
(2007) 05 DEL CK 0270

In the Delhi High Court

Case No : ITA No's. 1773 and 1774 of 2006

Precision Electronics Ltd.

APPELLANT

Vs

Dy. Commission of Income Tax

RESPONDENT

Date of Decision : 02-05-2007

Acts Referred:

Income Tax Act, 1961 — Section 260A

Citation : (2007) 164 TAXMAN 67

Hon'ble Judges : Vidya Bhushan Gupta, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : Kishan Mahajan and R.K. Raghavan, for the Appellant; Sanjeev Sabharwal, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—By this common judgment, two appeals bearing No. 1773 and 1774/2006 filed by the assessed arising out of the common order dated 31st January, 2006 passed by the Income Tax Appellate Tribunal (hereinafter referred to as "Tribunal") in ITA No. 3919 and 3920/Del/2002 for the assessment years 1995-96 and 1996-97, are being disposed of.

2. Brief facts of the case are that the assessed company is engaged in the manufacture of PCB board for Telecom purposes. In the Profit and Loss A/c for the assessment year 1995-96 it had shown a payment of commission of Rs. 87,53,183/- and for the assessment year 1996-97, a sum of Rs. 99,10,589/-. The commission was claimed to have been paid to one M/s. SLF Industries Ltd. The Assessing Officer wanted the details of the commission paid along with names and addresses of the persons and the Directors of the company to whom the commission was paid. The assessed was also called upon to disclose the nature of services rendered and as to how the services so rendered helped the assessed in improving its sales.

3. The assessed claimed that M/s. SLF Industries Ltd. was engaged for procuring

order from DOT and MTNL. The assessed also claimed that the business with DOT and MTNL involves cumbersome process and required extensive liaisoning with over 500 circles situated through out the country. Since M/s SLF Industries Ltd. had large network all over India and has sufficient experience in effecting supplies to the Government, the assessed utilised their services. It was further claimed by the assessed that by way of engaging M/s. SLF Industries Ltd. it saved considerable amount by way of manpower, out of pocket expenses etc. assessed also claimed that commission of 6.5% on the net order value procured from DOT and MTNL was paid to M/s SLF Industries Ltd.

4. The Assessing Officer wanted to have details of the persons with whom the assessed company would communicate in connection with procurement of orders. The assessed did not file the required information. However, the assessed filed confirmation of M/s. SLF Industries Ltd. regarding receipt of commission. The Assessing Officer was of the view that if payments are made on account of commission to any person for doing the liaison work, it was necessary to have a written agreement and also correspondence between the parties so as to establish the nature of liaisoning services rendered. It was observed by the Assessing Officer that the details of the services rendered had not been established by the assessed despite several opportunities granted to him and the assessed was not in a position to give the names of contact person of M/s. SLF Industries Ltd. The Assessing Officer observed that the commission paid was nothing but an adjustment entry. He also made enquiries from DOT and MTNL but there was no confirmation from them as to whether M/s. SLF Industries Ltd. acted as a liaisoning agent for the assessed. Further, the assessed could not furnish the address of M/s. SFL Industries Ltd. and the notice sent by the Assessing Officer to the address given by the assessed remained unserved and as such Assessing Officer drew adverse inference against the assessed for non furnishing the new and correct address of M/s. SLF Industries Ltd. Thus, the Assessing Officer disallowed the claim of the assessed for deduction of the aforesaid sum for the above mentioned assessment years.

5. Aggrieved against the order passed by the assessed, he filed an appeal before the Commissioner of Income Tax (Appeals) who called for a remand report from the Assessing Officer but the assessed could not furnish the confirmation from DOT and MTNL on the ground that the arrangement between the assessed and SFL was a private arrangement and DOT and MTNL are not aware of such arrangement. Accordingly, the appeal filed by the assessed was dismissed and order of Assessing Officer was confirmed.

6. Thereafter, assessed filed an appeal before the Tribunal challenging the findings of the Commissioner of Income Tax (Appeals). The Tribunal vide its impugned order dismissed both the appeals filed by the assessed.

7. It has been argued by learned Counsel for the assessed that it is a matter of business prudence and commercial expediency that prompted the appointment of a commission agent for the purpose of selling products to various business

concerns. This requirement is more so when dealing with government concerns. The appellant paid commission to procure order for selling its manufactured goods. It is further contended that the commission agent had disclosed the income in his return and the Department has accepted such income as being earned by the commission agent and under these circumstances the Tribunal wrongly rejected the claim of the Appellant.

8. From the record it is apparent that the assessed was required by the Income Tax Authorities to file the requisite particulars and produce the concerned person for verification/examination. The assessed did not submit any confirmation from the DOT and MTNL because DOT and MTNL were not directly involved. With regard to the names and addresses of the persons with whom the assessed interacted, it was stated by the assessed that there has been a lot of changes in the structure of M/s SFL Industries Ltd. and details and whereabouts of the employees of M/s SFL Industries were not available with the assessed. The assessed even did not file the copy of relevant bank account of M/s SFL. The assessed also failed to explain as to what was the nature of the services provided by the M/s SFL, and no correspondence in this regard has been produced by the assessed in spite of specific opportunities granted.

9. Relevant findings given by the Tribunal with regard to the fact that assessed was given due opportunity but he could not produce the requisite information before the Assessing Officer are reproduced as under:

We have already noticed that the assessed was not in a position to give the exact persons with whom it was dealing in connection with procurement of orders. The summons sent by the Assessing Officer to M/s SFL could not be served as they had changed that place of business. We are of the view that the above documents do not establish the services rendered by SFL to the assessed. Considering the huge quantum of the commission claimed to have been paid by the assessed, it is necessary to prove the nature of services rendered in respect of contracts to DOT and MTNL which were government agencies. Even assuming there was need for liaising agents to procure orders, it was necessary for the assessed to prove the actual rendering of the services by M/s. SFL. Considering the magnitude of the transaction as revealed in the list of transaction in the Assessment Year 1995-96 placed at 59 to 61 of assessed's paper book, it was necessary for the assessed to have produced some evidence regarding the nature of service rendered by the assessed. There is absolutely no evidence on record to suggest the rendering of any services by M/s SFL. The mere forwarding of one or two tenders to the assessed by M/s SFL and informing about the procurement of two orders on behalf of the assessed would not be sufficient to enable the assessed to claim the deduction in question. The fact that M/s SFL was in a different line of business again throws some suspicion on the claim made by the assessed. As per the terms of the agreement to pay Commission, M/s SFL was only to procure orders whereas in the letter dated 30.11.94 the assessed calls upon M/s SFL to resolve other disputes regarding deferment of

supply by DOT, Bangalore. Besides the above, there is not even correspondence and list of orders procured for A.Y. 1996-97. Considering the facts and circumstances and the evidence available on record, we are of the view that the assessed had failed to explain the expenditure in question was wholly and exclusively for the business of the assessed. Consequently the revenue authorities were justified in disallowing the claim. Orders of the revenue authorities do not call for any interference.

10. The above being the position, no fault can be found with the view taken by the Tribunal. Thus, the order of the Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of Section 260-A of the Act, which is confined to entertaining only such appeals against the order which involves a substantial question of law.

11. There are concurrent findings of the facts in the present case given by the three statutory authorities and in view of the fact that assessed has failed to provide the requisite information to the Assessing Officer, we do not find any infirmity in the order passed by the Tribunal.

12. Accordingly, the present appeals filed by the assessed are, hereby, dismissed.