
(1995) 05 DEL CK 0014

In the Delhi High Court

Case No : Income-tax Case No. 136 of 1993

Commissioner of Income Tax

APPELLANT

Vs

Orissa Cement Ltd.

RESPONDENT

Date of Decision : 01-05-1995

Acts Referred:

Citation : (1995) 215 ITR 409 : (1995) 82 TAXMAN 268

Hon'ble Judges : Dr. M.K. Sharma, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : Rajendra, for the Appellant; Radha Rangaswamy, for the Respondent

Judgement

Dr. M.K. Sharma, J.—In this petition u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Revenue seeks a direction to the Income Tax Appellate Tribunal to state a case and to refer to this court for its opinion the following questions, relevant to the assessment year 1983-84 :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal is legally correct in holding that commission payment of Rs. 2,38,594 qualifies for weighted deduction u/s 35B ?

(2) Whether, on the facts and in the circumstances of the case, it was competent for the Tribunal to hold that the Commissioner of Income Tax (Appeals) should have entertained the question of relief u/s 35(2B) when no claim was made before the Assessing Officer and where no material was filed during the assessment proceedings and to direct the Assessing Officer to allow necessary relief ?"

2. We have heard Mr. Rajendra, learned counsel appearing for the Revenue, as also Ms. Radha Rangaswamy, learned counsel for the assessee.

3. So far as question No. 1 proposed by the Revenue is concerned, we were taken through the provisions of section 35B as it stood during the relevant assessment year. According to learned counsel appearing for the Revenue,

question No. 1 as proposed is a question of law as it rests on the interpretation of section 35B as also the document containing the clauses of the agency agreement.

4. We have carefully considered the findings of the learned Tribunal on this aspect. The learned Tribunal came to the conclusion that the agency was required to provide all information to promote and ensure export by the assessed and render services only in connection with the exports. In our view, the aforesaid finding of the Tribunal is purely one of fact. Besides, the first clause of the agency agreement specifically permitted it to take steps to promote sale of goods as a selling agent and accordingly it definitely indicates that the entire services were only towards promotion of exports and relates to a case of agency. In the aforesaid view of the matter, in our opinion, question No. 1 does not call for any reference.

5. As regards question No. 2 proposed by the Revenue, the finding of the Tribunal is to the effect that the same is a legitimate deduction allowable, based on the certificate of the prescribed authority, namely, the Department of Science and Technology, although the claim for the same was not made before the Assessing Officer. We see no reason to take a reverse view from that taken by the learned Tribunal on the aforesaid issue and, Therefore, we are of the opinion that the said question also does not call for any reference.

6. In the aforesaid view of the matter, the petition stands dismissed.