Cit Vs. Speciality Paper Co.

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Court : Chennai

Decided On : Jul-07-2008

Reported in : [2009]316ITR415(Mad)

Judge : K. Raviraja Pandian and ;P.P.S. Janarthana Raja, JJ.

Appellant : Cit

Respondent : Speciality Paper Co.

Disposition : Appeal dismissed against the department

Judgement :

P.P.S. Janarthana Raja, J.

1. This appeal is filed by the revenue against the order of the Tribunal, Madras 'C Bench dated 30-11-2007 in ITA No. 1778/Mad/2006 for the assessment year 2001-02 raising the following substantial question of law:

Whether in the facts and circumstances of the case, the Tribunal was right in holding that the payment of commission by the assessee to a private limited company where its partners were directors is valid in law, when there is no evidence to show that the company had in fact rendered any service?

2. The brief facts are as follows:

The assessee is a registered partnership firm consisting of two partners. It is engaged in the business of purchase and sale of paper and boards. The assessment year is 2001-02 and corresponding accounting year ended on 31-3-2001. The assessee has filed a return of income on 31-10-2001 admitting the total income of Rs. 25.25,803. The same was processed under Section 143(1) of the Income Tax Act. Later on, notice under Section 143(2) of the Act was issued and served on the assessee on 30-10-2002. The assessing officer has completed the assessment under Section 143(3) of the Act determining the total income at Rs. 44,77,348. While computing the assessment, the assessing officer has disallowed the commission payment of Rs. 19,51,465 made to M/s Rose Flower Company Papers (P) Ltd., Sivakasi, on the ground that the said company has not rendered any service and also one of the partners is the director in the said company and also it is not for the purpose of business. Aggrieved by that order, the assessee has filed an appeal to the Commissioner (Appeals)-XI, Chennai. The appellate authority allowed the appeal and set aside the order of the assessing officer. Aggrieved by the same, the revenue has filed an appeal to the Tribunal, in which, the Tribunal has confirmed the order of the Commissioner (Appeals) and dismissed the appeal filed by the revenue. Hence, the present appeal.

3. Learned Counsel appearing for the revenue has submitted that the recipient of the commission is a sister-concern of the assessee and the marketing agents were partners of the assessee firm. He further contended that the said M/s Rose Flower Company Papers (P) Ltd. has in no way involved in sales and hence, the claim of the commission payment was correctly rejected by the assessing officer and hence, the order passed by the Tribunal is not in accordance with law and the same has to be set aside.

4. Heard the learned Counsel for the revenue. The assessee has paid a sum of Rs. 19,51.465 to M/s Rose Flower Company Papers (P) Ltd., Sivakasi, on account of commission. The assessee has also filed evidence to that effect that there was an agreement entered into between the assessee firm and M/s Rose Flower Company Papers (P) Ltd. on 1-4-1999. It is seen from the records that the appellant firm was managed by the partners, who do not have adequate expertise in the area of product quality etc. Under these circumstances, the services of the

said M/s Rose Flower Company Papers (P) Ltd. were engaged for promoting sales of its products by making personal meetings with customers, mills, etc. Further, the assessee has filed details regarding the volume of business and profitability increased substantially between 1989-90 to 2001-02 as a result of engaging M/s Rose Flower Company Papers (P) Ltd. The details with regard to the volume of business increasing turnover and profitability between 1998-99 and 2001-02 are as follows:

Sl. No.	Particulars	1998-99	1999-2000	2000-01	2001-02
1.	Turnover	264-1	737-44	993-51	1.300.98
2.	Operating exp.	2.69	3.72	3.71	3.43
3.	Profit before tax	4.07	22.17	20.91	28.15

The Commissioner (Appeal) after considering the matter in detail held as follows:

I have carefully considered the facts of the case, the nature of claim made and the reasons based on which the disallowance was preferred by the assessing officer. I have also perused the agreement dated 1-4-1999 of marketing services entered into by the appellant firm and M/s Rose Flower Company Papers (P) Ltd., being the marketing agent for marketing activities on commission basis with a view to promote their sales volume. Item (7) specifies that the marketing agent would be entitled for commission on sales turnover to be decided on mutual consent of both parties. It has also been decided that the agreement would be in force for a period of three years commencing from 1-4-1999 renewable for a further period of three years at the option of the parties. From the particulars available on record it is seen also that the turnover of the appellant company has steadily risen and the sales commission paid represents 2 per cent of the turnover for the year 1999-2000 and 1.50 per cent for the period under appeal on a turnover of Rs. 9,93,51.290 and Rs. 13,00,97,698 respectively.

The Tribunal also after considering the materials on record, confirmed the order of the Commissioner (Appeals) and held as follows:

The learned Departmental Representative strongly relied on the order of the assessing officer. However, the learned Counsel for the assessee relied on the findings of learned Commissioner (Appeals) supported by the decision of Hon'ble Supreme Court in the case of S.A. Builders Ltd. v. CIT : [2007]288ITR1(SC) and contended that the commission payment is reasonable and it is necessary for the business and it is the fact that the assessee got the services of the marketing agents for marketing activities on commission basis with a view to promote the sales. For that the marketing agents would be entitled for commission on the basis of sales turnover which has to be decided on mutual consent of both the parties. There cannot be any doubt in the nature of agreement because of this agreement only the turnover and profit increased considerably. It was also brought to our notice that for this year under appeal, the payment of commission is far below than the payment of commission made during the year 1999-2000. Therefore, we are in full agreement with the findings of the learned Commissioner (Appeals) who has given valid and acceptable reason for deleting the disallowance.

From the above, it is clear that both the authorities have given concurrent finding that commission is paid for rendering service. It is not a perverse order. It is a question of fact. Hence, we do not find any error or infirmity in the order of the Tribunal warranting interference and the same is in accordance with law and accordingly, it is confirmed. In these circumstances, no substantial question of law arises out of the order of the Tribunal and the Tax Case (Appeal) is liable to be dismissed and accordingly it is dismissed.