

Dy. Cit Vs. Kay Poly Plast Ltd.

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Court : Rajasthan

Decided On : May-28-2004

Reported in : (2004)91TTJ(NULL)374

Appeal No. : ITA No. 228/Jp/1997 28 May 2004 A.Y. 1993-94

Appellant : Dy. Cit

Respondent : Kay Poly Plast Ltd.

Advocate for Pet/Ap. : Prakash Javaria, *for the assessee* D.N. Pareek, *for the revenue*.

Judgement :

ORDER

Joginder Pall, A.M.

This appeal has been filed by the revenue against the order of Commissioner (Appeals), Udaipur, for the assessment year 1993-94.

2. The first grievance of the revenue relates to deletion of an addition of Rs. 6,24,916 made by the assessing officer on account of unsubstantiated job charges. The facts of the case are that the assessee had claimed job charges of Rs. 52,77,769 for cutting, bailing, stitching and printing of sacks. The assessing officer sent summons under section 131 to a few parties. But these were returned by the postal authorities 'unserved' in three cases stating that parties were

untraceable. In one case, notice server reported that there was no such party. In another case also, the party was not found at the given address. Accordingly, the assessing officer disallowed the job charges of Rs. 6,24,916 paid to these five parties on the ground that these were not genuine.

3. Aggrieved, the assessee impugned the disallowance in appeal before the Commissioner (Appeals). It was submitted that payments were made to job workers against their invoices for stitching and printing of sacks. Almost all payments were made by account payee cheques. While making the payments, the assessee also deducted the tax at source and deposited the same in Government account. These parties were also assessed to tax. Necessary returns for the TDS were also submitted before the income-tax authorities. These parties had also carried on the job work in earlier as well as subsequent years. It was also stated that no inhouse facilities of stitching and printing were available in company's factory.

These parties carried out the job work at assessee's premises. The payments to these parties were made at the same rates as made to other parties. It was also stated that according to quantitative details the works in respect of printing of numbers of sacks, stitching number of sacks was carried out by such job workers. It was stated that presently the parties were not working with the assessee. Accepting the contentions of the assessee, the learned Commissioner (Appeals) deleted the addition by recording following finding in para 2.2 of the impugned order :

'I have gone through the observations of the assessing officer and the arguments of the learned Authorised Representative. Out of the payments of Rs. 6,24,916, it was found that Rs. 68,499 were paid in cash and the balance was paid by account payee cheques. There are ten parties engaged for stitching and eleven parties for printing work. The reconciliation statement filed is reproduced hereunder

I. Reconciliation statement of stitching and printing job-1992-93

Particulars

Stitching

Printing

Total despatch

1,10,40,386

1,10,40,386

Less Opening stock

49,500

49,500

1,09,90,886

1,09,90,886

Less Opening C/O GPI

10,000

10,000

1,09,80,886

1,09,80,886

Add: Closing stock

33,500

33,500

1,10,14,386

1,10,14,386

Less Bought out bags

93,500

93,500

1,09,20,886

1,09,20,886

Less Unprinted bags sold

0

1,663

Anciliaries billed quantity

1,09,20,886

1,09,19,223

II. Details of stitching and printing-1992-93

Name of party

Stitching

Printing

Shree Ganesh Enterprises

22,13,633

22,13,633

Sonna Enterprises

24,27,678

24,27,678

Royal Enterprises

23,36,592

18,71,363

Star Stitching & Printing

12,73,600

13,04,655

Krishna Printers

0

5,03,500

A.K. Enterprises

0

6,50,265

Eklingnath Enterprises

4,87,030

9,73,030

Vikram Enterprises

0

52,500

Industrial Packings

4,13,890

2,99,670

N.S. Enterprises

1,08,500

0

Shree Rishab Enterprises

1,33,529

4,85,429

Lekha Packaging

14,45,934

0

Modern Packaging

80,500

1,37,500

Total

1,09,20,886

1,09,19,223

Add : Unprinted

1,663

Grand Total

1,09,20,886

M/s Lekha Packaging was paid @ 0.20 paise per bag for stitching while others were paid 0.25 per bag upto 10 lakh bags and over that Rs. 0.20 per bag. All the parties have been paid at the same rate. The parties in respect of whom disallowance have been made were not paid higher rate than the others. It is also a fact that the appellant itself is not doing the job of stitching and printing. Therefore, the payment for stitching and printing has to be in accordance with the total production of bags. According to the reconciliation statement, the appellant has shown the production of 1,09,20,886 bags. The appellant has claimed the stitching charges also for the same number of bags and not more. Printing charges have been claimed on 1,09,19,223 bags on the ground that 1,663 bags were unprinted though stitched. As regards the discrepancy in the GIR numbers and the addresses, the learned Authorised Representative stated that the appellant had given the information from its records because those parties are now not working for the appellant. Since these parties are not working with the appellant presently, it is not practicable for the appellant to produce them after a gap of three years. In view of the fact that the appellant has claimed stitching and printing charges at a uniform rate to all the parties and only to the extent of the production declared, the expenditure appears to be reasonable. Without payment of stitching and printing charges to the aboveresferred parties, the production would have been on the lower side. However, since the appellant has accepted the production as declared, obviously some expenditure must have been incurred for stitching and printing. Therefore, considering the facts and circumstances of the case, the disallowance made by the assessing officer is hereby deleted.'

Revenue is aggrieved by the order of Commissioner (Appeals). Hence, this appeal before us.

4. The learned departmental Representative, Shri D.N. Pareek, did not advance any specific arguments except relying on the order of assessing officer.

5. The learned counsel for the assessee, on the other hand, heavily relied on the order of Commissioner (Appeals) and reiterated the submissions made before him as summarized in para 3 above.

6. We have heard both the parties and given our thoughtful consideration to the rival submissions. We have carefully perused the orders of authorities below and evidence and material placed on record. It is clear from the submissions of the assessee as summarized in para 3 above that payments for the job charges were mostly made to these parties by account payee cheques. Assessee had deducted the tax at source and submitted the certificates/returns to the income-tax authorities. It is also a fact that when the assessing officer made enquiries these parties were not found there. But it must be noted that enquiries were made after a gap of three years. It is quite probable that they must have left the place. We have also observed that job work was being done at the premises of the assessee. Therefore, assessee was not concerned about ascertaining their whereabouts. Moreover, the quantity of work done tallies with the job charges paid to them. Thus, we are of the considered opinion that Commissioner (Appeals) was justified in deleting the impugned addition. We confirm his order and reject this ground of appeal.

7. The next ground of appeal relates to deleting an addition of Rs. 5,911 made by the assessing officer on account of delayed payment of PF. The learned Commissioner (Appeals) has allowed the deduction for the reason that payment was made in the accounting year under reference. This view is not correct. As per provisions of section 43B(b) read with second proviso and clause (va) of sub-section (1) of section 36, these payments were required to be made on the 'due dates' specified under the Public Provident Fund Act. When the attention of the learned counsel was drawn to these provisions, he conceded that the deduction is not admissible. We, therefore, set aside the order of Commissioner (Appeals) and restore that of assessing officer. This ground of appeal is allowed.

8. In the result, this appeal is partly allowed.