IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C' : NEW DELHI

BEFORE SHRI G.D.AGRAWAL, VICE PRESIDENT AND
SHRI A.D.JAIN, JUDICIAL MEMBER

ITA No.118/Del/2012
Assessment Year : 2008-09

Assistant Commissioner of Income Tax, Circle-12(1), New Delhi. (Appellant)	Vs.	M/s Henkel Teroson India Ltd., 1, Sri Aurobindo Marg, New Delhi – 110 016. PAN : AAACH5216Q. (Respondent)

Appellant by : Shri V.K.Saksena, CIT-DR.
Respondent by : Shri Anil Chadha, CA.

ORDER

PER G.D.AGRAWAL, VP :

This appeal by the Revenue is filed against the order of learned CIT(A)-XV, New Delhi dated 24th October, 2010 for the AY 2008-09.

2. The only ground raised by the Revenue in this appeal reads as under:-

"Whether ld.CIT(A) was correct on facts and circumstances of the case and in law in deleting the disallowance of Rs.70,09,183/- on account of royalty."

3. At the time of hearing before us, it was pointed out by the learned counsel for the assessee that the issue involved in the present appeal is settled in favour of the assessee by the order of the ITAT passed in ITA No.4844/Del/2009 dated 28th September, 2010 in

assessee's own case for AY 2004-05. He has also placed on record a copy of the said order of the Tribunal.

4. The learned DR supported the order of the Assessing Officer.

5. We have heard the contentions of both the sides and perused the material placed before us. We are in agreement with the submission of the learned counsel for the assessee that the issue relating to disallowance of royalty amount is covered in favour of the assessee by the order of the Coordinate Bench of the Tribunal dated 28th September, 2010 (supra) rendered in assessee's own case. In the said order of the Tribunal, Delhi 'C' Bench has followed the decision of Hon'ble Jurisdictional High Court dated 3rd September, 2009 in ITA No.837 of 2009 in the case of CIT Vs. Sarda Motor Industrial Ltd. We reproduce the relevant extract of the aforesaid Tribunal order as follows:-

> *"7.2 From the above, it is very clear that assessee has not obtained any benefit of enduring nature. The royalty is payable on the basis of volume of sales year to year. In the event of termination of agreement has to discontinue uses of material provided return everything in this respect. Hence it cannot be said that any benefit of enduring nature accrued to the assessee. Furthering examining the present case on the touchstone of Jurisdictional High Court cited above, we find that the same is squarely applicable to the facts of the case. The ld. Departmental Representative did not fully dispute this finding, he only contended that the agreement also provided training to the assessee's employees, which cannot be returned in any case. We do not find any cogency in this aspect of this agreement as training expense of employee cannot be treated as capital*

expenditure. The case law relied upon by the revenue are not applicable to the facts of the present case. Hence, respectfully following the precedent from the decision of the Hon'ble Jurisdictional High Court cited above, we set aside the order of the authorities below on this issue and decide the issue in favour of the assessee."

6. In view of the above position, we uphold the impugned order of learned CIT(A) and dismiss this appeal filed by the Revenue.

7. In the result, the appeal of the Revenue is dismissed.

Decision pronounced in the open Court on conclusion of hearing on 21st March, 2012.

Sd/-	Sd/-
(A.D.JAIN)	**(G.D.AGRAWAL)**
JUDICIAL MEMBER	**VICE PRESIDENT**

Dated : 21.03.2012
VK.

Copy forwarded to: -

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

Assistant Registrar