(1992) 05 CAL CK 0025

In the Calcutta High Court

Case No : Income-tax Reference No. 183 of 1991

Commissioner of Income Tax APPELLANT

Vs

Tribeni Tissues Ltd. RESPONDENT

Date of Decision : 11-05-1992

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

Citation : (1993) 111 CTR 176 : (1996) 217 ITR 846 : (1993) 69 TAXMAN 477

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Judgement

Ajit K. Sengupta, J.—In this reference u/s 256(1) of the Income Tax Act, 1961, for the assessment year 1981-82, the following question of law has been referred to this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was entitled to weighted deduction u/s 35B(1)(b)(iv) of the Income Tax Act, 1961, in allowing relief of Rs. 58,281 to the assessee ?"

The facts leading to this reference briefly stated are that the assessee is a company and the assessment year involved is 1981-82. The assessee claimed deduction u/s 35B of the Income Tax Act, 1961 (for brevity "the Act"), on account of travelling expenses and commission paid to foreign agents for securing information about the market conditions prevailing abroad. The reason for rejecting the assessee''s claim was that item (ii) of Clause (b) of Sub-section (1) of Section 35B of the Act has been withdrawn with effect from April 1, 1981.

2. The assessee carried the matter before the Commissioner of Income Tax (Appeals) and argued that the claim was on account of agency commission paid to selling agents in the U. K. who were appointed as sole agents for sale of the assessee''s products abroad. Various other clauses of the agreement also required the foreign agents to accept the orders from foreign customers,

transmit such orders to the assessee to deliver the products to the customers. For such various services, the assessee was required to pay commission to the agents and the commission was duly approved by the Reserve Bank of India. It was contended on behalf of the assessee that the claim for weighted deduction falls under sub-clause (ix) of Clause (b) of Sub-section (1) of Section 35B of the Act. Reliance was placed on the decision of the Special Bench of the Tribunal in the case of J. Hemchand. However, the Commissioner of Income Tax (Appeals) confirmed the order of the Assessing Officer.

3. Before the Tribunal, the order of the learned Commissioner of Income Tax (Appeals) was objected to and the submissions and arguments advanced before him were reiterated by the assessee''s counsel. It was also submitted that an identical claim of the assessee was allowed by the Commissioner of Income Tax (Appeals) in the assessment year 1980-81 which was not disputed by the department. Reliance was also placed on the appellate order of the Tribunal, E-Bench, Calcutta, in the case of Chloride India Ltd. v. IAC (Asst.) Range-I, Calcutta, in I. T. A. No. 742 (Cal) of 1987, dated November 28, 1988, relating to the assessment year 1981-82. It was argued that the issue considered by the Tribunal in the aforesaid order is identical to the present assessee''s case. Reliance was also placed on the decisions of various High Courts for the proposition that the commission paid to foreign agents is eligible for weighted deduction u/s 35B of the Act. The Tribunal considered the arguments and submissions made by both the sides. The appeal by the assessee was allowed as it was found that the payment of commission to foreign agents falls under Sub-clause (iv) of Clause (b) of Sub-section (1) of Section 35B of the Act. The order of the learned Commissioner of Income Tax (Appeals) was accordingly reversed.

4. At the hearing before us, Dr. Pal has submitted that this question is now concluded by the decision of this court in the case of COMMISSIONER OF Income Tax Vs. CHLORIDE INDIA LTD., . In that case, the Tribunal found that the expenditure was incurred by the assessee-company on the maintenance of the agency outside India for promotion of sale outside India of goods which the assessee "deals in". In the instant case before us, the Tribunal relied on the appellate order of the Tribunal of Chloride India Ltd. which came by way of reference before this court as mentioned hereinabove. The said case is distinguishable. It appears that the commission was paid to foreign agents for securing information about the market conditions prevailing abroad not for sales promotion. In our view, before any allowance is made under Sub-clause (iv) of Clause (b) of Section 35B(1), it is necessary to find out as to whether or not the maintenance of the agency outside India is for the promotion of sale outside India of the goods which the assessee deals in. In our view, the mere securing of information about the market conditions prevailing abroad cannot amount to sales promotion. In that view of the matter, the Tribunal has to go into the question and find out as a fact whether the maintenance of agency was, in fact, for sales promotion outside India of the goods dealt with by the assessee.

5. For the reasons aforesaid, we decline to answer the question in this reference and remand the matter to the Tribunal for fresh disposal in the light of the observations made in the judgment.

6. Leave is given to file vakalatnama within two weeks from date. There will be no order as to costs.

Shyamal Kumar Sen, J.

7. I agree.