

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM
I.T.T.A.No.3 of 2005

Date: 09.11.2017

Between:

The Commissioner of Income Tax,
Hyderabad – I.

...

Appellant

And

M/s.Advanta India Ltd.,
Secunderabad.

...

Respondent

Counsel for the Petitioner : Smt.M.Kiranmayee for
Mr. J.V.Prasad,
Senior Standing Counsel for
the Income Tax Department

Counsel for the Respondent: Sri Dinesh Babercidi for
Lakshmi Kumaran & P.Sridharan

The Court made the following:

Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Appeal is filed by the Revenue under Section 260-A of the Income Tax Act, 1961 (for short 'the Act'), questioning order, dated 21.02.2003, passed by the Income Tax Appellate Tribunal, Hyderabad Bench 'B', Hyderabad, in I.T.A.No.300/Hyd/2001, for the assessment year 1996-97, raising the following substantial question of law for consideration of this Court:

“Whether on the facts and in the 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?”

2. The brief facts of the case are that the respondent/assessee is a company engaged in the business of development of sale of hybrid seeds and during the assessment year 1996-97, 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 (Appeals) revised the order in terms of Section 263 of the Act, holding that 1/4th of the royalty paid was capital in nature inasmuch 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.300/Hyd/2001 and the Tribunal, after having dealt with the matter elaborately, set aside the order of the

Commissioner. Aggrieved thereby, the present appeal is filed by the department.

3. Heard the learned counsel for both sides and perused the record.

4. The related appeal I.T.T.A.No.153 of 2004 filed by the appellant/revenue for the assessment year 1995-96, was allowed by a Division Bench of this Court of which, one of us (CKR, J) is a Member, by its judgment dated 09.10.2015, approving the view taken by the Commissioner, 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, the Division Bench had answered the question in favour of the respondent/assessee and against the appellant/revenue. We are informed at the hearing that the Special Leave petition filed by the assessee against the said order was dismissed.

5. For the same reasons, the claim of the assessee for the assessment year 1996-97, 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.300/Hyd/2001, cannot be found fault

with. Accordingly, the question of law raised in the present appeal deserves to be answered in favour of the respondent/assessee and against the appellant/revenue.

6. In the result, the I.T.T.A is dismissed.

(C.V.Nagarjuna Reddy, J)

(Challa Kodanda Ram, J)

Date: 9th November, 2017

msb

