

**(1982) 10 MP CK 0003**

**Madhya Pradesh High Court**

**Case No:** Miscellaneous Civil Case No. 8 of 1981

Commissioner of Income Tax

APPELLANT

Vs

M.P. Umbrella Industries

RESPONDENT

**Date of Decision:** Oct. 11, 1982

**Acts Referred:**

- Income Tax Act, 1961 - Section 10(2)(xv), 256(1)

**Citation:** (1981) 12 TAXMAN 69

**Hon'ble Judges:** R.K. Vijayvargiya, J

**Bench:** Single Bench

**Advocate:** R.C. Mukati, for the Appellant; M.L. Kothari, for the Respondent

**Judgement**

R.K. Vijayvargiya J.

1. By this reference u/s 256(1) of the income tax Act, 1961, the income tax Appellate Tribunal, Indore Bench, Indore (for short "the Tribunal"), has referred the following question of law for the opinion of this court :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the sum of Rs. 25,001 paid to M/s. M.B. Umbrella Factory for the exploitation of trade mark was a revenue expenditure?

The material facts giving rise to this reference as set out in the statement of the case are as follows: The assessee-firm derived income from the business of manufacture of umbrellas. In the trading account the assessee debited a sum of Rs. 25,001 towards "TANK" trade mark commission paid to M/s. M.B. Umbrella Factory. Earlier M/s. M.B. Umbrella Factory was manufacturing umbrellas with this trade mark. The ITO found that an agreement was executed between the assessee and M/s. M.B. Umbrella Factory according to which the assessee was allowed to use the trade mark for a period of five years on payment of compensation at Rs. 25,001 per year.

The ITO, after giving an opportunity to the assessee to explain why the expenditure should not be disallowed being of capital nature, held that it was a case of sale of goodwill and the benefit of the agreement was of enduring nature and, therefore, the expenditure in question was not of revenue nature but of capital nature. The ITO, therefore, added the sum of Rs. 25,001 towards the total income of the assessee. On appeal by the assessee the Commissioner of income tax (Appeals) held that the trade mark had not been sold by the old firm or purchased by the assessee and that this was a case where the assessee-firm acquired a licence to use the same on the formula laid down in the agreement for a limited period of time by payment of licence fee. According to the Commissioner the payment in question was in the nature of royalty on trade mark used by the assessee and the payment was not by way of price for the acquisition of the capital asset which continued to belong to M/s. M. B. Umbrella Factory. The Commissioner, therefore, allowed the appeal and held that the amount of Rs. 25,001 was deductible as revenue expenditure. On further appeal by the Department the order of the Commissioner of income tax (Appeals) was maintained and the appeal was dismissed. At the instance of the Department the Tribunal has referred to the aforesaid question of law for the opinion of this court. In [Commissioner of Income Tax, Bombay Vs. Ciba of India Ltd.](#), the Supreme Court held that where the assessee did not under the agreement become entitled exclusively even for the period of the agreement to the patents and trade marks of the Swiss company and it had merely access to the technical knowledge and experience in the pharmaceutical field which the Swiss company commanded, and the assessee acquired under the agreement merely the right to draw, for the purpose of carrying on its business as a manufacturer and dealer of pharmaceutical products upon the technical knowledge of the Swiss company for a limited period by making the technical knowledge available, the Swiss company did not part with any asset of its business, nor did the assessee acquire any asset or advantage of an enduring nature for the benefit of its business and that the payment made by the assessee was allowable as revenue expenditure u/s 10(2)(xv) of the income tax Act.

2. Now, in the present case also, it has been found as a fact that the assessee did not purchase the trade mark or goodwill from the old firm as contended by the learned counsel for the Department. It is found as a fact that the assessee was merely granted a licence to use the trade mark "TANK" for a period of five years on payment of licence fee determined on the basis of a formula laid down in the agreement. It has further been held that the payment made by the assessee to M/s. M.B. Umbrella Factory was in the nature of royalty on trade mark used by it or in other words the payment made by the assessee was not by way of price for the acquisition of a capital asset but merely in the nature of licence fee paid for the use of capital asset which belongs to some one else.

3. In view of this finding of fact recorded by the Commissioner (Appeals) and confirmed by the Tribunal it cannot be said that the Tribunal committed any error in holding that the payment made by the assessee of Rs. 25,001 was revenue expenditure and not capital expenditure as contended by the Department. As a result of the discussion aforesaid our answer to the question referred to us is in the affirmative and against the Department. In the circumstances the parties shall bear their own costs of this reference.