

IN THE HIGH COURT OF DELHI AT NEW DELHI

15.09.2009

Present: Ms. Rashmi Chopra, Adv. for the appellant.

Mr. Prashant Shukla, Adv. for the respondent.

ITA No.651/2009 THE COMMISSIONER OF INCOME TAX III Vs. SUN RIDER INDIA P.LTD

In the tax return filed by the assessee for the Assessment Year 2001-02, the assessee had claimed a sum of Rs.29,19,829/- paid as commission to various persons on account of selling and distribution of the goods of the assessee through those persons/agents. After certain inquiries, the Assessing Officer disallowed the commission to the extent of Rs.15,82,202/- on the ground that the assessee had failed to prove the genuineness and also failed to establish the identity of the commission recipient. The assessee filed an appeal there against before the CIT (A) and gave various documents to establish genuineness of the identity of those persons. The additional evidence was admitted by the CIT(A) to which the Revenue has no objection. On that basis, the CIT(A) deleted the addition made by the AO and allowed the entire commission by the assessee to those persons. The Revenue feeling aggrieved by this order filed an appeal before the Income Tax Appellate Authority.

We may note that there were three such parties, the ITAT has accepted the order of the CIT(A) in respect of two parties, but insofar as third party, viz., Jharna Sarkar is concerned, the Tribunal has restored the matter to the AO for examining the same afresh in the light of documents discussed by the CIT(A), which were filed before him. This course of action is conducted by the Tribunal because of the reason that insofar as Jharna Sarkar is concerned, no confirmation was filed by her on the documents submitted by the assessee.

However, as far as other two agents are concerned to whom commission was paid, the Tribunal has noted that the documents in the form of income tax returns, PAN, copy of the distributors application form, appointment letter as distributor, details of goods sold as well as commissioner received have been furnished. The commission was paid by accounts payee cheques. These two persons even filed their confirmation with all the supporting evidence to justify the claims of expenditure and genuineness of transaction. Other issue, which is raised in the appeal relates to fluctuation in the foreign exchange. This stands covered by the judgment of the Supreme Court in the

case of Commissioner of Income Tax, Delhi v. Woodward Governor India P. Ltd.

We are, therefore, of the opinion that these are the findings of fact recorded on the basis of evidence produced before the Authority below. No substantial question of law arises for our consideration. This appeal is accordingly dismissed.

**A.K. SIKRI, J.
VALMIKI J. MEHTA, J
September 15, 2009**