

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E' NEW DELHI**

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

I.T.A. No.3832 to 3835/Del/2016
Assessment years:2003-04 to 2006-07

M/s Technico Agri Sciences Ltd SCO 835, 1 st & 2 nd Floor, NAC Manimajra, Chandigarh. PAN:AAACC 9811 G	Vs.	Dy.C.I.T., Circle-3(1), New Delhi.
(Appellant)		(Respondent)

Appellant by	Shri Rohit Jain, Advocate Ms. Meenal Goyal, C.A.
Respondent by	Ms. Rinku Singh, Sr. D.R.
Date of hearing	16/04/2019
Date of pronouncement	18/04/2019

ORDER

PER T. S. KAPOOR, A.M.

These four appeals are filed by the assessee against the separate orders of learned CIT(A)-IV, New Delhi all dated 28/02/2013.

2. At the outset, Learned A.R. submitted that these appeals involve common issue which is the penalty imposed by Assessing Officer and sustained by Learned CIT(A) u/s 271(1)(c) of the Act. Learned A.R. in this respect filed a chart showing the issue-wise decision of Hon'ble Tribunal in respect of all four years. Learned A.R. submitted the issue No. 2,3, 4 & 6 have been allowed by the Tribunal in favour of the assessee whereas the issue No. 1 & 5 have been set aside to the Assessing Officer for re-examination. It was submitted that in both scenario the penalty sustained by Learned CIT(A) needs to be deleted as the quantum itself has been

decided either in favour of the assessee or has been set aside to the Assessing Officer.

3. Learned D.R. though supported the orders of the authorities below but was unable to controvert the arguments of Learned A.R.

4. We have heard the rival parties and have gone through the material placed on record. We find that in all the appeals the issue listed at Sl.No. 1 to 4 in the chart are common. Out of these four issues the issue of excess depreciation has been set aside to the office of the Assessing Officer. The relevant findings of the Tribunal, as contained in para 91. Are reproduced below:

“9.1 In view of this Bench admitting the additional evidences filed by the assessee, the issue in dispute must necessarily be set aside to the file of the Assessing Officer so as to enable him to examine and verify the same. Accordingly, we restore this issue to the file of the Assessing Officer with the direction to examine the documents and the submissions of the assessee, keeping in mind the directions of the ITAT in the first round of proceedings and, thereafter, adjudicate the issue as per law after giving due opportunity to the assessee. Accordingly, ground nos. 2, 3 and 4 in ITA No. 5847/Del/2010, ground no. 2 in ITA No. 3111/Del/2013, ground no. 2 in ITA No. 3112/Del/2013, ground no. 3 in ITA No. 3113/Del/2013 and ground No. 2 in ITA No.3114/Del/2013 stand allowed for statistical purposes.”

5. As regards the issue involved in Sl.No. 2 to 4, these issues have been decided in favour of the assessee. The relevant paragraphs of the findings of Hon'ble Tribunal, as contained in para 11 are reproduced below:

11. Having heard the rival submissions, we take up the issues one by one. In assessment year 2003-04, the assessee has challenged the 4/5th disallowance out of Technology Enhancement Fee, Agronomy Management Fee and Production Facility Management Fee and has raised the issue

in grounds 3,4,5 and 6. The Ld. AR has drawn our attention to the Licence Fee Agreement as well as the Service Agreement and has emphasised that the amounts paid had been paid under the terms of the two agreements. It is the contention of the Ld. AR that although the licence fee paid by the assessee has been accepted by the department in earlier years, the other fees were not allowed on the ground that the benefit was of enduring nature and could not be said to have accrued only in one year. It is the contention of the Ld. AR that the impugned fees have been paid for the purpose of providing and sharing improvements in technology, training of staff, production facility management, technology review etc. It is seen that the Assessing Officer, while making the disallowance, has observed that technical and training provided by M/s Technico to the assessee company had provided enduring advantage to the assessee company which would benefit the assessee over a number of years and, therefore, allowing the entire expenditure in one year might give a distorted picture of profits in a particular year. While making the disallowance, the Assessing Officer has also placed reliance on the judgment of the Hon'ble Apex Court in the case of Madras Industrial Investment Corporation vs. Commissioner of Income Tax reported in 225 ITR 802 (SC). The Ld. Commissioner of Income Tax (A), while upholding the disallowance, also seconded the view taken by the Assessing Officer. Thus, apart from observing that the impugned fees gave an enduring benefit to the assessee company and, therefore, the allowability of expenditure had to be spread over 5 years, the lower authorities have not given any cogent reason for making the disallowance. Undisputedly, the factum of the fees having been paid is not disputed. Nor it is disputed that the impugned fees were paid for services which were, in fact, rendered by Technico Pty. Ltd. to the assessee company. Undisputedly, the impugned expenditure is not in the nature of capital expenditure. The lower authorities have placed reliance on the judgement of the Hon'ble Apex Court in the case of Madras Industrial Corporation Ltd. vs. CIT (supra) while holding that since the benefit was accruing to the assessee over a number of years, the same could not be allowed as a deduction in one year. However, it is seen that the judgment of the Hon'ble Apex Court in the case of Madras Industrial Corporation Ltd. vs. C.I.T. (supra) was rendered in the context of allowability of discount on debentures and, admittedly in this case, the liability was to accrue from year to year for a period of 12 years. It is in this context that the Hon'ble Apex Court held that since the payment was to secure a benefit over a

number of years and there was a continuing benefit to the business of the assessee company for a number of years, the liability should, therefore, be spread over a period of debentures. However, we find that the instant case is squarely covered by the judgment of the Hon'ble Apex Court in the case of Taparia Tools Ltd. vs JCIT (supra) wherein it has been laid down by the Hon'ble Apex Court that normally the revenue expenditure incurred in a particular year has to be allowed in the year the assessee claims that expenditure and the department cannot deny the same. The Hon'ble Apex Court went on to hold that even the fact that the assessee had deferred the expenditure in the books of account would be irrelevant. In this judgment, the Hon'ble Apex Court has also taken note of its earlier judgment rendered in the case of Madras Industrial Investment Corporation Ltd. vs. C.I.T. (supra) and has, thereafter, held that the Income Tax Act enables and entitles the assessee to claim entire expenditure in the manner it is claimed u/s 37(1) of the Act as long as the same is not capital in nature. Therefore, respectfully following the ratio of the judgment of the Hon'ble Apex Court in the case of Taparia Tools Ltd. vs. JCIT (supra), we are unable to concur with the findings of the Ld. Commissioner of Income Tax (A) in this regard and while setting aside the order of the Ld. Commissioner of Income Tax (A) on this issue, we direct the Assessing Officer to allow the entire expenditure in the assessment year in which it is claimed. Accordingly, ground nos. 3, 4, 5 and 6 in assessment year 200304 and identical ground nos. 5, 6, 7, and 8 in assessment year 05, ground nos. 4, 5, 6, 7 in assessment year 2005-06 and ground nos. 3, 4, 5, and 6 in assessment year 2006-07 stand allowed."

6. The issue of loose tools mentioned in Sl.No. 5 is involved only in three years and the matter has been set aside to the Assessing Officer by Hon'ble Tribunal. The relevant findings of Hon'ble Tribunal, as contained in para 11.1, are reproduced below:

"Ground no. 7 in assessment year 2003-04 challenges the action of the Assessing Officer in holding the expenditure with respect to loose tools as being capital in nature and allowing depreciation @25% thereon. A perusal of the assessment order shows that the Assessing Officer has simply mentioned that the expenditure on loose tools is of capital nature, the same was to be capitalized and depreciation had to be allowed thereon. The Ld. Commissioner of Income Tax (A),

while upholding the disallowance, has noted that the assessee had submitted before the Assessing Officer that the depreciated value of loose tools was arrived at on the basis of amortisation of cost over a period of three years as per the regular accounting policy being followed by the assessee company. The Ld. Commissioner of Income Tax (A) went on to hold that since the assessee company itself had admitted that they were amortising the cost of the loose tools over a period of three years as per the regular accounting policy, the Assessing Officer was justified in treating the same as being capital in nature and allowing 25% depreciation thereon. Thus, apparently, the assessee has taken contradictory stands before the lower authorities and, therefore, it is our considered opinion that it will be in the fitness of things if the issue is re-examined by the Assessing Officer. Accordingly, we restore the issue of expenditure on loose tools having been treated as capital expenditure by the AO/Ld. CIT (A) to the file of the Assessing Officer with the direction to re-examine the issue and, thereafter, adjudicate the issue as per law after giving due opportunity to the assessee to present its case. Accordingly, ground no. 7 in assessment year 2003-04, and identical Ground no. 4 in assessment year 2004-05, ground no. 2 in assessment year 2005-06 stand allowed for statistical purposes.”

7. The issue listed at Sl.No. 6 on upfront fee is also involved in one year i.e. assessment year 2004-05 which has been decided by Hon'ble Tribunal in favour of the assessee. The relevant findings of Hon'ble Tribunal, as contained in para 11.2.1, are reproduced below:

“11.2.1 Accordingly, respectfully following the judgment of the Hon'ble Apex Court as aforementioned, we are of the considered views that the entire upfront fee was allowable as a deduction in assessment year 2004-05 itself and accordingly, we set aside the order of the Ld. Commissioner of Income Tax (A) on the issue and direct the Assessing Officer to allow the entire amount in the year under consideration.”

8. The findings of Hon'ble Tribunal clearly demonstrate that the issues have been either allowed or set aside to the Assessing Officer therefore, the penalty sustained by Learned CIT(A) do not survive and hence these

are deleted. The Assessing Officer in the set aside proceedings may initiate penalties after completion of assessment in accordance with law.

9. In the result, all the appeals of the assessee are allowed.

(Order pronounced in the open court on 18/04/2019)

Sd.
(H. S. SIDHU)
Judicial Member

Sd.
(T. S. KAPOOR)
Accountant Member

Dated:18/04/2019

*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T.,