(1999) 03 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : IT Case No. 6 of 1998 20th March, 1999

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

NEW KRISHNA ENGINEERING INDUSTRIES — RESPONDENT

Date of Decision : 20-03-1999

Acts Referred:
Income Tax Act, 1961 — Section 256

Citation : (1999) 155 CTR 150

Hon'ble Judges : N.K. Agrawal, J;Jawahar Lal Gupta, J

Bench : Division Bench

Judgement

N.K. AGRAWAL, J.:

This is a petition by the CIT, Rohtak, under s. 256(2) of the IT Act, 1961, seeking a direction to the Tribunal, Delhi, to refer the following question to this Court for opinion :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law, in allowing deduction by way of commission claimed at Rs. 1, 14,415, when the recipient had admittedly not rendered any services to the assessee for procuring the business in question and when there was no direct evidence available to prove that services had in fact been rendered by any person in this behalf ?

2. The assessee, a partnership firm at Faridabad, filed return for the asst. yr. 1988-89 showing income of Rs. 1,28,370. The AO, during the assessment proceedings, disallowed deduction amounting to Rs. 1, 14,415 on account of commission paid on certain sales. That money was claimed by the assessee as having been paid to Smt. Asha Y. Kanakia of Bombay for services rendered by her in procuring business for the assessee-firm. In appeal preferred by the assessee, the CIT(A) upheld that view taken by the AO but, in further appeal, the Tribunal accepted the assessee''s claim. From the facts emerging from the order of the Tribunal, it appears that commission on sales was paid by the assessee-

firm to three members of the Kanakia family. They were Ramesh Y. Kanakia, Asha Y. Kanakia and Kirti K. Kanakla. Ramesh Y. Kanakia and Kirti K. Kanakia were paid Rs. 25,000 each. Disallowance was made by the AO in respect of the three payments shown by the assessee-firm. The CIT(A), however, allowed deduction of commission paid by the assessee-firm to Ramesh Y. Kanakia and Kirti K. Kanakia, but disallowed commission paid to Asha Y, Kanakia, wife of Yogesh K. Kanakia, on the ground that she had, in her statement, admitted that she was not aware of the transactions.

3. The Tribunal allowed deduction of the commission paid by the assessee-firm to Asha Y. Kanakia after noticing that the payments of commission to all the three members of the Kanakia family were of similar nature. All of them had confirmed the receipt of commission. It was also noticed that the AO had recorded the statement of Naresh Sharma, manager of the assessee-firm. Naresh Sharma had stated that three members of the Kanakia family, namely, Ramesh Y. Kanakia, Kirti K. Kanakia and Yogesh K. Kanakia, had come to Faridabad and an agency agreement was reached between the assessee-firm and those three persons on 20th Jan, 1987, for the sale of power presses of the assessee-firm through them on commission basis. This agreement was jointly executed by the three members of the Kanakia family and was signed by them. Naresh Sharma further explained that the name of Asha Y. Kanakia was substituted in place of her husband, Yogesh K. Kanakia, at the latter''s instance. It was agreed that the three persons, namely, Ramesh, Kirti and Yogesh, would procure orders for the assessee-firm and would also follow up the payments of sale proceeds to it. The orders for supply of power presses to M/s Packers India (P) Ltd., Bombay, M/s Izuki Auto India, Faridabad, and M/s Madras Fabricators, Bombay, were procured through the afore-mentioned persons. Commission was paid to them on account of orders for supply of goods procured by them. Statement of F.C. Singhal, managing partnei of M/s Izuki Auto India was also recorded by the AO. Sri Singhal admitted that Yogesh Kanakia, accompanied by a lady representative, used to visit his factory for negotiations regarding sale of power presses.

4. It was also found by the Tribunal that the amounts of commission had been actually paid to all the three recipients. Three banks drafts were deposited in their respective bank accounts. The recipients declared the receipt of commission as their income in the IT returns. The Tribunal also noticed that once the joint agency agreement was accepted to be reliable by the CIT(A) while allowing deduction of commission paid to Ramesh Y. Kanakia and Kirti K. Kanakia, there was no good reason to disallow commission paid to the third member of the Kanakia family, which was paid under the same agreement. It was also found that Asha Y. Kanakia was one of the directors of M/s Packers India (P) Ltd., Bombay, to whom goods were sold to M/s Packers India (P) Ltd. on account of the efforts made by her. It has also come on the record that orders for the supply of goods from M/s Packers India (P) Ltd., Bombay, could not have been received by the assessee-firm unless commission was paid to the recipients, who were directors in the company. Orders were received by the assessee-firm from M/s

Packers India (P) Ltd., Bombay, because the recipients had close connection with the affairs of the company. Commission was paid on account of commercial expediency. It has also come on the record that Asha Y. Kanakia went with her husband, Yogesh K. Kanakia, to secure orders for the supply of goods to M/s Izuki Auto India, as was admitted by Shri F.C. Singhal, the managing partner of the aforesaid buyer, before the AO. The manager of the assessee-firm also confirmed in his statement before the AO that the orders for the supply of goods were received on account of the services rendered by the members of the Kanakia family, Yogesh K. Kanakia, husband of Asha Y. Kanakia, had made a request to the assessee to make payment of commission to his wife on the ground that he had made efforts for securing orders for the supply of goods on her behalf. In these circumstances, payment of commission to Asha Y. Kanakia cannot be said to be ingenuine, fictitious or impermissible. Payment of commission is not disputed.

5. Looking to the finding of fact arrived at by the Tribunal, it is apparent that the view taken by the Tribunal does not suffer from any legal infirmity. Consequently, no question of law arises from the order of the Tribunal.

The petition is dismissed.