IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 421 of 2011

For Approval and Signature:

HONOURABLE MR.JUSTICE V. M. SAHAI Sd/-

HONOURABLE MR.JUSTICE N.V. ANJARIA Sd/-

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1.	Whether Reporters of Local Papers may be allowed to see the judgment ?	**NO**
2.	To be referred to the Reporter or not ?	**NO**
3.	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4.	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**NO**
5.	Whether it is to be circulated to the civil judge ?	**NO**

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COMMISSIONER OF INCOME TAX - Appellant
Versus
MULTIMEDIA FRONTIERS LTD - Opponent

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Appearance :
MRS MAUNA M BHATT for Appellant.
None for Opponent.

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CORAM : HONOURABLE MR.JUSTICE V. M. SAHAI
and
HONOURABLE MR.JUSTICE N.V. ANJARIA

Date : 13/06/2012

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE V. M. SAHAI)

We have heard Mrs. Mauna M. Bhatt, learned Standing Counsel appearing for the revenue.

2. This Tax Appeal has been filed proposing the following questions of law for the consideration of this Court :-

> "[A] Whether on the facts and circumstances of the case, the Tribunal was justified in confirming the order of CIT (A), deleting the addition of Rs.47,57,981/- made on account of treating the Royalty payment as capital expenditure ?
>
> [B] Whether on the facts and circumstances of the case, the Appellate Tribunal was justified in confirming the order of CIT (A), deleting the addition of Rs.9,43,217/- made on account of cessation of liability ?"

3. Learned counsel for the appellant has placed reliance on the decision of the Apex Court in the case of Southern Switch Gear Limited v. Commissioner of Income-Tax and another, 232 ITR 359 (SC).

4. We have carefully gone through this decision. In our opinion, this decision does not apply to the facts of the instant case. In paragraph 5, the Tribunal has recorded the categorical finding which is extracted below :-

> "5. We find that even the Assessing Officer

has recorded a fact that the payment of royalty for acquiring right to produce VCD and DVD systems under the licence of Philips is on the basis of turnover and payment is on yearly basis. We find that M/s. Philips Enterprise N.V. Netherland owns patents relating to VCD and DVD systems and the assessee as a manufacture had showed for the licence under Philips patents and accordingly entered into patents licence agreement whereupon royalty @ US $.0175 for VCD and US $ 0.375 for DVD is required to be paid on the basis of sales turnover. The assessee has paid the royalty every year out of its revenue on the basis of turnover computation. In view of these facts, we are of the considered view that the CIT (A) has rightly deleted the addition and we confirm the same. This issue of the revenue's appeal is dismissed."

5. In view of the aforesaid finding, the argument of learned Standing Counsel for the revenue that it was a capital expenditure and not revenue expenditure cannot be accepted. Hence, in our view, we are of the considered opinion that no questions of law, much less any substantial questions of law arise for consideration of this Court. Hence, the present Tax Appeal is accordingly dismissed.

Sd/-
[V. M. SAHAI, J.]

Sd/-
[N. V. ANJARIA, J.]

Savariya