

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.445/DEL/2022
[Assessment Year: 2013-14]**

DCIT, Central Circle-II, New CGO Complex, Block-'B', 3 rd Floor, NH-IV, Faridabad, Haryana-121001	Vs	M/s Voestalpine VAE VKN India Private Limited, 24/5, Sri Ram Road, Civil Lines, New Delhi-110054
		PAN-AAACV3943J
Revenue		Assessee

Revenue by	Sh. Akhilesh Gupta, Sr. DR
Assessee by	Sh. Rakesh Gulati, CA

Date of Hearing	12.04.2023
Date of Pronouncement	17.04.2023

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the Revenue is directed against the order of Ld. CIT (Appeals)-3, Gurgaon, dated 10.12.2021 for the Assessment Year 2013-14.

2. The grounds of appeal read as under:-

“Whether on the facts & in the circumstances of the case, the Ld. CIT(A) was right in deleting the addition made on account of addition of Rs.2,52,64,851/- made on account of disallowance of R & D Expenses being expenses of Capital nature with enduring benefits.”

3. Brief facts of the case are that the assessee was engaged in the manufacturing of CMS Crossings, castings, being supplied to the Indian

Railways and other customers. The assessee has claimed amount of Rs.2,52,64,851/-on account of R & D expenditure in the profit and loss account. The AO confronted the assessee why the same should not be treated as capital expenditure. It was explained by the assessee before the AO that it was dependent upon technical know- how, designs, expertise etc. supplied by VVG(M/s Voestalpine VAE GmbH, Austria) and JEZ Sistemas Ferroviarios S.L. Spain. For this purpose it has entered into technology cum license agreements with M/s VVG and JEZ dated 01.07.2004 which provides right to use the technology, process, patents and other IPRs. For this purpose the assessee has paid license fee @ 1.25% of net sales. In addition to this the appellant has taken consultancy services from M/s Digvijay System and Services Pt Ltd for procurement of orders from railways and has paid marketing fees @ 1.25% of net sales. TDS has been deducted upon all such payments. The expenses were recurring in nature and were not capital expenditure. Moreover these transactions were covered under the transfer pricing which were verified by the DCIT (International Taxation, New Delhi) and no adverse inference was drawn in respect of such transactions. It was explained that there was no sale/transfer of any technology or rights in favour of assessee. Reliance was placed upon the decision of Hon'ble Bombay High Court in the case of CIT vs Wheels India Ltd (1983) 141 IT 37 (Bom). The AO was not satisfied with the above

explanation and held the above expenses as capital in nature and made disallowance of Rs.2,52,64,851/-.

4. Upon assessee's appeal, the Id. CIT(A) deleted the addition by holding as under:-

“6. The facts of the case and material on record have been gone through. The appellant has claimed R & D expenses of Rs.2,52,64,851/-.

Sr. No.	Name	Rs.	Remarks
1	M/s JEZ Sistemas Ferroviarios S.L. Spain.	75,40,000/-	Technical Fee
2.	M/s VVG (Voestalpine VAE Gmbh, Austria)	76,250/-	Technical Fee
3	M/s JEZ Sistemas Ferroviarios S.L. Spain.	28,60,301/-	Technical Services
4.	M/s Digvijay Systems and Services Pvt. Ltd.	72,50,000/-	Marketing fees

During the year the appellant has made the above payments to VVG, JEZ and M/s Digambar on account of marketing and technical services utilized by the appellant to enable it to manufacture/sale various products in India. As per the technical license agreement dated 01.07.2004 entered by the appellant, VVG and JEZ has granted the appellant rights for production in India and for this purpose they have received license fee @ 1.25% of net sales upon which TDS has been deducted. Similarly the appellant has entered into a service agreement with M/s Digvijay System and Services Pvt Ltd for marketing activities for the appellant subject to payment @ 1.25% of net sales procured subject to TDS deduction. These transactions have been examined by the TPO, 3(3)(1) New Delhi vide order u/s 92 CA (3) of the Act dated 09.09.2016 and no adverse inference has been drawn. Further similar disallowance was made in the case of the appellant for the AY 2011-12 which has been deleted by the CIT (A), New Delhi vide order dated 19.03.2018 in Appeal No. 392/2014-15 in the case of the appellant. From the facts of the case it is noted that right of ownership of the technical know-

how remains with M/s VVG and JEZ. The appellant did not become owner of the same. It did not create any intangible asset in the books of the appellant as there was no transfer of right/technical know how to the appellant. The payment for the usage of the technical know- how is regulated in terms of percentage of net sales as clearly specified in the license agreement. Similarly making payment for availing marketing rights does not amount to creating any capital asset of enduring in nature. It is not the case of the AO that such payments were excessive in quantum or TDS upon the same has not been deducted.

Thus keeping in view the facts of the case as discussed in detail and the observation of the Ld. TPO and decision of Ld. CIT (A)-9, New Delhi in the case of the appellant, It is held that the payment made by the appellant of Rs. 2,52,64,851/- was not capital in nature. The AO has also not given any basis for making such disallowance. The order passed by the AO is cryptic, mechanical and non speaking. In the circumstances the addition made by the AO is hereby deleted.”

5. Against the above order, the Revenue is in appeal before us.
6. We have heard both the parties and perused the records. The Id. Counsel for the assessee pleaded that an identical issue was decided in the assessee's own case for Assessment Year 2011-12 in ITA No.4206/Del/2018.
7. Per Contra, the Id. DR fairly conceded with this proposition.
8. Upon careful consideration, we note that the Tribunal in that case has allowed the same by observing as under:-

“9. The assessee company has claimed an expenditure of Rs.2,41,98 ,983/- on account R & D Expenditure under the head of manufacturing expenditure. We have perused the details which have been enclosed at page no. 80 of the paper book. The same was also before the revenue authorities. The assessee paid an amount ranging from Rs.200/- to Rs.27,963/-,

in total Rs.50,000/- (approx.) to Research Development and Standard Organization Lucknow (RDSO). The amounts have been paid for product drawing and regular assessment fee. The amounts have been paid from September 2010 to November 2010. An amount of Rs.75 lacs (approx.) has been paid to Digvijay System & Services Pvt. Ltd . from November 2010 to March 2011 after due deduction of TDS on account of annual fee for assistance in marketing activities which has been determined based on annual sale as per the terms o f agreement. We find that an amount of Rs.66.30 lacs has been paid to Voestalpine VAE Gmbh, Australia on account o f Annual Technology License Fee as per the agreement. The clauses of the agreement have been perused and they indicate that this fee is for non-transferable license for production in India . Similar payments were made to JEZ Sistmasferroviarios , Spain of Rs .90.85 lacs on account o f technical support for customers and examination of the simulation patterns with regard to the designs on ground .

10. In the background of the facts, we have examined the provisions o f Section 37(1) of the Income Tax Act, 1961 which reads as under:

“Any expenditure (not being an expenditure o f the nature described in section 30 to 36) and not being in the nature of capital expenditure or personal expenditure of the assessee (laid out or extended wholly and exclusively) for the purpose of the business shall be allowed in computing the income chargeable under the profit and gains o f the business.”

11. On examination of the details, we find that these expenses are incurred during the normal course of business. The expenditure such as annual technology licence fee, technical support services , assistance in canvassing orders, marketing services which are calculated and paid on the basis of annual sales made by the assessee every year in accordance with the agreement entered between the parties cannot be treated as capital expenditure. The Assessing Officer misread the head “R&D expenditure” which in fact was a manufacturing expenditure . On this issue, we are guided by the judgment of the Hon’ble Supreme Court in the case of Travancore Sugar and Chemical Ltd . Vs 62 ITR 566 wherein it was held that whenever an amount is paid based on a percentage of turnover or profit, it would have no relation to the capital value of the

assessee. The facts in the instant case reveal that the payments have made for utilization of services on annual basis taking the turnover as baseline for computation and since no augmentation of the capital asset or transfer of technology or any right thereof accrued to the assessee, we hold that the expenditure ought to be treated as revenue in nature.

9. Respectfully following the decision of the Co-ordinate Bench of the Tribunal, we uphold the order of the Id. CIT(A) and decide the issue in favour of the assessee and against the Revenue.

10. In the result, this appeal of the Revenue stands dismissed.

Order pronounced in the open court on 17th April, 2023.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Delhi; Dated: 17.04.2023.

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi