(1992) 08 DEL CK 0012

In the Delhi High Court

Case No : Income Tax R. No. 64 of 1982

Modi Industries Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 06-08-1992

Acts Referred:

Citation : (1992) 108 CTR 13 : (1993) 200 ITR 329 : (1992) 65 TAXMAN 534

Hon'ble Judges : P.K. Bahri, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : O.P. Vaish and S. K. Agarwal, for the Appellant; B. Gupta and R. C. Pandey, for the Respondent

Judgement

B.N. Kirpal, J.—Pursuant to a direction issued u/s 256(2) of the Income Tax Act, 1961, by the Allahabad High Court, the Income Tax Tribunal has referred the following two questions to this court :

"1. Whether there was any evidence before the Tribunal to arrive at the finding that the applicant had not proved that the expenditure of Rs. 55,322 representing the commission paid to M/s. Standard Electrode Corporation was an expenditure incurred wholly and exclusively for the purpose of business ?

2. Whether, on the facts and in the circumstances of the case and on the material on record, the Tribunal could have legally come to a conclusion that the amount of Rs. 55,322 paid as commission to M/s. Standard Electrode Corporation did not represent an expenditure wholly and exclusively incurred for the purpose of business ?"

2. Briefly stated, the facts are that the assessed made a claim for deduction of Rs. 55,322 stated to have been paid as commission to one M/s. Standard Electrode Corporation (hereinafter referred to as the "said Corporation"). This payment was alleged to have been made on account of the services stated to have been rendered by the said Corporation as a sole selling agent of the assessed.

3. The said Corporation was owned by Modi Charitable Funds Society of which Shri G. M. Modi was the president. The said Shri G. M. Modi was also the chairman of the assessed-company.

4. In respect of the previous year ending October 31, 1963, relevant to the assessment year 1964-65, there was no agreement in writing between the assessed and the Corporation appointing the said Corporation as the sole selling agent. However, a resolution was passed by the board of directors of the assessed-company on July 27, 1963, approving the said appointment. This appointment was ratified by the shareholders in the general meeting held on November 11, 1963, after the end of the accounting year. It also appears that the Government raised some queries u/s 294 of the Companies Act and it then directed certain modifications in the terms of appointment while granting its approval in June, 1967.

5. The Income Tax Officer came to the conclusion that the so-called commission on sales was only a cloak for passing on some funds to the society and he, Therefore, disallowed the expenditure as not being laid out wholly and exclusively for the purpose of the assessed''s business.

6. An appeal was filed to the Appellate Assistant Commissioner. During the course of hearing, the Appellate Assistant Commissioner allowed the Income Tax Officer to rely on the evidence quoted by him subsequent to the completion of assessment. Permission was also granted to the assessed to lead such further evidence as it desired in support of its claim. The Income Tax Officer brought to the notice of the Appellate Assistant Commissioner certain facts and, on the basis thereof and also after taking into consideration the contentions of the assessed, the appeal of the assessed was dismissed by the Appellate Assistant Commissioner by recording the following finding :

"(i) There was no evidence to show that the corporation rendered any service so as to describe the commission payment as one made on grounds of commercial expediency.

(ii) When the assessed started its manufacturing operations it appointed certain agents including Modi Agency. On its appointment the corporation came to have its head office at Delhi. According to the statement of Garg referred to above, the corporation effected the following sales for the period 1-10-1963 to 31-10-1964 to Delhi parties :

(Rs.) Modi Agency (Prop. Gobind Ram) 18,88,028 Dobisal Pvt. Ltd., Delhi 32 Satya Prakash & Co., Delhi 512 Deen Dayal Bhagirath 28 Thus 99 per cent. of the sales were to Modi Agency. It was also admitted by the corporation that it had no godown at Delhi. Goods used to be drawn from the sales office of the assessed at Delhi.

(iii) Thus the employees of the corporation were no more than bill-preparing machines showing sales of goods received from the sale depot of the assessed at

Delhi to Modi Agency. As regards the sales to outside parties, dispatches were made directly by the assessed and the documents of title were negotiated by the assessed through its bankers and not through the bankers of the corporation. This much was clear from the letter of the chairman of the assessed-company dated 1-5-1965 to the Department of Company Affairs, Government of India.

(iv) The argument that the corporation was responsible for the bad debts, if any, had to be seen in the light of the fact that outstation sales were always effected against payments to be collected by the bankers. The assessed did not sell its goods on credit except to ''Semi-Govt. bodies and very responsible parties'' and the risk in the matter was more illusory than real.

(v) No agreement was executed with the corporation. The Company Law Board in its letter dated 1-6-1967 required the assessed to draw up an agreement to be entered into with the corporation on terms which were substantially different and send it for the approval of the Board. Instead of having done this, the corporation gave up the agency (according to the assessed) from August, 1967 - about one year before the term was due to expire. It could hence be said that the Company Law Board did not approve of the agreement."

7. In the second appeal before the Tribunal, the contention of the assessed was reagitated. The Tribunal, however, came to the conclusion that :

"Material on record does not show that the Corporation did render services in fact to the assessed."

8. This conclusion was based on the following observations of the Tribunal :

"Evidently the sale of the electrodes manufactured by the assessed required an agency which was qualified and experienced enough to overcome the competition that the assessed stated it was facing in the market. But it is seen from the evidence on record that the head of the staff of the corporation was Krishan Murari Garg who was paid a salary of Rs. 400. Neither at the Calcutta office nor at the Delhi office of the corporation was any person employed who was shown to have possessed the necessary experience and qualifications for the difficult task of selling the assessed''s new product successfully in the market against severe competition. Nor was there any claim before the authorities below that any other person supervised and advised the corporation on its duties during the relevant previous year. The claim made was that the corporation took over the goods from the assessed and arranged for their sale directly. But the authorities below have pointed out that the corporation had no godown of its own and an admission before the authorities below was that the goods used to be drawn from the sale office of the assessed-company at Delhi. We find the reasons recorded by the authorities below for disallowing the commission payment are by and large valid and to be based on material brought on record. The payment is seen to be made to a party which did not possess the necessary administrative set up for acting as sole selling agents in a highly competitive line and that too for a product put on the market for the first time, and did not have the physical resources necessary to have carried out its duties in the manner in which they were claimed to have been done. This is, Therefore, a case where the expenditure in question has not been proved by the assessed to have been incurred wholly and exclusively for the purpose of business."

9. The assessed filed an application u/s 256(1) of the Act. The same was, however, dismissed. It is on the application filed u/s 256(2) of the Act that the aforesaid two questions of law were referred.

10. Question No. 1 which has been referred is only concerned with the question as to whether there was any evidence before the Tribunal to arrive at the conclusion which it did. From the facts stated hereinabove, it is clear that there was evidence on which the Tribunal could come to the conclusion that the assessed had not proved that the expenditure in question was incurred wholly and exclusively for the purpose of business. For example, the Tribunal has taken note of the fact that no experienced or qualified person was employed either at the Calcutta or Delhi office of the Corporation nor did the Corporation have any godown in which the goods could be stored. On the contrary the goods were stored in the godowns of the assessed and the said Corporation used to take custody of the goods from there. It was also found that immediately on taking custody of the goods, the same would be transferred to the ultimate purchaser and the Corporation did not have physical resources necessary to carry out its duties in the manner in which they were claimed to have been done.

11. Learned counsel for the assessed has not been able to draw our attention to any evidence which could have led the Tribunal to a different conclusion. Question No. 1, Therefore, is answered in the affirmative and in favor of the Revenue.

12. As regards question No. 2, the answer to the same is self-evident. We have already set out various facts and circumstances which were taken into consideration by the Revenue authorities including the Tribunal in arriving at the conclusion that the said expenditure of Rs. 55,322 was not incurred wholly and exclusively for the purpose of the business. This is a finding of fact arrived at on the basis of the evidence on record. This finding of fact cannot be interfered with in exercise of our jurisdiction which is a very limited one. It was contended by learned counsel for the assessed that, in the subsequent years, evidence was produced which indicated that services had been rendered by the Corporation. Each year is a self-contained year and, for the assessment year 1964-65, with which we are concerned in this case, there was no evidence other than that which was considered by the Department and the Tribunal. On this evidence a conclusion of fact has been arrived at and the said finding cannot be said to be, not based on any evidence.

13. Question No. 2 is also answered in the affirmative and in favor of the Revenue.

14. The respondents will be entitled to costs.

