

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.2245/Del/2016**

**Assessment Years: 2012-13**

JCIT(OSD), Circle 1(2),  
New Delhi.

vs Advance Surfactants India ltd.,  
511/2/1, Rajokari,  
New Delhi.  
PAN: AABCA9042Q

Appellant

Respondent

**Assessee by None**

**Revenue by Shri Surender Pal, Sr. DR**

**Date of Hearing 04.04.2019**

**Date of Pronouncement 10.04.2019**

**ORDER**

**PER K. NARASIMHA CHARY, JM**

This is an appeal filed by the revenue against the order dated 2.2.2016 in Appeal No.444/14-15 passed by the Learned Commissioner of Income-tax(Appeals)-I, New Delhi {"CIT(A)"} for Assessment Year 2012-13.

2. Brief facts of the case are that the assessee is a company engaged in the business of manufacturing Linear Alkyl Benzene of Sulphonic Acid (LABSA) which is a raw material used for the manufacturing of Detergent cakes and power and other cleaning products. During the year under consideration the assessee company has declared gross turnover of

Rs.761,14,68,013/- and gross of Rs.68,43,23,220/-. Declaring net taxable income as Rs.9.39,29,902/- the assessee filed their return of income on 28.3.2013.

3. Learned AO, however, during the course of assessment found that a perusal of schedule of other expenses of the statement to the profit and loss account revealed that the assessee had debited royalty expenses of Rs.10,32,98,536/- paid to Chemtech Freezone Enterprises (“CHEMTEC”) and claimed the same as revenue expenditure. Learned AO, however, taking into consideration the ratio of the judgment of the Madras High Court in the case of Fenner Woodroffe & Co. Ltd. vs CIT (1976) 102 ITR 665 (Mad); ACIT vs. Southern Structural’s Ltd. (1977) 110 ITR 890 and also the decision of the Hon’ble Apex Court in the case of Southern Switchgear Ltd. vs CIT, 232 ITR 359 (SC), reached a conclusion that the royalty expenses of Rs.10,32,98,536/- does not fulfil the conditions of Section 37(1) and cannot be treated as revenue expenditure. He, therefore, while referring to the earlier orders and to maintain the consistency on the matter, disallowed the royalty expenditure holding it to be of capital in nature but allowed the depreciation @ 25% and taxed the balance amount of Rs.7,74,73,902/- by adding it back to the income of the assessee.

4. Assessee preferred appeal before the Id. CIT(A). Learned CIT(A), after consider the matter in its entirety, recorded a finding of fact that royalty paid by the assessee to Chemtech was on the basis of production. For this purpose learned CIT(A) made a reference to Article 7.5 of the agreement. He applied the law laid down by the Hon’ble jurisdictional High Court in CIT vs G4S Securities System, 338 ITR 46, CIT vs J.K.

Synthetics, 176 (2009) Taxman 355 (Del), Climate Systems India Ltd. vs CIT (2009) 319 ITR 113 (Del); and CIT vs EKL Appliances Ltd. (2012) 345 ITR 241 and reached a conclusion that where the payment of royalty depended on the quantum of sale which would decrease or increase every year depending upon the decrease or increase in the sale, payment of royalty would be revenue expenditure. He, therefore, accordingly, granted relief to the assessee.

5. Revenue is, therefore, before us in this appeal aggrieved by the finding of the learned CIT(A).

6. Learned DR submitted that the assessee company has been in the business of manufacturing activity of producing Acid Slurry and Adjunct Powder from AOS. The assessee paid lumpsum payment as well as royalty payment to Chemtech for the rights to sell the products, both inside and outside India, exclusively for specified products by obtaining technical knowhow from Chemtech. It is submitted by the learned DR that assessee is getting enduring benefit from the knowhow supplied by Chemtech. It is further submitted by the ld. DR that assessee got enduring benefits by Article 8.4 of the agreement, which provides patent rights to the assessee even after the expiry of the agreement meaning thereby assessee shall continue to use the technical and product range know how post termination rights. On the above basis, he justified the assessment order and prayed to restore the same.

7. Per contra, it is the argument of the learned AR that there is no dispute that the royalty payment by the assessee to Chemtech was based on the production and it, depending upon the quantum of sales, would decrease and increase year after year and, therefore, ld. CIT(A) rightly

following the decision of the Hon'ble jurisdictional High Court reached a correct conclusion that the royalty paid by the assessee is revenue in nature. He, therefore, submits that there is no reason established by the revenue for the interference with the findings of the learned CIT(A).

8. We have gone through the record in the light of the submissions made on either side. Absolutely, there is no dispute that the royalty payment by the assessee to Chemtech has been based on the production which goes without saying that depending upon the quantum of sales, it would increase or decrease year after the year. Hon'ble jurisdictional High Court in the cases of G4S Securities Ltd., Climate Systems India Ltd. and EKL Appliances Ltd.(supra) held in unequivocal terms whether the payment of royalty depending upon the quantum of sale which was increased or decreased upon the decrease or increase in sales, payment of royalty would be revenue expenditure. Further, in the case of J.K. Synthetics Ltd. (supra), the Hon'ble jurisdictional High Court laid down the broad principle to determine the question where a particular expenditure is of revenue or capital in nature, the broad principle which require to be applied to the facts of the case. In this case, the Hon'ble jurisdictional High Court allowed the royalty payment as revenue expenditure.

9. Nothing is brought to our notice as to why the ratio laid down by the Hon'ble jurisdictional High Court in these cases shall not be followed. The decisions of the Hon'ble jurisdictional High Court bind the CIT(A) and the Tribunal alike. We, therefore, do not find it possible to take a different view. While respectfully following the ratio laid down

by the Hon'ble jurisdictional High Court, we do not find any illegality or irregularity in the order of the learned CIT(A) and the same is confirmed.

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

**Order pronounced in the Open Court on 10<sup>th</sup> April, 2019.**

Sd/-

sd/-

**(N.K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Dated: 10<sup>th</sup> April, 2019  
VJ

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Draft dictated on	08.04.2019
Draft placed before author	09.04.2019
Draft proposed & placed before the second member	
Draft discussed/approved by Second Member.	
Approved Draft comes to the Sr.PS/PS	
Kept for pronouncement on	
Date of uploading order on the website	
File sent to the Bench Clerk	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	