Commissioner Of Income Tax vs I. A. E. C. (Pumps) Ltd. on 3 April, 1997

Equivalent citations: (1998)150CTR(SC)126

JUDGMENT

By the Court These appeals are by the revenue against the judgment of the Madras High Court rendered in Tax Cases Nos. 59 of 1972 and 333 and 234 of 1974, dated 14-3-1977 [see CIT v. I.A.E.C. (Pumps) Ltd. (1977) 110 ITR 353 (Mad)].

2. Broadly three questions were referred to the High Court. In all of them, the question involved is "whether the amount paid by the respondent-assessee to the foreign collaborator for technical know-how is a capital expenditure or a revenue expenditure". The High Court referred to the decision of this court in CIT v. Ciba of India Ltd. (1968) 69 ITR 692 (SC) and also the agreement in question. It held that ultimately, the question is to be decided on the basis of the relevant agreement. According to the High Court, the only general principle that can be derived from the decisions, is whether under the terms of the agreement, the assessee acquired a "benefit of an enduring nature" which will constitute "acquisition of an asset" and so the amount paid for the same is a "capital expenditure" or whether the assessee had only acquired technical knowledge for the manufacture of any particular item for a specific duration, and he acquired only a "licence to use the other party's patent and knowledge" and the amount paid would only be a "revenue expenditure". Having taken a proper view of the principles to be applied, the High Court arrived at the following conclusions (page 357):

> "Having regard to the said clauses, we are clearly of the opinion that the Tribunal was right in its conclusion that the whole of the amount paid by the assessee constitutes revenue expenditure and has to be allowed as a deduction. From the terms of the agreement referred to above, the following facts are clear :
>
> (1) The agreement itself provides that what was granted by Aturia to the assessee is merely a licence to use its patents and designs exclusively in India ; (2) The agreement is for a duration of 10 years with the parties having the opinion to extent the agreement or renew the same subject to the approval of the Government of India; (3) During the currency of the agreement, Aturia had undertaken not to surrender its patents without the consent of the assessee and to make available to the assessee any improvements, modifications and additions to designs; (4) Aturia has also undertaken to enable the assessee to defend any counterfeit by others and also had undertaken to share the expenses with reference thereto; (5) The assessee shall not disclose to third parties any of the documents made available by Aturia to the assessee without having received a written authorisation from Aturia. We are of the opinion that the above features clearly establish that what was obtained by the assessee is only a licence and what was paid by the assessee to Aturia is only a licence

fee and not the price for acquisition of any capital asset".

We heard counsel. We are of the view that the High Court posed the correct question that arose for consideration and also applied the proper principles of law to the instant case. By applying the proper principles of law to the agreement in question, the High Court concluded that the amounts paid to the collaborator is only a "licence fee" and not the price for acquisition of a "capital asset". It was concluded that the entire payment constitutes revenue expenditure and the questions were answered in favour of the assessee.

We are of the opinion that the reasoning and conclusion of the High Court are unassailable. The High Court rightly held that the expenditure incurred in the present cases by the assessee is only a revenue expenditure. These appeals fail and are dismissed with no order as to costs.