आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ "सी", नई दिल्ली में
IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI

सुश्री सुषमा चावला, उपाध्यक्ष एवं श्री एन. के. बिल्लैया, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, VP & SHRI N.K.BILLAIYA, AM

आयकर अपील सं. / ITA No.7714/Del/2017
निर्धारण वर्ष /Assessment Year 2012-13

Honda Motorcycle and Scooter India Pvt.Ltd.,
Plot No.s 1 & 2, Sector-3, Imt. Manesar,
Gurgaon-122050.
PAN-AAACH7467D .....**अपीलार्थी**/Appellant

vs

The DCIT,
Circle-2(1), Gurgaon. ..... **प्रत्यर्थी** / Respondent

अपीलार्थी की ओर से / Appellant by : Sh.Ajay Vohra, Sr.Adv.,
Sh. Gaurav Jain, Adv. &
Sh. Karan Jain, CA
प्रत्यर्थी की ओर से / Respondent by : Sh.A.K.Saroha, CIT DR
Mrs. Sunita Singh, Sr.DR

सुनवाई की तारीख/ **Date of Hearing : 07.08.2020**		**घोषणा की तारीख /** **Date of Pronouncement: 31.08.2020**

आदेश/ORDER

PER SUSHMA CHOWLA,VP

The present appeal filed by assessee is against order of DCIT, Circle-2(1), Gurgaon dated 28.11.2017 relating to assessment year 2012-13 against the order passed under section 143(3)/144C of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised following grounds of appeal:-

1. "That the assessing officer (AO) erred on facts and in law in completing the assessment under section 143(3)/144C of the Income Tax Act, 1961 ('the Act') at an income of Rs 594,22,74,340 as against the income of Rs 517,18,00,950 returned by the appellant.

2. That the Dispute Resolution Panel (DRP)/ AO erred on facts and in law in disallowing unrealized foreign exchange loss relating to capital assets, to the extent of Rs.53,05,919, under section 43A of the Act, which was netted against unrealized gain of the equivalent amount arising from foreign currency fluctuation relating to Capital Work in Progress.

2.1 That That the AO erred on facts and in law in holding that the appellant did not provide details I documentary evidence for the aforesaid gain of Rs.53,05,919/-.

2.2. That the AO erred on facts and in law in failing to appreciate that the amount of Rs. 53,05,919 was a capital receipt not chargeable to tax and complete details in this regard were submitted before the AO vide submission dated 06.11.2017.

3. That the DRP/AO erred on facts and in law in disallowing expenditure of Rs.10,45,249, which was debited under the head of corporate social responsibility (CSR) in books on the ground that the same were not incurred for the purpose of business.

3.1. That the Assessing Officer erred on facts and in law in holding that the expenses were not incurred for the purpose of business, more so since the same were debited under the head of CSR and not the other heads of business expenses in books.

3.2. That the Assessing Officer erred on facts and in law in holding that insertion of Explanation 2 to section 37 of the Act by Finance Act, 2014 with effect from 01.04.2015 was clarificatory in nature and was applicable to the assessment year 2012- 13, failing to appreciate that the said substantive amendment was prospective in nature and not applicable during the assessment year under consideration.

3.3.. Without prejudice, that the AO erred on facts and in law in not appreciating that, even otherwise the newly inserted provisions of Explanation 2 to section 37 were not applicable to the expenses under consideration.

4. That the DRP/AO erred on facts and in law in law in disallowing composition fee amounting to Rs. 22,36,130 paid to regularize Naurangpur building by holding that the said amount is penal in nature covered within the scope of Explanation to section 37(1) of the Act.

5. That the AO/ DRP erred on facts and in law in making net disallowance of Rs. 1,73,72,080 after allowing depreciation on total expenditure of Rs.1,92,48,229 incurred by the appellant towards repair and maintenance/replacement of existing assets, holding that the said expenses were capital in nature.

5.1. That the AO/ DRP erred on facts and in law in not appreciating that the above gross expenses aggregating to Rs. 1,92,48,229 were incurred on routine repairs and maintenance, which did not result in creation of capital asset and were, therefore, allowable as revenue expenditure.

6. That the AO/ DRP erred on facts and in law in disallowing expenditure incurred by the appellant on account of signages installed at the premises of dealers/ sub dealers amounting to Rs. 89,03,053 holding that the said expenditure resulted in enduring benefit and were capital in nature.

6.1. That the AO/ DRP erred on facts and in law in not appreciating that the above expenses aggregating to Rs. 89,03,053 were recurring expenses incurred for the purpose of business and did not result in creation of capital asset in the hands of appellant or imparting any enduring benefit of capital nature, and were, therefore, allowable as revenue expenditure.

6.2. Without prejudice, the AO/ DRP erred on facts and in law in not allowing depreciation on the aforesaid amount under section 32 of the Act

7. That the AO/ DRP erred on facts and in law in disallowing sales tool expenses amounting to Rs. 2,72,32,757 by alleging that the appellant was under no obligation, legal or contractual, to incur sales tool expenses as business expenses.

7.1. That the AO/ DRP erred on facts and in law in failing to appreciate that the said expenses were allowable deduction under section 37 of the Act since the same was incurred for the purpose of business, viz., to maintain prescribed standards and uniformity in advertising appellant's brand effectively across India.

8. That the AO/ DRP erred on facts and in law in holding that 25 percent of the total royalty expenses amounting to Rs. 94,45,04,266, incurred by the assessee during the relevant previous year in lieu of granting license / right to use the IPR/know-how under 'Royalty and

Technical Knowhow Agreement was capital in nature, resulting in enduring benefit to the appellant and thereby making a net disallowance of Rs.70,83,78,200 after allowing 25% depreciation thereon.

8.1. That the assessing officer erred on facts and in law in observing that the assessee received benefit of enduring nature under the Royalty agreement, since the appellant obtained exclusive right to manufacture and sell the products within the territory of India.

8.2. That the AO/DRP erred on facts and in law in observing that the royalty agreement is the extension of payment towards technical know-how and since the appellant has capitalized payments towards technical know, therefore, the royalty payments must also be capitalized .

8.3. That the assessing officer erred on facts and in law in failing to appreciate that the royalty paid was a running royalty allowable as revenue deduction.

8.4. Without Prejudice, that the assessing officer erred on facts and in law in not allowing deduction of 75% of the total expenditure incurred towards know-how to be revenue expenditure on parity of treatment with running royalty.

8.5. That the assessing officer erred on facts and in law in alleging that since the shares of the appellant were predominantly held by HMCL, Japan, the former was an establishment of a foreign company itself in India and there is no difference between HMCL, Japan and the appellant.

8.6. That the assessing officer erred on facts and in law in alleging that the entire royalty payment was made to the parent company to reduce Indian tax liability, without giving any cogent reasons.

8.7. That the AO/DRP erred on facts and in law in holding that the impugned expenditure shall not be allowed on deduction even on principles of consistency.

9. That on the facts and circumstances of the case, the technical knowhow expenses amounting to Rs. 110,45,71,000 incurred by the appellant during the relevant previous year in lieu of granting technical guidance/ knowhow under 'Technical Knowhow Agreement' was revenue in nature, and therefore, ought to be allowed as deduction while computing the taxable income of the appellant.

10 That the AO/ DRP erred on facts and in law in levying interest under section 234D of the Act."

3. Briefly in the facts of the case the assessee for the year under consideration had furnished return of income declaring income of Rs. 5,17,18,00,950/-. The assessee was a subsidiary of Honda Motor Co. Ltd., Japan (Honda) Group and is engaged in the business of manufacture and sale of Motorcycle and Scooters. As per assessee, Honda is one of the world leaders in manufacture and distribution of automobiles, motorcycle and power products and has substantial expertise, technical know-how, brand equity, worldwide marketing network in the above field. During the year under consideration, the assessee had entered into various international transactions with its Associate Enterprise (in short "AE"). Reference u/s 92CA(1) of the Act was made and the TPO proposed certain upward adjustment which after the directions of the DRP were reduced to NIL. The Assessing Officer in the draft assessment order on the perusal of the financial statement noted that the assessee had claimed expenditure amounting to Rs.2,16,47,192/- for foreign fluctuation loss in respect of fixed assets. It is further noticed that the assessee had disallowed the amount of Rs.1,63,41,273/- only out of Rs.2,16,47,192/- while computing the total income of the concerned assessment year. In respect of the same, the assessee was asked to explain the difference of Rs.53,05,919/- (Rs.2,16,47,192/- - Rs.1,63,41,273/-). The assessee in reply explained that *"an amount of Rs.2,16,47,192/- is adjusted in computing the actual cost of assets for computing income tax depreciation on assets, as per provision of section 43A of the Act. Your goodself would appreciate that the assessee has voluntarily disallowed the amount arising on*

loss of foreign exchange and no further disallowance is to be made in the computation of income."

4. In the draft assessment order, the Assessing Officer proposed that *"if the fixed assets has been bought by taking the loan in foreign currency than any loss/expenses arises on account of payment of such loan shall be adjusted to the cost of fixed assets rather it is treated as a revenue expenditure".* It is further noticed that *"such foreign fluctuation loss/gain shall not be allowed in respect of reinstatement of loan. In the given case, the assessee had only reinstate the foreign loan in its books of account and debited the sum of Rs.2,16,47,192/- in its profit & loss account on account of such reinstatement. However, such expenses are required to be added while computing the total income having regard to the provision of section 43A of the Act but the assessee while computing the total income has added only Rs.1,63,41,273/-. Therefore, the difference of Rs.53,05,919/- is required to be added to the income of the assessee".* Objections were filed before the DRP who directed the Assessing Officer to examine the documents and pass the order on the issue. In the final assessment, the Assessing Officer held as under:-

> *5.5. "As per the directions of the Hon'ble DRP, the assessee has been provided an opportunity vide notice dated 30.10.2017 to file the submission to produce documentary evidence in support of its contention. The assessee has submitted that difference of Rs.53,05,919/- was on account of foreign exchange gain on capital work in progress which is being capital receipt in nature not chargeable to tax. Thus, the receipt was not off from foreign exchange capital loss of Rs.2,16,47,192/- and accordingly, balance Rs.1,63,41,273/- was added back to the income of the assessee. However, no documentary evidence in support of the*

aforementioned claim that the said amount pertains to capital work in progress has been provided by the assessee. In view of above facts, amount of Rs.53,05,919/- is disallowed and added to the returned income of the assessee."

5. The assessee is in appeal against the order of the Assessing Officer.

6. The Ld.AR for the assessee pointed out that Ground of appeal No.1 raised by the assessee is general in nature. He further stated that Ground of appeal Nos. 2 to 2.2 raised by the assessee are against the disallowance of foreign exchange fluctuation loss of Rs.53,05,919/-. It was pointed out by the Ld.AR for the assessee that the total loss on capital account was Rs.2.16 crores (approx.) and the gain on account of capital account was Rs.53,05,919/-. The net sum of Rs.1.63 crores (approx.) was added back to the computation of income and offered to tax against which there is no dispute. The Ld.AR for the assessee stressed that in view of the provision of section 43A of the Act, realized loss of Rs.2.16 crores (approx.) and realized gain of Rs.53,05,919/- was on account of capital assets, the same were not allowable as revenue expenditure but were liable to be added to/reduced from cost of relevant assets in the year in which the liability in foreign currency is discharged as per the provisions of section 43A of the Act. Accordingly, loss of Rs.2.16 crores (approx.) was added back and gain of Rs.53,05,919/- was reduced from the taxable income in the computation of income by way of adding back net amount of Rs.1.63 crores (approx.). It was also pointed out that the amount was disallowed in the absence of documentary evidence by the Assessing Officer but pursuant to the directions of the DRP, reconciliation

as well as the evidences substantiating the aforesaid gain of Rs.53.05 Lakhs has been filed which has been completely ignored in the final assessment order. Our attention was drawn to supplementary Paperbook at page 28 in this regard.

7. The Ld. DR for the Revenue in reply submitted that the evidences be examined by the Assessing Officer to decide the allowance of aforesaid expenditure.

8. We have heard the rival contentions and perused the record. The issue which arises vide Ground of appeal Nos. 2 to 2.2 is against the disallowance of Rs.53,05,919/-. The aforesaid sum of Rs.53,05,919/- is the foreign exchange gain against the Capital Work in Progress (in short "CWIP"). The assessee had disclosed foreign exchange loss on acquisition of fixed assets at Rs.2.16 crores (approx.) against which the foreign exchange gain of Rs.53,05,919/- against CWIP was adjusted and the balance of Rs.1.63 crores (approx.) was added back in the computation of income. Admittedly the foreign exchange loss on acquisition of fixed assets totaling to Rs.1.63 crores (approx.) is not allowable as an expenditure in view of the section 43A of the Act. Further, foreign exchange gain of Rs.53,05,919/- is to be adjusted against the aforesaid loan and net amount of Rs.1.63 crores (approx.) having been offered to tax, warrants no further disallowance in the hands of the assessee. Accordingly, we hold so and the issue raised in Ground of appeal Nos. 2 to 2.2 is thus allowed.

9. The issue raised vide Ground of appeal No.3 to 3.3 raised by the assessee is against the disallowing expenditure of Rs.10,45,249/- which was debited under the head corporate social responsibility (in short "CSR") in books of accounts, on the ground that the same were not incurred for the purpose of business.

10. Briefly the facts of the case relating to the issue are that the assessee had incurred expenditure totaling Rs.10,45,249/- towards grant to schools for employees welfare, refreshment expenses for labour welfare, sports, laying of pipe lines in Government Senior Secondary (in short "GSS") school, cotton bags with company logo of distribution in schools and community, flex banner printing for blood donation camp, renovation work for training center at Mohindergarh, donation for Ganesh Mahotsav, miscellaneous publicity expense, etc. which were classified under the head 'Corporate Social Responsibility' in the books of account. The Assessing Officer disallowed the aforesaid expenditure on the ground that the expenditure was not incurred wholly and exclusively for the purpose of business. The Assessing Officer further alleged that Explanation (2) to section 37 of the Act inserted by Finance Act, 2014 w.e.f. 01.04.2015, which provides that CSR expenses shall not be deemed to be incurred for the purpose of the business, is clarifactory in nature and is applicable to Assessment Year 2012-13 as well.

11. The assessee is in appeal against the said disallowance made by the Assessing Officer. The Ld.AR for the assessee drew our attention to the

documents placed in the Paperbook from page 734 to 861 and pointed out that the same were treated as CSR expenses. It was alleged that the same were incurred with a view to secure advantage to the assessee's business and could not be treated as not incurred for the purpose of business. It was further pointed out that Explanation 2 to section 37 of the Act has been held to be prospective by different Benches of the Tribunal, with special reference to the decision of Raipur Tribunal in Jindal Power Ltd. [ITA No.99/BLPR/2012] and Delhi Tribunal in National Small Industries Corpn. Ltd. vs DCIT (175 ITD 601). Our attention was drawn to the list of expenses tabulated for the purpose and it was vehemently stated that the expenditure incurred were for the benefit of the business of the assessee and part of expenses related to items on which the name/logo of the assessee company was printed was distributed to public.

12. The Ld.DR for the Revenue stressed that the test of expenses being incurred wholly and exclusively for the purpose of business needs to be fulfilled.

13. We have heard the rival contentions and perused the record. The issue which arises in the present appeal is against the allowability of expenditure incurred by the assessee under the head CSR expenditure. The assessee claimed that the expenditure has been incurred towards maintenance charges of GSS, Gurgaon for the benefit of the children of the employees of the assessee company. The assessee has placed on record the list of the expenditure before us. The perusal of the same reflects the expenditure on certain renovation

work at Mohindergarh including providing chairs and tables by the assessee. Further expenses are debited on account of Tools for Honda Training Center Lab- Mohindergarh. All the said expenses are incurred for efficiently carrying out the business of the assessee and thus fulfill the condition of wholly and exclusively for the purpose of business. Further, the donation to Brahma Kumaris merits to be disallowed in the hands of the assessee, as it is case of charity. The same may be looked into as per the provision of section 80G of the Act. Further, expenditure incurred towards display of name/logo of the assessee on various items is undoubtedly for the promotion of the business of the assessee as it promotes goodwill. Hence, the expenditure is to be allowed as revenue expenditure.

14. Before parting, we may also refer to the alternate observations of the Assessing Officer that the Explanation (2) to section 37(1) which has been introduced w.e.f. 01.04.2015 is to be applied retrospectively. We find that the Raipur Bench of Tribunal in Jindal Power Ltd. (supra) and Delhi Tribunal in National Small Industries Corpn. Ltd. vs DCIT (supra) have held that the said explanation is prospective in nature. Consequently, we find no merit in the stand of the Assessing Officer in this regard except expenditure of Rs.50,000/-, the balance expenditure is allowed in the hands of the assessee. Thus, Ground of appeal Nos. 3 to 3.3 are partly allowed.

15. Now, coming to the next Ground of appeal No.4 raised by the assessee i.e. disallowance of composition fee amounting to Rs.22,36,130/-.

16. Briefly in the facts of the case the assessee had paid the aforesaid amount of Rs.22,36,130/- for regularizing deviations in building structure within the permissible limits. The Assessing Officer was of the view that the said expenditure was in the nature of penalty and is hit by Explanation 37(1) of the Act. After hearing both the Counsels and perusing the details of composition fee and evidences placed at page 731 of the Paperbook, the expenditure has been incurred by the assessee towards composition fee for regularizing the Naurangpur Building and issuance of Occupancy certificate. The regularizing undoubtedly would be within the permissible limits and in case of irregularity, the structure has to be broken down. So, we find no merit in the stand of the Assessing Officer in this regard. We further find that the Hon'ble Supreme Court in Prakash Cotton Mills vs CIT 201 ITR 684 (SC) had observed as under:-

> *"Therefore, whenever any statutory impost paid by an assessee by way of damages or penalty or interest is claimed as an allowable expenditure under section 37(1) of the Income Tax Act, the assessing authority is required to examine the scheme of provisions of the relevant statue providing for payment of such impost notwithstanding the nomenclature of the impost as given by the statue, to find whether it is compensatory or penal in nature. The authority has to allow deduction under section 37(1) of the Income Tax Act, wherever such examination reveals the concerned impost to be purely compensatory in nature."*

17. Further, the Hon'ble Delhi High Court in CIT vs Lokenath & Co. 147 ITR 624 (Del.) on similar facts held that *"on similar facts wherein the assessee has constructed a multi-storeyed building and in view of excess construction on one of the floor, it submitted a fresh plan and where the revised plan was approved,*

subject to payment on adhoc composition fee, the Hon'ble High Court held that "the mandate of the Legislature is that on the acceptance of the compensation, there is condonation of the disobedience of a procedural requirement. This compensation was not a penalty payment, to save the assessee from criminal liability or criminal prosecution or to compound any offence committed by the assessee. Thus, the Tribunal was justified and the impugned sum was admissible as business expenditure under section 37(1) of the Act."

18. Following the said dictate of the Hon'ble High Court, we hold that the composition fee of Rs.22,36,130/- paid by the assessee merits to be allowed as business expenditure. Thus, Ground of appeal No.4 raised by the assessee is allowed.

19. Now coming to the Ground of appeal No.5 raised by the assessee of disallowance of Rs.1,73,72,080/- i.e. expenditure incurred on repair and maintenance/replacement of existing assets. The Assessing Officer was of the view that the aforesaid expenditure incurred by the assessee booked under the head "repair and maintenance" is capital in nature and hence, disallowed the same after allowing the depreciation on the total expenditure. The assessee is in appeal against the same.

20. Our attention was drawn to the list of expenditure placed at pages 596 & 597 of the Paperbook. The Ld.AR for the assessee submitted that expenses were incurred on repair and maintenance of existing shop floor light, relining of melting furnace used in casting, general electrical work in CKD area,

demolition work of technical enter site, replacement of existing furniture etc. It was stressed that the expenses were incurred for repair/replacement of existing assets, which did not result in acquisition of any new asset or enhancement in the existing profit earning apparatus of the assessee company. Therefore, the said expenditure incurred on repairs was allowable as deduction u/s 31(1) or section 37(1) of the Act. He placed reliance on the ratio laid down by Hon'ble Supreme Court in CIT vs Saravana Spinning Mills (P.) Ltd. 293 ITR 201 (SC) and many other cases and stressed that similar expenditure on repairs of existing assets/building/machines had been incurred by the assessee in the earlier years also, which has always been allowed as deduction by the department, in all the earlier assessment years.

21. The Ld.DR for the Revenue on the other hand placed reliance on the orders of the authorities below.

22. We have heard the rival contentions and perused the record. The issue which arises in the present appeal is whether the expenditure which has been incurred by the assessee on the repair/replacement of existing assets, can the same be allowed in the hands of the assessee. The Hon'ble Supreme Court in CIT vs Saravana Spinning Mills (P.) Ltd. (Supra) has laid down that in case the expenditure is incurred for current repairs, then it replaces part of the existing plant & machinery and the same is to be allowed as business expenditure in the hands of the assessee u/s 31(1) of the Act. We have perused the details filed by the assessee. The list at page 596 of the

Paperbook is in respect of repair and maintenance of existing structure and is to be allowed as an expenditure in the hands of the assessee. However, the expenditure incurred on acquisition of chairs, which are detailed at page 597 of the Paperbook is capital in nature and amount totaling to Rs.10,97,122/- needs to be capitalized in the hands of the assessee. The said expenditure is booked under the head furnishing furniture. Accordingly, we uphold the order of the Assessing Officer in this regard but direct the Assessing Officer to allow the expenditure incurred on repairs of plant & machinery in entirety. Thus, Ground of appeal No.5 raised by the assessee is partly allowed.

23. Now coming to the Ground of appeal No.6 raised by the assessee i.e the expenditure incurred on signages installed at the premises of dealers/sub dealers amounting to Rs.89,03,053/-.

24. Briefly in the facts relating to the issue, the assessee had debited expenditure of glow sign board/signages which were displayed at the location of the dealers of the assessee and the Assessing Officer was of the view that the expenditure was of enduring benefit and hence capital in nature. The Ld.AR for the assessee before us pointed out that the expenditure was revenue expenditure which merits to be allowed, as though the Signages were at dealer's places but the expenditure was for the benefit of the business of assessee company. In this regard, reliance was placed on the decision of Hon'ble Delhi High Court in CIT vs Orient Ceramics & Inds Ltd. 11 taxmann.com 418 (Del.HC) and the decision of Punjab & Haryana High Court

in CIT vs Liberty Group Marketing Division [2008] 173 Taxman 439 (P&H HC). Further, reliance was placed on the decision of Delhi High Court in CIT vs Honda Siel Power Products Ltd. 300 ITR 56 (Del.). The Ld.AR for the assessee further pointed out that the assessee had purely treated the expenditure as capital but there is no estoppel in law and hence the expenditure incurred merits to be allowed in entirety. It was also pointed out that no such disallowance was made in the hands of the assessee in the earlier years.

25. The Ld. DR for the Revenue placed reliance on the orders of authorities below.

26. We have heard the rival contentions and perused the record. The expenditure was incurred on signage for display of the name of the assessee at the dealer's premises. However, once the same is fixed at dealers site then the Courts have held that it does not satisfy the test of ownership with the assessee and the expenditure is to be allowed as revenue expenditure. We find support from the ratio laid down by the Hon'ble Delhi High Court in CIT vs Honda Siel Power Products Ltd.(supra). Thus, we are of the view that the expenditure to the extent claimed by the assessee is to be allowed in the hands of the assessee and not the entire expenditure. Ground of appeal No.6 is thus partly allowed.

27. Now coming to the Ground of appeal No.7 raised by the assessee against the disallowance of sales tools expenses of Rs.2,72,32,757/-.

28. Briefly in the facts of the case, the assessee incurred the said expenditure on sales tools expenses. The assessee explained that it required its authorized dealers to use specified quality of sales tools. fixtures at their showrooms which was to ensure that such exclusive authorized dealers maintain uniformity in advertising assessee's brand effectively across India and maintaining the high prescribed standards. The Assessing Officer was of the view that the there was no obligation to incur the said expenses; hence, the same were disallowed in the hands of the assesse.

29. The Ld.AR for the assessee pointed out that the expenditure were incurred in order to make the showrooms of the dealer look alike and the assessee incurred 50% of the expenses. The assessee during the course of hearing was asked to file copy of Agreement entered into with the dealer/s and also the No. of dealer appointed by it. The Ld.AR for the assessee duly filed the same and pointed out that the turnover of the assessee had increased from Rs. 64 crores in the preceding year to Rs. 8,539 crores during the year.

30. We have heard the rival contentions and perused the record. The expenditure incurred by the assessee on sales tools/fixtures which are placed at dealer's outlets are specifically manufactured by third party manufacturers in accordance with the specifications provided by the assessee. As per the terms of the agreement between the assessee and the third party manufacturers, 50% of the price of the sales tools is directly paid by the assessee as advance to the third party manufacturer at the time of placement

of order and balance 50% is paid by the authorized dealers, post inspection and approval of the ordered items by the Inspecting Officer of the assessee before delivery at dealer's outlet. Such sales tools/ fixtures inter-alia includes the following:-

- Reception Counter;
- Customer Lounge Partition with Monitor Stand;
- Shelf Partition for Parts and Accessories;
- Frost Glass Partition;
- Digital Graphic Panel;
- Specifications Panel;
- Two-Wheeler Display Base (Window);
- Two-wheeler Display Base (Corner);
- Sing Ring;
- Catalogue Stand.

31. The question which arises is whether the assessee is incurring expenditure to maintain standard format of displaying its products all over India in order to induce prospective customers to clearly identify the exclusive dealers of assessee's products in India and expenditure incurred was wholly and exclusively for the purpose of his business.

32. The Ld. DR for the Revenue placed reliance on the orders of the authorities below.

33. We have heard the rival contentions and perused the record. We have perused the Agreement between the assessee and its dealer and Article 11.2 of the Dealership Agreement reads as under:-

> *11.2. "The company shall provide the necessary information, materials and such other assistance from time to time at the dealer's cost and expense, wherever applicable, which support the dealer's advertising and*

sales promotion efforts for the products, in accordance with the provisions of the policy, guidelines, and operations standards with regard to advertising issued by the Company from time to time. The company may at discretion, provide subsidy on the advertising material."

34. Clause 7.2 of the Dealership Agreement states as follows:-

7.2. "The Dealer agrees to comply at all times during the validity of this agreement with the minimum requirements concerning the dealership premises including interalia sales office, showroom, workshop, spare parts and accessories shop and other necessary equipment, machinery, tools specified by the company from time to time. The list of equipments, machinery and tools with detailed specifications and quantities based on dealer's sales/service capacity will be issued by the Company to the dealer from time to time alongwith guidelines and procedures for procuring the same. This may include recommended purchase prices for such equipments, machinery and tools based on arrangement for bulk purchases/quantity discounts etc. with the suppliers and on training, after sales service infrastructure/support etc. provided by the Supplier."

35. In view of the aforesaid, we are of the view that the expenditure incurred on Signages expenses was in the nature of advertisement expenditure, which are recurring in nature, incurred for the purpose of business and in the absence of any capital asset being acquired/owned by the assessee, the same was allowable as business deduction under section 37(1) of the Act.

36. The Assessing Officer while disallowing the claim of the assessee has strongly placed reliance on the decision of Hon'ble Supreme Court in Honda Siel Cars India Ltd. vs CIT [395 ITR 713] (SC). However, the facts of the said case are distinct as in the facts of the said case expenditure was on account of setting up of manufacturing facility and was not for running of the business. The Tribunal in assessee's own case for Assessment Year 2011-12 while deciding the issue in appeal filed against the order passed u/s 263 of the Act

had distinguished the said decision and allowed the claim of the assessee. Hence, Ground of appeal No.7 raised by the assessee is allowed.

37. Now coming to Ground of appeal No.8 raised by the assessee under which the assessee is aggrieved by the orders of the authorities below in disallowing 25% of Royalty expenses. The Ld.AR for the assessee pointed out that Ground of appeal No.9(a) which is the additional ground of appeal raised by the assessee may be taken up alongwith this ground of appeal.

38. Briefly in the facts of the case relating to the issue, the assessee has claimed expenses on technical knowhow fees and royalty during the year amounting to Rs.488.65 crores (approx.). The said amount was paid to the foreign company i.e. Honda Motor Company, Japan, in view of technical know-how and technology assistance received from them, the assessee claimed it to be revenue expenditure in its hand. The Assessing Officer after considering the reply of the assessee was of the view that the Agreement executed between the assessee and Honda Motor Company, Japan for the purpose of transferring of technical know-how and technology reflects that the payment in lumpsum as well as variable was paid for acquiring asset of enduring benefit. The plea of the assessee was that the aforesaid payment was in respect of information of production process of product which included the planning sheet of production, control sheet of quality, flow chart of the production process and drawings, concept drawings brochures, jigs, assemble and inspection tools, information for quality control of the products etc. The Assessing Officer was of

the view that the kind of knowledge which was shared by Honda Motor Company, Japan comprises the life cycle of the product i.e. starting from production process till the output of the final product. He further observed that this not only increases the goodwill of the assessee company in the market but also other intangibles, through which the assessee company got enduring benefit. Vide para 13.5 at page 35 of the assessment order, the Assessing Officer has enlisted the benefits arising to the assessee as Assessing Officer had show caused the assessee with regard to lumpsum payment of Rs.110.45 crores (approx.) and Royalty of Rs.378.20 crores (approx.) totaling to Rs.488.65 crores (approx.). Relying on the findings of the earlier year, it was proposed by Assessing Officer that the said amount is disallowed in the hands of the assessee.

39. The DRP directed the Assessing Officer to provide an opportunity to the assessee to file submissions in this regard. In the final assessment order at page 37, the Assessing Officer notes that out of total technical knowhow of Rs.110.45 crores (approx.), the assessee had already capitalized sum of Rs.75.58 crores (approx.) and rest was shown as intangible assets and not claimed as an expense during the year. So, the contention of the assessee with regard to technical know-how expenses was not accepted. In relation to the Royalty expenses incurred during the year, against which the assessee filed elaborate submissions before the Assessing Officer, the Assessing Officer noted that the arguments of the assessee that this was running Royalty, therefore, it

was treated as revenue expenditure. The Assessing Officer on perusal of the technical know-how and Royalty Agreement came to a finding that the Royalty Agreement was extension of payment towards technical know-how. He thus observed that *"Any payment which has been made on account of technical know-how and royalty should be read into one and cannot be bifurcated as the assessee has done. It is further noted that the royalty without technical know-how do not have any existence per se. Therefore the same is inextricable from the technical know-how. The assessee claimed that the royalty paid was a running royalty therefore the same would be allowable expenditure however it failed to acknowledge the fact that the royalty was conjoint with the technical know-how and without which the same did not have any existence therefore, the same should be treated as capital in nature."*

40. The Assessing Officer did not accept the plea of the assessee that the same Royalty being paid for more than 15 years and being allowed in the hands of the assessee, was not accepted in view of the decisions of Hon'ble Supreme Court and Hon'ble Allahabad High Court and 25% of the Royalty expenditure of Rs.378.20 crores (approx.), which worked to Rs.94,45,04,266/- was treated as capital expenditure being spent towards acquisition of capital assets. Depreciation on the same was allowed and balance sum of Rs.70,83,78,200/- was added in the hands of the assessee. The assessee is in appeal against the order of the Assessing Officer.

41. The Ld.AR for the assessee pointed out that under same Agreement, the assessee had paid to Honda Motor Company, Japan two considerations i.e. one was the lumpsum Royalty on account of model fee and second was the recurring Royalty. He further pointed out that both the payments flowed from the same Agreement and the plea of the assessee was that there was no enduring benefit to the assessee vis-a-vis the recurring Royalty. The Ld.AR for the assessee pointed out that in earlier years, the same was allowed as revenue expenditure and only in the year under consideration, the same was disallowed. He referred to the order of Assessing Officer and who in turn relied on the decision of Hon'ble Supreme Court in Honda Siel Cars India Ltd. vs CIT [395 ITR 713] (SC) to disallow 25% of the expenses. The Ld.AR for the assessee pointed out that in the case of Honda Siel Cars India Ltd. vs CIT (supra) itself, in later years Tribunal has allowed entire Royalty expenses as revenue after considering the decision of Hon'ble Supreme Court (supra), on the ground that the Royalty payment was for availing know-how for new models. The Ld.AR for the assessee pointed out that in assessee's own case relating to Assessment Year 2011-12, the Commissioner invoked the provision of section 263 of the Act to disallow 25% of Royalty expenditure for similar reasons. He referred to the decision of Tribunal placed at page 458 and pointed out that the order u/s 263 of the Act,, was quashed after considering the decision of Hon'ble Supreme Court in Honda Siel Cars India Ltd. vs CIT (supra) in later decision of the Tribunal in said case itself. He further pointed out that under the said Agreement, limited right to use the know-how without any ownership

right was acquired and as the know-how was used in existing business of manufacturing through dealers, the expenses was incurred for the purpose of business. He fairly pointed out that the lumpsum fee paid of Rs.110 crores was capitalized in the books of accounts as well as for income tax purpose and the assessee was claiming depreciation on the same. But by way of Additional Ground of appeal No.9(a), the same is being claimed as revenue expenditure. The Ld.AR for the assessee stressed that where the assessee had acquired only limited rights in the Agreement, then same reasons are applicable for running Royalty, and lumpsum Royalty payment should also be allowed as expenses. In this regard, reliance was placed on the following decisions:-

[i] CIT v. Hero Honda Motors Ltd. 372 ITR 481 (Del.HC)

[ii] CIT V. Munjal Showa Ltd. 329 ITR 449 (Del.HC)

[iii] Maruti Suzuki India Ltd. vs Addl. CIT (ITA No.6021/Del/2012) [Assessment Year 2008-09]

42. The Ld.AR for the assessee further pointed out that this was a legal issue raised by the assessee where the facts were already on record and in the light of the decision of Hon'ble Supreme Court in National Thermal Power Co.Ltd. vs CIT [1998] 229 ITR 383 (SC), the additional ground to be admitted and claim to be allowed. He further stressed that there is no estoppel in law for raising the said issue; in view of correct legal position in the eyes of law.

43. The Ld.DR for the Revenue strongly opposed the admission of the additional ground of appeal. He stressed that the discretion of Court can be exercised only in extraordinary circumstances. He stressed that the assessee had claimed it to be capital expenditure so the Department was stopped from making investigation and it was pointed out that it was investigation into facts. Our attention was drawn to the Agreement placed at pages 44 onwards of the Paperbook and he pointed out that the parent company was Japanese Company and 99% holding of the assessee was with Japanese company. He objected to the Ld.AR's statement that the facts were on record and pointed out that all the facts were not on record. He also stated that the plea of no knowledge was very much weak where best legal minds were available to the assessee. He relied on the decision of Hon'ble Delhi High Court in Manish Build Well (P.) Ltd. [2011] 16 taxmann.com 27 (Delhi) and the decision of Hon'ble Supreme Court in Keshav Mills Co.Ltd. vs CIT [1965] 56 ITR 365 (SC).

44. The Ld.AR for the assessee also pointed out that the issue stands covered by the decision of Hon'ble Supreme Court and strong reliance was placed on the observations of the Assessing Officer in this regard. The Ld.AR for the assessee in re-joinder pointed out that the sole argument of the Ld.DR for the Revenue was placing reliance on the decision of Hon'ble Supreme Court in the case of Honda Siel Cars India Ltd. vs CIT (supra), wherein the facts were different and hence that decision was not applicable to the facts of the present case. On an without prejudice basis, it was pointed out that even if there was

some consideration for manufacturing in earlier years then in the present years, the knowhow was only imparted for the newer models. He again placed reliance in the later decision of Hon'ble Delhi High Court in CIT vs Hero Honda Motors Ltd. (ITA Nos. 694, 696, 698, 699 of 2011 and 625 and 633 of 2012) relating to Assessment Year 2000-01 to 2002-03 vide order dated 03.02.2015.

45. The appeal was fixed for clarification and the Ld.AR for the assessee pointed out that the decision of the Hon'ble Supreme Court in Honda Siel Cars India Ltd. vs CIT (supra) was with regard to the expenditure in first year wherein Hon'ble Apex Court held that since the information was passed for establishing the manufacturing facilities, the same was capital in nature. The Ld.AR for the assessee stressed that under Ground of appeal No.8, the claim was made in respect of recurring Royalty which is always been allowed as revenue expenditure in the hands of the assessee. Ground No.9a was agaisnt allowance of technical know-how paid for new models, which come into the market and this lumpsum Royalty which in turn is model fee has been allowed as an expenditure in the case of the CIT vs Hero Honda Motors Ltd. (supra). The SLP against the order of Hon'ble Delhi High Court has been dismissed. The Ld.AR for the assessee also pointed out that the amount has been paid in respect of the new models introduced during the year.

46. We have heard the rival contentions and perused the record. The assessee had entered into a technical know-how agreement with Honda Motors Company, Japan under which it was paying lumpsum fee which was the

amount in connection with the new models introduced in a year. The total amount paid during the year was Rs.110.45 crores (approx.) which was capitalized by the assessee in its books of accounts and also in the P&L A/c. The assessee also paid running Royalty which was paid for grant of the right to license and manufacturing of two-wheelers in India. The total running Royalty paid was Rs.378.20 crores (approx.). The said Royalty which is the recurring Royalty paid by the assessee from year to year had been allowed as revenue expenditure in the hands of the assessee in the preceding years. We find no merit in the said exercise carried out by the Assessing Officer and accordingly we direct the Assessing Officer to allow the running Royalty as business expenditure in entirety. Ground of appeal No.8 raised by the assessee is thus allowed.

47. Now coming to the next issue raised which is by way of additional ground of appeal. Since it is legal issue, it is admitted for adjudication. The assessee fairly pointed out that the lumpsum Royalty was capitalized in its books of accounts and also not claimed as an expenditure in the return of income. However, because of the settled position by way of the decision of the Jurisdictional High Court in CIT v. Hero Honda Motors Ltd. (supra), the same is being claimed as business expenditure. The relevant findings are as under:-

> *"The Hon'ble ITAT in the appellant's own case for Assessment Year 2011-12 reiterated that the facts in the case of the appellant differ from the facts of Honda Siel Cars Ltd. (supra) because the amount expended is in relation to the running royalty and not for the purpose of setting up of plant.*

Further, reference is also made to the decision of the Delhi Tribunal in the case of Honda Cards India Ltd.vs DCIT : ITA No.4491/Del/2014 dated 18.08.2017 (pages 414-457 of the CLPB) and also confirmed by Hon'ble Delhi High Court in ITA No.45/2019 vide order dated 13.05.2019 (refer pages 457A-457F of the CLPB), wherein the Tribunal after referring to the decision of the Supreme Court in the case of Honda Siel Cars (supra) observed that the Supreme Court has carved out the distinction between the payments at the time of setting up of the manufacturing facility and the payments made once the manufacturing process has already began. In the former case, royalty expenditure for setting up the manufacturing facility is capital in nature while in the latter case, the royalty expense is revenue in nature."

48. The SLP filed against the said decision has been dismissed by the Hon'ble Supreme Court. Applying the said ratio, we are of the view that the assessee was entitled to claim the aforesaid expenditure as revenue expenditure in the hands of the assessee.

49. Coming to the stand of the Revenue that where the assessee itself had not claimed as deductible in its hands, then the same cannot be allowed by the additional ground of appeal. We find no merit in the stand of the Ld.DR for the Revenue as there is no estoppel in law; especially where the issue has been decided by the Jurisdictional High Court on similar facts. Accordingly, we allow the additional ground of appeal raised by the assessee.

50. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 31st August, 2020.

Sd/-	Sd/-
(N.K.BILLAIYA)	**(SUSHMA CHOWLA)**
लेखासदस्य/ ACCOUNTANT MEMBER	**उपाध्यक्ष / VICE PRESIDENT**

दिल्ली / दिनांक Dated : 31st August, 2020 *Amit Kumar*

आदेश की प्रतिलिपि अग्रेषित/ Copy of the Order is forwarded to :

1. **अपीलार्थी** / The Appellant
2. **प्रत्यर्थी** / The Respondent
3. **आयकर आयुक्त(अपील)** / The CIT(A)
4. **मुख्य आयकर आयुक्त** / The Pr. CIT
5. **दिल्ली**/ DR, ITAT, Delhi
6. **गार्ड फाईल /** Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति//True Copy//

दिल्ली
Assistant Registrar, ITAT, Delhi