

(1999) 09 MAD CK 0061

In the Madras High Court

Case No : Tax Cases No"s. 1105 and 1106 of 1988 (Reference No"s. 867 and 868 of 1988)

Commissioner of Income Tax

APPELLANT

Vs

Print System Products

RESPONDENT

Date of Decision : 30-09-1999

Acts Referred:

Income Tax Act, 1961 — Section 37, 37(3A)

Citation : (2000) 158 CTR 110 : (2000) 243 ITR 8 : (2003) 128 TAXMAN 275

Hon'ble Judges : R. Jayasimha Babu, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : Chitra Venkataraman, for the Appellant; N. Devanathan, for the Respondent

Judgement

R. Jayasimha Babu, J.—This is another instance of the Revenue's dogged persistence in a matter which in the least warrants it. The Central Board of Direct Taxes itself had in a circular found at [1979] 117 ITR 24, inter alia, clarified the scope of the terms "publicity" and "sales promotion" for the purposes of Section 37(3A), inter alia, in the following terms :

"As the terms "publicity" and "sales promotion" have a wide amplitude, expenditure incurred by taxpayers on fashion shows ; beauty contests ; consumer contests ; consumer gift offers ; and free samples or gifts will fall within the ambit of new Sub-section (3A) of Section 37 of the Income Tax Act, 1961."

2. Rightly following that circular, the Income Tax Officer had allowed the deduction claimed by the assessee for the commission paid by it to others for securing orders for the imported photographic equipment, for which, admittedly, there was no ready market. The Commissioner by exercising his revisional authority interfered with that order, and disallowed the amounts for the assessment years 1979-80 and 1980-81 on the ground that it constituted sales promotion expenses. The Tribunal has rightly reversed the order of the

Commissioner. We fail to understand as to why the Revenue felt it necessary to approach this court against the order of the Tribunal, which is in conformity with what the Central Board of Direct Taxes itself had stated.

3. That there is a difference between sales and sales promotion is self-evident. All expenses relating to sales incurred in the normal course for effecting such sales must necessarily be allowed as expenditure connected with the business, u/s 37 of the Act. Parliament has made a special provision for sales promotion only in Section 37(3A) of the Act, though that term has not been defined in the section. The Central Board of Direct Taxes which is vested with the power of ensuring the proper and efficient administration of the Act had rightly issued a circular dated May 17, 1978, a portion of which has been extracted above. A bare perusal of that circular shows that promotional expenses are expenses which relate to the general promotion of the product with a view to attract customers for the product such as advertisement in newspapers, holding contests to attract attention of the potential customers to that product, consumer gifts offers to generate interest among the buyers and invite their attention to the product, for increasing the sales of the product. Commission paid to the persons, who effect the actual sale, at a percentage of the value of the product and salary paid to employees such as marketing officers and sales personnel and persons manning the sales offices are obviously expenditure incurred for effecting normal sales, and do not amount to the special sales promotion expenses. By and large sales promotion expenses are expenses which are not directly related to any single sale, but, are expenses aimed at generating interest among the potential customers for the purchase of the product. Commission, on the other hand, is paid on the actual sales effected to the person through whose assistance, the sale was concluded. Similarly, salary paid to the sales personnel is for retaining the services for effecting the sales.

4. The Tribunal was quite right in reversing the order of the Commissioner. The question referred to us, viz.,

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the commission paid to intermediaries who canvassed the sales are not sales promotion expenses and will not fall within the ambit of Sub-section (3A) of Section 37 of the Income Tax Act, 1961 ?"

is answered in favour of the assessee and against the Revenue. The assessee shall be entitled to costs in the sum of Rs. 1,500 in each tax case.