

**Cit Vs. Padmini Packaging (P) Ltd.**

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**SooperKanoon Citation :** [sooperkanoon.com/715960](http://sooperkanoon.com/715960)

**Court :** Delhi

**Decided On :** Apr-04-2006

**Reported in :** [2006]155TAXMAN268(Delhi)

**Appeal No. :** IT Appeal No. 257 of 2006 4 April 2006

**Appellant :** Cit

**Respondent :** Padmini Packaging (P) Ltd.

**Advocate for Pet/Ap. :** R.D. Jolly & Ajay Jha,;for the Appellant

**Judgement :**

ORDER

The assessed is engaged in the manufacture of moulded plastic items. It claimed that it had paid commission to its agents at the rate of 8.65 per cent which was disallowed by the assessing officer on the ground that the same was excessive. The assessing officer was of the view that a commission of 2.65 per cent would be reasonable and accordingly allowed deduction of the same from the taxable income of the assessed.

2. In an appeal against the above order, the Commissioner (Appeals) deleted the addition. In a further appeal to the Tribunal filed by the revenue, the said deletion has been affirmed on the following findings of fact:

- (a) That there was a nexus between the expenditure and the business of the assessed.
- (b) That the genuineness of the expenditure was not disputed by the revenue.
- (c) That there was no evidence to suggest any siphoning off of the money on account of payment of commission.

3. Based on the above findings and relying upon the decision of the Division Bench in CIT v. Dalmia Cement (Bharat) Ltd. : [2002]254ITR377(Delhi) , the Tribunal held that the addition made by the assessing officer was not sustainable. There is, in our view, no infirmity in that view. Once on a question of fact it is found that there was a nexus between the expenditure incurred by the assessed and his business and once it was held that the genuineness of the expenditure was not in dispute or had been established, the assessing authority could not sit in the arm chair of the businessman to determine as to what commission he ought to pay to its agents for doing his business. Mr. Jolly, however, argued that the Commissioner (Appeals) and the Tribunal had failed to take into account the fact that there was a search at the premises of the assessed in which it was discovered that the assessed was doing some business outside the books of account. We do not think that the said circumstances, even if established, could be conclusive evidence of the fact that the commission was either not paid or that the same was excessive within the meaning of section 40(A)(2) of the Income Tax Act. No substantial question of law arises for our consideration. This appeal fails and is hereby dismissed.