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

+ ITA 861/2019, CM APPL. 43005/2019, CM APPL. 43006/2019

PRINCIPAL COMMISSIONER OF INCOME TAX, DELHI-2,

..... Appellant

Through: Ms. Vibhooti Malhotra, Sr. Standing
counsel with Mr. Siddharth Manocha,
Adv.

versus

M/S CONTINENTAL INDIA (P) LTD.

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **26.09.2019**

CM APPL. 43005/2019 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL. 43006/2019 and ITA 861/2019

3. The revenue has preferred the present appeal to partially assail the order dated 19.03.2019 insofar it has held that the respondent/assessee satisfied the test that the transfer of technical know-how by Continental AG to the assessee's company was non-exclusive and non-transferable license for the use of latter's technology for manufacturing of tyres in India. It was only a production license and was for limited purpose of manufacturing the tyres.
4. The tribunal has relied upon the decisions in CIT v. Sharda Motors Industries Ltd. 319 ITR 109 and CIT v. Hero Honda Motors Ltd 372 ITR

481 both decided by this Court. The Tribunal has also placed reliance upon the circular No. 21/1969 issued by the CBDT which clarifies that when a license is obtained for user of technical knowledge from a foreign participants for a limited period together, with or without the right to use the patents and trademarks of the foreign party, the payment would not bring into existence an asset of enduring the advantage to the Indian party. The relevant discussions on impugned order read as follows:

“21. Following the ratio of the judgment CIT vs. Sharda Motor Industries Ltd., CIT vs. Hero Honda Motors Ltd. (supra), we are of the considered view that assessee company satisfied the test that transfer of technical know how I royalty by the continental AG to the assessee company was "non-exclusive and non-transferable" licence for the use of technology for manufacturing of tyres in India, which was only a production licence and for limited purpose for use for manufacturing of tyers. Even the termination clause 11.8 is very categoric that immediately upon termination of the agreement the assessee shall delivered to the continental AG statement of product sold or disposed of to the effective date of termination which have not already been accounted for and shall pay to the continental amount of royalties due in respect thereof, assessee shall immediately return to continental all documents, original data and technology related to technology and information for manufacturing and design of products placed at its disposal by the continental AG under this agreement.

22. We are of the considered view that the expenditure incurred by the assessee in accordance with TEA agreement pe1taining to the technical "know-how" is quantified on the basis of sale I production effected by using such technical know-how is of revenue nature and as such allowable as business deduction. Ld. CIT(A) has also relied upon Circular no. 21 of 1969 issued by CBDT I clarified that

*when a licence is obtained for user of technical knowledge from a foreign participant for a limited period together with or without the right to use the patents and trademarks of the foreign party, the payment would not bring into existence an asset of enduring advantage to the Indian party. So in view of the matter decision relied upon by Ld. DR viz. **Honda Siel Car India Ltd. v. ACIT, Semoco Electrical Pvt. Ltd.** are not applicable to the facts and circumstances of the case. Consequently, we find no illegality or perversity in the findings in the findings returned by Ld. CIT(A). Hence, ground no. 2 is determined against the revenue.”*

5. In view of the aforesaid, we are of the opinion that no question of law arises for consideration in the present petition. Accordingly, present petition stands dismissed.

VIPIN SANGHI, J

SANJEEV NARULA, J

SEPTEMBER 26, 2019

Pallavi