(2011) 04 DEL CK 0193

In the Delhi High Court

Case No : IT Appeal No. 647 of 2011

Pawan Kumar Jain		APPELLANT
	Vs	
Commissioner of Income Tax		RESPONDENT

Date of Decision : 08-04-2011

Acts Referred:
Income Tax Act, 1961 — Section 260A

Citation : (2011) 242 CTR 45 : (2011) 334 ITR 23 : (2011) 203 TAXMAN 185

Hon'ble Judges : M.L. Mehta, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Rakesh Gupta, Ashwani Taneja and Rani Kiyala, for the Appellant; Suruchi Aggarwal and Bhawana Bara, for the Respondent

Final Decision : Disposed Off

Judgement

M.L. Mehta, JJ.—The Appellant, herein, is a proprietor of M/s Pawan Jain & Sons and is engaged in the business of manufacture of stainless steel utensils and trading and export of stainless steel utensils, rice items.

2. This case pertains to the asst. yr. 2006-07, for which year, the Appellant has filed return of income declaring total income of Rs. 99,00,454. The AO in assessment proceedings noticed that the Assessee had paid commission of Rs. 31,25,312 to one M/s Laxcon Steels (P) Ltd., purportedly, in consideration for the said company standing guarantee for purchases from certain firms/companies.

3. The AO was of the view that this transaction was not genuine and, therefore, it had allowed the aforesaid commission and shown the income at Rs. 1,30,25,766. The Assessee preferred an appeal there against before the CIT(A) who also confirmed the findings of the AO.

4. Decision remains the same even at the level of Tribunal which has dismissed the appeal of the Assessee. From the orders passed by the three authorities below, we find that they have examined the transaction in question, and keeping in view various considerations, they come to the conclusion that No. services

were referred by the said company for which it was paid the commission by the Assessee. Another factor which has also weighed with the authorities is that there was No. necessity to pay such a commission to the said party for standing guarantee when the party owned him more than Rs. 1.4 crores in loan.

5. These findings of facts are on the basis of proper appreciation of the material on record and, therefore, in normal course there is No. reason to interfere with the same, that too in this appeal preferred u/s 260A of the Income Tax Act which is acceptable only on substantial question of law.

6. However, Dr. Gupta, learned Counsel appearing for the Assessee has brought to our notice one significant fact, which according to him, is not taken note by the authorities below.

7. He points out that M/s Laxcon Steels (P) Ltd., to whom commission was paid, had filed IT return for the asst. yr. 2006-07 declaring income of Rs. 1,48,50,705 and had paid tax thereupon. This indicates the aforesaid commission paid by the Assessee to the aforesaid company. On this basis, it is argued that it was not the intention of the Assessee to divert the income or to evade taxes. It is also argued that the Revenue has not suffered any loss, in as much as, the taxes are paid by M/s Laxcon Steels (P) Ltd. which received the aforesaid commission. It is also stated by learned Counsel for the Appellant that the acknowledgement of IT return in the case of M/s Laxcon Steels (P) Ltd. was filed before the AO and the same is a part of record book and is glossed over by the authorities below.

8. Since this is vital information and has not been considered by the authorities below, we restore the case back to the AO for a limited purpose, namely, to find out as to whether the aforesaid information is on record, as claimed by the Appellant and if it is found on record what would be the effect there of.

9. The present appeal is disposed of in the aforesaid terms.