CALCUTTA HIGH COURT

Commissioner of Income Tax

Vs

Indian Oxygen Ltd

(Deb, J.)

06.04.1976

JUDGEMENT

Deb, J.

(1.) THE following question is involved in this reference under Section 256(2) of the Income-tax Act, 1961: "Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the sum of Rs. 2,97,480 paid by the assessee to the British Oxygen Co. Ltd., London, in pursuance of the agreement dated October 1, 1959, was a permissible deduction under Section 37(1) of the Income-tax Act, 1961."

(2.) THE assessment year involved is 1962-63 for which the relevant accounting year ended on September 30, 1961. The assessee is an Indian company (hereinafter referred to as the "Indian company"). It is engaged in the manufacture and sale of oxygen and other products both in gases and liquid forms, including the manufacture and sale of electrodes, welding rods, welding equipment, medical equipment and accessories. The Indian company was a 100 per cent. subsidiary company of the British Oxygen Co. Ltd., London (hereinafter referred to as "the English company"). During the year under consideration the Indian company ceased to be a 100 per cent. subsidiary company of the English company and the English company held about 51 per cent. of the capital of the Indian company. Under the agreement dated October 1, 1959, the Indian company was to pay to the English company 2.5 per cent. of the total expenditure incurred by the English company in running a scientific establishment inasmuch as certain processes, informations, inventions and rights of the English company were to be utilised by the Indian company free of charge. Pursuant to this agreement and during the accounting year Rs. 2,97,480 was paid to the English company by the Indian company and this amount was claimed by the Indian company as a deduction, but it was rejected by the Income-tax Officer.

(3.) IN the appeal filed by the INdian company this deduction has been allowed under Section 37(1) of the INcome-tax Act 1961, by the Appellate Assistant Commissioner and the appeal filed by the department has been dismissed by the Tribunal by following the decision of the Supreme

Court in the case of *Commissioner of INcome-tax v. Ciba of INdia Ltd*[1]. The submission made before us by Mr. B.L. Pal, the learned counsel for the revenue, are as follows: The instant agreement does not provide for return by the Indian company to the English company of all or any information, processes and inventions supplied to the Indian company by the English company on the termination of the agreement; by this agreement the English company has sold those information, processes and inventions to the Indian company and the Indian company is entitled to use those information, processes and inventions even after the termination of this agreement; therefore, it should be held that the Indian company has obtained an enduring advantage of a permanent nature under this agreement and accordingly it should also be held that the above expenditure incurred by the Indian company is in the nature of a capital expenditure, and hence, the present case is not covered by Ciba's case , but by the decision of the Madras High Court in the case of *Fenner Woodroffe and Co. Ltd. v. Commissioner of Income-tax*[2]

Cases Referred.

1[1968] 69 ITR 692
2[1976] 102 ITR 665