

Vs. Commissioner of Income Tax, Kolkata I and Another

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Court : Kolkata

Decided On : Jul-30-2014

Judge : Girish Chandra Gupta

Respondent : Commissioner of Income Tax, Kolkata I and Another

Judgement :

ORDER

SHEET IN THE HIGH COURT AT CALCUTTA Special Jurisdiction [Income Tax].ORIGINAL SIDE ITA No.148 of 2006 M/S.TIMKEN INDIA LTIMITED (Previously known as TATA TIMKEN LIMITED) Versus COMMISSIONER OF INCOME TAX, KOLKATA - I & ANOTHER BEFORE: The Hon'ble JUSTICE GIRISH CHANDRA GUPTA The Hon'ble JUSTICE TAPABRATA CHAKRABORTY Date : 30th July, 2014.

Appearance: Mr.Abhrotosh Majumdar with Ms.Nilanjana Pal (Banerjee) and Mr.S.Lahiri, Advocates.

Ms.A.G.

Gutgutia, Advocate The Court : The appeal is directed against a judgment and order dated December 1, 2005 wherein the learned Tribunal held that the one time lump sum payment made by the assessee for acquiring technical know-how for a period of six years was a capital expenditure.

On that basis the views to the contrary expressed by the CIT(A) were set aside and the appeal preferred by the revenue was allowed.

2 Aggrieved by the aforesaid judgment and order, the present appeal has been preferred by the assessee.

With the joint efforts of Tata Iron & Steel Company Limited and Timken Company, an existing company under the laws of the State of Ohio, United States of America, a new company by the name of Tata Timken Limited was incorporated under the Companies Act, 1956.

Tata Timken Limited (TTL for brevity) in order to expand its business agreed to take technological assistance from Timken Company on the terms and conditions contained in an agreement dated 10th September, 1998 which included payment of compensation as follows: ARTICLE V - COMPENSATION FOR LICENSE OF TECHNICAL INFORMATION A.

TTL agrees to pay to Timken a lump sum amount of USD300000 net of taxes, according to the following schedule: USD100000 within sixty (60) days after this Agreement is filed with the Reserve Bank of India: USD100000 within sixty (60) days of delivery of Technical Documentation from Timken to TTL; and USD100000 within sixty (60) days of the commencement of Commercial Production, or four years after this Agreement is filed with the Reserve Bank of India, whichever is earlier.

3 Lump sum payments made hereunder by TTL to Timken shall be made without deduction of any present or future tax assessment or other governmental charge, statutory levy or cess imposed upon such payments by the Government of India (or any political subdivision or taxing authority thereof or therein) and such taxes, assessments or charges, if any, shall be borne and paid by TTL.

TTL shall send to Timken all certificates or other verification on such tax payments as may be required by Timken as soon as practical after such payment.B.In addition to the lump sum payment under Article V(A) above, TTL agrees to pay to Timken a royalty of three percent (%) of the Net Ex- Factory Sales Price of the

Products sold in the Republic of India and a royalty of three percent (%) of the F.O.B price invoiced and realised for Products exported, or sold for export, from or in, as the case may be, the Republic of India during the six (6) years period commencing with the start of Commercial Production. A question arose as to whether the amount of USD200000 paid by TTL to Timken during the assessment year was to be treated as a revenue expenditure ?.

The assessee naturally was interested in contending that it is a revenue expenditure whereas the department was of the opinion that it is a capital expenditure.

The CIT(A) upheld the contention of the assessee which was challenged before the learned Tribunal which restored the views expressed by the assessing officer that the expenditure was capital in nature.

Mr.Majumdar, learned advocate appearing in support of the appeal, submitted that the facts and circumstances of the present case are identical with those in the case of Alembic Chemical Works Co.LTD.versus Commissioner of Income Tax, Gujarat, reported in (1989) 3 SCC329 The assessee company, he contended, was already in existence and the assessee was also engaged in the business of ball bearings.

The assessee entered into an agreement with the foreign company for the purpose of acquiring a new technology.

In an identical situation in the aforesaid case of Alembic Chemical (supra).the Apex Court held that it appears to us that the answer to the questions referred should be on the basis that the financial outlay under the agreement was for the better conduct and improvement of the existing business and should, therefore, be held to be a revenue expenditure.

Reference may also be made to the observations of this Court in CIT v.

CIBA of India Ltd. Mr.Majumdar also relied upon a judgment in the case of Commissioner of Income Tax, Madras versus I.A.E.C.(Pumps) Ltd., Madras, reported in (1998) 8 SCC460 wherein Their Lordships of the Supreme Court

agreed with the views of the High Court holding that we are of the opinion that the above features clearly establish that what was obtained by 5 the assessee is only a licence and what was paid by the assessee to Aturia is only a licence fee and not the price for acquisition of any capital asset. Mr.Majumdar submitted that considering the fact that the payment made by the assessee is on account of a license fee and considering that the Supreme Court was considering an identical question in the case of I.A.E.C.(Pumps) LTD.the question should be answered in favour of the assessee.

Ms.Gutgutia, learned advocate appearing for the revenue, drew our attention to a judgment of the apex Court in the case of Jonas Woodhead & Sons (India) LTD.versus Commissioner of Income Tax, reported in 1997 (224) ITR342(SC).She submitted that the moot question for consideration has been indicated in the aforesaid judgment as follows: Whether the expenditure or payment thus made makes an accretion to the capital asset and after the court comes to the conclusion that it does so, then it has to be held to be a capital expenditure. She contended that the vexed question has been made simpler by the apex Court in the aforesaid case.

If the payment made by the assessee makes an accretion to the capital asset the expenditure is capital in nature.

She contended that the assessee may have already had an existing plant and machinery.

It may also be true that the assessee was pursuing 6 the same line of business, but it cannot be denied that by paying the sum of USD200000 the assessee acquired a new technology.

There was as such accretion to the capital of the assessee in the sense that the company became better equipped to do its business with the help of technology.

Therefore, the expenditure has to be treated as a capital expenditure.

On the top of that, from the agreement entered into between the assessee and the non-resident it would appear that the benefit of such payment is of an enduring

nature which is to continue to benefit the assessee for a period of six years. It was, as such, a plain case of a capital expenditure on which the assessee was entitled to claim depreciation.

The assessee has already been allowed depreciation at the rate of 25%.

Accordingly, more than just treatment was given to the assessee and this court should refrain from interfering with the order under challenge.

We have considered the rival submissions of the learned advocates for the parties.

The submissions advanced by Ms. Gutgutia are no doubt meritorious and certainly represent one way of looking at the things.

Sight cannot however be lost of the fact that the payment made by the assessee is on account of license fee.

By making such payment, the assessee has got a permission to use the technology.

The money paid is irrecoverable.

In case the business of the assessee for some reason or the other is stopped, no benefit from such payment is likely to accrue to the assessee.

The license is not transferable.

Therefore, it cannot be said with any amount of certainty that there has been an accretion to the capital asset of the assessee.

In case, the assessee continues to do business and continues to exploit the technology for the agreed period of time, the assessee will be entitled to take the benefit thereof.

But in case it does not do so, the payment made is irrecoverable.

It is in this sense that the matter was looked into by the High Court of Madras and was endorsed by the apex Court in the case of CIT versus IAEC (Pumps) Ltd.,

Madras (supra).The point as a matter of fact is covered by the aforesaid judgment.

Nothing really is left for us to do in the matter.

We are, therefore, of the opinion that the question has to be answered in the affirmative and in favour of the assessee.

The appeal is, thus, allowed.

(GIRISH CHANDRA GUPTA, J.) (TAPABRATA CHAKRABORTY, J.) sm AR[CR].

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