

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: 'F', NEW DELHI**

**BEFORE SHRI G.D.AGRAWAL, PRESIDENT  
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**ITA No. 4337/Del/2016  
A.Y. 2012-13**

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| ACIT, Circle 21(2)<br>Room no.199C<br>2 <sup>nd</sup> floor<br>CR bldg. IP Estate<br>New Delhi | <b>vs.</b> | Ruskin Titus India<br>(P) Ltd.<br>C 434, 3 <sup>rd</sup> floor<br>Defence Colony<br>New Delhi 110 024<br><br>PAN: AADCC 0463 B |
| <b>(Appellant)</b>   |            | <b>(Respondent)</b>  |

|                              |                                   |
|------------------------------|-----------------------------------|
| <b>Appellant by</b>          | Shri Atiq Ahmad, Sr.D.R.          |
| <b>Respondent by</b>         | Smt. Lalitha<br>Krishnamurthy, CA |
| <b>Date of Hearing</b>       | 20/12/2017                        |
| <b>Date of Pronouncement</b> | 26/12/2017                        |

**ORDER**

**PER BEENA A PILLAI, JUDICIAL MEMBER**

The present appeal has been filed by the revenue against order dated 30/05/16 passed by Ld.CIT(A)-7, New Delhi for Assessment Year 2012-13 on the following grounds of appeal:

- “1. On the facts and circumstances of the case, Ld.CIT(A) has erred on facts and in law in deleting addition of Rs.1,47,52,000/-.*
- 2. The appellate craves for any addition, modification, deletion of grounds of appeal if find necessary during the course of appeal.”*

**2.** Brief facts of the case are as under:

Assessee filed its return of income on 29/11/12 declaring a total loss of Rs. 1,44,21,840/-. The case was selected for scrutiny and notice under section 143(2) along with questionnaire under section 142(1) was issued. In response to notices issued, representatives of assessee appeared from time to time and furnished requisite details, books of account, bills, vouchers which have been put to test check.

**2.1.** Ld.AO observed that assessee is engaged in the business of manufacturing of air distribution product, a control device. It was observed that assessee during the year claimed royalty paid to the following companies amounting to Rs. 1,47,52,000/-, the details of which are as under.

- Air Systems Components Inc., USA-Rs. 36, 88, 000/-
- Ruskin Company, USA -Rs.36,88,000/-
- Caryair Equipment India Pvt. Ltd.,- Rs.73,76,000/-

**2.2.** It was submitted by assessee that the above royalty was paid to these companies as per agreement entered into between them, copies of the agreements were enclosed and filed before the Ld. AO. Submissions recorded by the Ld.AO shows that an identical issue had arisen for assessment year 2008-09 against which addition was made by Ld.AO which was allowed by Ld.CIT(A)-6, New Delhi. It is also recorded that the Department has filed the appeal before this Tribunal against the order of Ld.CIT(A) for assessment year 2008-09.

**2.3.** However, Ld.AO followed his predecessor and disallowed the claim of assessee by holding that royalty paid by assessee needs to be disallowed by treating it as capital in nature.

**2.4.** Aggrieved by the order of Ld.AO assessee preferred appeal before Ld.CIT(A). Ld.CIT(A) followed the decision of this Tribunal for Assessment Year 2008-09 and deleted the addition made by Assessing Officer.

**2.5.** Aggrieved by the order of Ld.CIT(A) revenue is in appeal before us now.

**2.6.** At the outset Ld.AR submitted that in the order dated 06/01/16 passed by this Tribunal in assessee's own case for assessment year 2008-09 in ITA No. 147/del/2012, this Tribunal dealt with identical issue in para 14 at page 8 of the order as under:

*“14. The ratio of judgement (supra) is that in case the foreign company agreeing not to manufacture similar product in India or give right for manufacture to others, it amounts to exclusive and enduring advantage and subsequently payment of technical aid or fee or royalty is to be disallowed. But the judgment (supra) is not applicable to the facts and circumstances of the present case for the sole reason that in the instant case, benefit of enduring nature has to be transferred to the assessee company as is evident from Article 6 of the Agreement. Transfree company i.e. CEIPL would get 3% of the net selling price of the licensed products manufactured by the licensee, calculated as per Article 6 of the agreement, meaning thereby, transferee company (CEIPL) was having complete lien on the*

*technical know-how, assisting skills and other expertise as per Article 4 of the agreement. So, finding no illegality-or perversity in the findings returned by Ld. CIT(A), ground No.2 is also determined against the Revenue.”*

**2.7.** Ld. DR placed reliance upon the order passed by Ld. AO.

**3.** We have perused the submissions advanced by both the sides in the light of the records placed before us.

**3.1.** On comparing the facts discussed by the Tribunal for assessment year 2008-09 (supra) vide order dated 06/01/16 with that of the facts for the relevant assessment year under consideration, it is observed that assessee has been consistently paying royalty as per license agreement at 3% of the net selling price of the licensed products under Article 6 of the agreement. While doing so this Tribunal in assessment year 2008-09 placed reliance upon the judgment of *Hon'ble Supreme Court* in the case of *Suthen land switchgear Ltd vs. CIT* reported in 232 ITR 359. Similarly in the facts of present case, Ld.CIT(A) has observed that the transferee company was having complete lien on the technical know-how, assisting skills and other expertise as per Article 4 of the Agreement.

**3.2.** As the revenue has not been able to point out any factual material difference between the year under consideration as well as Assessment Year 2008-09, or any contrary decision, we do not find any reason to deviate from the view taken by this Tribunal in Assessment Year 2008-09. We thus hold the royalty payment to be a revenue expenditure.

- 3.3.** Accordingly ground raised by revenue stands dismissed.
- 4.** In the result appeal filed by the revenue stands dismissed.  
Order pronounced in the Open Court on 26<sup>th</sup> December, 2017.

Sd/-

**(G.D.AGRAWAL)**  
**President**

Dated: 26<sup>th</sup> December, 2017.

\*mv

Copy of the Order forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard File

Sd/-

**(BEENA A PILLAI)**  
**Judicial Member**

By Order

Asst. Registrar  
ITAT, Delhi Benches, New Delhi

**ITA 4337/Del/2016 A.Y. 2012-13**  
**ACIT vs. Ruskin Titus India (P) Ltd.**

| S.No. | Details  | Date       | Initials | Designation |
|-------|--|------------|----------|-------------|
| 1     | Draft dictated on Dragon                         | 21.12.2017 |          | Sr. PS/PS   |
| 2     | Draft placed before author                       | .12.2017   |          | Sr. PS/PS   |
| 3     | Draft proposed & placed before the Second Member |            |          | JM/AM       |
| 4     | Draft discussed/approved by Second Member        |            |          | AM/AM       |
| 5     | Approved Draft comes to the Sr. PS/PS            |            |          | Sr. PS/PS   |
| 6     | Kept for pronouncement                           |            |          | Sr. PS/PS   |
| 7     | File sent to Bench Clerk                         |            |          | Sr. PS/PS   |
| 8     | Date on which the file goes to Head Clerk        |            |          |             |
| 9     | Date on which file goes to A.R.                  |            |          |             |
| 10    | Date of Dispatch of order                        |            |          |             |