IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'A' PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.870/PUN/2018

निर्धारण वर्ष / Assessment Year : 2012-13

Lear Automotive India Private Limited, (successor in the interest of Lear Oragadam Automotive India Private Limited), E-25, 26, 27, MIDC, Bhosari, Pune 411 026 Maharashtra PAN : AAACL1978K	Vs.	ACIT, Circle-9, Pune
Appellant		Respondent

Assessee by	Shri Dhanesh Bafna & Shri Hardik Nirmal
Revenue by	Shri Keyur Patel, CIT-DR
Date of hearing	31-05-2023
Date of pronouncement	01-06-2023

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the order passed by the CIT(A)-6, Pune on 30-01-2018 in relation to the assessment year 2012-13.

2. The only issue pressed by the ld. AR is against the capitalization of Engineering Research and Development cost

incurred by the assessee during the year at Rs.3,90,45,945/-, which was claimed as revenue expenditure.

3. Tersely, the factual matrix of the case is that the assessee is a Joint Venture between Lear Corporation, Mauritius and Tachi-S Company Ltd., Japan. The assessee is engaged in the manufacture and sale of Seats for Passenger cars. During the course of assessment proceedings, the AO observed that the assessee claimed deduction of Rs.3.90 crore towards Engineering and Development costs. On being called upon to substantiate the deductibility of the outgo, the assessee furnished a copy of the Engineering and Recovery Agreement under which such payment was made. Considering the relevant clauses of the agreement, the AO came to hold that the amount paid by the assessee was capital expenditure and hence, not deductible as revenue expenditure. He treated it as an intangible asset and allowed depreciation thereon @ 25% after capitalization, which resulted into disallowance of Rs.2,92,84,489/-. The ld. CIT(A) accorded his imprimatur to the assessment order on this count, against which the assessee has come up in appeal before the Tribunal.

4. We have heard the rival submissions and perused the relevant material on record. The assessee entered into

Engineering Recovery Agreement dated 11-03-2010 with Lear Corporation, Japan Ltd. and Tachi-S Co., Ltd. which is also a Japanese entity (in short '*Lear and Tachi-S*'). Under this Agreement, Lear and Tachi-S were to perform Engineering and Development work for the Automotive Seating systems chosen by the assessee in the manufacture of seats for passenger cars. This Agreement, whose copy has been placed at page 1 onwards of the paper book, clearly provides in the 'Background' that Lear and Tachi-S would: 'perform the engineering development work for the Products under the terms of this Agreement'. Clause 2.3 of the Agreement dealing with `Engineering costs', provides that the assessee would be paying USD 8.07 per product towards Engineering Costs incurred by Lear and Tachi-S, which will be shared by Lear at USD 4.12 and Tachi-S at 3.95 USD. Such costs have been determined by considering the aggregate volume of 9,51,333 units over the life span of X02A Nissan Seat Program. Sub-clause (b) of clause 2.3 further provides that the Engineering costs shall be borne by the assessee with effect from the start of production and the assessee will intimate the figures of quarterly sales to Lear and Tachi-S for enabling them to raise invoices towards the Engineering Costs accordingly. It further

provides that: `In case there is a shortfall in the volumes, Tacle (the name of the assessee, as it then was) shall not be liable to pay any unrecovered Engineering Costs to Lear and/or Tachi-S'. Clause 3.1 of the Agreement dealing with `Technology rights' provides that "the rights and title to, and the interest in, the Technology are owned jointly by Lear and Tachi-S in the ratio of 51:49 respectively". Clause 3.2 of the Agreement dealing with `License to be granted' provides that Lear and Tachi-S: `hereby grant to Tacle (the assessee) a non-exclusive license'. Clause 3.5 of the Agreement, dealing with the eventuality of `Transfer of business', provides that "If at any time Tacle (the assessee) transfers its business, or if Lear Corporation (Mauritius) Limited or Tachi-S (and/or their respective Affiliates) cease to be a shareholder of Tacle, or in the event that this Agreement is terminated but Tacle is still supplying the Products to the Customer, the parties agree to negotiate in good faith ongoing licenses for the Technology on commercially reasonable terms". Clause 4 of the Agreement dealing with `Confidentiality' of the Proprietary Information states that: "Each party shall at all times hold confidential all information provided to such party by or on behalf of another party during the term of this Agreement". Clause 4.2 with

caption `No license to IP', which is quite relevant for our purpose, provides that: "Except as provided in this Agreement, no right or license under any intellectual property right, express or implied, is granted to any party relating to any information furnished by one party to another party under this Agreement". Clause 6 with the marginal note of `Assignment' further states that: "no party shall transfer or assign in whole or in part this Agreement or any rights or privileges or delegate any of its obligations under this Agreement without the prior written consent of the other party".

5. A careful perusal of the relevant clauses of the Engineering Recovery Agreement clearly decipher that: -

(i) the license to the assessee to use the Engineering Development work done by Lear and Tachi-S was non-exclusive;

(ii) Payment by the assessee towards Engineering and Development cost each year was directly dependent upon the volume of production in such year using the technology;

(iii) There was no obligation on the assessee to make any payment *de hors* the production in any later year in the eventuality of closing down of its business notwithstanding the fact that Lear and Tachi-S initially determined the amount

payable per unit of production on the basis of aggregate targeted volume of 9,51,333 over the life of the project.

(iv) Similarly, the assessee was not eligible for any exemption from payment after a specific period on recoupment of costs by Lear and Tachi-S. In other words, profit or loss on the engineering costs incurred by Lear and Tachi-S over the period was theirs only;

(v) Intellectual property rights of the Technology in the Engineering and Development work remained with Lear and Tachi-S and that the assessee had no right over the same either during the term of the agreement or thereafter; and

(vi) The assessee was not entitled to transfer or assign any rights or privileges granted to it under the Agreement.

6. It is manifest from the key points of the Agreement as culled out above that the assessee did not have any dominion and control over the intellectual property rights of the technology developed by Lear and Tachi-S, which was simply licensed to it on non-exclusive basis. Thus, the payment by the assessee did not result in acquiring and owning the Engineering and Development Technology so as to be characterized as an intangible asset capable of capitalization. Rather, it is a case of payment in the nature of royalty for the use of such

Technology, being an item of revenue nature. As such, the view point of the authorities below in this regard does not merit our concurrence. We, therefore, overturn the impugned order on this score and direct to delete the disallowance of Rs.2,92,84,459/- made by the AO and affirmed in the first appeal.

7. Ground Nos. 2 and 3 were not pressed by the ld. AR, which are hereby dismissed.

8. In the result, the appeal is partly allowed.

Order pronounced in the Open Court on 01st June, 2023.

Sd/-	Sd/-
(PARTHA SARATHI CHAUDHURY)	(R.S.SYAL)
JUDICIAL MEMBER	VICE PRESIDENT

पुणे Pune; दिनांक Dated : 01st June, 2023
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The Pr.CIT-5, Pune
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	31-05-2023	Sr.PS
2.	Draft placed before author	01-06-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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