
(1995) 01 RAJ CK 0009
In the Rajasthan High Court
Case No : IT Reference No. 36 of 1986

Mangal Chand

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 16-01-1995

Acts Referred:

Income Tax Act, 1961 — Section 256(1)

Citation : (1995) 81 TAXMAN 444

Hon'ble Judges : Y.R. Meena, J; V.K. Singhal, J

Bench : Division Bench

Advocate : M.S. Singhvi, for the Appellant; D.S. Shishodia and Sundeep Bhandawat, for the Respondent

Judgement

1. The Tribunal has referred the following question of law arising out of its order dated 19-3-1985 in respect of the assessment year 1979-80 u/s 256(1) of the income tax Act, 1961 ("the Act"):

"Whether, on the facts and in the circumstances of the case, disallowance of commission in respect of supplies made in Chandigarh stated to be payable to Embico Traders was correct in law?"

The brief facts of the case are that the assessee has claimed the payment of commission to Embico Traders, Sardarshahr, for booking the orders for white cement manufactured by Travancore Cement Ltd. The ITO during the course of the assessment found that the assessee was allowed a commission at the rate of 17 per cent per m. ton from Travancore Cement Ltd. Initially it used to deduct the amount of commission payable to the assessee out of the bill which was then added back and paid to the assessee separately. However, as per agreement dated 1-8-1984 the company had allowed direct discount at the rate of Rs. 20 per m. ton to the assessee. On the question of sub-agency after detailed discussion, it was found that the appointment of sub-agents by the assessee was only a sham transaction and a device to divert its income and reduce its own tax liability. Although such claim was allowed in the past, it was observed that the

principles of res judicata are not applicable to the income tax proceedings and, accordingly, a sum of Rs. 53,223 was added back to the income of the assessee which was the amount claimed to have been paid to Embico Traders. The appeal before the Commissioner (Appeals) was dismissed in part on the ground that the commission in respect of payment of supplies in Chandigarh was not covered by the written agreement and, as such, the disallowance in respect of supplies made in relation to UP and Punjab was confirmed. The assessee, thereafter, came in second appeal before the Tribunal. The Tribunal found that the supplies in relation to UP and Punjab were allowed by the Commissioner on the basis of written agreement while there was no such mention in respect of Chandigarh. The contention that the place Chandigarh was by mistake omitted to be mentioned in the agreement was not accepted. The offices of the two concerns were found at the same premises by the ITO. The Tribunal came to the conclusion that the transaction was not a genuine one and as a result of the written agreement, the liability is not incurred, the mere fact that the assessee and Embico Traders thought that the liability was incurred would not be sufficient because the relationship between the two parties is not totally independent. In these circumstances, it was observed that the Tribunal would not go beyond the terms of the agreement and allow any part of claim over and above what has been the express contractual liability of the assessee. We have considered over the matter. The finding which has been recorded is of fact and the averment in the petition that the payment could be otherwise than by a written agreement has no force. We feel that the assessee has not even submitted any proof of the verbal agreement. In these circumstances, it was found that there is no agreement in existence. In these circumstances, the Tribunal was justified in disallowing the commission in respect of payment made in Chandigarh stated to be paid to Embico Traders. The reference is accordingly, answered in favour of the revenue and against the assessee.