

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT  
&  
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No.-4091/Del/2014  
(Assessment Year: 2011-12)**

DCIT Circle 9(1) New Delhi.	vs	SMCC Construction India Ltd. 23, Local Shopping Centre, Madangir, New Delhi. AAACM7822P
<b>Assessee by</b>		<b>Sh. G.C. Srivastava, Adv.</b>
<b>Revenue by</b>		<b>Sh. S.S. Rana, CIT DR</b>

<b>Date of Hearing</b>	<b>10.10.2017</b>
<b>Date of Pronouncement</b>	<b>23.10.2017</b>

**ORDER**

**PER SHRI K.N. CHARY, JUDICIAL MEMBER**

Challenging the order dated 16.04.2014 in appeal no. 582/2013-14 passed by the Ld. Commissioner of Income Tax (Appeals)-XII, New Delhi (hereinafter for short called as the 'Ld. CIT (A)'), Revenue preferred this appeal on the following grounds:

1. *"The Ld. CIT (A) erred on facts and in law in deleting the addition of Rs. 7,22,70,958/- made by the AO on account of fee and technical knowhow."*
2. *The appellant craves to amend modify, alter, add or forego any ground of appeal at any time before or during hearing of this appeal."*

2. Briefly stated facts are that the assessee is an engineering and construction company and was incorporated on 12.12.1996 as a Joint Venture between Mitsui Construction Co. Ltd., Japan and M/s Kairali Construction, India. The assessee commenced its business operations in August, 1997 and the first year of assessment was 1998-99. The assessee is engaged in the business of providing engineering services, undertaking turnkey construction and renovation works of industrial undertakings, etc. and executed a number of engineering projects therein. For the AY 2011-12 they have filed their return of income on 30.11.2011 declaring a total income of Rs. 22,66,60,231/- and the assessment u/s 143(3) of the Income Tax Act, 1961 (for short called as the 'Act') was concluded by way of order dated 18.02.2014 with the addition of Rs. 1,34,307/- which was held as excess depreciation, Rs. 722,70,958/- towards the royalty and fee for technical knowhow and Rs. 1,69,079/- towards the difference in the income shown by the assessee and the details to be found 26AS. In the appeal preferred by the assessee by way of impugned order, inter-alia, the Ld. CIT (A) deleted the addition of Rs. 7,22,70,958/-, challenging which the Revenue is before us in this appeal.

3. Ld. DR heavily relied upon the order of the AO and reasoning given by the AO for holding that the said expenditure of Rs. 7,22,70,958/- was

incurred for acquiring intangible assets which are not allowable as expenditure u/s 37 of the Act and, therefore, are liable to be added. On this premise he prayed to quash the impugned order. Ld. AR submitted that Ld. CIT (A) vide paragraph no. 3.6 of his order stated that the claim of the assessee for deduction of royalty and fee for technical services has already been allowed in assessee's own case by the Ld. CIT (A) for the assessment years 2008-08 to 2010-11 and such a finding was upheld by the Delhi Benches of the Tribunal in appeal. He further submitted that the findings of the Ld. CIT (A) and the Tribunal for the assessment years 2008-09 to 2010-11 are upheld by the Hon'ble Jurisdictional High Court in IT(Appeal) Nos. 439, 511 & 526/Del/2014 by way of order dated 03.07.2015, reported in Commissioner of Income Tax-III vs. SMCC Construction India Ltd. (2015) 61 taxmann.com 202 (Delhi).

4. We have carefully gone through the record. For deleting this addition of Rs. 7,22,70,958/- which was added on account of royalty and fee for technical services, Ld. CIT (A) reasoned that in assessee's own case for the assessment years 2008-09 to 2010-11 his predecessors have allowed such a claim of the assessee and such allowance of the claim of the assessee was upheld by the coordinate benches of this Tribunal. We have also perused the decision of the Hon'ble Jurisdictional

High Court in assessee's own case for AYs. 2008-09 to 2010-11 reported in Commissioner of Income Tax-III vs. SMCC Construction India Ltd. (2015) 61 taxmann.com 202 (Delhi), whereunder the Hon'ble Jurisdictional High Court held that a perusal of the TCA shows that the payment by the assessee to SMCL is for the technical know-how given to the assessee as a Licensee, and although the payment is spread over a period of 10 years, it does not make the assessee the owner of the technical knowhow, since the very nature of the license agreement is that is not of a permanent nature. Hon'ble High Court held that the view taken by the CIT (Appeals), and concurred with by the ITAT, cannot in the circumstances be said to be improbable or contrary to the settled legal position. The Court, therefore, concurred with the view of the CIT (A) and the ITAT that the benefit to the assessee as a result of payment of royalty for technical knowhow was not of an enduring nature, and, therefore, cannot be construed to be a capital expenditure.

5. In view of this decision of the Hon'ble Jurisdictional High Court in assessee's own case, we do not find any illegality or irregularity in the findings of the Ld. CIT (A) and consequently we find that the appeal of the Revenue is *devoid* of merits and is liable to be dismissed. We do so.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 23.10.2017

Sd/-  
**(G.D. AGRAWAL)**  
**PRESIDENT**

Dated: 23.10.2017

\*Kavita Arora

Sd/-  
**(K.N. CHARY)**  
**JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR  
ITAT NEW DELHI