

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.As. No.3889/DEL/2015  
Assessment Years: 2010-11

Dy.CIT, Circle-I, NOIDA.	vs.	M/s. H-One India Pvt. Ltd., 12, Udyog Vihar, Surajpur Kasna Road, Gr. NOIDA
TAN/PAN: AAACH 3082L (Appellant)		(Respondent)

Appellant by:	Shri Surender Pal, Sr.D.R.		
Respondent by:	None		
Date of hearing:	30	08	2018
Date of pronouncement:	31	08	2018

**ORDER**

**PER AMIT SHUKLA, J.M.:**

The aforesaid appeal has been filed by the assessee against the impugned order dated 24.03.2015 passed by Commissioner of Income Tax (Appeals)-I, NOIDA for the quantum of assessment passed u/s.143(3) for the Assessment Year 2010-11.

2. None appeared on behalf of the assessee despite service of notice.

3. The only issue involved in the appeal is deletion of addition of Rs.1,83,38,966/- on account of payment of royalty and technical knowhow.

4. From the perusal of the impugned assessment order, we find that Assessing Officer has noted as under:

*“The assessee company is engaged in manufacturing of pressed, welded panels and sub assemblies for automobiles and other equipments, design and manufacturing of metal forming dies, welding jigs and inspection fixtures. Automobile framework parts being the main H One India Products and are important parts for making whole body cars. Presently, they are being widely used by several automobile makers and have acquired high reliability. The die assembly comprises a metal die used for making automobile framework parts from steel. As per profit and loss a/c, assessee, during the year, has disclosed total sales of Rs. 100,32,01,200/- which include other income of Rs.2,15,80,684/-, against which assessee has claimed total expenditure of Rs. 106,19,56,196/- including depreciation of Rs.13,43,60,356/-. On examination of the profit and loss a/c, it is seen that the assessee has claimed Royalty of Rs. 1,40,15,713/- and Consultancy Fees of Rs.43,23,253/- paid to Parent Company Hone Co. Limited, Japan.”*

5. The royalty was made @3% to H-One Company Ltd., Japan and in response to the show cause notice assessee has stated as under:

*“H-One India Pvt. Ltd. has entered into a Technical Collaboration Agreement with H-one Co., Ltd Japan (formally Hongo Company Ltd.). The Agreement was duly approved by the Govt, of India. As a part of agreement H-one India is paying Royalty on the license components on agreed terms for granting to H-one India a non transferable technical license and other guidance and support in regard to day to day development for manufacturing sheet metal automobile components in India.*

*H-one India had been mainly granted a licence for use of assets. There was no acquisition of assets and neither had we acquired any*

*enduring advantage in the capital field. All information, know-how supplied to H-one India under this agreement shall remain the sole and exclusive property of H-one Company Limited, Japan and shall be held in trust by our company till the duration of the agreement.*

*Supreme Court of India on similar issue in IT Bombay vs. CIBA of India Limited, Civil appeal Nos. 9 To 16 of 1967 has held that royalty payments in the above circumstances are expenses of revenue nature.*

*This is to humbly submit that the judicial position of Royalty Payments is now fairly clear. Further to our claim The Departmental Circular No.21 [F. No. 7A/40/68-IT(A-II)], dated 09.07.1969 clearly lays down that :*

*"If what has been acquired under the agreement is merely a license for the user, for a limited period, of the technical knowledge of the foreign participant, together with or without the right to use the patents and trademarks of the foreign party, the payment would not bring into existence an asset of enduring advantage to the India participant and should be regarded as expenditure incurred for the purpose of running the business during the period of the agreement. The payment would, therefore, be revenue in nature. The recent decision of the Supreme Court in the case of CTT v. Ciba of India Ltd. [1968] 69 ITR 692 provides clear guidance in cases of this type."*

*The first step, therefore, in dealing with foreign collaboration agreements is to analyse the terms of the agreement and ascertain the facts relating to the working or implementation of the agreement in order to find out, what rights or benefits or property have been acquired under the agreement by the Indian participant and for what consideration.*

*Based on above clarification and judgment in our own case in earlier year by IT AT and CIT (A) Assessment Year 2009-10, 2007- 08 and 2004-05 allowed Royalty as revenue Expenditure."*

6. However, the learned Assessing Officer held that since the order of the Tribunal has not been accepted in the Assessment Years 2001-02 and 2005-06 and appeal has been preferred before the Hon'ble Allahabad High Court, therefore, he is repeating the same addition on the issue of consultancy charges of Rs.43,23,253/-. Learned Assessing Officer held that the assessee is getting enduring advantage and for this issue also he has held that the issue decided by the assessee in assessee's own case has not been accepted and appeal has been filed by the Department before the Hon'ble High Court.

7. Learned CI T(A) had deleted the addition, following the order of the Tribunal right from the Assessment Years 2001-02 to 2009-10. The details of such Tribunal orders passed in assessee's own case in both the issues are as under:

<b><i>Appeal Ref.</i></b>	<b><i>A.Y.</i></b>	<b><i>Deciding Authority</i></b>	<b><i>Order Reference</i></b>
<b><i>ITA No.2146(Del)2006</i></b>	<b><i>2001-02</i></b>	<b><i>ITAT, Delhi "A Bench".</i></b>	<b><i>Order Dated 04/7/2008</i></b>
<b><i>ITA No. 154/Del/2010</i></b>	<b><i>2003-04</i></b>	<b><i>ITAT, Delhi "C Bench".</i></b>	<b><i>Order 29/4/2010</i></b>
<b><i>ITA No.4031/Del/2009</i></b>	<b><i>2005-06</i></b>	<b><i>ITAT, Delhi "E Bench".</i></b>	<b><i>Order Dated 1/12/2009</i></b>
<b><i>ITA No.2613/Del/2011</i></b> <i>i</i>	<b><i>2006-07</i></b>	<b><i>IT AT, Delhi "C Bench".</i></b>	<b><i>Order Dated 5/8/2011</i></b>
<b><i>ITA No.5984/Del/2012</i></b>	<b><i>2004-05</i></b>	<b><i>ITAT, Delhi "C Bench".</i></b>	<b><i>Order 22/2/2013</i></b>
<b><i>ITA N o.5985/Del/2012</i></b>	<b><i>2007-08</i></b>	<b><i>ITAT, Delhi "C Bench".</i></b>	<b><i>Order 22/2/2013</i></b>
<b><i>ITA No.5986/Del/2012</i></b>	<b><i>2009-10</i></b>	<b><i>ITAT, Delhi "C Bench".</i></b>	<b><i>Order 22/2/2013</i></b>

*Re. Technical supervision fees:*

<b>Appeal Ref.</b>	<b>A.Y.</b>	<b>Deciding Authority</b>	<b>Order Reference</b>
<b>ITA No.4031/Del/2009</b>	<b>2005-06</b>	<b>ITAT, Delhi "E Bench".</b>	<b>Order Dated 4/12/2009</b>
<b>ITA No.5984/Del/2012</b>	<b>2004-05</b>	<b>ITAT, Delhi "C Bench".</b>	<b>Order Dated 22/2/2013</b>
<b>ITA No.5985/Del/2012</b>	<b>2007-08</b>	<b>ITAT, Delhi "C Bench".</b>	<b>Order Dated 22/2/2013</b>
<b>ITA No.5986/Del/2012</b>	<b>2009-10</b>	<b>ITAT, Delhi "C Bench".</b>	<b>Order Dated 22/2/2013</b>

8. Following the aforesaid Tribunal orders which had been decided on identical facts and issues, ld. CIT(A) has decided the issue in favour of the assessee both on royalty and technical knowhow.

9. In view of the aforesaid fact that, similar issues have been decided by the Tribunal in assessee's own case right from the Assessment Years 2001-02 to 2009-10, therefore, the order of the ld. CIT (A) which is based upon the judicial precedence of the earlier orders passed by the Tribunal is affirmed and the grounds raised by the Revenue is dismissed.

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

**Order pronounced in the open Court on 31<sup>st</sup> August, 2018.**

Sd/-  
**[PRASHANT MAHARISHI]**  
**ACCOUNTANT MEMBER**

Sd/-  
**[AMIT SHUKLA]**  
**JUDICIAL MEMBER**

DATED: 31<sup>st</sup> August, 2018

PKK: