(1996) 02 MP CK 0004

In the Madhya Pradesh High Court

Case No : MCC No. 85 of 1990

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

GANESH SOAP WORKS — RESPONDENT

Date of Decision : 09-02-1996

Acts Referred:
Income Tax Act, 1961 — Section 256, 40A

Citation : (1999) 152 CTR 31

Hon'ble Judges : A.K. Mathur, C.J;S.K. Kulshrestha, J

Bench : Full Bench

Advocate : A. Adhikail, for the Revenue and None, for the Assessee, for the Appellant;

Judgement

BY THE COURT:

This is a Income Tax reference under s. 256(1) of the IT Act, at the instance of the Revenue and the following question has been referred for answer by this Court, which reads as under:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the expenditure incurred by Ganesh Sales Agency, was allowable as a business expenditure incurred by the assessee?"

2. The matter relates to the asst. yr. 1977-78 for which the previous year was Diwali year 1976. The assessee paid Rs. 54,861 as commission to Ganesh Sales Agency whose proprietor was Snit. Pushpa wife of the main partner Shri Jakhu Bhai of the assessee-firm. The ITO called upon the assessee to justify the payment of commission to Ganesh Sales Agency. In the earlier year, the ITO had disallowed part of the commission paid to the said concern under s. 40A(2)(a) and the Tribunal had upheld the finding. The assessee claimed that Snit. Pushpa was actually rendering service to the assessee-firm and the assessee had also paid commission to strangers. The ITO had rightly observed that out of the total commission of Rs. 55,476 claimed as a deduction by the assessee-firm, the

major portion of Rs. 54,861 was claimed to have been paid to Ganesh Sales Agency. The ITO held that the partner Shri Jakhubhai was controlling the entire affairs of the firm and the claim of payment of commission was fictitious. It was further held that the payment was also hit by the provisions of s. 40A(2)(a) of the IT Act, 1961. Against this order, appeal was preferred by the assessee and the CIT(A) confirmed the order. Hence, the assessee approached the Tribunal and the Tribunal upheld the finding of ITO as well as the CIT(A) and confirmed the finding of both the authorities below that Smt. Pushpa, wife of the main partner Shri Jakhubhai of the assessee-firm, was not entitled to the amount of commission paid to her. The Tribunal remanded the matter back to the authority only to the extent that whatever legitimate expenditure is incurred by that concern for this purpose should naturally be allowed. The ITO was directed to look into this aspect of the matter and to determine the amount that should be added in the assessee''s case. Against this order, the Revenue has filed the application for making the reference for answer by the High Court.

3. We have heard the learned counsel for the parties and perused the record.

4. So far as the finding that the part of the commission was paid to Snit. Pushpa, wife of the. main partner of the firm is concerned, that has already been disallowed under s. 40A(2)(a) by the ITO and the Tribunal has upheld the finding. Since the matter has been remanded back to the ITO and no question of law is involved in the case, therefore, the view taken by the learned Tribunal is justified.

5. Accordingly, the reference is answered against the Revenue and in favour of the assessee.