(2006) 09 P&H CK 0339

In the Punjab And Haryana At Chandigarh

Case No : IT Appeal No. 152 of 2005

Emson Tools Mfg. Corpn. Ltd. APPELLANT

Vs

Aaykar Bhawan RESPONDENT

Date of Decision : 05-09-2006

Acts Referred:

Citation : (2007) 158 TAXMAN 318

Hon'ble Judges : Rajesh Bindal, J;A.K. Goel, J

Bench : Division Bench

Advocate : S.K. Mukhi, for the Appellant;

Final Decision : Dismissed

Judgement

1. This appeal has been preferred by the assessee proposing following substantial questions of law:-

"(a) Whether, on the facts and circumstances of the case, the ITAT was justified in rejecting the claim of commission paid by the appellant to M/s. Vashisht Indl. Products (P.) Ltd. By wrongly applying the express provisions of law and judicial pronouncements.

(b) Whether, on the facts and circumstances of the case, the ITAT was justified in erroneously rejecting the claim of commission paid by the appellant to M/s Vashisht Industrial Products (P.) Ltd. on the basis of alleged contradiction in the statements of the two directors recorded by the Assessing Officer without even allowing the opportunity of cross-examination despite specific prayer for the same thus violating principles of natural justice.

(c) Whether, on the facts and circumstances of the case, the ITAT was justified in reversing the orders of CIT(A) and thereby confirming the disallowance of commission paid on erroneous findings of facts and law.

(d) Whether, on the facts and circumstances of the case, the decision of ITAT is perverse being based on erroneous criteria and irrelevant factors and is thus liable to be set aside."

The assessee claimed deduction of Rs. 12,19,587 as commission for rendering services like liaisoning for procurement of orders, getting material passed and release of payments etc., paid to M/s. Vashisht Industrial Products (P.) Ltd. The Assessing Officer rejected this claim on the ground that the assessee failed to establish that the commission was wholly and exclusively for the propose of business of the assessee. This view was reversed by the CIT(A) with the observation that the assessee had paid similar commission in the previous years and that Shri Amarjeet Dhal had confirmed that the payment had been given for the services rendered by Shri P.D. Sharma. M/s Vashisht Industrial Products (P.) Ltd. had used their own resources to get the work done for the assessee-company.

2. On further appeal by the revenue, the Tribunal set aside the view taken by the CIT and restored the view taken by the Assessing Officer.

3. The Tribunal gave following reasons in support of this view:-

"9.1 First, according to Shri Brijesh Kumar and Shri Amarjeet Dhal, Shri P.D. Sharma rendered various services like procuring orders, collection of payments, procuring drawing and collecting payments from various parties. He was also responsible for collecting ''C'' forms and ST declaration whereas, Shri P.D. Sharma stated that he only provided knowledge to the assessee-company for upgradation of their products and to improve their productivity and had taken the management of the assessee-company along with its products to various tractor manufacturing companies. He further claimed that his services were of comprehensive nature and not in general sense of liaison and so he was not required to shuttle from various manufacturers. In his statement he nowhere stated that he collected drawings for procuring orders, collected ''C'' forms, ST declarations collected payments from various companies etc. as stated by Shri Amarjeet Dhal.

9.2 Second, Shri P.D. Sharma could not tell the rate of the commission or the basis of payment of commission specially when Shri P.D. Sharma was claimed to have personally rendered various services to the assessee on behalf of his company M/s Vashisht Industrial Products (P.) Ltd. of which he was the director and the assessee-company specifically alleged to have paid commission @ 2 per cent of the sales.

9.3 Thirdly, the assessee had not filed any documentary evidence to prove the nature of services required to be rendered by M/s Vashisht Industrial Products (P.) Ltd. Nor regarding the rate of commission required to be paid for the services by the assessee-company to M/s Vashisht Industrial Products (P.) Ltd.

9.4 Fourthly, the assessee has shown taxable income of more than Rs. 46 lakhs and M/s Vashisht Industrial Products (P.) Ltd. showed its total income at Rs. 59,441 whereas the income from commission has been shown at Rs. 23,20,982 which means that the income shown by M/s Vashisht Industrial Products (P.) Ltd. was quite nominal and therefore, it cannot be ruled out that in order to reduce its tax liability, without corresponding tax liability in the hands of the recipient the assessee showed the payment of commission to evade correct tax liability.

9.5 Fifthly, in the instant case, the learned DR has exposed the assessee for making a false claim before the CIT(A) i.e., that in the past 8 years payment of similar commission by the assessee has been allowed by the department, whereas the assessment year under consideration was the first assessment year of the assessee as the assessee-company was incorporated on 24-4-1996. The assessee has not denied these facts brought to the notice of the Bench by learned DR. However, the assessee tried to explain that in fact it had not stated before the CIT(A) that this commission paid in the last 8 years pertained to the assessee-company but in fact pertain to its firm which was in existence prior to the incorporation of the assessee-company. However, the assessee has not been able to prove this fact from any of the submission made before the CIT(A) or by bringing on record any other evidence. On the contrary, we find the year-wise detail of the commission submitted by the assessee before the CIT(A), copy of which has also been placed at page 34 of the paper book, nowhere states that the year-wise details of commission pertained to the erstwhile firm of the assessee-company. In the heading of page 34 of the paper book the name of the assessee-company has been mentioned and thereunder year-wise details of the commission paid from assessment years 1989-90 to 1996-97 has been mentioned along with the sections under which the assessment was complete in those assessment years.

10. From all this, it is clear that the assessee misguided the CIT(A) and obtained the benefit because one of the reasons for deleting the addition that favoured with the CIT(A) was that in case similar commission by the assessee was allowed by the department in the past, the similar commission should not have been disallowed in the year under consideration.

11. Thus, from the details mentioned hereinabove, in our opinion, the assessee has failed in proving from any documentary evidence that commission @ 2 per cent on the sales was agreed to be paid to M/s Vashisht Industrial Products (P.) Ltd. by the assessee. Even from the contradiction in the statements of Shri P.D. Sharma, Shri Brijesh Kumar and Shri Amarjeet Dhal, the payment of this commission @ 2 per cent of the sale does not stand proved. We are further of the opinion that in view of the material contradictions in the statements of these persons the nature of services rendered by M/s Vashisht Industrial Products to the assessee through Shri P.D. Sharma also do not stand proved.

12. Lastly, from the other facts coupled with above mentioned contradictions, the genuineness of the transactions of payment of commission by the assessee, made wholly and exclusively for the purposes of the business of the assessee does not stand proved. Hence, we are of the opinion that, for the reasons stated above, the CIT(A) erred in deleting the impugned addition, ignoring the material

contradictions and the other deficiencies in the instant case of the assessee. Accordingly, the order of the CIT(A) in this regard is set aside and the well reasoned and well discussed order of the Assessing Officer regarding the impugned addition in respect of claim of payment of commission amount to Rs. 12,19,587 is upheld. The ground of appeal taken by the revenue is allowed."

4. We have heard learned counsel for the assessee.

5. Learned counsel for the assessee submitted that though, the assessee-company was incorporated only on 24-4-1996 and thus, the observation that the commission had been allowed in the preceding eight years, may not be technically correct, the commission had been allowed to the firm which was in existence prior to incorporation of the assessee-company for the last eight years. Reliance has been placed on judgment of the Hon''ble Supreme Court in Commissioner of Income Tax, A.P. Vs. T. Veerabhadra Rao, K Koteswara Rao and Co., to submit that successor assessee steps into the shoes of the predecessor-assessee. It was also submitted that contradiction pointed out by the Tribunal in the statement of Shri P.D. Sharma and Shri Amarjeet Singh Dhal on the question of collection of ''C'' forms was not material as both the directors categorically mentioned rendering of services and receipt of commission. It was also submitted that the said witnesses were not allowed to be cross-examined which was also a point taken in para 9 of the written submissions before the Tribunal. Reliance was placed on judgment of this Court in Commissioner of Income Tax Vs. Sham Lal, 2, holding that it was necessary to confront the assessee with the material relied upon against the assessee.

6. We are unable to accept the submission made.

7. Apart from the grounds adverted to by the learned counsel for the appellant, there are other grounds in support of the order of the Tribunal. The Tribunal inter alia held that other income of M/s Vashisht Industrial Products (P.) Ltd. to whom commission of Rs. 23,20,982 was paid, was only Rs. 59,441 which created doubt about payment of commission. Further absence of a written document containing terms of the agreement with a person to whom commission is being paid in lakhs, discrepancies in the statements of the assessee and Sh. P.D. Sharma, Brijesh Kumar, ignorance of the recipient of commission about the rate of commission does not inspire confidence. Seeking cross-examination of the witnesses while filing written arguments before the Tribunal will not improve the case of the assessee when the entire material was discussed in the order of assessment and first appeal. The view taken by the Tribunal is certainly a possible view.

8. Taking into account all the submissions made, finding recorded by the Tribunal cannot be held, in any manner, to be perverse.

9. No substantial question of law arises. The appeal is dismissed.

