Commissioner Of Income-Tax, Bombay vs Ciba Of India Ltd on 15 December, 1967

Equivalent citations: 1968 AIR 1131, 1968 SCR (2) 696, AIR 1968 SUPREME COURT 1131

Author: J.C. Shah

Bench: J.C. Shah, V. Ramaswami, Vishishtha Bhargava

PETITIONER:
COMMISSIONER OF INCOME-TAX, BOMBAY

Vs.

RESPONDENT:
CIBA OF INDIA LTD.

DATE OF JUDGMENT:
15/12/1967

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
RAMASWAMI, V.
BHARGAVA, VISHISHTHA

CITATION:
1968 AIR 1131 1968 SCR (2) 696
CITATOR INFO :
RF 1987 SC 798 (11)
R 1989 SC1913 (14)

ACT:
lncome-tax Act (11 of 1922), ss. 10(2) (xii) and (xv)-Scope of.

HEADNOTE:
A Swiss company, Ciba Ltd. 'of Basic, carried on the business of selling its products in India, through a subsidiary called Ciba (India) Ltd. After the incorporation of the assessee the activities of the Swiss Co. in India were bifurcated : the pharmaceutical section was taken over by the assessee Ciba of India Ltd. and the other lines of business were continued by Ciba (India) Ltd. An agreement

was entered into between the Swiss Co. and the assessee for providing the latter with technical assistance for running the business. The Swiss Co., which was continually carrying on research had agreed to make the, results available to the assesse, and the assessee was expressly prohibited from divulging confidential information to third parties without the consent of the Swiss Co. A licence was granted to the assessee to use the Swiss Co's patents and trade marks in India. The licence was to be for a period of 5 years liable to be terminated in certain eventualities even before the expiry of that period. It was subject to rights actually granted or which may be granted after the date of the 'agreement to others. In consideration of the right to receive scientific and technical assistance the assessee stipulated to make certain recurrent contributions dependent upon the sales and only for the period of the agreement. 'Pursuant to this agreement, the 'assessee paid diverse sums of money to the Swiss Co. and claimed them as admissible deductions either under s. 10(2) (xii) or s. 10(2) (xv) of the Indian Income-tax Act, 1922, in proceedings for assessment to tax.

The Swiss Co. had also entered into an agreement with May and Baker Ltd. of England, who were also carrying on business as pharmaceutical manufacturers in India. By that agreement the two companies mutually agreed to grant to one another a non-exclusive licence in respect of certain products in different countries including India. By cl. 5 of the agreement the two companies agreed to take all necessary steps to defend patents granted to or applied for in respect of those products against infringement, and agreed to share equally all costs incurred. In a suit instituted by May and Baker against M/s. Boots Drug Co. alleging that the latter has infringed the Indian patents of the plaintiffs. May and Baker had co incur certain costs and the Swiss Co. paid its share to May and Baker as per the terms of cl. 5 of the agreement. The assesse reimbursed that amount to the Swiss Co. and claimed it as a permissible deduction under s. 10(2) (xv) in proceedings for assessment to tax

The High Court, on reference, held in favour of the assesses that the first claim was an admissible deduction under s. 10(2) (xv) but not under s: 10(2) (xii), and held that the second claim was not a permissible deduction.

In appeals, by the Commissioner of Income-tax and the assessee,

HELD : (1) Expenditure (not being in the nature of capital expenditure) laid out or expended on scientific research relating to the business

69 7

of a person is an admissible allowance under s. 10(2) (xii) if the expenditure was laid out or expended by the assessee. In the present case, the amounts paid to the Swiss Co. were not laid out or expended by the assesses on scientific

research relating to the business of the assessee. Payment made to recoup another for expenditure for scientific research incurred by that other person, even if it may ultimately benefit the assessee is, unless it is carried on for or on behalf of the assessee, not expenditure, laid out or expended in relation to the business of the assessee. Therefore, the expenditure was not allowable under s. 10(2) (xii). [701 G-H; 702 A-B]

But, it was an admissible allowance under s. 10 (2) (xv), because, the expenditure incurred by the assessee was not an allowance of the nature described in cls. (i) to (xiv) of s. 10(2), it was laid out or expended wholly or exclusively for the purpose of the business of the assessee, and it was not of a capital nature. The assessee did not become entitled exclusively even for the period of the, agreement to the patents and trade marks of the Swiss Co.; it acquired merely the right to draw. for the purpose of carrying on its business upon the technical knowledge of the Swiss Co. for a limited period; by making that technical knowledge available the Swiss Co. did not part with any asset of its business nor did the assessee acquire and asset or advantage of an enduring nature for the benefit of its business. [702 B-C, H; 703 E-F]

Evans v Medical Supplies Ltd. v. Moriarty (H. M. Inspector of Taxes), 37 T.C. 540; Jeffrey v. Rolls Royce Co. Ltd. 40 T. C. 443 and Musker v. English Electric Co., Ltd. 41 T.C. 556, referred to.

(2) From the terms of the agreement between the Swiss Co. and the assessee, the assessee was entitled to certain Indian patents, but they did not include the Indian patents of May and Baker obtained by he Swiss Co. from May and Baker. It could not therefore be assumed that the, rights to patents standing in the name of May and Baker were available to the assessee under its agreement with the Swiss Co. The rights to the patents and trade marks did not devolve upon the assessee when it took over the pharmaceutical business from Ciba (India) Ltd., nor was there any proof that the obligation of the Swiss Co. to pay a share of the costs of the suit, incurred by May and Baker was taken over and transmitted by Ciba (India) Ltd., to the assessee. Therefore, the High Court was right in holding against the assessee regarding the second claim. [707 E-G, H; 708 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 9 to 16 of 1967.

Appeals from the judgment and order dated January, 20, 21 of 1965 of the Bombay High Court in Income-tax Reference No.67 of 1961.

B. Sen, S. K. Aiyar and R. N. Sachthey, for the appellant (inC.As. Nos. 9 to 13 of 1967) and the respondent (in C.As.

Nos. 14 to 16 of 1967).

A. K. Sen, B. A. Palkhivala and J. B. Dadachanji, for the appellant (in C.As. Nos. 14 to 16 of 1967) and the respondent (in C.As. Nos. 9 to 13 of 1967).

The Judgment of the Court was delivered by Shah, J. The Income-tax Appellate Tribunal referred two questions to the High Court of Judicature at Bombay under s. 66(l) of the Indian Income-tax Act, 1922 :

> "(1) Whether on the facts and in the circumstances of the case, the payment made by the assessee to Ciba Ltd. Basle in pursuance of the agreement dated 17-12-1947 is an admissible deduction under the provisions of s. 10(2) (xii) of-the Income-tax Act, and if not. under s. 10(2) (xv) of the Act, either in part or whole ?
>
> (2) Whether on the facts and in 'the circumstances or the case, the payment made in accordance with the terms of the agreements dated 15-11-1944 and 18-6-1948 for meeting the expenses of Suit No. 890 of 1946 is an allowable expense under s, 10(2)(xv) of the Income-tax Act ?"

In answer 'to the first question the High Court recorded that the payment made by the assessee to Ciba Ltd., Basle, in pursuance of the agreement dated December 17, 1947 is an admissible deduction under s. 10(2) (xv) of the Income-tax Act, but not under s. 10 (2) (xii) of the Act. The second question was answered in the negative. Against the answer recorded on the first question the Commissioner of Income- tax has appealed, and against the answer recorded on the second question the assessee has appealed. The assessee which was originally floated in the name of Ciba, Pharma Ltd., and is now called Ciba of India Ltd. is an Indian subsidiary of Ciba Ltd., Basle (hereinafter referred to as 'the Swiss Company') which is engaged in the development, manufacture and sale of medical and pharmaceutical preparations. The Swiss Company originally carried on business in India of selling its products through a subsidiary called Ciba (India) Ltd. After the incorporation of the assessee on December' 13, 1 947 the activities of the Swiss Company in India were bifurcated :

> the pharmaceutical section was taken over by the assessee from January 1, 1948, and the other lines of business relating to dyes and chemicals were continued by its subsidiary Ciba (India) Ltd., the name whereof, was later changed to Ciba Dyes Ltd, By a deed dated December 17, 1947 the Swiss Company agreed with the assessee in consideration of payment of a "tech- nical and research contribution for the use of its Indian patents and/or Trade Marks", to communicate the results of its research work, insofar as they relate to the products which were already manufactured or processed or sold by the assessee or which may. with the prior approval of the Swiss Company, in future be manu-

factured or processed or sold by the assessee. The preamble of 'the agreement, inter alia, recited :

"Ciba Pharma has installed its own tabletting ampoule filling and finishing work and has an organisation suited for the distribution and promotion of the said products. Ciba Pharma wishes to acquire the extensive knowledge and practical experience in the pharmaceutical field that Ciba Basle commands by reason of its long and extensive research work and scientific and practical experience. Therefore the parties have agreed that Ciba Pharma shall pay to Ciba Basle a technical and research contribution for the use of its Indian patents and/or Trade Marks referring to the said products. The technical 'and research contribution is at the same time a consideration for the scientific and technical assistance and will refund partly Ciba Basle's costs and expenses for the maintenance and development of the research work described in this Preamble."

The preamble was followed by six Articles and two Schedules, the first Schedule setting out the numbers of the Indian Patents, and the Second Schedule setting out the names and numbers of the Indian Trade-Marks. Article I provided .

" 1. Ciba Basle will communicate currently and/or at request of Ciba Pharma all the results of its research work, insofar as they relate to the said products which are already manufactured or processed or sold by Ciba Pharma or which shall hereafter with the prior approval of Ciba Basle be manufactured or processed or sold by Ciba Pharma. Whenever manufacture or processing of a preparation is taken up by Ciba Pharma with the prior approval of Ciba Basle, the pertaining patent right and Trade Marks will be licensed to Ciba Pharma according to the terms of Articles 11 and III. In this case Ciba Basle undertakes to deliver to Ciba Pharma all processes, formulae, scientific data, working rules and prescriptions pertaining to the manufacture or processing of said products, which have 'been discovered and developed in Ciba Basle's laboratories and will forward to Ciba Pharma as far as possible all scientific and biblio- graphic information, pamphlets or drafts, which might be useful to introduce licensed preparations and to promote their sale in India.....

2. Ciba Pharma agrees not at any time to divulge to third parties without Ciba Basle's consent any confidential information received under this Agreement from Ciba Basle and in particular to keep all data connected with the manufacturing processes under lock and key."

By cl. 2 of Article II, the Swiss Company granted to the assessee "full and sole right and licence" in the territory of India under the patents listed in Sch. 1, to make use, exercise and vend the inventions referred to therein, and to use the Trade-Marks set out in Sch. 11 in the territory of India. By cl. 3 the sole right of the assessee under the Swiss Company's Indian patents was limited by existing licences granted by the Swiss Company to third parties, and right was also reserved to the Swiss Company to conclude other licence agreements with third parties. By the first clause of Article III, it was provided:

"As consideration for Ciba Basle's obligations stipulated in Article 1 and 11, Ciba Pharma agrees to pay to Ciba Basle half-yearly the following percentage contributions of the total of the net selling prices of all phar- maceutical products manufactured or processed and/or sold by Ciba Pharma :

(a) Contribution towards technical consul-

tancy and technical service rendered and research work done.

5%

(b)Contribution towards cost of raw material used for experimental work.....

3%

(c) Royalties on trade marks used by Ciba Pharma.

2% Total .... 10%"

Article IV imposed certain restrictions upon the assessee. it provided :

"1. Ciba Pharma shall not assign the benefit and the obligations of this Agreement without the written consent of Ciba Basle; and

2. Ciba, Pharma shall not grant any sub- licence under the patents and/or trade marks of Ciba Basle without its previous written consent."

Article V dealt with duration and termination of the agreement.

It provided :

"1. This Agreement comes into force on January 1st, 1948, and shall continue in force for a period of 5 years. Therefore provided that if one of the parties fails to perform or observe the provisions of this Agreement the other party may cancel the same by giving to the party in default 3 months' notice by registered letter or by cable.

2. If Ciba Basle shall be compelled for any reason beyond its control to transfer or part with all or any of its shares in Ciba Pharma, it will have the right to immediately determine this Agreement.

3. Upon the termination of this Agreement for any cause Ciba Pharma shall cease to use the patents and trade marks to which this Agreement refers except as to stocks then on hand and shall return to Ciba Basle or to such persons as they may appoint for that purpose all copies of information, scientific data or material sent to it by Ciba

> Basle under this Agreement and then in its possession and shall expressly refrain from communicating any such information, scientific -data or material received by it hereunder to any person, firm or company whomsoever other than Ciba Basle."

Article VI incorporated an arbitration agreement. By a supplementary agreement dated July 15, 1949, the contribution under Article III payable by the assessee was reduced from 10% to 6% of the net selling price of the pharmaceuticals. Pursuant to this Agreement, the assessee paid year after year diverse sums of money to the Swiss Company.

In proceedings for assessment to tax for the assessment years 1949-50 to 1953-54 payments made to the Swiss Company were claimed as permissible allowance in the computation of taxable income under s. 10 (2) (xii) of the Indian Income- tax Act, 1922. The Income-tax Officer disallowed the claim (except as to 2% paid as royalty on trade marks used by the assessee). The order was confirmed in appeal by the Appellate Assistant Commissioner. The Income-tax Appellate Tribunal held that the payments made by the assessee to the Swiss Company were allowable under s. 10 (2) (xii) and in any event under s. 10 (2) (xv). The High Court disagreed with the Tribunal as to the admissibility of the expenditure under s. 10 (2) (xii) of the Indian Income-tax Act, but agreed with the Tribunal on its admissibility under s. 10(2)

(xv). Correctness of the view taken by the High Court is challenged on behalf of the Commissioner. Expenditure (not 'being in the nature of capital expenditure) laid out or expended on scientific research related to the business of a person in an admissible allowance under s. 10(2) (xii) of the Indian Income-tax Act in computation of the taxable profits and gains of the business of the assessee. One of the conditions of the admissibility of an allowance under cl. (xii) of s. 10(2) is that the expenditure must be laid out or expended on scientific research by the assessee. The amounts paid by the assessee were not laid out or expended by the assessee on scientific research related to the business of the assessee. Payment made to recoup another person for expenditure for scientific research incurred by that other person, even if it may ultimately benefit 'the assessee is. unless it is carried on for or on behalf of the assessee, not expenditure laid out or expended on scientific research related to the business of the assessee. The High Court was. therefore right in rejecting the claim for allowance 1 under s. 10(2) (xii) of the Income-tax Act.

But the outgoing was properly treated as an allowable expen- diture under s. 10(2)(xv) of the Income-tax Act. Under the terms of the agreement, 'the Swiss Company had-(1) undertaken to deliver to the assessee all processes, formulae, scientific data, working-rules and prescriptions pertaining to the manufacture or processing of products discovered and developed in the Swiss Company's laboratories and to forward to the assessee as far as possible all scientific and bibliographic information, pamphlets or drafts, which might be useful to introduce licensed preparations and to promote their sale in India : (cl. 1 of Article 1), and (2) had granted to the assessee full and sole right and hence under the patents listed in Sch. 1, to make use, exercise and vend the inventions referred to in India and had also granted a licence "to use the trade marks" in Sch. If in the territory of India, subject to any existing licence which third parties held at the date of the agreement, or which the Swiss Company granted to third parties after that date : (cl. 2 of Article If and cl. 3 of Article 11). In consideration of the right to receive scientific and technical assistance

the assessee had agreed to make the stipulated contributions, and had agreed (a) not to divulge to third parties without the consent of the Swiss Company any confidential information received under the agreement : (Article 1 cl. 2); and (b) without the written consent of the Swiss Company not to assign the benefit of the agreement or grant sub-licences of the patents and trade marks of the Swiss Company (Article IV, cis. 1 and 2) and had further agreed (c) upon the termination of the agreement for any cause to cease to use the patents and trade marks and to return to the Swiss Company all copies of information, scientific data or material sent to it and to refrain from communicating any such information, scientific data or material received by it to any person : (Article V cl. 3).

The assessee did not, under the agreement, become entitled exclusively even for the period of the agreement, to the patents and trade marks of the Swiss Company : it had-merely access to the technical knowledge and experience in the pharmaceutical field which the Swiss Company commanded. The assessee was on that account a mere licensee for a limited period of the technical knowledge of the Swiss Company with the right to use the patents and trade marks of that Company. The assessee contends that tile contribution for being permitted to have access to this technical knowledge for the purpose of running the business during the period of the agreement falls within the terms of s. 10(2)(xv) of the Income-tax Act, 1922. That clause, insofar as it is material, provides :

> "Such profits or gains shall be computed after making the following allowances, namely
>
> (xv) any expenditure not being an allowance of the nature described in any of the clauses
>
> (i) to (xiv) inclusive, and not being in the nature of capital expenditure or personal expenses of the assessee laid out or expended wholly and exclusively for the purpose of such business, profession or vocation."

The expenditure incurred by the assessee is not an allowance the nature described in cls. (i) to (xiv). Again the expenditure is laid out or expended wholly and exclusively for the purpose of the business of the assessee. Counsel for the Revenue however contends that the expenditure is of capital nature and on that account not admissible as an allowance in the computation of the taxable income. The assessee acquired under the agreement merely the right to draw, for the purpose of carrying on its business as a manufacturer and dealer of pharmaceutical products, upon the technical knowledge of the Swiss Company for a limited period : by making that technical knowledge available the Swiss Company did not part with any asset of its business nor did the assessee acquire any asset or advantage of an enduring nature for the benefit of its business. Counsel for the Commissioner strongly pressed for acceptance of what he called the principle of the speeches of Viscount Simonds and Lord Tucker and Denning in Evans Medical Supplies Ltd. v. Moriarty (H.M. Inspector of Taxes) (1). Counsel said that it was ruled in that case by the majority of the House that money received 'by a tax-payer for making available to another person a right to technical 'know-how' is liable to be treated as a capital receipt. It must in the first instance be noted that the House of Lords was dealing with the true character of a receipt by a tax-payer who had made technical 'know-how' available to another in consideration of a certain payment. The nature of a receipt as capital or (1) 37 T.C. 54).

revenue is not always determinative of the nature of the outgoing in the hands of the person who pays it. Again the view expressed by the majority of the House does not lay down any principle which may be of value in deciding this case. In Evans Medical .Supplies Ltd.'s case(1) the Burmese Government granted a contract 'to the taxpayer company engaged in the, manufacture of pharmaceutical products with a world-wide trading Organisation and which till then carried on business in Burma through an agency to set up a pharmaceutical industry in Burma. The Company undertook to disclose secret processes to the Burmese Government and to provide other information in consideration of the payment of a "capital sum of pound 1,00,000". The assessee had not entered into any other similar agreement with any other foreign Government or any other party. The Court of Appeal held that the amount of pound 1,00,000 arose to the assesse as a receipt of its trade. but a part of that sum which was attributable to the disclosure of secret processes was a capital receipt, and on that view remanded ,the case 'to the Commissioners to determine the part so attributable. The speeches of the Law Lords in dealing with the appeals of 'the Crown and the Company disclose a remarkable divergence ,of opinions. Viscount Simonds and Lord Tucker held that by the ,transaction the assessee had parted with a capital asset for a price, and that the Crown could not be permitted to make out a new ,case that a part of the amount received by the assessee was capital and the rest income. Lord Morton of Henryton agreed with the Court of Appeal. Lord Keith of Avonholm held that the amount in its enitrely was received 'by the assessee in the course of its trading activity and Lord Denning said that he could see no ,distinction between the money paid for disclosing information of secret processes and money paid for other information, and that it was a single payment for "know-how"

> in the course of the assessee's trade and was on, that account income and not capital, but since there was no finding that it was received in the course of the existing trade which was being taxed, it was not liable to be brought to tax. The view of the majority of the House reached on different and somewhat contradictor' premises is of little assistance in deciding this case. In two later cases decided by the House of Lords : Jeffrey v. Rolls Royce Ltd.(1); and Musker v. English Electric Co. Ltd.(3), it was observed that in Evans Medical Supplies Ltd.'s case(1) there was a total loss of the business of the company by the communication of secret processes to the Burmese Government and on that account the company parted with an asset against receipt of a capital sum. In the case of Rolls Royce Ltd. (2) payment received for licensing a foreign Government to manufacture aero engines with the accumulated technical knowledge of the taxpayer and for supplying the necessary infor-
>
> (1) 37 T.C. 540.
>
> (3) 41 T.C. 556.
>
> (2) 40 T.C. 443.

mation and drawings, and for advising the foreign Government as to improvements and modifications in manufacture and design, instructing the licensee's personnel in their works and for releasing members of their own staff to assist in the manufacture -of engines by -the licensee was

held to be received on revenue account of the taxpayer's trade. In English Electric Company's case(1) the taxpayer contracted with the Admiralty to design and develop a, turbine and to license its manufacture by a limited number of companies in the United Kingdom, Australia and Canada and also contracted with the Government of Australia and an American aircraft manufacturing corporation to license the manufacture of a bomber which the taxpayer had designed and developed, and received fixed lumpsum payments as a consideration for imparting " manufacturing technique" to the licensee'. The receipts were held to be income.

In the case in hand it cannot be said that the Swiss Company had wholly parted with its Indian business. There was also no, attempt to part with the technical knowledge absolutely in favour of the assessee.

The following facts which emerge from the agreement clearly show that the secret processes were not sold by the Swiss Company to the assessee : (a) the licence was for a period of five years, liable to be terminated in certain eventualities even before the expiry of the period; b) the object of the agreement was to obtain the benefit of the technical assistance for running- the business; (c) the licence was granted to the assessee subject, to rights ac- tually granted or which may be granted after the date of the agreement to other persons; (d) the assessee was expressly prohibited' from divulging confidential information to third parties without the con-sent of the Swiss Company, (e) there was no transfer of the fruits of research once for all : the Swiss Company which was continuously carrying on research and had agreed to make it available to the assessee; and (f) the stipulated payment was recurrent dependent upon the sales, and only for the period of the. agreement. We agree with the High Court that the first question was rightly answered in favour of the assessee.

The second question relates to the admissibility of a share in, the costs incurred in a Civil Suit in the High Court of Calcutta as an allowable expenditure under s. 10(2)(xv) of the Income-tax Act. The relevant facts are these : In accordance with the terms of the agreement dated June 18, 1948, the assessee took, over the pharmaceutical section of Ciba (India) Ltd. The pharmaceutical stock-in-trade together with all the pending contracts and orders were transferred to the assessee by Ciba (India) Ltd' which then had changed its name to Ciba Dyes Ltd. Under an (1) 4 T.C. 556.

agreement between the Swiss Company with Messrs. May and Baker Ltd., England-hereinafter called 'May and Baker'-who were also carrying on business as pharmaceutical manufacturers in India, the two contracting companies mutually agreed to grant to one another a non-exclusive licence in respect of "sulphathiazol products" in different countries including India. May and Baker had prior to the date of the agreement obtained patents in India bearing Nos. 26513 and 36850, and the Swiss Company obtained the benefit of 'those patents under the agreement. By cl. 5 of the agreement the two companies agreed to take all necessary steps to defend patents -ranted to or applied for by it in respect of "sulphathiazol products" against infringement, and agreed to share equally all costs incurred and all damages or other sums received in respect thereof. Under cl. 8 of the agreement each party had to take all steps within its power to secure the observance of the terms of the agreement by its subsidiary or associated companies' licensees and agents. 'Sulphathiazole' was sold in India by the .Swiss Company and by May and Baker under the trade names of "Cibasol"

and "Thiazamide" respectively. In a suit instituted by 'May and Baker in the Calcutta High Court against Messrs. Boots .Drug Co. alleging that the latter had infringed the Indian patents of the plaintiff, it was found necessary during the progress of the suit 'to amend the specifications of the patents. The High Court ,of Calcutta made it a condition in granting the application for amendment that May and Baker shall not institute any action for ,any act of infringement of the patent committed prior to the date of the amendment, and that they shall pay to Boots Pure Drug Co. costs of and incidental to the application for amendment of the specifications. May and Baker complied with the order of payment of costs and the Swiss Company _paid its share of costs to May and Baker under the terms of cl. 5 of the agreement. The assessee reimbursed that amount to the Swiss Company and claimed it as a permissible deduction in proceedings for assessment to tax. The Income-tax Officer disallowed the claim. In appeal, the Appellate Tribunal held that in the payment made by 'the assessee there was no capital element and the assessee incurred the expenditure in the course of its business and for the purpose of ensuring that the patents with which it was connected were not infringed. The High Court held that the assessee company was not responsible for the payment because the liability of the Swiss Company had not at any time devolved upon Ciba (India) Ltd. prior to the transfer of the business in the pharmaceutical section to the assessee, and ,since the assessee had undertaken the liability to satisfy, discharge and pay all debts and liabilities of Ciba (India) Ltd. and of no ,other person, the assessee was not entitled to claim the amount paid to the Swiss Company as an allowable deduction. The High Court also observed that since the agreement between Ciba (India) 'Ltd. and the assessee contained no clause for sharing any expen-

diture between the assessee and the Swiss Company as was to be found in the agreement dated November 15, 1944 between May and Baker and the Swiss Company, the amount paid by the assessee was not a permissible allowance, and even assuming that the agreement to assist implied a stipulation to share the cost, the agreement was only prospective, and did not attract liability in respect of any infringement before the date of the agreement.

Counsel for the assessee contended in the first instance that under the terms of the agreement between the Swiss Company and May and Baker each Company became a licensee for the patents of the other, and under the agreement with Ciba (India) Ltd. the assessee was entitled to the rights to the patents of May and Baker and on that account the costs incurred for defending the rights of the Swiss Company as a licensee from May and Baker ensured for the benefit of the assessee and the assessee in paying the amount 'to the Swiss Company was acting for protecting its trading interest. In the alternative, it was contended that the obligations of the Swiss Company arising in respect of the patents, relating to sulphathiazole were debts which. Ciba (India) Ltd. was liable to discharge, and from Ciba (India) Ltd. under the terms of the agreement dated June 18, 1948, that liability devolved upon the assessee.

In our view, the contentions cannot be accepted. From the terms of the agreement between the Swiss Company and the assessee it is clear that the assessee was entitled to certain Indian patents 'but that did not include any patent either in respect of "sulphathiazole" or "thiazamide" ob- tained 'by the Swiss Company from May and Baker. The two patents Nos. 27,825 and 29,117 obtained by the Swiss Company and the Indian Trade Mark No. 1621 in respect of "Cibazol" are specifically referred to in the, Schedules to the agreement dated December 1, 1949. The right to the patents of

May and Baker for the manufacture of "sulphalthiazole" and the trade mark in respect of thiazamide did not however devolve upon the assessee. It cannot therefore be assumed that the rights to the patents standing in the name of May and Baker were available to the assessee Jr under its agreement with the Swiss Company. No argument was apparently advanced either before the Tribunal or before the departmental authorities that the assessee was entitled to these patent rights, and no investigation was permissible on that question in the High Court.

Suit No. 890 of 1946 was filed before the assessee was registered. By paying to the Swiss Company the share of costs in that Suit No. 890 of 1946, the assessee was not seeking to protect its trading interest.

We also agree with the High Court that it is not proved that the obligation of the Swiss Company to pay a share of the costs ill Suit No. 890 of 1946 incurred by May and Baker was transmitted from Ciba (India) Ltd. to the assessee. We are unable to agree with the contention of counsel for the assessee that the Tribunal had found that liability of the Swiss Company in regard to the payment of share of costs of May and Baker devolved upon the assessee. The Tribunal has riot expressly so found and there is no evidence in support of that view. In our view the High Court was right in answering the second question against the assessee. Both the sets of appeals fail and are dismissed with costs. One hearing fee in each set.

V.P.S. Appeals dismissed.

L2Sup.CI/68-28-11-68-2,500-Sec. VI-GIPF.