

**IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE**

PRESENT:

THE HON'BLE JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

**ITAT/170/2021
IA NO:GA/1/2021**

**PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VS.
M/S. DUNLOP INDIA LTD.**

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**ITAT/170/2021
IA NO:GA/2/2021**

**PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VS.
M/S. DUNLOP INDIA LTD.**

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For the appellant: Mr. P. B. Bhowmik, Adv.

For the respondent: None appears.

Heard on : January 25, 2022.

Judgement on : January 25, 2022.

RE: IA NO:GA/1/2021

T.S. SIVAGNANAM, J. : We have heard Mr. Bhowmik, learned senior standing counsel for the appellant/revenue. There is a delay of 720 days in filing this appeal. Though in the affidavit filed in support of the condone delay petition the dates and events have been given. They are all administrative delay and the revenue cannot take any special privilege for not filing the appeal within the period of

limitation. However, considering the fact that the respondent/assessee has already gone into liquidation and the company was not represented before the Tribunal and considering the nature of the issue, with consent of the learned senior standing counsel for the appellant we are inclined to take up the main appeal itself. Therefore, we exercise discretion and condone the delay. Accordingly, the delay in filing this appeal is condoned.

The application, IA NO.GA/1/2021 stands disposed of accordingly.

RE: ITAT/170/2021

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961, (the Act, in brevity) is directed against the order dated 31.7.2019 passed by the Income Tax Appellate Tribunal, “C” Bench, Kolkata (Tribunal) in ITA Nos.621 & 897 (Cal) of 1996 for the assessment year 1992-93. The revenue has raised the following substantial questions of law for our consideration.

- a. Whether on the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal, has erred in facts as well as in law in allowing Capital Payment towards purchase of knowhow wrongly claimed as Royalty Revenue Expenditure ?
- b. Whether in the facts and in law method of payment is not conclusive to determine the nature of payment as Capital or Revenue Expenditure ?

We have heard Mr. Bhowmik, learned senior standing counsel for the appellant. The issue pertains to the disallowance of a certain

sum of money out of the technical purchase account. The assessing officer while completing the assessment for the assessment year under consideration (AY 1992-93) disallowed the same on the basis of an order giving effect to the appellant's order passed by the Commissioner of Income Tax (Appeals) dated 16.2.1995 for the assessment year 1987-88. The assessee was on appeal before the Commissioner of Income Tax (Appeals)-V, Calcutta (CIT(A)). The assessee produced a comparative chart and demonstrated before the CIT (A) that the same nature of expenses were allowed as business expenditure in the earlier assessment years up to the assessment year 1990-91. Further, it was stated that in an appeal filed against the order of the assessing officer for the assessment year 1987-88 giving effect to the order passed by the CIT (A), by order dated 16.10.1995 in appeal no.128/Spl.23/V/94-95, the CIT (A) allowed the entire technical purchase amount as deduction. Further, before the CIT (A) the assessee filed the second order passed by the CIT (A) for the assessment year 1987-88 and for the assessment year 1990-91. Considering all these orders including the order for the assessment year 1990-91 dated 19.12.1995 the CIT (A) granted relief to the assessee and directed the assessing officer to allow the entire expenditure on technical purchases and charges as business expenditure. There were other issues which were either decided for or against the assessee. Thus, the revenue as well as the assessee were on appeal against the various orders for the assessment years 1985-86, 1986-87, 1987-88, 1988-89, 1989-90, 1992-93, 1993-94, 1997-98. Cross objection was filed by the assessee for the assessment year

1985-86. This appeal was filed before the Tribunal in the year 1992. The Tribunal in the impugned order records that several notices were sent to the assessee as well as the official liquidator asked by them the respondent was under the process of liquidation. The Tribunal further records that the counsel, who had filed vakalats also withdrawn the vakalats. Thus, it appears that the assessee was not represented. Be that as it may, the Tribunal has considered this issue and in paragraph 8 of the order it has dismissed the revenue's appeal. Considering the fact that for several assessment years the assessee was granted relief and those orders also having become final, the Tribunal was fully justified in rejecting the revenue's appeal and confirming the order passed by the CIT (A). Thus, we find there is no error committed by the Tribunal in the decision making process or in the decision itself. Thus, the revenue has not made out any ground to interfere with the order of the Tribunal. Accordingly, the appeal fails and dismissed and the substantial questions of law are answered against the revenue.

The stay application, IA NO.GA/2/2021 also stands dismissed.

(T.S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)