(2006) 08 DEL CK 0111

In the Delhi High Court

Commissioner of Income Tax APPELLANT

Vs

Genesis Commet (P.) Ltd. RESPONDENT

Date of Decision : 25-08-2006

Acts Referred:

Citation : (2007) 163 TAXMAN 482

Hon'ble Judges : Vipin Sanghi, J;Madan B. Lokur, J

Bench : Division Bench

Judgement

1. The revenue is aggrieved by an order dated 29-4-2005 passed by the Income Tax Appellate Tribunal, Delhi Bench "F" in ITA No. 5568 Delhi 2004 relevant for the assessment year 2001-02.

2. The Assessing Officer disallowed commission payment made by the Assessing Officer (sic) to three parties, that is Sh. Rajesh Singhal, proprietor of M/s. Rajesh Traders, Smt. Renu Bhagwan and M/s. Jagdish Rai Jai Bhagwan.

3. Feeling aggrieved, the assessed preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner accepted the appeal in respect of one of the parties, that is, Smt. Renu Bhagwan.

4. Against the order of the Commissioner, the assessed filed an appeal before the Tribunal which accepted the appeal and that is why the revenue is before us.

5. The Tribunal has noted that insofar as M/s. Rajesh Traders is concerned, it had given the names and addresses of the parties whom it had introduced to the assessed as result of which the assessed had made sales to these parties to the extent of Rs. 50,62,849. M/s. Rajesh Traders confirmed the receipt of commission and gave details of services rendered by it as per its letter dated 11-10-2003 in response to summons issued by the assessing officer u/s 131 of the Income Tax Act. M/s. Rajesh Traders also appears to have been given a copy of the accounts of the assessed as maintained in its books of account.

6. Insofar as M/s. Jagdish Rai Jai Bhagwan is concerned, the assessed furnished

a copy of the accounts of this party containing the details of commission paid. The assessed also disclosed the names of the parties from whom business had been procured by the assessed through the said commission agent. M/s. Jagdish Rai Jai Bhagwan also confirmed the receipt of commission.

7. Despite all this material. it appears that the assessing officer required the presence of the commission agents for cross-examination. The assessed has pointed out that M/s. Rajesh Traders has sent the information and as regards M/s Jagdish Rai Jai Bhagwan, there are some differences that the assessed had with that party and, Therefore, it was not in a position to produce the said party.

8. However, the assessing officer did not take any coercive measures to enforce attendance of any of the parties except issuing summons u/s 131 of the Income Tax Act in response to which necessary information was filed.

9. The Tribunal took a view that the fact that the assessed was not in a position to produce the two commission agents is not its fault and the assessing officer could have exercised powers available to him to summon and cross-examine these two parties if, for some reason, he did not accept the statement furnished by these two parties. The assessing officer could also have made independent enquiries from the customers of the assessed. However, none of this was done.

l0. Therefore, we are of the opinion that the Tribunal has not committed any error in the view that it has taken. The assessed produced all the material that it could possibly produce and if the assessing officer was not inclined to believe the material produced, he could have used the coercive powers available to him, which he failed to exercise.

11. Therefore, we are of the view that in this case, no substantial question of law arises for our consideration.

12. Dismissed.