

(1997) 01 KAR CK 0093

In the Karnataka High Court

Case No : ITRC No. 110 of 1994 15 January 1997

Commissioner of Income Tax

APPELLANT

Vs

Srinivasa TEXTILE PROCESSING LTD.

RESPONDENT

Date of Decision : 15-01-1997

Acts Referred:

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

Citation : (2002) 177 CTR 10

Hon'ble Judges : S. Rajendra Babu, J;B.S. Sreenivas Rao, J

Bench : Full Bench

Advocate : ER. Indra Kumar, for the Revenue S. Parthasarathi, for the Assessee, for the Appellant;

Judgement

S. Rajendra Babu, J.

The question referred for our opinion is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the commission paid to the agents should not be treated as sales promotion expenses so as to attract the provisions of section 37(3A) for disallowance?"

2. The assessee for the assessment year 1984-85 had paid a sum of Rs. 4,26,386 by way of sale commission. In the assessment this expenditure was disallowed in the light of section 37(3A) on the basis that such amount would amount to sale promotion. The matter was carried in appeal. The appellate authority held that the commission paid could not be treated as sale promotions and granted the relief as contemplated u/s 37(3A) of the Act. When the matter was carried in second appeal to the Tribunal, the Tribunal took the view that the expenditure had been incurred on sales already effected by the agents and that it could not be treated as sales promotion. Therefore, upheld the view taken by the Commissioner (Appeals). It is brought to our notice that in Commissioner of Income Tax Vs. Bata India Ltd., and Commissioner of Income Tax Vs. Popular

Automobiles Ltd., the expression sales promotion has been considered by the Calcutta and the Kerala High Courts and were of the view that this expression has very wide amplitude and undefined and the meaning of the expression has to be understood in the setting in which the same occurs. Sales promotion certainly involves advertisement and publicity and when the manufacturer desires for further popularity of his product he may adopt other methods other than advertisement and publicity which may amount to sales promotion and of similar character. Therefore, their Lordships took the view that the expression should be read in the context and the sales promotion would mean an activity which would promote the sales of the assessee by reason of the incentives or other attractions offered to attract the customers of the assessee. Payment of commission to representatives is in effect remuneration for work done which will not amount to sales promotion to attract the limitation imposed on section 37(3A) of the Income Tax Act. We respectfully agree with their Lordships. We may observe that an expression or word or term in a statute would acquire a particular meaning depending on the text and the context. The contention in the present case is one of advertisement and publicity followed by the expression sales promotion. Sales promotion, therefore, would acquire an identical meaning to advertisement and publicity, that is by providing certain incentives or taking certain other steps by which the product of the manufacturer could be popularised to promote the sale. That would not mean such amounts as are paid to a commission agent who effect sales will amount to sale promotion within the meaning of the expression u/s 37(3A) of the Act. In that view of the matter, we think the view taken by the Tribunal to be perfectly justified. The question referred for our opinion is, therefore, answered in the affirmative and against the revenue.