : 19-02-2008

Acts Referred:

Citation : (2008) 304 ITR 262

Hon'ble Judges : Vidya Bhushan Gupta, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : R.D. Jolly, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.—The Revenue is aggrieved by an order dated 17th November, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench "G" in ITA No. 5079/Del of 2004 relevant for the assessment year 2001-2002.

2. The assessed had entered into a joint venture agreement with Tyco Asia Investment Ltd. and Elentec Co. Ltd. to carry out manufacturing operations of CRT sockets, electronic components like TV remote control etc. for the domestic market as well as for exports. The assessed paid an amount of Rs. 9,23,733/- to Tyco Asia Investment Ltd. as well as Elentec Co. Ltd. as technical support fee. According to the Assessing Officer, the benefit received by the assessed was of an enduring nature and, Therefore, the amount was treated as a capital expenditure and not as a revenue expenditure as claimed by the assessed.

3. Feeling aggrieved, the assessed took up the matter before the Commissioner of Income Tax (Appeals) [CIT (A)] who came to the conclusion that in fact the assessed was only being supplied with technical support to enable it to manufacture the products as required and that this was, Therefore, not a capital expenditure but a revenue expenditure. There was no transfer of technical knowhow in the setting up of the plant and machinery but the payment was only to enable the assessed to manufacture the products. In other words, the

technical support was in the form of technical advice rather than sharing of any technical knowhow, designs, drawings etc.

4. Feeling aggrieved by the order passed by the CIT (A), the Revenue preferred an appeal before the Tribunal which rejected the appeal and that is how the Revenue is now before us.

5. There is a finding of fact given by the Tribunal that all that the assessed received was technical assistance in the manufacture of the products. There was no transfer of technology or knowhow etc. which would enable the assessed to set up its plant and machinery.

6. In *Gannon Norton Metal Diamond Dies Ltd. Vs. Commissioner of Income Tax*, , the Bombay High Court held that if the knowhow acquired relates to the process of manufacture, then any payment made for this purpose would have to be considered as a revenue expenditure since the acquirer does not obtain any asset of an enduring nature it is more in the nature of a payment for consultancy.

7. In so far as the present case is concerned, we find that the only service that was rendered to the assessed was in relation to the process of manufacture. Even assuming that this would give the assessed an advantage of an enduring nature, but as held by the Supreme Court in *Empire Jute Co. Ltd. Vs. Commissioner of Income Tax*, , it is not every advantage of an enduring nature that can be classified as a capital expenditure. One has to take a pragmatic and commercial view of the matter and if that is done, there can be no doubt that the assessed acquired technical knowhow to enable it to manufacture the products and this was more in the nature of information guidance or payment for consultancy.

8. In any event, in view of the concurrent finding of fact by the CIT (A) and the Tribunal, both authorities having gone through the relevant documents, we are not inclined to disturb the conclusion arrived at.

9. No substantial question of law arises.

10. Dismissed.