ANDHRA PRADESH HIGH COURT

Coromandel Fertilizers Ltd

Vs

Commissioner of Income-Tax

(K.Madhava Reddy, C.J. P Sriramulu, J.)

10.06.1983

JUDGMENT

K. Madhava Reddy, C.J.

1. The assessee is a company incorporated under the Companies Act, 1956, with its registered office at Secunderabad in Andhra Pradesh, whose main object is manufacture of fertilizers in India. EDI Parry Ltd., a company incorporated under the English Companies Act and having its registered office in London, is one of the largest manufacturers and distributors of fertilizers of various types in India for the last sixty years and had conducted extensive agronomical research and acquired in India unrivalled knowledge and experience of agronomy, agricultural practices and soil formations and chemical compositions, cropping patterns, particularly applicable to South India. The assessee-company, being desirous of obtaining from EID Parry the said know-how for promoting the sale of fertilizers manufactured by it, entered into an agreement with EID Parry Ltd. On April 16, 1964. The important features of this agreement, among others, are as follows :

"(5) EID has agreed to impart and disclose to Coromandel its said know-how for the consideration and on the terms and conditions hereinafter set forth :

1.EID shall impart and disclose to Coromandel the said know-how for exploitation by Coromandel in India : all documents, materials and information relating to the said know-how shall be handed, given or imparted by EID to the representatives of Coromandel designated for the purpose.

2. For the purpose of enabling Coromandel to make the fullest use of the know-how to be imparted and disclosed pursuant to clause 1 hereof, EID covenants not to impart or disclose the said know-how to third parties, that is parties not within the EID group of companies, which shall or may produce or sell fertilizers in competition with Coromandel in the State of Andhra Pradesh or other areas adjacent thereto and in which the complex fertilisers produced by Coromandel are

then being sold. EID further undertakes that it will on or before Coromandel commencing production enter into a further agreement with Coromandel the terms of which shall be mutually agreed whereby EID's right to market and sell complex fertilizer produced by it at its factory at Ennore, Madras, will be restricted to the State of Andhra Pradesh for the period of and in the manner provided by such agreement.

3. In consideration of the said know-how to be imparted and disclosed by EID as provided in clause 1 hereof and in consideration of the obligations undertaken by it under clause 2 hereof Coromandel shall within ninety days from the date hereof allot and issue to EID 63, 450 equity shares of rupees ten each in Coromandel all credited as fully paid up.Coromandel agrees and undertakes that it shall not disclose the said know - how to any person, firm or body corporate and that it shall use its best endeavors to ensure that the said know-how shall not divulged to third parties : PROVIDED however that nothing contained in this clause shall prevent Coromandel from disclosing the said know-how in so far as may be necessary to a director or other officer or employee of Coromandel for the proper performance and discharge of his duties towards Coromandel : PROVIDED that such director, officer or employee has previous to such disclosure and within the limits permissible by law given a written undertaking to Coromandel not to disclose the said know-how or any part thereof to any person, firm or body corporate."

3. For the assessment year 1969-70, the assessee claimed the amount of Rs. 6,35,400 paid by it to EID Parry Ltd. Os consideration under the said agreement as deductible revenue expenditure. The ITO by his order, dated November 23, 1972, held it to be payment for securing technical know-how and that the same had brought into existence an asset of an enduring nature and as such amounted to capital expenditure. In that view, he held that the question of granting of depreciation or deducting it as revenue expenditure did not arise. The AAC, on appeal, was of the view that :

> "the amount paid is not only towards imparting of technical know-how but also to restrict EID with regard to the marketing and sale of their products within the State of Andhra Pradesh as per clause 2 of the agreement..... The payment is made partly towards restriction of the competition that may arise on account of EID Parry selling their fertilizers in Andhra Pradesh state and part of the payment has to be taken as towards restricting such competition."

4. He further held that the profit gaining apparatus had not been set in motion and the company was only in the initial stages of erection; only to understand the proper implications of the market and the types of products to be manufactured, that the above know-how was acquired and hence it must be treated as acquiring an asset of enduring advantage, and hence the payment of this sum can only be treated as capital expenditure.
5. On appeal, the Appellate Tribunal by its order, dated August 2, 1976, observed :

"We are inclined to uphold the view of the Appellate Assistant Commissioner that the expenditure incurred by virtue of the agreement, dated April 16, 1964, should be considered only as capital..... What the assessee acquired from EID Parry by virtue of the agreement is the entire know-how which the EID acquired by virtue of its long and extensive research during the last sixty years. The expenditure incurred on account of purchase of such know-how can only be classified as capital in nature..... The restrictive clause in the agreement prohibits the EID to enter the market in Andhra Pradesh. The expenditure relating to such restriction will also have to be considered only as capital expenditure.... We find that none of the clauses in the agreement indicate that the payment involved relates to day-to-day running of the business."

6. Accordingly, the deduction claimed was disallowed. On the above findings and at the instance of the assessee, the following question is referred for decision to this court :

"Whether, on the facts and in the circumstances of the case, the amount of Rs. 6,35,400 paid by the assessee to EID Parry Ltd. Or any part thereof was deducting as revenue expenditure in arriving at the total income of the assessee-company ?The answer to this question depends upon the construction of the agreement and the nature of the expenditure incurred. What constitutes capital expenditure and what is revenue expenditure are not easy to determine. As early as in CIT v. Ciba of India Ltd. [1968] 69 ITR 692, the Supreme court had occasion to consider what constitutes capital expenditure and what constitutes revenue expenditure. Dealing with the case of Ciba of India Ltd., an Indian subsidiary of Ciba Ltd. Basle a swiss company engaged in the development, manufacture and sale of medical and pharmaceutical preparations, which had entered into an agreement with the principal Swiss Co., for a specific period for use of processes, formulae, scientific data, patents and trade marks on contribution to the foreign company a percentage of sale price of products towards technical services, research work, cost of material used in research and royalties, the court held that these contributions made by the Indian subsidiary, which was the assessee, were not contributions relating to patents and other processes, research and technical assistance and was not allowable under s. 10(2)(xii) as expenditure laid out or expended on scientific research but was allowable as business expenditure under s. 10(2)(xv). The assessee acquired under the agreement merely a right to draw, for the purpose of carrying on its business as a manufacturer and dealer of pharmaceutical products, upon the technical knowledge available, the Swiss company did not part with any asset of its business, nor did the assessee acquire any asset or advantage of an enduring nature for the benefit of its business. What is revenue expenditure and what constitutes capital expenditure have been further elaborated by the Supreme Court in Empire Jute Co. Ltd. v. CIT . There, the assessee-company, Empire Jute company, incurred expenditure for the purchase of loom hours. That expenditure was treated as revenue expenditure and in upholding the same, the court observed that every case has to be decided on its own facts. As a fact it found that by purchasing loom hours no new asset was created. It only enabled the assessee to carry on business more beneficially. Before we decide whether the expenditure was revenue expenditure or capital expenditure, what, however, has to be ascertained is whether by expending that amount a capital asset was created. The Supreme Court further laid down that what is an outgoing of capital and what is an outgoing on

account of revenue depends on what the expenditure is calculated to effect from a practical and business point of view rather than upon the juristic classification of legal rights, if any, secured, employed or exhausted in the process. The question must be viewed in the larger context of business necessity or expediency. While approving the test to determine whether the expenditure was capital expenditure or revenue expenditure is to find out whether the expenditure resulted in adding to the fixed capital or asset of the assessee and resulted in acquiring or creating an asset of an enduring nature, the Supreme Court observed that the test of enduring benefit is by itself not a certain or a conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case. The Supreme Court pointed out that it is not a universally true proposition that what may be a capital receipt in the hands of the payee must necessarily be capital expenditure in relation to the payers. The fact that a certain payment constitutes income or capital receipt in the hands of the recipient is not material in determining whether the payment is revenue or capital disbursement qua the payer. On examining the terms of the agreement under which the Empire Jute Co., the assessee therein, purchased certain loom hours from four other jute mills for a consideration of Rs. 2,03,255 during the previous year relevant to the assessment year 1960-61 and claimed to deduct that amount as revenue expenditure, the court held that the allotment of loom hours under an agreement to different mills was not a right conferred but was merely a contractual restriction on the right of every mill to work its looms to their full capacity, and the purchase of loom hours had the effect of relaxing the restriction on the operation of looms to the extent of the number of working hours per week transferred to it. The expenditure incurred by the assessee was "revenue" in nature and allowable as a deduction under s. 10(2) (xv). By the purchase of loom hours no new asset was created and there was no addition to or expansion of the profit making apparatus of the assessee. The permanent structure upon which the income was the product of fruit remained the same. It was not enlarged. The expenditure incurred in this behalf was laid out as part of the process of profit daring. The court allowed it as "revenue expenditure."

7. Earlier a Division Bench of this court in *Hylam Ltd. v. CIT*[1] was called upon to consider the claim of the assessee to deduction of the consideration paid by it to Bakelite Company Ltd., an English company, in respect of the patents owned by the English company in India for the production of copper-clad laminates, and exclusive non-assignable license to manufacture laminates in accordance with the processes covered by the patents, the consideration paid being 5% royalty on the net selling price of all laminated products made and sold by it in accordance with those patented processes until the said payment reached pound 5,000/- and the further agreement under which the English company had agreed to furnish exclusively to the assessee technical information relating to manufacture and testing of the products for which a consideration of 2% of net sales on certain class of products as consultancy fee and 5% of the net sales of other products every year during which the agreement remained in force was agreed to be paid. This court upheld the apportionment of the consultancy fee between capital and revenue in the ratio of 1 : 2 and allowed deduction of 2/3rd of the consultancy fee as revenue expenditure made by the Appellate Tribunal. Purporting to follow the Supreme Court decision in CIT v. Ciba

of India Ltd. , that Division Bench laid down certain principles. A full Bench of this court in Praga *Tools Ltd. v. CIT*[2] was of the view that the Hylam's case , was not correctly decided and that the Division Bench deciding that case distinguished the Supreme Court's decision in CIT v. Ciba of India Ltd. "on incorrect and unsubstantial grounds." In Praga Tools' case, the Full Bench was considering the agreement entered into by the assessee with J & S Ltd., a foreign company, for the manufacture of certain tools and cutter grinding machines for which J & S Ltd., was to supply the accessories, designs, technical know-how with latest modifications and assistance and the foreign company was to assist in the manufacture of main castings of the machine and was required to sell to the assessee all the fixtures, jigs, tools, guages, raw materials and special parts at their commercial retail value and in consideration of granting of these rights, the assessee agreed to pay initially pound 1,000 and to pay royalty at 5% on the Indian selling price on the production of the machine, subject to Indian taxes. This agreement was to remain in force for a period of ten years and was renewable thereafter for five years by mutual consent and the assessee was entitled notwithstanding the termination of the agreement, to use for the purpose of their business all the information, technical know-how, patents, copy-rights and drawings transferred by J & S to the assessee or which might come into the possession of the assessee during the sub-sistence of the agreement. The court held that the expenditure incurred had direct nexus or relation to the carrying on or conduct of the business of the assessee; it was part of the profit making process; the very object of payment of royalty based upon the production and sale of the products manufactured by the assessee was to obtain manufacturing license and technical know-how including drawings, designs, specifications and other technical information to enable the assessee to make and sell the products indicated in the agreements; merely because the agreements provided that the assessee shall be entitled to retain technical know-how, designs, drawings, etc., even after the expiry of the agreements, it did not alter the nature of the transaction; there was no property right transferable in the technical know-how. The court further held that the fact that the assessee was not entitled to use of trade mark of J. S., for the products, after the expiry of the agreement period clinched the issue. The court declared that it is the totality or cumulative effect of all the material facts evidenced by the documents and the surrounding circumstances that are to be taken into consideration to arrive at a decision as to what is the nature of the expenditure and viewed in the larger context of business, each factor or circumstance by itself may not be decisive. In view of the several factors mentioned in the agreement referred to above, the expenditure incurred by the assessee for the purpose of payment of royalty, etc., to the collaborators was "revenue" in nature and hence deductible. The Hylam's case was specifically overruled by the Full Bench.

8. On a perusal of the Supreme Court decisions and the Full Bench decision of this court referred to above, which are binding on us, it is clear that no single circumstance would be decisive of the question now before us. The cumulative effect of all the terms and stipulations of the agreement and the nature of the benefit accrued and the restrictions imposed on the respective parties, the period during which the agreement is operative and the rights that flow to the assessee therefrom have to be taken into account and on an assessment of all those factors, the question whether the expenditure incurred by payment of the consideration under the agreement constitutes revenue

expenditure or capital expenditure has to be determined. As observed by the Supreme Court, even though in the hands of the recipient the amount received may be capital or revenue expenditure, it may not be necessarily so, so far as the payer is concerned. It is, therefore, necessary to consider whether the technical know-how acquired by the assessee under this agreement results in securing a capital asset of an enduring nature, advantage or benefit. Whether the expenditure is capital expenditure or revenue expenditure depends upon whether for the consideration paid by the assessee an asset of enduring benefit was acquired. If it brings into existence an asset of enduring benefit, it would be capital expenditure. The source from which the amount was raises or the manner in which it was paid is of no consequence. What has to be determined is whether by such payment the assessee has secured an asset or benefit of an enduring nature.

9. In this context, it cannot be ignored that with the pace of developing technology and scientific knowledge and easy inter-communication between advanced countries and the developing countries, technical know-how with respect to each product, far from remaining static, would be not only developing at a very fast pace but also spreading to all parts of the world quickly. So much so, technical know-how is liable to speedy obsolescence. By its very nature, in the present circumstances, the acquisition of technical know-how may sometimes be of almost fleeting nature. It may not be a benefit of an enduring nature. In Indian *Telephone Industries Ltd. v. CIT*[3] the Karnataka High Court was called upon to consider the agreement entered into by the assessee with the International Standard Electronic Corporation of U.S.A., for short "Standard", under which Standard agreed to finance the setting up of a factory for the manufacture of Pentaconta Switching Equipment and to cause BTM, who were manufacturing cross-bar exchanges, to provide the required technical information and know-how and to sell certain machinery to the assessee and invest $ 1,250,000 partly in cash and partly in "know-how" valued at $ 500,000 in the share capital of the assessee and decide whether the expenditure incurred constituted revenue or capital expenditure. The court held that the assessee had acquired a right to make use of the know-how made available by BTM at the instance of Standard and incurred the expenditure not for acquiring an asset of an enduring nature, but only to improve the prospects of its own business and to meet requirements of the transitional stage before taking to the manufacture of the electronic equipment and hence the expenditure was allowable under s. 37 of the I. T. Act. If we examine the terms of the present agreement under which the assessee has paid Rs. 6,35,400 and which it claimed to be revenue expenditure deductible under s. 10(2)(xv) of the I. T. Act, we find that (no asset of an endurable nature has been acquired by the assessee.) EID Parry which has been engaged in the manufacture and distribution of fertilizers of various types in India for a period of sixty years and had during that period conducted extensive agronomical research and maintained well equipped facilities for further research and gained considerable knowledge and experience, did not transfer these research equipment or project. It only agreed to impart and disclose know-how for exploitation by the assessee. The assessee paid a consideration of Rs. 6,35,400 to EID Parry for having agreed to impart and disclose the said know-how to it for the purpose of exploitation by the assessee. With a view to enable the assessee to make full use of

the know-how imparted and disclosed to it, EID Parry & Co., also covenanted not to impart or disclose the said know-how to third parties. It should be noted that EID Parry did not give an undertaking that it shall not impart or disclose this know-how to those not in Andhra Pradesh or areas adjacent thereto. EID Parry & Co. further undertook not to market and sell in Andhra Pradesh complex fertilizers produced by it at its factory at Ennore, Madras. The terms of such an agreement were to be settled in mutual agreement. The assessee-company, in turn, undertook not to disclose the technical know-how acquired by it to any third party. It would be noticed that the property, if any, in technical know-how was not totally transferred to the assessee-company; it was only given an exclusive right to use the know-how in Andhra Pradesh and other areas adjacent thereto in which complex fertilisers produced by EID Parry were then being sold. EID Parry was free to sell the technical know-how or impart or disclose the same to third parties elsewhere or use the same for its own benefit outside the specified area. Technical know-how itself is not of an enduring nature and, as already discussed above, was liable to speedy obsolescence. The amount paid, though a lump-sum payment, was to acquire the know-how which did not become the exclusive property of the assessee. The The assessee could not assign this know-how to any third party. The technical know-how relating to the manufacture of the products is concerned, the assessee-company has entered into arrangements with two corporations incorporated in the United States of America, namely, California Chemical Company and International Minerals and Chemical Corporation. The know-how that is acquired under the agreement in question for which the amount of Rs. 6,34,500 is paid is with regard to marketing and selling such products in India. Experience in marketing and selling of complex fertilisers in India, particularly in South India, was being assigned by EID Parry and it is this know-how that is shared by it with the assessee-company. It is in short purchase of sale know-how by the assessee-company and purchase of the knowledge of market conditions and soil compositions. This knowledge could have been acquired by engaging its own personnel, but that would have taken considerable time and involved heavy expenditure. Instead that knowledge was sought to be acquired quickly by paying a lump-sum amount to EID Parry. Acquisition of sales know-how, market conditions and soil compositions are not, in our view, of a lasting and enduring nature. Especially market conditions change rather swiftly and sales know-how becomes obsolete much too quickly.

10. Acquisition of such know-how is not acquisition of any tangible asset or an asset of an enduring nature. The period for which the agreement would be operative cannot be a decisive factor in such matters. In our view, the acquisition of the know-how and the expenditure incurred was the integral part of the profit making process and has not created an asset of an enduring benefit; it, therefore, constitutes revenue expenditure. Mr. Ch Srirama Rao, learned counsel for the Revenue, however, contended that the amount was also paid to eliminate a competitor and any amount paid for securing such a benefit would constitute capital expenditure and in support of his contention placed reliance upon the judgment of the Supreme Court in CIT v. Coal Shipments P. Ltd. . The Supreme Court held that the payment made to ward off competition in business to a rival would constitute capital expenditure if the object of making that payment is to

derive an advantage by eliminating competition for some length of time; the same result would not follow if there is no certainty of the duration of the advantage and the same can be put to an end to at any time. How long the period of contemplated advantage should be, in order to constitute enduring benefit, would depend on the circumstances and the facts of each individual case. Although an enduring benefit need not be of an everlasting character it should not be so transitory and ephemeral that it can be terminated at any time on the volition of any of the parities. It would be seen that even here the test laid down is whether benefit of an enduring nature was acquired and, in determining that, the court should consider whether a competitor in business was eliminated for a considerable period of time. After what the Supreme Court has laid down in Empire Jute Co. Ltd. v. CIT , the test of enduring benefit is neither certain nor conclusive nor can it be applied blindly and mechanically. It has to be applied having regard to the facts of each case. The technical know-how in this case imparted to the assessee itself being of a fleeting nature and liable to become obsolete, the fact that no period is prescribed during which the EID Parry may not sell complex fertilisers within Andhra Pradesh and its adjacent areas is not of much consequence. Thereby it cannot be said that any tangible benefit of an enduring nature was acquired by the assessee so as to make the expenditure incurred by it capital expenditure and not revenue expenditure. Another decision relied upon by the learned counsel for the Revenue is the case of a firm distributor who paid some amounts to rivals not to carry on business in four States. The Madras High Court in Blaze & Central (P.) Ltd. v. CIT , held that the said payment was made to a rival for excluding competition and was, therefore, capital expenditure on the ground that though not a tangible asset, an income generating asset was acquired. In understanding this decision we must bear in mind that the agreement is with respect to exhibition of a film in a particular area. A film can be exhibited and exploited for making money over a short period and if for the whole of that period others are excluded from a particular area, it may amount to securing an enduring benefit. The conclusion of the court may perhaps be justified on such a reasoning. The correctness of that decision, however, is open to doubt having regard to what the Supreme Court has said in Empire Jute Co. Ltd. v. CIT and CIT v. Ciba of India Ltd. . In any case, we are not persuaded to accept that the facts of this case allow the application of what is statues in Blaze & Central (P.) Ltd. v. CIT . Another case, CIT v. Best and Co. P. Ltd. on which reliance is placed by the learned counsel for the Revenue was a case where payment was made to the assessee for the termination of the exclusive agency and for restricting its right to sell similar products covered by the agency terminated. We do not see how the principle laid down in that case has any application to the facts of this case. In fact, as observed by the Supreme Court the mount received by the assessee whose agency was terminated may constitute capital receipt but so far as the person who paid the amount is concerned, it may not be capital expenditure. In any case, that was a converse situation with which we are not concerned. Mr. Srirama Rao, learned counsel, also relied upon the decision in CIT v. Saraswathi Publicities , in which, applying the principles enunciated in CIT v. Best and Co. P.Ltd. , the Madras High Court held that the amount received referable to the restrictive covenant was capital receipt. This is also a case where the assessee received certain amount and not a case where he paid any amount. On the other hand, several High Courts have taken the

view that acquisition of technical know-how is not acquisition of a capital asset and the expenditure incurred for obtaining such technical know-how is revenue expenditure. In *Cooper Engineering Ltd. v. CIT*[4] the Bombay High Court held that the expenditure on acquisition technical know-how and training of personnel was revenue expenditure. So also in *Mysore Kirloskar Ltd.v. CIT*[5] the company had incurred some expenditure with a view to advance the pace of development by obtaining technical know-how. The Karnataka HIgh Court held that it was not acquisition of an asset of everlasting and enduring nature and, therefore, the expenditure incurred therefor was not capital expenditure. The deduction was allowed holding it to be revenue expenditure. holding it to be revenue expenditure. In Shriram Refrigeration Industries Ltd. v. CIT , the Delhi High Court held that the expenditure incurred for obtaining technical know-how only for running of business, which technical know-how is not totally sold but only allowed to be used, was revenue expenditure and not capital expenditure. That was a case of expenditure incurred for obtaining workshop drawings and manufacturing instructions. If there is any sale of such know-how and restrictions are placed in its use, that court declared, it was revenue expenditure. In CIT v. Hindusthan General Electrical Corporation Ltd. , the Calcutta High Court held that the expenditures incurred for setting up a factory with foreign collaboration was revenue expenditure. It observed that there was no property right in technical know-how. Even so, Mr. Srirama rao argues that for holding that the benefit was of an enduring nature it was not necessary that there should be complete transfer of ownership of the asset. It is enough if it is of an enduring nature to hold that it is a capital asset and capital expenditure. That is true; none the less such an expenditure must result in a capital asset or benefit of an enduring nature and not be an expenditure in a profit making process. Commissioner of Taxes v. Nchanga Consolidated Copper Mines Ltd. [1965] 58 ITR 241 (PC), was a case where expenditure was incurred only to put another company out of production for 12 months. The Privy Council observed that (headnote) "it had no true analogy with expenditure for the purpose of acquiring a business or the benefit of a long-term or enduring contract. It bore a fair comparison with a monetary levy on the production of a given year. What the assessee-company did was to charge its 1958-59 production with the payment of this money in order to settle its share of the group's production programme in the way that suited it best. It was a cost incidental to the production and sale of the output of their mine; as such its true analogy was with an operating cost. It resembled an outlay of a business 'in order to carry it on and to earn a profit out of this expense as an expense of carrying it on'."

11. Referring to this judgment in *Empire Jute Co. v. CIT*[6] it was observed that the test that an expenditure made with a view to bring into existence an asset or an advantage for the enduring benefit of a trade, would make it a capital expenditure must yield where there are special circumstances leading to a contrary conclusion and continued referring to Commissioner of Taxes v. Nchanga Consolidated Copper Mines Ltd. [1965] 58 ITR 241 (PC), it would be misleading to suppose that in all cases securing a benefit for the business would be prima facie capital expenditure so long as the benefit is not so transitory as to have no enduring benefit at all. The Supreme court then went on to lay down as follows (p. 10) :

> "There may be cases where expenditure, even if incurred for obtaining advantage of enduring benefit, may, none the less, be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test. What is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test, if the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. The test of enduring benefit is, therefore, not a certain or conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case."

12. We do not think that this case in any way helps the contention raised on behalf of the Revenue. We, therefore, hold that whether an expenditure incurred by an assessee is capital expenditure or revenue expenditure has to be determined on a consideration of the facts of each case. On the facts what one has to ask is :

"Has the expenditure incurred resulted in creation of an asset of enduring benefit ? "Technical know-how with regard to agronomical research, soil conditions, manufacture and distribution of complex fertilisers suitable for various types of soil in a particular area for a certain period to the exclusion of others without any transfer of the right in the technical know - how and leaving the transfer fresh to sell that technical know-how outside the area and restrict the transferee from disclosing it to third parties does not result in acquisition of any asset of enduring benefit so as to make the expenditure incurred for acquiring the same capital expenditure. Acquisition of sales and marketing know-how or acquiring the exclusive right to market the goods and eliminating a competitor from the market whether constitutes acquiring an asset of enduring benefit, depends upon the nature of the business which the assessee carries on. With the fast pace of development of scientific and technical knowledge and the quick spread of advanced technology all over the world, the technical know-how of the sort acquired by the assessee from EID Parry under the agreement, is in our view, liable to become obsolete within a short span of time. An asset which may become obsolete within a short time cannot be regarded as an asset of enduring nature and hence expenditure incurred thereon cannot be treated as capital expenditure; it would be revenue expenditure.

13. In view of the above discussion, we hold that the amount of Rs. 6,35,400 paid by the assessee for acquiring technical know-how under the agreement, dated April 16, 1964, constitutes revenue expenditure and is deductible under s. 10(2)(xv) of the I.T. Act. We, accordingly, answer the question referred in favour of the assessee-company. Parties to bear their costs.

Cases Referred,

1[1973] 87 ITR 310
2[1980] 123 ITR 773
3[1979] 117 ITR 682
4[1982] 135 ITR 597
5[1978] 114 ITR 443 (Ker) [FB]
6[1980] 124 ITR (SC)