



IN THE HIGH COURT OF DELHI

I.T.A.No. 69 of 2003Date of Decision:- January 08, 2004

Commissioner of Income Tax-IV.....Appellant

Through: Mr. R.D.Jolly with Mr. Ajay Jha,
Advocates.

Versus

M/s.Gopal Das Estate.....Respondent

Through: Nemo.

CORAM:-

HON'BLE THE CHIEF JUSTICE
HON'BLE Mr.JUSTICE BADAR DURREZ AHMED

1. Whether Reports of the local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

B.C.PATEL, CJ (ORAL)

1. The appellant, who failed before the Commissioner of Income Tax (Appeals) as well as Income Tax



Appellate Tribunal, has approached this Court, *inter alia*, alleging that the finding recorded by the Assessing Officer on page 21 has not been considered either by the Commissioner of Income Tax (Appeals) or by the Income Tax Appellate Tribunal and, therefore, in the opinion of the counsel, in view of the decision of the Apex Court in the case of Commissioner of Income Tax, Punjab v. Indian Woollen Textiles Mills reported in 51 ITR 291, this would be a question of law as the relevant facts have not been taken into consideration by the authorities below. It was also submitted by learned counsel that it is open for the Assessing Officer to consider the reasonableness of the amount of brokerage claimed by the assessee as business expenditure.

2. The assessee was called upon to explain about the brokerage, which he claimed to the tune of Rs.1,45,25,708/- in his profit and loss account. The assessee pointed out that the following aspects were required to be taken into consideration at the time of giving brokerage:-

A handwritten signature in black ink, appearing to be 'B.S.' followed by a flourish.



1. The brokers were required to arrange the sale of space;
 2. The brokers were required to arrange for tenants and for the space in the building;
 3. The brokers were required to negotiate the higher amount of advance rent and security deposit etc.;
 4. The brokers were required to persuade various space owners who agreed earlier to purchase the space from the assessee, to buy the leased space; and
 5. The brokers were required to negotiate the claims of the persons who have surrendered the space agreed to be purchased earlier.
3. The assessee also pointed out that normally there is a trend in the market that the brokers should be paid equivalent to 15 days to one month's rent as brokerage/commission. However, he also pointed out that there is a trend in the market that the owners of the property insist on interest free security and advance rent, which results in monthly rent at a lower rate. It is in view of these factors that the brokers demand higher brokerage. The Assessing Officer has examined the matter and has pointed out in his order that the assessee did explain that there is a trend in the market to ask for interest free security from the tenants, therefore, the monthly rent substantially reduces. It is in view of this the brokers are

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demanding more commission to compensate their loss due to fixation of low monthly rent. It is also noted that the assessee's case cannot be accepted because in the case of broker Trilok Chand, Rajender Parkash, Dayarani the commission has been paid amounting to Rs.8,00,000/- each in respect of space given on lease to M/s.Oracle Software on the rent of Rs.17,50,000/- while advance rent of Rs.10,50,000/- and interest free security has been received to the extent of Rs.42,00,000/-. Here commission has been paid equivalent to 1-1/3 of the monthly rent. A similar example is quoted about another estate agent where commission was paid at the rate of Rs.2,67,650/- amounting only 1/3rd where monthly rent fixed was Rs.10,50,000/- and interest free security has also been received amounting to Rs.2,61,000/-. Thus the commission paid is equivalent to about 1/3rd of the monthly rent. These are some examples only while the payment has been made on similar lines excepting 5 parties.

4. In a market, it is well known that faster the transactions, the higher the profits. It is well known

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that the value of a currency note in general depends on the velocity. If a thousand rupees are saved and put in a locker, will have the value of Rs.1,000/- and if the same amount is transacted 20 times a day by different people, the same will have the value of Rs.20,000/- and so on. It goes without saying that in such a scenario it would be in the best interests of builders that buildings are erected in as short a period of time as possible and that the same are quickly given to the prospective occupiers either by sale or on lease. To ensure that the buildings are not kept vacant for long, the assistance of brokers is necessary. The brokers, in turn, charge for the services rendered by them in bringing about the transaction of sale or lease, as the case may be. The speculation of brokerage in each case is market driven and dependent on the demand and supply situation. These salient features cannot be over looked while deciding the matter of brokerage. This depends on individual cases and broker to broker. The Assessing Officer in his assessment order has pointed out with regard to five parties the alleged excess amount by way of

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brokerage that has been paid to the tune Rs.41,84,947/-. Total monthly rent from these five parties would be in the vicinity of Rs.85,00,000/-. Thus yearly rent would be in the vicinity of Rs.10,20,00,000/-. For this fixed income of Rs.10,20,00,000/- per annum, the excess brokerage allegedly paid is in the sum of Rs.41,89,947/-. Considering the figures, it appears that the amount of brokerage is paid at the rate of 1- 1/3 times the monthly rent. As against this, the benefits secured are also required to be taken into consideration as also the loss, which would be suffered by the brokers on the lower rate of monthly rent on account of higher security amount deposit and advance amount paid by the persons/tenants.

5. In this backdrop, the Commissioner of Income Tax (Appeals) was required to examine the matter and in paragraph 12 of the judgment, the Commissioner of Income Tax (Appeals) has considered this submission and in paragraph 14 has arrived at a conclusion that the brokers were not related to the appellant or its Directors and the expenditure is neither of personal

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nor capital nature and accordingly held that the disallowance was not justified. The order made by the appellate authority on these aspects was examined by the Appellate Tribunal, which approved the order made by Commissioner of Income Tax (Appeals). The relevant part of paragraph 42 of the order made by the Income Tax Appellate Tribunal makes it clear, which reads as under:-

“As rightly opined by the CIT(A), it is for the assessee to decide as to what is the rate of commission, which it should pay taking into account the trends in the real estate business and varying these as and when eventualities require so. In our opinion, disallowance cannot be made on surmises, conjectures and suspicion and on the basis of the aforesaid observations, we uphold the order of the CIT(A).”

6. In view of the totality of the situation, we are of the opinion that no interference is called for in this matter.

The appeal is dismissed.

Badar Durrez Ahmed
CHIEF JUSTICE

Badar Durrez Ahmed
BADAR DURREZ AHMED, J.

January 08, 2004
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