

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'A': NEW DELHI)**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 1954/Del/2016
(Assessment Year: 2012-13)**

Dy. Commissioner of Income Tax, Circle-II, Block-B, CGO Complex, NH-IV, Faridabad.	Vs.	M/s Voith Paper Fabrics India Ltd., Plot No. 113/114A, Sector- 24, Faridabad.
PAN No: AABCP0441Q		
APPELLANT		RESPONDENT

Revenue by : Shri Sridhar Dora, Sr. DR,
Assessee by : Shri. Santosh K. Aggarwal, Adv.

ORDER

PER: ANADEE NATH MISSHRA, AM

This appeal by Revenue is filed against the order of the Learned Commissioner of Income Tax (Appeals) ["Ld. CIT(A)" for short], Faridabad, dated 28.01.2016, for Assessment Year 2012-13, on the following grounds:

- "1. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right in law in deleting the additions of Rs. 2,82,21,192/- on account of technical know-how expenses despite the fact that the expenditure incurred in the form of technical know-how is capital in nature. Further, as per clause 2.6 "the ownership of the technology so developed by assessee with*

the assistance of Voith Shall always vest with assessee" and thus it is not an interim or adhoc arrangement, rather is acquired permanently".

2. *The appellant craves for the permission to add, delete or amend the grounds of appeal before or at the time of hearing of appeal."*

(2) At the time of hearing, the Ld. Counsel for Assessee, submitted at the outset that the disputed issue in this appeal regarding Technical Know-how Expenses is covered in favour of the Assessee by the orders of Co-ordinate Bench of Income Tax Appellate Tribunal (ITAT), Delhi, in assessee's own case for Assessment Years 2009-10, 2010-11 and 2011-12. The Ld. Counsel for Assessee drew our attention to the orders of Co-ordinate Benches of ITAT, Delhi, **dated 28.05.2018 in ITA No.- 6603/Del/2014 and 6923/Del/2014** for Assessment Year 2009-10 and **order dated 07/06/2018 in ITA No. 1196 and 1197/Del/2015** for Assessment Years 2010-11 and 2011-12.

(3) The Ld. Departmental Representative (DR) agreed with the contention of the Ld. Counsel for Assessee that the issue in dispute regarding allowability of Technical Know-how Expenses is covered in favour of assessee's own case by orders of Co-ordinate Benches of ITAT, Delhi, as mentioned above.

(4) We find that the Ld. CIT(A) has followed his own order for Assessment Years 2010-11 and 2011-12. The Ld. CIT(A) has also stated that the facts are absolutely identical to Assessment Years 2010-11 and 2011-12. For the sake of ready reference, the relevant portion of the order of the Ld. CIT(A) is reproduced as under:

"7. I have considered the facts of the case and gone through the submissions of the appellant. As stated earlier, this issue has been in dispute between the Revenue and the Appellant for a number of years. This particular issue is covered by my

appellate order on absolutely identical fact, in appeal No. 271/2013-14 dated 18.12.2014 for assessment year 2011-12 in the appellant's case and also in the appellant's case for A.Y. 2010-11. For the sake of convenience the relevant extract from my appellate order for A.Y. 2011-12 in the case of the appellant is reproduced as below:

“ In nutshell, the AO’s observations are as under:-

- i) The right obtained by the assessee was the right to use the knowhow.*
- ii) The assessee derived benefits of enduring nature which increased the functional capacity of manpower and ultimately resulted in increase of the production.*
- iii) The acquisition of know how under a license was capital expenditure as ultimately it vests permanently with the assessee.*

Hence, the AO disallowed the entire amount holding the same to be of a capital nature resulting in an addition of Rs. 2,64,37,637/- to the income of the appellant.

During the course of appellate proceedings, the learned counsel of the appellant vide letter dated 12.12.2014 gave detailed submissions of this issue. While giving the facts of the case along with the relevant clauses of the agreement entered into by the appellant company (as revised by the agreement dated 21st May 2010 due to change in method of royalty calculation in pursuance to the press note No. 8 (2009 series) dated December 17, 2009 issued by Department of Industrial Policy & Promotion and to further clarify the scope of agreement) with Voith Paper Fabrics GmbH & Co. KG the appellant also relied upon a number of prominent judicial pronouncements as per which payment of a similar nature had been held to be of a revenue nature. The detailed submissions of the appellant are reproduced hereunder:

Thus, the appellant in his reply highlighted the following points:-

- i) The appellant has merely required the assistance to improve the quality of its products. Hence, it cannot be said to be having a benefit of enduring nature.*
- ii) The case laws referred to and relied upon by the assessing officer are not applicable to the case of appellant since in all these case laws, the agreements were entered for provision of technical aid/knowhow for initializing a new venture or setting up/establishing a new factory dealing in products in which the payer of the royalty/ technical assistance fee was not already engaged in the business of*
- iii) As per the articles of the agreement, the parties can terminate the agreement by giving a three months' notice and upon termination, the appellant has to return copies of technical knowhow and therefore, there is no permanency in the assistance /right to use obtained by appellant so as to classify it as*

- having enduring benefits.*
- iv) *The appellant is already engaged in manufacture of the products and expenditure for obtaining technical knowhow for a running concern could never be said to be a capital expenditure.*
 - v) *The whole purpose of the expenditure has been to improve quality of products and hence improving the profitability without any consequent addition to it's profit earning apparatus.*

9. *I have considered the facts of the case and gone through the submissions of the appellant. I have also gone through the technical knowhow agreements between the appellant company and Voith Paper Fabrics GmbH & Co. KG. Various judicial pronouncements on this issue have also been considered and analyzed before taking a decision during the appeal of the appellant for the assessment year 2010-11. Since the facts of the case are absolutely identical and the only change is in the serial number of the clauses of the agreement, thus my findings and decision for assessment year 2010-11 would be applicable for the present appeal as well.*

10. *Hence, I hold that the AO erred in treating the amount of Rs. 2,64,37,637/- on account of technical knowhow as being of a capital nature. Accordingly, **Ground Nos. 2&3 of the appeal is thus allowed.***

8. *In the present appeal the facts are absolutely identical to the proceedings for A.Y. 2011-12 and A.Y. 2010-11 and the same is also evident from last para at the AO's order at page 4. The arguments of the AO in the assessment order and the arguments of the Ld. AR in their written submissions are also identical to the arguments made during the appellate proceedings for A.Y. 2011-12 and A.Y. 2010-11. Since there are no new facts and arguments from the either side, thus I have no hesitation in following my own order in the case of the appellant for the appeal for A.Y. 2011-12 and A.Y. 2010-11. Hence following the precedent of my earlier order in the case of the appellant for the assessment year 2011-12 and A.Y. 2010-11, I hold that the AO has erred in making an addition of Rs. 2,82,21,192/- on account of disallowance of Technical Know-how Expenses. Accordingly, Ground Nos. 2 and 4 of the appeal of the appellant are allowed.”*

(4.1) We have heard both sides carefully and perused the material available on record.

There is no dispute between the two sides that the facts in the case of the Assessee in this year (i.e. A.Y. 2012-13) are identical to the facts of the assessee's case for

Assessment Years 2009-10, 2010-11 and 2011-12. There is also no dispute that the Ld. CIT(A) has followed his own orders for Assessment Years 2009-10, 2010-11 and 2011-12 in deciding the Assessee's appeal for this year. The Co-ordinate Benches of ITAT have already taken a view on the disputed issue, on identical facts, for Assessment Years 2009-10, 2010-11 and 2011-12 vide aforesaid orders dated 28.05.2018 and 07.06.2018; and there is also no dispute that the issue is squarely covered in favour of the assessee by the aforesaid orders of Co-ordinate Benches of ITAT, Delhi.

(4.2) As both sides agree, that the issue in dispute is covered in favour of the Assessee by the aforesaid orders of Co-ordinate Benches of ITAT, Delhi; and as neither side has brought any distinguishing facts and circumstances for this year in comparison to Assessment Year 2009-10, 2010-11 and 2011-12 to our attention; therefore, respectfully following the orders of Co-ordinate Benches of ITAT, Delhi, in assessee's own case for Assessment Years 2009-10, 2010-11 and 2011-12 by aforesaid orders dated 28.05.2018 and 07.06.2018; we also decide the disputed issue for this year in favour of the Assessee and dismiss the appeal filed by the Revenue.

(5) In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 04/ 01/2019

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 04.01.2019
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	03/01/2018
Date on which the typed draft is placed before the dictating Member	04/01/2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	