

## **ITAT apportions exp. on living Germplasm and technical know-how between capital and revenue exp.**

**Summary – The High Court of Andhra Pradesh in a recent case of Advanta India Ltd., (the Assessee) held that Where under a long term licensing agreement, assessee acquired genetic material for cereals, seeds, etc. i.e., organic Germplasm as also technical know-how in bio-technology field along with right to future development and improvement and such technology would benefit assessee even after expiry of agreement period and even assessee could sell germplasm, a part of expenditure paid by assessee would be apportioned as capital expenditure**

### **Facts**

- Under a long term licensing agreement, the assessee acquired living organic germplasm from UK firm and also technical know how in bio-technology field along with right to future development and improvement made during period of license.
- The Assessing Officer observed that the expenditure incurred by the assessee towards technical know how fee falls within the ambit of Section 35AB and allowed 1/6<sup>th</sup> of the amount so claimed as deduction. The Assessing Officer had also treated 1/4<sup>th</sup> of royalty paid as capital expenditure.
- On appeal, the Commissioner (Appeals) treated 75 per cent of the technical know how fees as revenue expenditure and 25 per cent as being capital in nature, and thus allowing 75 per cent of the fees paid towards Technical know how as deduction under section 37.
- On appeal to the Tribunal:

### **Held**

- One significant aspect of the agreement is that the assessee is not required to return the licensee's Germplasm, export in case of termination of the agreement in terms of the Agreement. The Agreement provides for termination of the agreement only in case of the breach of the agreement as set out therein. In other words, the Germplasm which has been supplied to the assessee and the relevant material on multiplication of the same is available for the assessee's use even after the currency of the agreement.
- Under the licensing agreement, the products produced or developed with the Germplasm and the technical know-how provided under the agreement are the revenue earning products for the assessee. In other words, they are material or tools in the hands of the assessee for generating the revenue. The agreement is valid for a period of five years from the date of commercial production and eight years from the date of execution. In the sense, the Germplasm is the revenue earning apparatus. The technical knowledge which has been acquired in the process of implementation particularly in the bio-technology field would certainly benefit the assessee even after the expiry of the agreement period and there is no embargo on the assessee for using the expertise and knowledge acquired. Further, by clearly defining 'Licensee Germplasm' and 'Licensor Germplasm'

and setting out a right to access the 'Licensor's' improvements during the currency of the agreement the agreement has ensured the benefits of research, development and improvements to the Licensee, the assessee. Further, in terms of the agreement, Licensor had access to the Licensee's improvements subject to payment. Both the parties intended to benefit for a considerable period of time out of the relationship emanating from the agreement. Even though in the Bio-technology field changes are likely to happen in fast phase, the assessee still has the benefit of the same in view of the dynamic nature of the agreement entered into between the assessee and the technology provider. This is a distinct and distinguishing factor, which would benefit the assessee giving an enduring benefit to the assessee.

- Payment of technical know how fee was capital in nature Royalty was linked at a particular percentage of consideration received on sale of products produced by assessee by use of Germplasm and with the help of technical know how. Expenditure on account of payment of royalty was revenue in nature.