



IN THE HIGH COURT OF DELHI AT NEW DELHI

+ITA.NO. 354/2005

THE COMMISSIONER OF INCOME TAX Petitioner
Through Ms Prem Lata Bansal
with Mr S.C. Sharma.

versus

DABUR INDIA LTD. Respondent
Through Nemo.

CORAM:

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

ORDER

25.08.2005

1. In The State of Himanchal Pradesh v Associated Hotels of India Ltd

1972 29 SFC 474 the Supreme Court declared that if the main object underlying the contract is to transfer property in or deliver the possession of a chattel as chattel, then the contract is one of sale. The test, observed their Lordships, is whether or not the work and labour bestowed end in anything that can properly become the subject of a sale. Neither the ownership of the materials nor the value of the skill and labour, as compared with the value of the materials is conclusive, although such matters may be taken in to consideration in determining whether the contract is in substance one for work and labour or one for the sale of chattel.

2. Relying upon the above decision, the Income Tax Appellate Tribunal of Pune Bench in Wadllal Dafry International Ltd v ACIT 118 Taxman 141 held that buying packing material was tantamount to purchasing goods for the purpose of packing and that just because some printing was required to be done by the supplier



on such good was of no consequence.

3. In the instant case also the supply of corrugated boxes was to be made with some labels printed on the same. The question that was raised before the Tribunal, therefore, was whether the supply of the such boxes was a contract for sale of chattel and as such outside the purview of Section 194-C of the Income Tax Act, 1961. The Tribunal has relying upon the decision of the Supreme Court in *Associated Hotels(supra)* and the order passed by the Pune Bench of the Tribunal in *Wadilal Dairy* referred to above held that the dominant object underlying the contract in the instant case was the supply of goods in the form of corrugated boxes. It has accordingly, set aside the order passed by the Commissioner of Income Tax (appeals) and the consequent demand raised against the assessee under Sections 201(1) and 201 (1A).

4. Ms Bansal counsel for the Revenue finds fault with the view taken by the Tribunal. Relying upon the decision of the Supreme Court in the case of *State of Tamil Nadu v Anandam Viswanathan* 73 STC 1, she submits that the very fact that some labour was added which requires skill was sufficient to take the contract out from the category of a simple contract for supply of goods.

5. We have carefully gone through the decision relied upon by the counsel but find it difficult to accept the submission made by her. In the case of *Anandam Viswanathan's (supra)* the work entrusted to the assessee, was printing of question papers for Universities. The question was whether such printing work could be treated to be a simple case of contract for sale of goods. Answering the question in



the negative, the court held that printing of question papers at the behest of a University or educational institution is a delicate and confidential type of work and the price paid for supplying such printed question papers or printed matter entails primarily the confidence and secondly the skill and to a very small extent the material. Hence, such work undertaken by the concerned agency could not be categorised as entailing sale of goods. It was instead a contract for works done. There is no similarity between the facts with which the supreme Court was dealing in Viswanathan's case and those in the present case. It is nobody's case before us that the printing of the labels on the corrugated boxes required any special skill or involved any confidence or secrecy. In the circumstances, the Tribunal was justified in holding that the predominant object underlying the contract was one for sale of goods which took the contract out of the purview of Section 194-C of the Act.

No substantial question of law arises for consideration.

Dismissed.


T.S. THAKUR, J


BADAR DURREZ AHMED, J

August 25, 2005

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