
(2002) 11 KL CK 0037
In the High Court Of Kerala
Case No : IT Appeal No. 158 of 2002

Keltron Component Complex Ltd.

APPELLANT

Vs

Deputy Commissioner of Income Tax and Another

RESPONDENT

Date of Decision : 11-11-2002

Acts Referred:

Income Tax Act, 1961 — Section 260A, 40A(2)

Citation : (2003) 182 CTR 58 : (2003) 264 ITR 352 : (2003) 129 TAXMAN 525

Hon'ble Judges : K. Balakrishnan Nair, J;G. Sivarajan, J

Bench : Division Bench

Advocate : P. Balachandran and Preetha S. Nair, for the Appellant; George K. George, for the Respondent

Final Decision : Dismissed

Judgement

G. Sivarajan, J.—These two appeals are filed by the same assessee u/s 260A of the IT Act, 1961 (for short "the Act"), against the order of the Tribunal, Cochin Bench, in ITA 172/Coch/1998 for the asst. yr. 1994-95 and ITA No. 490/Coch/1998 for the asst. yr. 1995-96 by two separate orders. This Court while admitting the said appeals issued notice on the following questions of law :

- "1. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in restricting the commission to the extent of 7 per cent of the turnover?
2. Whether Tribunal was justified in disallowing the commission over and above 7 per cent on the ground that it is clearly hit by Section 40A(2) and it is not wholly and exclusively incurred for the purpose of business ?
3. Whether the Tribunal was justified in disallowing the commission in the light of agreement, services rendered, and other evidence ?"

The brief facts are : The appellant is a manufacture of alluminium electrolytic capacitors and it is a subsidiary company of Kerala State Electronics Development Corporation Ltd. (for short "KSEDC"), a company of the

Government of Kerala. On 4th Jan., 1993, the appellant entered into an agreement (Annexure D) with KSEDC Ltd. in which latter was appointed as a sole selling agent of the appellant-company and it has to sell the products manufactured by the appellant-company for a period of five years from the said date. The consideration provided for such service was 7.5 per cent of the turnover by way of commission. Besides selling the products of the appellant-company it had to collect information regarding selling process, quality of competitor's products, etc. from the market, get best possible price for the appellant's products, fulfil export obligations of appellant, etc. In the assessment for the two years, i.e., 1994-95 and 1995-96 the appellant claimed deduction of a sum of Rs. 174 lakhs and Rs. 1,69,72,510, respectively, as commission paid to KSEDC Ltd. based on the agreement. The assessing authority disallowed the commission to the extent of Rs. 1,05,00,000 for the asst. yrs. 1994-95 and Rs. 80,00,000 for the asst. yr. 1995-96. This is by way of restricting the commission payment to 50 per cent of the profit accruing the company before commission. The appellant filed appeals before the CIT(A), Calicut, who by separate orders Annexure C in both the cases partially allowed the appeals by holding that the assessing authority was not justified in calculating the commission on the basis of profit and limited the commission paid to 7 per cent of the turnover. Both the Department and the assessee filed appeals against the said orders before the Tribunal and the Tribunal by separate orders dismissed both the appeals on this point.

2. Sri P. Balachandran, learned counsel appearing for the appellant submits that the appellant had entered into an agreement as in the past for entrusting the sale of all types of aluminium electrolytic capacitors and other products manufactured by the appellant to their holding company M/s KSEDC Ltd. and as per the agreement, besides the sale of the products, the KSEDC has to collect from time to time and at periodical intervals necessary market information regarding the selling prices, quality of competitor's products, etc. from the market and will work consistently for expanding the market potential for the company's products both in the domestic and international markets. Various other obligations are also to be fulfilled by the KSEDC as per the said agreement. It is also provided that on all sales made by KSEDC in domestic market whether against orders secured by KSEDC or not a commission of 7.5 per cent of ex-seller's factory price excluding excise duty and sales-tax and in respect of export sales, the commission shall be 1 per cent of the fob price has to be paid to KSEDC. The contract was for a period of one year. The counsel on the basis of the terms of the agreement submitted that the commission provided was just and reasonable and that the assessing authority as well as the two appellate authorities was not justified in reducing the commission which will amount to altering the terms of the agreement. The counsel also submits that the assessing authority had accepted the commission provided in the earlier agreement.

3. Sri P.K.R. Menon, learned senior Central Government standing counsel for the respondents, submits that as per the agreement entered into between the

holding company and the subsidiary company the percentage of commission provided is 7.5 per cent on the sale of the products of the appellant to the holding company which is very high when compared to the sales turnover and the services rendered by KSEDC. The senior counsel accordingly submitted that the Tribunal was perfectly justified in limiting the commission to 7 per cent of the sales turnover.

4. We have considered the rival submissions. Section 40A(2)(b) of the Act clearly provides for disallowance of amounts which the assessing authority considered to be in excess of the requirements of the business. The AO in fact had limited the commission to 50 per cent of the profit accruing to the company before the commission. The first appellate authority had considered the circumstances and limited the disallowance beyond 7 per cent. The Tribunal had also agreed with the view taken by the first appellate authority. On the face of the provisions of Section 40A(2)(b) of the Act and the factual circumstances, we are of the view that the two appellate authorities were perfectly justified in limiting the commission to 7 per cent as against 7.5 per cent provided in the agreement. According to us, the conclusion reached by the Tribunal are based on findings of fact on which no substantial question of law much less any question of law arises.

There is no merit in these two appeals. They are accordingly dismissed.