(2002) 07 KAR CK 0009

In the Karnataka High Court

Case No : Income Tax R.C. No. 815 of 1998

Commissioner of Income Tax — APPELLANT

Vs

Gogte Textiles Ltd. — RESPONDENT

Date of Decision : 18-07-2002

Acts Referred:
Income Tax Act, 1961 — Section 256 (1), 37 (3A)

Citation : (2002) ILR (Kar) 3823 : (2003) 260 ITR 229

Hon'ble Judges : S.B. Majage, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : M.V. Seshachala, for the Appellant; Sundaraswamy Ramdas, for the Respondent

Judgement

G.C. Bharuka, J.—This reference is made to this court by the Tribunal u/s 256(1) of the Income Tax Act, 1961 (in short the "Act"). The question of law involved herein is--

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the commission paid to the agents on actual sales cannot form sales promotion expenses ?

2 ..."

2. The assessee is a limited company. While framing the assessment order for the assessment year 1985-86, the Assessing Officer, among various other additions/disallowances, took into consideration the commission paid to the agents, for the purpose of disallowance u/s 37(3A) of the Act. He also deducted the amount of Central subsidy received by the assessee from the cost of the assets to arrive at the depreciation allowable for the year. In an appeal filed by the assessee, the Commissioner (Appeals) held that the commission paid to the agents should not be taken into consideration for the purpose of disallowance u/s 37(3A) and the depreciation should be allowed without deducting the subsidy from the cost. Against the order of the Commissioner (Appeals), the Department

appealed before the Tribunal. Following the judgment of the Calcutta High Court in the case of Commissioner of Income Tax Vs. Sutlej Cotton Mills Ltd., , the Tribunal held that the commission paid on actual sales cannot form sales promotion expenses.

3. The above question of law has arisen in the context of Section 37(3A) of the Act which reads as under : "37. General.--. . .

(3A) Notwithstanding anything contained in Sub-section (1), where the expenditure or, as the case may be, the aggregate expenditure incurred by an assessee on any one or more of the items specified in Sub-section (3B) exceeds one hundred thousand rupees, twenty per cent, of such excess shall not be allowed as deduction in computing the income chargeable under the head ''Profits and gains of business or profession''.

(3B) The expenditure, referred to in Sub-section (3A) is that incurred on--

(i) advertisement, publicity and sales promotion ; or

(ii) running and maintenance of aircraft and motor cars ; or

(iii) payments made to hotels."

4. This court in the case of CIT v. Srinivasa Textile Processing Ltd. (I. T. R. C No. 110 of 1994, dated January 15, 1997), by following the decisions of the Calcutta and Kerala High Courts, respectively, in the cases of Commissioner of Income Tax Vs. Bata India Ltd., and Commissioner of Income Tax Vs. Popular Automobiles Ltd., has held that :

"Sales promotion therefore would acquire an identical meaning to advertisement and publicity that is by providing certain incentives or taking certain other steps by which the product of the manufacturer could be popularised to promote the sale. That would not mean such amounts as are paid to a commission agent who effect sales will amount to sale promotions within the meaning of the expression u/s 37(3A) of the Act."

5. The above judgment has been followed with approval by a subsequent Division Bench of this court in the case of Commissioner of Income Tax Vs. Klas Engineering (P.) Ltd., (I. T. R. C. No. 122 of 1998, dated November 29, 1999), wherein it has been held that (page 780) :

"The matter is now covered by the decision given in the case of CIT v. Srinivasa Textile Processing Ltd. (I. T. R. C No. 110 of 1994, dated January 15, 1997), wherein it was observed that ''sales promotion'' would have the meaning of ''advertisement, publicity, i.e., by providing certain incentive or taking certain other steps by which the product of the manufacturer could be popularised to promote the sale and would include the amount paid to the commission agent''. In view of the above we are of the view that the Tribunal is right in law in holding that commission paid on sales is not sales promotion expenditure, and therefore the provisions of Section 37(3A) have no application."

6. In the above view of the matter, we hold that the commission paid to the agents cannot be treated as sales promotion expenses within the meaning of Section 37(3A) of the Act. The question referred is accordingly answered in the affirmative, i.e., in favour of the assessee and against the Revenue.