(1989) 02 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No''s. 30 and 31 of 1982

Commissioner of Income Tax APPELLANT

Vs

Kumar Engineers RESPONDENT

Date of Decision : 28-02-1989

Acts Referred:
Income Tax Act, 1961 — Section 40A(2)

Citation : (1989) 178 ITR 630

Hon'ble Judges : S.S. Sodhi, J;Gokal Chand Mital, J

Bench : Division Bench

Advocate : Ashok Bhan and Ajay Mittal, for the Appellant; B.S. Gupta and Sanjay Bansal, for the Respondent

Judgement

Gokal Chand Mital, J.—The assessee, Kumar Engineers, appointed Kumar and Company, as their sole selling agent. The sole selling agent was to be paid commission at the rate of 6 per cent. on the orders procured by them. For the assessment year 1976-77, the assessee claimed deduction of commission paid to the sole selling agent but the Income Tax Officer disallowed it. He came to the conclusion that two of the partners of the assessee-firm were partners of the firm carrying on the sole selling agency and since no work was done by the sole selling agency, he held that the commission paid was unreasonable.

2. On appeal, the Commissioner of Income Tax (Appeals) came to the conclusion that it was found that one of the partners of the sole selling agency firm had travelled throughout India to collect orders which increased the sales of the assessee and held that 2 per cent. commission was reasonable and disallowed the remaining 4 per cent.

3. On further appeal, the Income Tax Appellate Tribunal, Delhi, further found that two of the partners of the sole selling agency firm were proved to have gone around the country obtaining huge orders for the products of the assessee-firm and keeping in view the higher sales and other relevant factors came to the conclusion that 4 per cent. was reasonable and disallowed only 2 per cent.

commission.

4. Both sides filed applications for reference and the Tribunal, as would be apparent from para 5 of the statement of the case, agreed to refer one common question, so as to cover the controversy raised by both the sides and thus referred the following question for opinion :"

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in allowing a further allowance of Rs. 15,033 as admissible u/s 40A(2) of the Income Tax Act, 1961 ?"

5. Since references were made on the applications of both the sides, they have been registered as ITR Nos. 30 and 31 of 1982.

6. A reading of the aforesaid, referred question shows as if reference has been made only at the instance of the Revenue and not at the instance of the assessee. To avoid any complication or technical objection, the assessee filed Income Tax Case No. 48 of 1982, for recasting the question or for calling for a separate question at its instance.

7. Shri B.S. Gupta, Senior Advocate, appearing for the assessee, did not press I. T. C. No. 48 of 1982, nor did he claim recasting of the question.

8. In this view of the matter, we proceed to decide the question as referred. I. T. C. No. 48 of 1982 is dismissed as not pressed.

9. Whether the commission paid is reasonable or not is largely a question of fact and it has been so held by the Supreme Court in Upper India Publishing House (P) Ltd. Vs. Commissioner of Income Tax, Lucknow, and by this court in Narain Motors Vs. Commissioner of Income Tax, . We have gone through the agreement of sole selling agency and the order of the Tribunal, and are of the opinion that considering all the facts and circumstances of the case, no question of law or even a mixed question of law and fact is found to have been made out.

10. Moreover, on the basis of facts taken into consideration by the Tribunal, it cannot be said that the Tribunal was not justified in law in allowing further 2 per cent. commission which came to Rs. 15,033 as admissible u/s 40A(2) of the Act.

11. Accordingly, we answer the question in favour of the assessee, that is, in the affirmative, with no order as to costs.