

IN THE HIGH COURT OF DELHI AT NEW DELHI

16.04.2009

Present : Ms P. L. Bansal, Sr. Standing Counsel with Mr Sanjeev Rajpal and Ms. Anshul Sharma, Standing Counsel for the Revenue.

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The question that has been agitated before us pertains to a sum of Rs 32 lacs approximately paid as commission by the Assessee to several parties.

The impugned Order details 18 such persons and also expresses satisfaction that

the payments were genuine. Ms Bansal, learned counsel appearing for the

Revenue, contends that the payments of commission is not in issue. The argument

is that there was no consideration or cause for payment of commission to those

parties, since, no services had been rendered by the recipients of commission.

This is completely belied by the detailed findings recorded by the Tribunal in

paragraphs 7 to 7.13 of the impugned judgment. We note that the Tribunal has

also recorded that there is no evidence that commission flowed back to the

Assessee or that the entries with respect to commission payments were just paper

transaction. The following observations being relevant are extracted hereinafter:

There is no evidence on record to show that the commission was paid to

any

near relative, family member or sister concern. There is no iota of evidence to show that the payment of commission represented

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only accommodation entry or was only a paper transaction. There is also no

evidence to show that the amount of commission came back to the Assessee in any

form. Since the Assessee has given full details including the addresses of buyers and addresses of the agents, as well as details of payment etc. the

transactions of payment of commission as well as the aspect of rendering

services by the commission agents were fully verifiable. However, neither the AO

nor the learned CIT(Appeals) made any attempt at their end to make probe into

the matter for coming to the conclusion that the transactions were bogus, unfair

and fraudulent. In our opinion, in absence of any such material on record and in

absence of any inquiry conducted to prove the non-genuineness of the transactions the departmental authorities were not justified in disallowing the

claim of the assessee which was fully supported by the documentary evidence on record.

*Apart from expressing its satisfaction as to the genuineness of the transaction the ITAT has taken into consideration the fact that*

commission has  
been paid and allowed in the past and that the commission percentage  
is  
negligible. Ms Bansal contests this position.

The total turnover of the Assessee was Rs 68 crores before tax, inter alia of which included Rs 25.68 crores of export turnover. The turnover we are concerned with is stated to be Rs 3.74 crores on which the commission has been paid. It has been pointed out by Ms Bansal that rather than the stated 0.05% the commission, the commission works out to 1.5% in relation to local sales and

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7% as far as export turnover is concerned. Even then according  
to us there remains no reason to doubt these payments. It has been laid  
down in  
several decisions of the Supreme Court that the ITAT is a final forum for  
findings of fact. The High Court would intervene only if a finding appears  
to  
be perverse, which we are unable to conclude in the case in hand.

So far as the second question is concerned it relates to disallowance of  
Rs 2 lacs under Section 14A of the Income Tax Act, 1961. The ITAT has  
noted,  
and correctly so in our view, that the expenditure cannot be disallowed  
on the  
basis of a mere estimate as to what possibly could have been incurred  
to earn  
income exempted from tax. The Tribunal records no evidence has been  
brought on  
record to show that the impugned expenditure was incurred to earn  
exempted

income, thus meriting disallowance.

No substantial questions of law arise for our consideration.  
Dismissed.

**VIKRAMAJIT SEN, J.**

**RAJIV SHAKDHER, J.**

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