

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**ITR No. 168 OF 1993**

% Date of Decision: 01.09.2010.

**M/S FRICK INDIA LTD.**

**. . . Appellant**

Through : None

VERSUS

**COMMISSIONER OF INCOME TAX**

**. . . Respondent**

Through: Ms. Prem Lata Bansal, Advocate

**CORAM :-**

**HON'BLE MR. JUSTICE A.K. SIKRI  
HON'BLE MS. JUSTICE REVA KHETRAPAL**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

**A.K. SIKRI, J. (ORAL)**

1. The assessee in the return filed by it for the assessment year 1982-83 had claimed weighted deduction under Section 35B of the Income Tax Act on the ground that it had paid certain commission to the agents outside India. This was denied by the Assessing Officer on the ground that no relationship between the assessee and those persons to whom the commission was paid was established. The CIT (A) confirmed this finding. The Income Tax Appellate Tribunal also agreed with the view of the CIT (A). The order of the ITAT reveals that though the payments were shown to have been made to the parties in Bangladesh and Shri Lanka

which were stated to be the commissions in respect of the sales in those countries, the assessee had not placed any documents to show its arrangement with those persons to whom the commission was purportedly paid. It was also observed by the Tribunal that the assessee had not shown to have any regular agreement of agency with any of the said parties. Even necessary correspondence between those parties was not placed before the Tribunal or before the authorities below to show that what was the exact nature of relationship between those parties and the assessee. Following is the due discussion in this behalf:-

“in the case before us the transactions in question in respect of which commission has been paid relate to the sales made to parties in Bangladesh and Sri Lanka. In respect of sales to Bangladesh parties three persons, namely Sieko International Ltd., Khurshid Enterprises and Bengal Progressive Enterprises had been paid commission. Similarly in respect of sales to Sri Lankan parties, three persons namely, D. Gautam, K. Hevamallia and Finco Ltd. had been paid commission. With none of them the assessee is shown to have any regular agreement of agency and the assessee has not even placed necessary correspondence with them, before us or before the authorities below to show what is the exact nature of relationship between them and the assessee. Commission may be paid to a person even though he was acting as an agent of the purchaser only. Therefore, the mere fact that commission had been paid to some outside parties cannot mean that they have been retained by the assessee as its agents and were under an obligation to work for the promotion of the sale of the assessee’s goods outside India. In the absence of such evidence therefore, we are, unable to hold that the relationship between the assessee and the aforementioned foreign parties to whom commission has been paid amounted to the assessee maintaining an agency outside India for the promotion of the sale of its goods. We, therefore, do not find any good reason for disturbing the findings of the authorities below and affirm their decisions that the assessee was not entitled to weighted deduction in respect of the expenditure in question.”

2. Thereafter the assessee moved an application under section 254 (2) of the Act stating that certain mistakes had crept in the order of the Tribunal dated 30.5.1991, inasmuch as certain documents in this regard were filed before the Assessing Officer. This application was also dismissed by the Tribunal vide orders dated 5.2.1992 categorically stating that no documents were filed before the Tribunal. It further mentions that even if certain documents were filed before the authorities below, there was no discussion in respect of those documents in the orders of the Assessing Officer or CIT (Appeal) which showed that the assessee had not relied upon those documents to establish the exact nature of relationship between the assessee and those parties. Therefore, according to the Tribunal, it was not permissible for the assessee to file such documents alongwith the Miscellaneous application as it was too late for the assessee to do so at this stage.. The assessee thereafter moved an application for reference under Section 256 (1) of the Act and following question is referred for the opinion of this Court:-

“Whether on the facts and circumstances of the case the Appellate Tribunal was right in holding that on the basis of material before the Appellate Tribunal relationship of agency with the parties, to whom commission was paid by the assessee, was not established so as to disqualify the assessee from grant of weighted deduction under Section 35B of the Act?”

3. Nobody has appeared on behalf of the assessee. In any case, from the aforesaid discussion, we are of the view that on the basis of material placed before the Tribunal, it has recorded finding of fact and no question

of law arises for our answer. Therefore, the reference is answered against the assessee.

**(A.K. SIKRI)  
JUDGE**

**(REVA KHETRAPAL)  
JUDGE**

**SEPTEMBER 1, 2010**  
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