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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 480/2017

THE COMMISSIONER OF INCOME TAX-LTU ..... Appellant

Through: Mr.Ruchir Bhatia, Sr.Standing Counsel.

versus

HONDA CARS INDIA LTD. ..... Respondent

Through: Mr.Deepak Chopra, Mr.Amit Shrivastava and Mr. Ankul Goyal, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% 09.05.2018

The Revenue's grievance is that ITAT without an appropriate analysis of the agreement in question concluded that the payment of royalty and lump sum fee (which the assessee says is running royalty and model fee) falls into capital stream.

The assessee after accepting notice relied upon a previous judgment of the Supreme Court for Assessment Year (A.Y.) 1999-2000, 2001-2002, 2003-2004 and 2005-2006 (reported as *Honda Siel Cars India Limited Vs. Commissioner of Income Tax, Ghaziabad (2017)* 395 ITR 713). It is submitted that although in respect of the past agreement, the amount paid (towards royalty and technical fee) in that case amounted to capital or revenue expenditure, the Court rejected the assessee's contention that the expenditure was revenue and at the same time in the later part of its judgment, upheld the reasoning of this Court for some other part of the payments made.

The assessee furthermore contends that for A.Y. 2010-2011 similar payments were held to be revenue in nature.

The discussion of the lower appellate authority i.e. the CIT(A) and the ITAT would disclose that they went by the previous assessment year's decisions for A.Y. 2003-2004. The assessee entered into a new agreement in 2005. In these given circumstances, the omission by the lower appellate authorities is erroneous. The issue is therefore remitted for reconsideration by the ITAT which shall proceed to decide the question whether the payments made towards model fee/running royalty – characterised – lump sum payment, by the ITAT in the impugned order fall in the revenue or capital stream.

The appeal is partly allowed in the above terms.

Parties shall appear before the ITAT on 21st May, 2018.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MAY 09, 2018
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