IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'B' : NEW DELHI)

BEFORE SH. R.K.PANDA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.331/Del/2012
(Assessment Year : 2008-09)

M/s. Frick India Ltd. **809,** **Surya Kiran Building,** **19, Kasturba Gandhi Marg** **New Delhi- 110 001** PAN – AAACF0410C	Vs.	DCIT, Circle-11(1), Room No. 312, C.R.Building, I.P.Estate New Delhi
(APPELLANT)		**(RESPONDENT)**

Assessee by	Sh. Tarandeep Singh, Adv.
Revenue by	Sh. Atiq Ahmad, Sr. DR

Date of hearing:	19.04.2022
Date of Pronouncement:	29.04.2022

ORDER

PER ANUBHAV SHARMA, JM:

The appellant company is engaged in the manufacture and sale of air-conditioning and refrigeration equipments. The appeal has been preferred by the assessee against order dated 09/12/2011 in appeal no. 222/10-11 for the assessment year 2008-09 passed by Commissioner of Income Tax (Appeal)-XIII, New Delhi (herein after referred as Ld. First appellate authority or in short Ld.FAA) in appeal preferred against order dated 24.12.2010 u/s 143(3) of

the Income Tax Act, 1961 passed by DCIT, Circle 11(1), New Delhi (herein after referred to as 'Ld. Assessing officer or in short Ld.AO').

2. The assessee has raised following grounds of appeal :

> 1. *That on the facts and circumstances of the case and in law the CIT(A) erred in confirming the action of the assessing officer in treating the sum of Rs 27,71,113/- paid vide agreement dated 13-12-2002 to M/s Vilter Manufacturing Corporation, USA as capital expenditure.*
> *1.1 That the CIT(A) erred in not dealing with ground No 2.1 taken to the effect that, without prejudice, the Assessing officer erred in not allowing depreciation on the entire amount of consideration payable under the Act"*
>
> *The appellant seeks leave to add, alter, amend any of the grounds either before or at the time of hearing of the appeal."*

3. Heard the counsel for the assessee and Ld. Sr. DR and perused the record.

4. The facts of the case resulting in treating the amount of Rs. 27,71,113/- as capital in nature is that the appellant had entered into an Intellectual Property License and Non-Compete Agreement on 13-12-2002 with M/s Vilter Manufacturing Corporation ('Vilter' hereinafter) 5555, South Packard Avenue, Cudahy, Wisconsin, USA, The said agreement was amended by the supplementary agreement dated 5-11-2003. In pursuance of said agreement, a sum of Rs. 27,71,113/- was actually paid by the appellant as part consideration during the year under consideration. The amount payable under the agreement was treated as deferred revenue expenditure in the books of account and a sum of Rs. 32,32,960 was charged off to the P & L A/c. during the year under consideration. In the computation of total income, however, the amount of Rs.32,32,960/- was added back and the sum of Rs. 27,71,113/- claimed as revenue expenditure.

assessment orders and the orders of Ld First Appellate Authority. The same was sustained by ld. CIT(A) on the basis of previous years.

3.2 It was submitted by the ld. Counsel for assessee that in the assessee's own case for the assessment year 2004-05 and 2005-06 it has been held by the Tribunal that the payments made to M/s. Vilter Manufacturing Corporation for use of know how is revenue expenditure.

3.4 It can be observed that in asssesse's own case for the assessment year 2004-05 and 2005-06, ITA No. 2072/Del/2008 and ITA no. 330/Del/2012 respectively, by judgment dated 30.12.2021 in para no. 7.7 the Co-ordinate Bench held as under :-

> *"7.7 In the backdrop of our aforesaid observations, we are of the considered view, that as the payment made by the assessee company to M/s Vilter Manufacturing Corporation, USA was for the technical know-how services provided by the latter for facilitating carrying out the ongoing/existing business of manufacturing of refrigeration products by the assessee in a more technically viable and profitable manner, therefore, the same was rightly claimed by the assessee as a revenue expenditure for computing its income for the year under consideration and had wrongly been dubbed as a capital expenditure by the lower authorities. Our aforesaid view i.e. where an assessee who is engaged in the business of manufacturing and selling certain products had made a payment to a foreign company for merely acquiring a right to use technical know-how, whereas the ownership and intellectual property rights in the said know-how remained with the foreign company, then, the payment in question would be in the nature of a revenue expenditure, is supported by the*

judgment of the Hon'ble High Court of Delhi in the case of OT Vs. Hero Honda Motors Ltd., (2015) 372 UR 481 (Del). We, thus, in the backdrop of our aforesaid observations not finding favour with the view taken by the lower authorities wherein they had rejected the assessee's claim for deduction of the payment made for the technical know-how to M/s Vilter Manufacturing Corporation, USA as a revenue expenditure, and had dubbed the same as a capital expenditure, set- aside the.order of the CIT(A) and'direct the' A.O to allow the assessee's claim for deduction of the aforesaid amount of payment of Rs. 82,73,814/- as a revenue expenditure. The ***Grounds of appeal Nos. 2 to 2.2*** *are allowed in terms of our aforesaid observations."*

3.5 Ld. DR could not distinguish the facts or site any other legal proposition to the contradictory. This bench has also followed the aforesaid precedent while allowing the appeals of assessee for the AY 2006-07 and 2007-08, vide orders of even date. Thus, there is no reason to distinguish and grounds are allowed in favour of assessee.

4. Consequently, the appeal of assessee is allowed.

Order pronounced in open court on this 29th day of April, 2022.

Sd/-	**Sd/-**
(R.K.PANDA)	**(ANUBHAV SHARMA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Date:- 29th .04.2022
Binita, SR.P.S

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT

4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI