(1999) 11 KAR CK 0001

In the Karnataka High Court

Case No : Income Tax R.C. No. 122 of 1998

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) 258 ITR 779

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

Bench : Division Bench

Advocate : M.V. Seshachala, for the Appellant;

Judgement

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

"Whether, on the facts and in the circumstances of the case, the Appellate 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 ?"

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.

3. 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.

4. 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.

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

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