

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'F', New Delhi**

**Before : Shri H.S. Sidhu, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 1791/Del/2016
Assessment Year: 2011-12**

DCIT, Circle 21(2), New Delhi. (Appellant)	vs.	Ruskin Titus India (P) Ltd.(Formerly known as M/s. Caryaire Air System Component (P) Ltd.), C-434, 3 rd floor, Defence Colony, New Delhi. PAN- AADCC0463B (Respondent)
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Appellant by	Sh. Surender Pal, Sr. DR
Respondent by	Ms. Lalita Krishnamurthy and Ms. Vidhi Agarwal, C.A.

Date of Hearing	29.01.2019
Date of Pronouncement	31.01.2019

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the Revenue against the order of Id. CIT(A)-7, New Delhi dated 28.01.2016 for the assessment year 2011-12 on the following ground :

“On the facts & in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.1,40,98,000/- made by A.O. on account of Royalty paid by treating the expenditure as capital in nature.”

2. The brief facts of the case are that the assessee filed return of income on 25.11.2011 declaring loss of Rs.2,03,63,512/-. In the assessment proceedings, it was noticed that the assessee had claimed royalty of Rs.1,40,98,000/- and paid to following three parties :

- (i). Caryaire Equipments India Pvt. Ltd. - Rs.70,49,000/-
- (ii). Air System Components Inc, USA – Rs.35,24,500/-
- (iii). Ruskin Company, USA – Rs.35,24,500/-

As per assessee, the royalty was paid as per technical services and license agreement with the above parties in consideration of the services provided on recurring basis and payable for year to year for a period of 10 years and payment made are in accordance with article 6 of the agreement based on yearly basis. The Assessing Officer noticed that similar issue was involved in assessment year 2008-09 and there is no change in the circumstances attending to the current year. The Assessing Officer further observed that against the order of the Id. CIT(A) in appeal for A.Y. 2008-09, the appeal was filed by the Revenue before the Tribunal. Accordingly, the Assessing Officer disallowed the royalty treating it as capital in nature and made the addition in the total income of the assessee. Aggrieved from the order of the Assessing Officer, the assessee appealed before the Id. CIT(A) who after following the decision of ITAT in ITA No. 147/Del/2012 dated 06.01.2016 for A.Y. 2008-09 in the case of assessee, allowed the appeal of the assessee observing as under :

“5.3. It is noted that the appeal was instituted on similar facts for the A. Y. 2008-09 which was decided in favour of the appellant by the CIT(A)-VI vide order in A. No. 118/10-11 dated 24.10.2011. The Hon'ble ITAT has decided the Departmental appeal preferred against the order of the CIT(Appeals) in favour of the appellant in ITA No. 147/Del/2012 vide order dated 06.01.2016. The Hon'ble ITAT held as under:

"14. The ratio of judgement (supra) is that in case of 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 judgement (supra) is not applicable to the facts and circumstances or 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. Transferee 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 (CEIPL) was having complete Hen on 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(Appeals), ground No. 2 is also determined against the Revenue. "

5.4. Since the facts are similar, respectfully following the order of the Hon'ble ITAT for A.Y. 2008-09, disallowance of Rs.1,40,98,000/- made by the A.O. by treating the expenditure on royalty as capital in nature, is directed to be deleted. The ground of appeal is ruled in favour of the appellant."

Aggrieved, the Revenue is in appeal before the Tribunal.

3. The Id. DR relied on the order of the Assessing Officer whereas the Id. AR of the assessee submitted that the issue is covered in favour of the assessee by the decision of ITAT in assessee's own case for the assessment year 2008-09.

4. Having considered the arguments of both the sides and gone through the material on record including the orders of the authorities below, we find that the claim of royalty was dismissed by the Assessing Officer holding it as capital in nature, on the basis of assessment order passed in the case of assessee for the assessment year 2008-09 in the identical facts and circumstances of the case. The Assessing Officer has also observed that the appeal of Revenue is under adjudication before the Tribunal on this issue involved in A.Y. 2008-09. However, since the ITAT in the said case of assessee

for the assessment year 2008-09 has decided the issue in favour of the assessee vide order dated 06.01.2016 as mentioned above, the very basis of rejecting the assessee's claim taken by the Assessing Officer stands collapsed. Therefore, the issue, being covered by the decision of co-ordinate Bench of Tribunal (supra), the present appeal of the Revenue is found devoid of merits.

5. In the result, the appeal is dismissed.

Order pronounced in the open court on 31.01.2019.

Sd/-

(H.S. Sidhu)
Judicial member

Sd/-

(L.P. Sahu)
Accountant Member

Dated: 31.01.2019

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(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
(3)	<i>Commissioner</i>	(4)	<i>CIT(A)</i>
(5)	<i>Departmental Representative</i>	(6)	<i>Guard File</i>

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi