

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.06.2009

Coram

The Honourable Mr.Justice F.M.IBRAHIM KALIFULLA
and
The Honourable Mr.Justice B.RAJENDRAN

TC(A). No.240 of 2004

Commissioner of Income Tax
Coimbatore

....Appellant

-vs-

M/s. Textool Co. Ltd

...Respondent

Tax Case Appeal against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench dated 07.03.2003 in ITA No.635/Mds/95 for the Assessment year 1991-92.

For Appellant : Mr. K.Subramanyam

For Respondent : Mr.R.Venkata Narayanan
for M/s. Subbaraya Aiyar

JUDGMENT

(The Judgment of the court was delivered by
F.M.IBRAHIM KALIFULLA,J)

The Revenue has come forward with this appeal on the following substantial questions of law.:-

1) Whether in the facts and circumstances of the case, the Tribunal was right in deleting the addition made on account of payments to third parties contrary to the terms of agreement with the agent?

2) Whether in the facts and circumstances of the case, payments made to third parties at the request of the agent, without any evidence of service having been rendered by the third parties can be treated as a business expenditure?

2. The assessee is a manufacturer of textile machine tools. The only issue is relating to payment of additional commission to M/s. Texind Corporation. The Texind Corporation is an accredited agent for sale of textile machineries. During the assessment year 1991-92, a sum of Rs.44,57,020/- was shown as payment of commission to M/s. Texind Corporation.

Out of the said sum, a sum of Rs.9,13,247/- was shown as additional commission. Before the Assessing authority, the assessee contended that during the relevant assessment year, there was a dull in the sale of textile products and therefore, at the instance of their accredited agent viz., M/s. Texind Corporation, they availed services of certain individuals for whom the assessee was obliged to pay the commission, which was shown as additional commission. **The Assessing Authority declined to accept the said explanation offered by the assessee by stating that the assessee was not able to establish the nature of services rendered by such third parties to the assessee or to M/s. Texind Corporation, that in the agreement with Texind Corporation, there was no provision for payment of additional commission or third party commission, that no material was produced in proof of payment at the time of hearing, that the only explanation was that such payments were made on the advise of M/s. Texind Corporation.** On the above stated reasoning, the Assessing Authority disallowed the sum of Rs.9,13,247/- towards additional commission. **Before the CIT appeals, the Chartered Accounts of the assessee placed various materials in support of its claim and the CIT appeals has rendered the finding as under:-**

"..... The Chartered Accountant has also furnished before me the full particulars of this additional commission indicating the Invoice No. and date, the particular item of the machinery sold such as cone winder, double winder, ring spinning frame, ring doubling frame etc., along with the name of the customer, the amount of commission in each case, the cheque No. and date of payment of each such amount. I find no justification for the disallowance of the claim. The addition of Rs.9,13,247/- is accordingly deleted. "

3. The Tribunal was pleased to confirm the order of CIT appeal, inasmuch as even in the earlier year, such a claim of additional commission came to be allowed which was also affirmed by the Tribunal. When we examined the reasoning of the Assessing Authority vis-a-vis the finding of the CIT appeal, we find that whatever reasons which has been given by the Assessing Authority for not allowing the additional commission came to be fully explained and satisfied before the CIT appeals with material particulars in the form of facts, figures and documents. **The finding of the CIT appeals disclose that the full particulars relating to the products, quantity, names of customers to whom the sale was effected, the amount of commission mentioned in each invoice and mode of payment in the form of cheque towards such commission were all fully placed before the CIT appeals covering the entire sum of Rs.9,13,247/-.**

4. As far as the details furnished in those material documents are concerned, there was no dispute raised either before the CIT appeals or before the Tribunal. In such circumstances, when the CIT appeals is equally empowered as that of the Assessing Authority to be satisfied as regards the documentary evidence, in support of any claim made by the assessee and such exercise has been done by the CIT appeals, who rendered the finding based on the relevant documents placed before him, the ultimate conclusion of the said authority and the confirmation of the same by the Tribunal cannot be found fault with.

5. Our conclusion is supported by the decision of our High Court in the case of [2008] 305 ITR 438 CIT v. SAPTHAGIRI TRADERS LTD., wherein it is held that in order to claim a deduction under Section 37 of the Income Tax Act, two conditions must be satisfied (a) the expenditure should have incurred wholly and exclusively for the purpose of business and (b) such expenditure should not be in the nature of capital expenditure. After setting out the said legal principle, the Division Bench on being satisfied with the findings of the Tribunal held that it cannot be doubted and the same cannot be interfered with. When the above principle will apply to the facts of the present case, we too find that the assessee satisfactorily established before the CIT appeals that the expenditure incurred by it was exclusively for the purpose of business and was not in the nature of capital expenditure. Therefore, the impugned order of the CIT appeal as confirmed by the Tribunal cannot be interfered with.

6. As far as the reliance placed on the decision of the [2007] 294 ITR 592 Delhi High Court, [2007] 294 ITR 592 (Delhi) SAWHNEY RUBBER INDUSTRIES v. COMMISSIONER OF INCOME TAX is concerned, where the Tribunal gave a finding of fact that as regards the relief claimed by the assessee, which was disallowed with reference to which the Delhi High Court took a view that with regard to a such power of finding of fact interference cannot be made. The said decision having been rendered in the regular facts involved in that case, we are not in a position to apply the said decision to the facts of this case, which turns out on entirely different set of facts.

7. The appeal fails the same is dismissed and the questions of law is answered against the Revenue.

To

1. Commissioner of Income Tax
Coimbatore

2. The Income Tax Appellate Tribunal,
Madras 'A' Bench
Madras