

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "F" : DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHARY, JUDICIAL MEMBER

ITA.No.5297/Del./2019
Assessment Year 2016-2017

The ACIT, Circle-2, Faridabad.	vs.	M/s. Voith Paper Fabrics India Ltd., 113-114A, Sector-24, Faridabad. Haryana - 121 001 PAN AABCP0041Q
(Appellant)		(Respondent)

For Assessee :	Sh S.K. Agarwal, Advocate
For Revenue :	Shri Toufel Tahir, Sr. D.R.

Date of Hearing :	13.06.2022
Date of Pronouncement :	30.06.2022

ORDER

PER ANIL CHATURVEDI, A.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A), Faridabad, dated 31.03.2019 relating to the A.Y. 2016-2017.

2. The relevant facts as culled out from the material on record are as under :

2.1. The assessee is a Company stated to be engaged in the business of manufacturing of industrial felts which are used for paper making, manufacturing and selling of paper machine clothing for pulp, paper and board industry. The assessee filed its return of income for the A.Y. 2016-17 on 30.11.2016 declaring total income of Rs.21,94,03,760/-. The case was selected for scrutiny and thereafter, assessment was framed under section 143(3) of the I.T. Act, 1961 vide order dated 24.12.2018 and the total income of the assessee was determined at Rs.25,54,52,295/-. Aggrieved by the order of the A.O, assessee carried the matter in appeal before the Ld. CIT(A) who vide order dated 31.03.2019 in Appeal No.10666/2018-19 allowed the appeal of the assessee.

3. Aggrieved by the order of the Ld. CIT(A), the Revenue is now in appeal before the Tribunal by raising the following grounds :

- 1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right in law in deleting the*

additions of Rs.3,60,48,535/- despite the fact that the expenditure incurred on technical know how paid to parent company M/s Voith Paper Fabrics GmbH & Co. KG for acquiring an intangible asset in the form of technical knowhow and thus capital in nature?

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right on facts and in law in deleting the additions of Rs.3,60,48,535/- despite the fact that as per clause 2.6 of Technical knowhow agreement dated 21.05.2010 ‘the ownership of the technology so developed by assessee with the assistance of Voith shall always vest with assessee’ and thus it is not an interim or adhoc arrangement, rather is acquired permanently?”

4. Before us, at the outset, the Ld. D.R. submitted that that though the Revenue has raised various grounds, but, the sole grievance of the Revenue is with respect to deletion of addition of Rs.3,60,48,535/-.

5. During the course of assessment proceedings, A.O. noticed that assessee had debited Rs.3,60,48,535/- on account of "Technical know-How Fees Royalty". According to A.O. the expenses appeared to be of capital in nature. The assessee was, therefore, show caused and asked to explain as to why the expenses should not be considered as capital expenditure. The assessee made detailed submissions which were not found acceptable to A.O. A.O. noted that assessee had entered into a "Technical Know-How Agreement" with M/s. Voith Paper Fabrics GmbH & Co. KG, a company incorporated under the laws of Germany, whereby it provided know-how and technical assistance to the assessee for the manufacture of paper maker felts, paper and other industrial fabrics. As per the agreement assessee was required to pay to Voith Paper Fabrics GmbH for technical assistance and know-how, royalty @ 5% of the net export sale price. A.O. noted that the expenses incurred in the form of royalty was termed as "Technical Know-How Fees" in the P & L A/c and was claimed as deductible expenditure. A.O. was of the view that the expenditure in question was in

relation to carrying on of the business of the assessee for running the business more profitably and the rights obtained by the assessee was absolute rights to use the know-how. He was of the view that assessee had derived benefits of enduring nature as well as increase in functional capacity of the manpower which ultimately increases the production of the company. He was further of the view that acquisition of know-how under a license was capital expenditure and it would fall within the ambit of amended section 32 of the I.T. Act, 1961. He further noted that identical expenditure was disallowed by the A.O. in A.Y. 2010-11 to 2014-15. He, therefore, held the expenditure incurred by the assessee on technical know-how fees be not a revenue expenditure. He, therefore, made a net disallowance of Rs.3,60,48,535/- after allowing the claim of depreciation.

6. Aggrieved by the order of A.O., assessee carried the matter before CIT(A).

7. The Ld. CIT(A) decided the issue in favour of the assessee by noting that similar disallowances made by the A.O. for the A.Ys. 2009-10 to 2014-15 were deleted by his predecessor. He further noted that the order of Ld. CIT(A) for A.Y. 2009-10 to 2010-11 was confirmed by ITAT vide order dated 28.05.2018 and 07.06.2018 in ITA.Nos.6603, 6923/2014 and ITA.Nos.1196 & 1197/Del./ 2015. He, therefore, following the order of the Tribunal held that A.O. was not justified in making disallowance of Rs.3,60,48,535/-.

8. Aggrieved by the order of the Ld. CIT(A), the Revenue now is in appeal before us.

9. Before us, the Ld. D.R. strongly supported the order of the A.O.

10. The Learned Authorized Representative, on the other hand, supported the order of the Ld. CIT(A) and further submitted that the issue has already been decided by CIT(A) in its favour and apart from the decisions of the Tribunal in assessee's own case, on identical facts, the issue

has also been decided in favour of the assessee by Hon'ble Punjab & Haryana High Court in the case of CIT vs., Super Steels reported in [1989] 178 ITR 637 [P & H]. He, therefore, supported the order of the Ld. CIT(A).

11. We have heard the rival submissions and perused the material available on record. The issue in the present case is with respect to deletion of addition of Rs.3,60,48,535/-. We find that A.O. had disallowed the expenditure considering it to be a capital expenditure and following the decision of his predecessor for earlier assessment years. When the matter was carried before the Ld. CIT(A), Ld. CIT(A) noted that in A.Ys. 2009-10 to 2014-15 the addition made by the A.O. has been deleted by his predecessor. He also noted that for those years the order of Ld. CIT(A) has been upheld by the Tribunal. Before us, no fallacy in the findings of the Ld. CIT(A) has been pointed-out by Revenue nor has Revenue placed on record any material to demonstrate that the order of Tribunal in assessee's own case for earlier years has been set aside, overruled or modified by higher judicial forum. We, therefore, find no

reason to interfere with the order of the Ld. CIT(A) **and thus dismiss the grounds of the Revenue.**

12. **In the result, appeal of the Revenue is dismissed.**

Order pronounced in the open court on 30.06.2022.

SD/-

Sd/-

[N.K. CHOUDHARY]
JUDICIAL MEMBER

[ANIL CHATURVEDI]
ACCOUNTANT MEMBER

Delhi, Dated 30th June, 2022

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	Ld. CIT(A) concerned
4.	CIT concerned
5.	DR ITAT "F" Bench, Delhi
6.	Guard File

//By Order//

Assistant Registrar, ITAT, Delhi Benches,
Delhi.

Date of dictation on	13.06.2022
Date on which the typed draft order is placed before the dictation Member	13.06.2022
Date on which the approval draft comes to the Sr. PS	13.06.2022
Date on which the fair order is placed before the Dictation member for pronouncement	29.06.2022
Date on which the fair order comes back to the Sr. P.S.	30.06.2022
Date on which the final order is uploaded on the website of ITAT	30.06.2022
Date on which the file goes to the Bench Clerk	30.06.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order.	