(1999) 05 KL CK 0011

In the High Court Of Kerala

Case No : O.P. No''s. 23660 to 23663 of 1998 5th March, 1999

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

EXCEL GLASSES LTD. — RESPONDENT

Date of Decision : 03-05-1999

Acts Referred:
Income Tax Act, 1961 — Section 256

Citation : (1999) 155 CTR 117 : (2000) 112 TAXMAN 89

Hon'ble Judges : Om Prakash., C.J;Om Prakash, C.J;J.B. Koshy, J

Bench : Full Bench

Judgement

OM PRAKASH, C.J.

By these four Original Petitions filed under s. 256(2) of the IT Act, 1961, against the combined order of the Tribunal, the CIT requires us to direct the Tribunal to draw up a statement of the case and refer the following questions for the opinion of this Court :

O.P. No. 23660/98

"(i) Whether, on the facts and in the circumstances of the case and also in the absence of confirmation from the agents for the services said to have been rendered by them, the Tribunal is right in law and fact in holding that the assessee has established the nexus between the payment of commission made to the agents and the services rendered by them to the assessee and in allowing the entire claim and is not the order of the Tribunal unsupported by relevant and cogent evidence ?

(ii) Whether, on the facts and in the circumstances of the case, the payment made to H.M.M. Ltd., is an allowable deduction for the asst. yr. 1987-88 ?

(iii) Whether, on the facts and in the circumstances of the case, did the assessee discharge the burden of proof that lay on it ?"

O.P. No. 23661/98

"(i) Whether, on the facts and in the circumstances of the case and also in the absence of confirmation from the agents for the services said to have been rendered by them, the Tribunal is right in law and fact in holding that the assessee has established the nexus between the payment of commission made to the agents and the services rendered by them to the assessee and in allowing the entire claim and is not the order of the Tribunal unsupported by relevant and cogent evidence ?

(A) Whether, on the facts and in the circumstances of the case, did the assessee discharge the burden of proof that lay on it ?

O.P. No. 23662/98

"(i) Whether, on the facts and in the circumstances of the case and also in the absence of confirmation for the agents or the services said to have been rendered by them, the Tribunal is right in law and fact in holding that the assessee has established the nexus between the payment of commission made to the agents and the services rendered by them to the assessee and in allowing the entire claim and is not the order of the Tribunal unsupported by relevant and cogent evidence ?

Iii) Whether, on the facts and in the circumstances of the case, did the assessee discharge the burden of proof that lay on it ?"

O.P. No. 23663/98

"(i) Whether, on the facts and in the circumstances of the case and also in the absence of confirmation from the agents for the services said to have been rendered by them, the Tribunal is right in law and fact in holding that the assessee has established the nexus between the payment of commission made to the agents and the services rendered by them to the assessee and in allowing the entire claim and is not the order of the Tribunal unsupported by relevant and cogent evidence ?

(ii) Whether, on the facts and in the circumstances of the case, the payment made to H.M.M. Ltd., by cheque after the end of the accounting year is an allowable deduction for the asst. yr. 1986-87 ?

(iii) Whether, on the facts and in the circumstances of the case, did the assessee discharge the burden of proof that lay on it ?"

2. The assessee-company claimed deduction of commission having been paid to M/s Aggarwal Trading Co., M/s B.K. Export Enterprises and Shri Joseph Sebastian. So far as the commission paid to Shri Joseph Sebastian is concerned, that case was accepted by the appellate authority and the Revenue filed an appeal before the Tribunal against that. Insofar as the commission paid to M/s Aggarwal Trading Company is concerned, the appellate authority allowed the commission only in part and, therefore, the assessee approached the Tribunal questioning the disallowance in part, of the commission paid to M/s Aggarwal

Trading Co., and total disallowance of commission paid to M/s BX Export Enterprises. The Tribunal upon considering the entire correspondence exchanged between the assessee-company and the agents and materials on Sag Construction Associates vs. Union of India & Ors. (Del) record concluded that the agents rendered services to the assessee-company. It was clearly held by the Tribunal that M/s Aggarwal Trading Company procured orders for the assessee-company from parties and also assisted the assessee-company in securing payments from some parties.

3. It is contended by the standing counsel before us that mere debit entries were made in the books of assessee-company and, in fact, no evidence was produced by the assessee-company to show the actual payment of amount of commission having been made to the agents. There is no difference in the legal and factual position of the other agent, M/s B.K. Export Enterprises. The genuineness of the agents is not denied. Since the debit entries have been made in the books of the assessee-company, it was for the authorities to rebut those debit entries and show that they are not genuine. No evidence in rebuttal was filed and, therefore, the Tribunal accepted the case of the assessee-company. From the discussion made by the Tribunal in its order, it is manifest that a clear finding of fact was recorded in regard to the payment of commission of Joseph Sebastian, M/s Agarwal Trading Company and M/s BX Export Enterprises. We do not see any question of law arising from the findings recorded by the Tribunal.

In the result, all the four Original Petitions fail and are rejected.

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