(1996) 08 MAD CK 0050

In the Madras High Court

Case No : Tax Cases No''s. 1073 and 1074 of 1984 (Reference No''s. 930 and 931 of 1984)

Commissioner of Income Tax APPELLANT

Vs

R.S. and Sons RESPONDENT

Date of Decision : 13-08-1996

Acts Referred:
Income Tax Act, 1961 — Section 256(2), 28, 35(B(1)), 35(B)

Citation : (1999) 240 ITR 921

Hon'ble Judges : N.V. Balasubramanian, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : Deokinandan and C.V. Rajan, for the Appellant; K.M.L. Majele and Philip George, for the Respondent

Judgement

K. A. Thanikkachalam, J.—In pursuance of the direction given by this court in T.C.P. Nos. 170 and 171 of 1982, dated April 18, 1983,

the Tribunal referred the following two questions for the opinion of this court u/s 256(2) of the Income Tax Act, 1961, hereinafter referred to as

(the ""Act"") :

1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the commission of Rs. 1,20,311 paid to the

State Trading Corporation as service charges would qualify for weighted deduction u/s 35B of the Income Tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the commission of Rs. 2,11,034 paid to local

agents of foreign buyers and insurance premium of Rs. 54,318 paid to the Export Credit Guarantee Corporation would qualify for weighted

deduction u/s 35B of the Income Tax Act, 1961 ?

2. Question No. 1 relates to commission paid to State Trading Corporation on which weighted deduction u/s 35B of the Act was claimed. When

these tax cases came up before us for consideration, the department is not pressing this question No. 1. Accordingly, we are returning this question

No. 1 unanswered.

3. In so far as question No. 2 is concerned, it consists of two parts. The first part relates to commission paid to local agents of foreign buyers and

the second part relates to insurance premium paid to the Export Credit Guarantee Corporation on which weighted-deduction u/s 35B of the Act

was claimed.

4. In so far as the second part of the second question is concerned, the premium paid to the Export Credit Guarantee Corporation would qualify

for weighted deduction under section,35B of the Act, in view of the decision rendered by us in T. C. Nos. 834.and 835 of 1984 of even date

(August 13, 1996) in the case of CIT v. K. Haji Md. Ghouse Saheb and Co. [1994] 240 ITR 920. Therefore, we answer this second part of the

second question in the affirmative and against the Department.

5. So far as the first part of the second question is concerned, it relates to commission paid to the local agents of foreign buyers. The assessee is an

exporter of hides and skins. The first appellate authority directed allowance of weighted deduction u/s 35B of the Act in respect of the commission

paid to local agents. The Tribunal held that commission payment made to local agents of foreign buyers would fall under sub-clauses (i) and (ii) of

section 35B(1)(b) of the Act. Accordingly, the Tribunal following the decision of the Special Bench of the Tribunal (Bombay ""B"" Bench), in the

case of J. Hemchand and Co., in I.T.A. Nos. 3255 and 3330 (Bom) of 1976-77, held that the assessee is entitled to weighted, deduction u/s 35B

of the Act. Before us, it was submitted that the foreign buyers actually issued instructions to the local agents to obtain the goods required by him

and the assessee from whom the goods were purchased was required to pay commission to the local agents. The orders issued by the foreign

buyers mentioned the name of the agent on whose information the order had been booked. The services of the agents was of informing their

principals of the nature of the goods available with the particular businessman in India and securing orders for such goods from the foreign buyers.

The order also required that the invoices prepared by the seller/assessee was countersigned by the agent, who was sending the information through

cable. Since it is the agent who furnishes the information to the assessee about the foreign buyers and brings about the sale, the Commissioner of

Income Tax (Appeals) held that the commission payment to Indian agents of foreign buyers is an expenditure exclusively incurred not only on

advertisement or publicity outside India in respect of the goods, but also in obtaining information regarding the market outside India for such goods.

The details of the nature of the services rendered by the local agents would go to show that the expenditure incurred by way of commission

payment would fall under sub-clauses (i) and (ii) of section 35B(1)(b) of the Act. On a similar set of facts, in T. C. No. 1126 of 1984 in the case

of Commissioner of Income Tax Vs. Farida Prime Tannery , by our judgment of even date (August 13, 1996), we held, following various decision

on this aspect, that the assessee is entitled to weighted deduction u/s 35B of the Act in respect of the commission payment made to the local agents

of the foreign buyers irrespective of the fact that the commission was paid in India. By following the decision in our judgment in T. C. No. 1126 of

1984- Commissioner of Income Tax Vs. Farida Prime Tannery , we consider that there is no infirmity in the order passed by the Tribunal on this

aspect in the present case also. Accordingly, we answer the first part of the second question in the affirmative and against the Department. No

costs.