

Cit Vs. Klas Engineering (P) Ltd.

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Court : Karnataka

Decided On : Nov-29-1999

Reported in : (2002)177CTR(Kar)12

Appeal No. : ITRC No. 122 of 1998 29 November 1999

Appellant : Cit

Respondent : Klas Engineering (P) Ltd.

Advocate for Pet/Ap. : M V. Seshachala, *for the Revenue* None, *for the Assessee*

Judgement :
ORDER

By the Court

The Tribunal has referred the following question of law arising out of its order dated 16-4-1992, pertaining to the assessment year 1984-85.

'Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that commission paid on sales is not sales promotion expenditure, and, therefore, provisions of section 37(3A) have no application ?'

2. In the assessment the Income Tax Officer had disallowed Rs. 3,47,665. That was the amount the assessee had paid towards commission on sales. This had

been treated as sales promotion expenses by the Income Tax Officer.

The assessee had challenged this finding in appeal filed before the Commissioner (Appeals). The Commissioner (Appeals) held that the provisions of section 37(3A) had no application to commission paid on sales. He gave relief to the assessee in this regard. The revenue had raised a ground in the appeal filed to the Tribunal.

3. The Tribunal followed the decision of the Calcutta High Court in the case of CIT v. Sulej Cotton Mills Ltd. : [1992]194ITR66(Cal) and held that commission payment does not constitute sales promotion expenses and, therefore, disallowance under section 37(3A) was not proper. Following the said decision, the Tribunal upheld the order of the Commissioner (Appeals) in this regard.

4. The matter is now covered by the decision given in the case of CIT v. Srinivasa Textile Processing Ltd. (ITRC 110/1994, dated 15-1-1997) (2002) 177 CTR (Karn) 10 wherein it was observed that 'sales promotion' would have the meaning of 'advertisement, publicity, i.e., by providing certain incentive or taking certain other steps by which the product of the manufacturer could be popularised to promote the sale and would (sic-not) include the amount paid to the commission agent. In view of the above we are of the view that the Tribunal is right in law in holding that commission paid on sales is not sales promotion expenditure, and, therefore, provisions of section 37(3A) have no application.

Reference is accordingly answered in favour of the assessee and against the revenue.

Sri S. Parthasarathi, learned counsel to file the memo of appearance within two weeks.

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