IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 27.03.2015
ITA No. 436 of 2014 (O&M)

The Commissioner of Income Tax, Faridabad

----Appellant

Versus

M/s Heidelberg Cement India Ltd.

-----Respondent

Coram: Hon'ble Mr. Justice S.J. Vazifdar, Acting Chief Justice
Hon'ble Mr. Justice Harinder Singh Sidhu

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. Tajender K. Joshi, Advocate
for the appellant.

****

S.J. VAZIFADAR, A.C.J. (Oral)

CM-28984-CII-2014

For the reasons recorded in the application, the delay of 120 days in re-filing the appeal, is condoned.

Civil Misc. Application is allowed.

ITA No. 436 of 2014

This is an appeal against the order dated 28.02.2014 passed by the Income Tax Appellate Tribunal, Mumbai (for short 'the Tribunal') allowing the respondent's appeal against the order passed by the Commissioner of Income Tax (Appeals) confirming the disallowance of ₹80.88 lacs paid as non-compete fee to an Executive Director and treating the same as capital expenditure. The matter pertained to the assessment year 2008-09.

2. The non-compete fee was paid to the respondent-Executive Director in terms of Article 5 of an agreement between them. The non-compete clause was

operative only for a period of one year. The question whether such payment must be on capital or on revenue account is not a question of law alone. It is a question of fact and in any event, a mixed question of law and of fact.

3. In the present case, there is nothing to suggest that the payment in consideration of the non-compete clause, which was to operate only for a period of one year, resulted in the respondent acquiring an asset of an enduring nature. No reasons have been given to suggest that the payment would be a capital expenditure.

4. The reliance upon Article 8 of the agreement is not well founded. Article 8 was a confidentiality clause. In any event, the former Executive Director was bound to maintain confidentiality of any information acquired by him in the course of his employment, which is not in public domain. Nor is the reliance upon Article 9 of any relevance. It merely provided that all intellectual property in any work or material developed, discovered, invented, designed and/or authored by the Executive Director, during the course of his employment, with the company, shall belong to and are the absolute property of the company. The same having been created by the Executive Director as an employee of the company was under a contract of service and not under a contract for services. The intellectual property thus belonged to the company in any event.

5. Thus, it is difficult to see how such provisions can be clubbed with the clause containing the non-compete agreement can bring about expenditure on capital account.

The appeal is dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

27.03.2015

Atul