

THE HONB'E SRI JUSTICE G. CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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I.T.A.No.156 OF 2004

JUDGMENT: (per GC,J)

This appeal is filed by the Revenue under Section 260-A of the Income Tax Act, 1961 (for short, the "the Act"), questioning the order dated 21.02.2003, passed by the Income Tax Appellate Tribunal, Hyderabad Bench 'B', Hyderabad, in I.T.A.No.301/Hyd/2001, for the assessment year 1997-98, raising the following substantial question of law for consideration of this Court:

"Whether on the facts and in circumstances of the case the Tribunal was correct in law in quashing the order passed by the Commissioner of Income Tax under Section 263 of the Income Tax Act, 1961?"

The brief facts of the case are that the respondent/assessee is a company engaged in the business of development and sale of hybrid seeds and during the assessment year 1997-98, the assessee paid royalty to M/s. Zeneca Limited, U.K and the claim for deduction of royalty was allowed during that assessment year. The Commissioner of Income Tax revised the order in terms of Section 263 of the Act holding that 1/4th of the royalty paid was capital in nature in as much as the expenditure relating to transfer of technical information and for providing personnel and services was in the capital field. Questioning the same, the assessee filed an appeal before the Income Tax Appellate Tribunal, Hyderabad Bench 'B', Hyderabad in I.T.A.No.109/Hyd/1999 and the Tribunal after having dealt with the matter elaborately, set side the order of the Commissioner (Appeals). Aggrieved thereby, the present appeal is filed by the department.

Heard Sri J.V. Prasad, learned standing counsel for the appellant/ department and Sri Parsi Pardivala, learned senior counsel for the respondent/assessee.

In the related appeal I.T.T.A.No.153 of 2004 filed by the appellant/revenue for the assessment year 1995-96, we had allowed the appeal approving the view taken by the C.I.T (Appeals) apportioning 1/4th of the expenditure on capital account and 2/3rd on revenue account. The apportionment of the consideration paid by the assessee to the foreign company was only with respect to the lump sum payment which has been made. So far as the royalty that is payable on the basis of the production and sale of the products, is concerned, we had answered the question in favour of the respondent/assessee and against the appellant/revenue. For the same reasons, the claim of the assessee for the assessment year 1997-98, relating to the payment of royalty is required to be allowed as revenue expenditure and in that view of the matter, the impugned order of the Tribunal allowing the appeal filed by the assessee in I.T.A.No.301/Hyd/2001 cannot be found fault. In those circumstances, the question of law raised in the present appeal deserves to be answered in favour of the respondent/assessee and against the appellant/revenue.

Accordingly, the I.T.T.A is dismissed. No order as to costs.

Miscellaneous petitions, if any pending in this appeal, shall stand closed.

G. CHANDRAIAH,J

CHALLA KODANDA RAM, J

Date:09.10.2015.

Gk.

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