

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/TAX APPEAL NO. 835 of 2019**

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THE PRINCIPAL COMMISSIONER OF INCOME TAX
Versus
WESTERN AGRI SEEDS LTD.

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Appearance:
MRS MAUNA M BHATT(174) for the Appellant(s) No. 1
for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE J.B.PARDIWALA**
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 20/01/2020

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)

1 This Tax Appeal under Section 260A of the Income Tax Act, 1961 (for short, 'the Act, 1961') is at the instance of the Revenue and is directed against the order passed by the Income Tax Appellate Tribunal, Ahmedabad 'B' Bench, dated 27th March 2019 in the ITA No.2796/Ahd/2014 for A.Y. 2011-12.

2 The Revenue has proposed the following questions as the substantial questions of law involved in this appeal:

“[A] Whether the Appellate Tribunal has erred considering the facts and circumstances of the case and in law, in upholding the order of the CIT(A) for deleting disallowance on account of discount and rate difference to Rs.2,31,95,051/-?

[B] Whether the Appellate Tribunal has erred considering the facts and circumstances of the case and in law, in upholding the order of the CIT(A) for deleting disallowance made u/s 40(A)(2) to Rs.1,55,06,080/-?

[C] Whether the Appellate Tribunal has erred considering the facts and circumstances of the case and in law, in upholding the order of the CIT(A) for deleting addition of Sub License Free Expenses of Rs.27,57,500/-?"

3 For the reasons recorded by us today, while dismissing the Tax No.834 of 2019, this Tax Appeal stands dismissed so far as the questions Nos.2[A] and 2[B] respectively, as proposed by the Revenue, is concerned. The question No.2[C], as proposed, is one relating to deletion of addition of Sub License Fee Expenses to the tune of Rs.27,57,500/-. In this regard, the Tribunal, while concurring with the finding recorded by the CIT(Appeals) held as under:

*“Heard the respective parties, perused the relevant materials available on record. It appears that the appellant has acquired sub-license for using Monsanto technology and such sub-license is non-transferable. Such license is provided to the assessee to test produce and sell genetically modified hybrid cotton plant seeds in the territory of the appellant for effectively increasing its business; no asset, however, is created. While holding such expenses as revenue expenditure the Ld. CIT(A) relied upon the judgment passed by the Hon'ble Delhi High Court in the matter of **CIT vs. J K Synthetic Ltd.** reported at **309 ITR 371** wherein it was held that since under the agreement the assessee has obtained a technical assistance and acquired some technical information which was a know-how related to process of manufacture, then it is not a transfer of the ownership of the know-how and to be treated as revenue expenditure. The judgment passed by the Coordinate Bench, in the case of *Urja Products Ltd.* was also mentioned in the order passed by the Ld. CIT(A) wherein similar issue has been decided in favour of the appellant. The non-refundable up-front fee itself does not mean a capital expenditure but the same is required to be paid for acquiring license from the main company which is used for the purposes of business and hence the entire expenditure incurred by the appellant is treated as revenue expenditure. We, therefore, find no infirmity in the order passed by the Ld. CIT(A) in deleting such addition of*

Rs.27,57,500/- as made by the Ld. AO. We, therefore, do not hesitate to confirm the same. So, as to warrant inference. The question is accordingly answered in the affirmative that is in favour of the assessee and against the Revenue. Consequently the appeal fails and is accordingly dismissed.”

4 Thus, we take notice of the fact that the Tribunal has relied upon the decision of the Delhi High Court in the case of **CIT vs. J K Synthetic Ltd** reported in **309 ITR 371**, wherein the Delhi High Court has taken the view that no under the agreement the assessee has obtained a technical assistance and acquired some technical information which was a know-how related to process of manufacture, then it is not a transfer of the ownership of the know-how and to be treated as revenue expenditure.

5 We are in complete agreement with the finding recorded by the Tribunal as regards the proposed question No.2[C] is concerned.

6 In the result, this appeal fails and is hereby dismissed so far as the third question, as proposed by the Revenue, is concerned.

THE HIGH COURT
OF GUJARAT

(J. B. PARDIWALA, J)

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(BHARGAV D. KARIA, J)

CHANDRESH