

Cit Vs. Gogte Textiles Ltd.

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Court : Karnataka

Decided On : Jul-18-2002

Reported in : (2002)177CTR(Kar)13

Appeal No. : ITRC No. 815 of 1998 18 July 2002

Appellant : Cit

Respondent : Gogte Textiles Ltd.

Advocate for Pet/Ap. : M.V. Seshachala, *for the Revenue* Sundaraswamy Ramdas, *for the Assessee*

Judgement :

ORDER

G. C. Bharuka, J

This reference is made to this court by the Tribunal under section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). The question of law involved herein is :

'Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the commission paid to the agents on actual sales cannot form sales promotion expenses ?'

2. The assessee is a limited company. While framing the assessment order for the assessment year 1985-86, the assessing officer, among various other additions/disallowances, took into consideration the commission paid to the agents, for the purpose of disallowance under section 37(3A) of the Act. He also deducted the amount of central subsidy received by the assessee from the cost of the assets to arrive at the depreciation allowable for the year. In an appeal filed by the assessee, the Commissioner (Appeals) held that the commission paid to the agents should not be taken into consideration for the purpose of disallowance under section 37(3A) and the depreciation should be allowed without deducting the subsidy from the cost. Against the order of the Commissioner (Appeals), the department appealed before the Tribunal. Following the judgment of the Calcutta High Court in the case of CIT v. Sulej Cotton Mills Ltd. : [1992]194ITR66(Cal) , the Tribunal held that the commission paid on actual sales cannot form sales promotion expenses.

3. The above question of law has arisen in the context of section 37(3A) of the Act which reads as under :

37. General

(1) xxxx

(3A). Notwithstanding anything contained in sub-section (1), where the expenditure or, as the case may be, the aggregate expenditure incurred by an assessee on any one or more of the items specified in sub-section (3B) exceeds one hundred thousand rupees, twenty per cent of such excess shall not be allowed as deduction in computing the income chargeable under the head 'Profits and gains of business or profession'.

(3B). The expenditure, referred to in sub-section (3A) is that incurred on

(i) advertisement, publicity and sales promotion; or

(ii) running and maintenance of aircraft and motor cars, or

(iii) payments made to hotels.

4. This court in the case of CIT v. Srinivasa Textile Processing Ltd. (ITRC No. 110/1994, dated 15-1-1997) (2002) 177 CTR (Karn) 10 by following the decisions of the Calcutta and Kerala High Courts respectively in the cases of CIT v. Bata India Ltd. : [1993]201ITR884(Cal) and CIT v. Popular Automobiles Ltd. (1995) 212 ITR 611 has held that :

'Sales promotion, therefore, would acquire an identical meaning to advertisement and publicity that is by providing certain incentives or taking certain other steps by which the product of the manufacturer could be popularised to promote the sale. That would not mean such amounts as are paid to a commission agent who effect sales will amount to sale promotions within the meaning of the expression under section 37(3A) of the Act.'

5. The above judgment has been followed with approval by a subsequent Division Bench of this court in the case of CIT v. Klas Engineering (P) Ltd. ITRC No. 122/1998, dated 29-11-1999) (2002) 177 CTR 12 wherein it has been held that :

'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) wherein it was observed that 'sales promotion' would have the meaning of 'advertisement, publicity, i.e., by providing certain incentive or taking manufacturer could be popularised to promote the sale and would 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) has no application. '

6. In the above view of the matter, we hold that the commission paid to the agents cannot be treated as sales promotion expenses within the meaning of section 37(3A) of the Act. The question referred is accordingly answered in affirmative, i.e., in favour of the assessee and against the revenue.