

H.  
ITEM NO.6

COURT NO.1

SECTION IIIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.1400 OF 2005

M/S. DRILCOS (INDIA) PVT. LTD. Appellant (s)

VERSUS

COMMNR. OF INCOME TAX, MADRAS Respondent(s)

(With office report)

Date: 06/09/2012 This Appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE MADAN B. LOKUR

For Appellant(s) Mr. Subramonium Prasad,Adv.

For Respondent(s) Mr. Rajiv Dutta,Sr.Adv.

Mr. Rahul Kaushik,Adv.

Mr. Chandra Bhushan Prasad,Adv.

Ms. Anil Katiyar,Adv.

UPON hearing counsel the Court made the following  
O R D E R

Heard learned counsel on both sides.

The civil appeal filed by the assessee is dismissed with  
no order as to costs.

[ T.I. Rajput ]  
A.R.-cum-P.S.

[ Indu Satija ]  
Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1400 OF 2005

M/s. Drilcos (India) Pvt. Ltd.

...Appellant(s)

Versus

Commissioner of Income Tax, Madras

...Respondent(s)

O R D E R

Heard learned counsel on both sides.

This civil appeal filed by the Department concerns Assessment Year 1993-1994.

The assessee manufactures equipments which are used for mining. It entered into an Agreement with an American company on 7th June, 1990.

The Agreement with the American company called 'Licence and Technical Assistance Agreement" under which the American company was required to transfer technical know-how to the assessee for consideration of US \$2,25,000/- to be paid in three instalments. The first instalment in convertible Indian currency amounting to Rs.17,49,889/- was paid on 29th November, 1990. Subsequently, disputes arose between the contracting parties and the know-how was not transferred by the American company.

The short question which arises for determination is whether the amount of Rs.17,49,889/- could be claimed by the assessee as a deduction under Section 37 of the Income Tax Act, 1961?

...2/-

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The claim of the assessee under Section 37 of the Income Tax Act, 1961 ['Act', for short] was rejected by the Department. However, the Department allowed the expenditure to be amortized under Section 35AB of the Act.

The contention of the assessee is that Section 35AB of the Act is not applicable to this case. We find no merit in the said contention. Sub-section (1) of Section 35AB of the Act clearly states that where the assessee has paid in any previous year any lump sum consideration for acquiring any know-how for use for the purposes of his business, then one-sixth of the amount so paid shall be deducted in computing the profits and gains of the business for that previous year and the balance amount shall be deducted in equal instalments for each of the five immediately succeeding previous years. Explanation to the said section says that the word 'know-how' means any industrial information or technique likely to assist in the manufacture or processing of goods or in the working of a mine. If one carefully analyzes Section 35AB of the Act, it is clear that prior to 1st April, 1986, there was some doubt as to whether such expenditure could fall under Section 37 of the Act. To remove that doubt, Section 35AB of the Act stood inserted. In sub-section (1) of Section 35AB of the Act, there is a concept of amortization of expenditure. In the present case, it is true that on account of certain disputes which arose between the parties, the balance amount was not paid by the assessee to the American company. However, the word 'for' in Section 35AB of the Act, which is a preposition in English grammar, has to be emphasised while interpreting Section 35AB of the Act. Section 35AB of the Act says that the expenditure should have

...3/-

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been incurred for the purposes of the business of the assessee. In the present case, the Technical Assistance Agreement was entered into between the assessee and the American company for acquiring know-how which was, in turn, to be used in the business of the assessee. Once Section 35AB of the Act comes into play, then Section 37 of the Act has

no application.

For the afore-stated reasons, we see no error in the impugned judgment of the High Court.

Accordingly, the civil appeal filed by the assessee stands dismissed with no order as to costs.

.....CJI.  
[S.H. KAPADIA]

.....J.  
[MADAN B. LOKUR]

New Delhi,  
September 06, 2012.  
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