IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI

BEFORE SHRI N.K.SAINI, ACCOUNTANT MEMBER And
SHRI KULDIP SINGH , JUDICIAL MEMBER

ITA No. 5713/Del/2016 : Asstt. Year : 2011-12

DCIT Circle-14(1) New Delhi	Vs	Precision Pipes & Profiles Co. Ltd. 54, Okhla Industrial Area, Okhla Phase-II New Delhi
(APPELLANT)		**(RESPONDENT)**
		PAN No. AAACP5144P

Assessee by : Sh. Mukul Bagla, CA
Revenue by : Sh. Atiq Ahmad, Sr. DR

Date of Hearing : 21.09.2017		Date of Pronouncement : 26 .10.2017

ORDER

Per N. K. Saini, AM:

This is an appeal by the department against the order dated 28.07.2014 of ld. CIT(A)-17, New Delhi.

2. The only effective ground raised in this appeal reads as under :-

> "1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 52,08,153/- on account of 25% of Rs. 2,08,32,612/- pertaining to royalty expenses treated as capital in nature made by the AO by following the ITAT's decision in assessee's own case in earlier years ignoring the fact that the department has already filed a review petition in Hon'ble High Court for A.Y. 2005-06 an hence the matter has not attained its finality."

3. During the course of hearing, the ld. Counsel for the assessee at the very outset, submitted that this issue is squarely covered vide order dated 12.10.2012 in ITA no. 4257 and 4258/Del/2012 for the assessment years 2006-07 and 2008-09 in assessee's own case wherein the earlier order dated 30.4.2010 in ITA no. 374/Del/2009 for the assessment year 2005-06 in assessee's own case delivered by this bench of the ITAT has been followed. It was stated that the said order dated 12.10.2012 has been followed in the assessment year 2009-10 and 2007-08 in ITA no. 5276 and 5275/Del/2013 order dated 10/10/2014 and in ITA no. 5331/Del/2014 for the assessment year 2010-11 vide order dated 4.7.2017 copies of the said orders were furnished which are placed on record. The ld. DR although supported the order of the AO but could not controvert the aforesaid contention of the ld. Counsel for the assessee.

4. We have considered the submissions of both the parties and carefully gone through the material available on the record. It is noticed that an identical issue having similar facts has already been adjudicated by this bench of the ITAT in assessee's own case vide order dated 12.10.2012 in ITA no. 4257 and 4258/Del/2012 for the assessment year 2006-07 and 2008-09. The relevant findings has been given in para 5 to 7 of the said order which read as under :-

> *"5. DR supported the order of Assessing Officer and submitted that the Commissioner of Income Tax(A) was not justified in deleting the addition made by the Assessing Officer by way of disallowance of 25% payment of royalty. The assessee's representative vehemently contended the above submissions and submitted a copy of the judgment dated 30.4.2010 of IT AT Delhi 'F' Bench in assessee own case in ITA No.374/Del/2009 for AY 2005-06 (immediately preceding to the assessment year under consideration in these appeals). The AR submitted that the Commissioner of Income Tax(A) deleted the addition made by the Assessing Officer in AY 2005-06, therefore, in, the absence of any other substantial evidence or circumstance, principle of consistency should be followed. He supported the impugned order and requested that this appeal is devoid of merits as the issue is covered by the above judgment of ITAT 'F' Bench.*

6. The operative para of judgment of ITAT 'F' Bench in ITA No.374/Del/2009 is being reproduced as under:-

> *"We have considered the rival contentions and gone through the terms and conditions of the agreement- entered into by the assessee. We found that assessee was required to pay annually royalty at the rate of 2% of the items manufactured under this agreement and sold during the term of the said agreement. Such royalty to be computed on half yearly basis. As the royalty payment is determined annually on the basis of quantity and value of production, the expenditure so incurred by the assessee is essentially recurring and revenue in nature. However the AO has treated 25% of such payment as capital in nature. The expenditure so claimed is charged on the products manufactured by the assessee company and the same is not incurred for. acquiring a processor design or technology which can be utilized by the assessee for years to come so as to categorize such expenditure, as capital in nature, Nothing was brought on record by the • learned DR to controvert the findings of the C1T(A) recorded at pages 5 & 6 of appellate order. We therefore do not find any reason to interfere in the order of CIT(A) for allowing the entire payment of royalty as revenue expenditure,*

7. In view of above, we observe that in earlier judgement of Tribunal in assessee's own case, it has been observed that the assessee was required to pay royalty @2% of the items manufactured and sold under the agreement. Such royalty payment was determined on the basis of quantity and value of the production. Therefore, the expenditure incurred by the assessee company was essentially of recurring and revenue in nature. We also observe that the Assessing Officer treated 25% of such payment as capital in nature but these findings are not justified as the assessee company was not deriving any benefit of enduring nature. Accordingly, we hold that the expenditure of royalty so claimed by the assessee company on the products manufactured by it was related and computed at 2% of net ex factory sale price on half yearly basis under the agreement.. Admittedly, the assessee company did not make payment of royalty for acquiring process or design or technology which can be utilized by the assessee in the years to come and the assessee company was not deriving any benefit of enduring nature. Accordingly, such expenditure does not fall in the ambit of capital in nature. We also observe that the ld. DR has not brought any substantial cause to controvert the findings of the Commissioner of Income Tax (A) recorded in the impugned order in this regard."

5. So, respectfully following the aforesaid referred to order dated 12.10.2012 in assessee's own case in ITA No. 4257 and 4258.Del.2012 for the assessment year 2006-07 and 2008-09. We do not see any merit

in this appeal of the department.

6. In the result appeal of the department is dismissed.
(Order Pronounced in the Open Court on 26/10/2017)

Sd/-	Sd/-
(Kuldip Singh)	**(N. K. Saini)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 26/10/2017
Binita
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

		Date	Initial	
1.	Draft dictated on	25 /10/2017		
2.	Draft placed before author	26/10/2017		
3.	Draft proposed & placed before the second member			
4.	Draft discussed/approved by Second Member.			
5.	Approved Draft comes to the Sr.PS/PS			
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			