**(1999) 11 KAR CK 0011**

**In the Karnataka High Court**

**Case No :** ITRC No. 122 of 1998 29 November 1999

Commissioner of Income Tax APPELLANT

Vs

KLAS ENGINEERING (P) LTD. RESPONDENT

**Date of Decision :** 29-11-1999

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

**Citation :** (2002) 177 CTR 12

**Hon'ble Judges :** V.K. Singhal, J;T.N. Vallinayagam, J

**Bench :** Full Bench

**Advocate :** M V. Seshachala, for the Revenue None, for the Assessee, for the Appellant;

## Judgement

By the Court

The Tribunal has referred the following question of law arising out of its order dated 16-4-1992, pertaining to the assessment year 1984-85.

" ;Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that commission paid on sales is not sales promotion expenditure, and, therefore, provisions of section 37(3A) have no application ?"

2. In the assessment the Income Tax Officer had disallowed Rs. 3,47,665. That was the amount the assessee had paid towards commission on sales. This had been treated as sales promotion expenses by the Income Tax Officer.

The assessee had challenged this finding in appeal filed before the Commissioner (Appeals). The Commissioner (Appeals) held that the provisions of section 37(3A) had no application to commission paid on sales. He gave relief to the assessee in this regard. The revenue had raised a ground in the appeal filed to the Tribunal.

3. The Tribunal followed the decision of the Calcutta High Court in the case of Commissioner of Income Tax Vs. Sutlej Cotton Mills Ltd., and held that

 

commission payment does not constitute sales promotion expenses and, therefore, disallowance u/s 37(3A) was not proper. Following the said decision, the Tribunal upheld the order of the Commissioner (Appeals) in this regard.

4. The matter is now covered by the decision given in the case of CIT v. Srinivasa Textile Processing Ltd. (ITRC 110/1994, dated 15-1-1997) (2002) 177 CTR (Kar) 10 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 (sic-not) 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, provisions of section 37(3A) have no application.

Reference is accordingly answered in favour of the assessee and against the revenue.

Sri S. Parthasarathi, learned counsel to file the memo of appearance within two weeks.

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