



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 332/2005

THE COMMISSIONER OF INCOME TAX Appellant
Through Mr. Sanjeeve Sabharwal, Adv.
versus

M/S PLASHFOOD P. LTD. Respondent
Through Mr. C. S. Aggarwal, Sr. Adv. with
Mr. Prakash Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
08.09.2006

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The Revenue is aggrieved by an order dated 29th October, 2004 passed by the Income Tax Appellate Tribunal, Delhi Bench 'E' in ITA No. 3877/Del/03 relevant for the assessment year 2001-02.

The Assessee sold some shares of M/S. WIMCO to a foreign buyer. It appears that the market value of the shares was about Rs. 10/- per share but they were sold by the Assessee at Rs. 35/- per share and the total amount received was Rs. 29,87,98,500/-. The result of the sale of the shares was that the controlling interest in WIMCO was transferred from the Assessee to the purchaser, a Swedish concern.

In connection with the sale of the shares, the Assessee claimed a deduction of a sum of Rs. 1,48,75,000/- from the capital gains. This included the fees and expenses to the consultants for advice, conceptualization



meeting, brokering the transaction, negotiations and other necessary assistance including advice on legal matters.

The Assessing Officer came to the conclusion that the expenses were incurred wholly and exclusively in connection with the transfer of shares, but was of the view that in such transactions the brokerage charged varied from 0.10% to 0.50% and on this basis he allowed a deduction of 0.50% of the sale consideration to cover the entire consideration of brokerage, stamp duty and related expenses. This was on the acceptance of the alternative plea of the Assessee that in case the entire consideration was not allowed then the normal brokerage for such transactions is 2% and that the amount of Rs. 56 lacs which was paid to the professional consultant approximates to 2% of the sale transaction and, therefore, it may be allowed as a deduction.

It is significant to note that the necessity of incurring the expenditure was not disputed by the Assessing Officer but only the quantum of expenditure was not acceptable to him.

Feeling aggrieved, the Assessee filed an appeal before the Commissioner of Income Tax (Appeals) who partly allowed the appeal and concluded that the Assessee was entitled to a deduction of 1.5% of the total sale consideration. This view of the CIT(A) was accepted by the Revenue but not by the Assessee who filed an appeal before the Tribunal.

The Tribunal considered the matter and proceeded on the basis,



as did the Assessing Officer and the CIT(A) that the expenditure incurred was wholly and exclusively in connection with the transfer of shares. Thereafter, the Tribunal applied its mind only to the aspect of quantum.

The Tribunal took into consideration the fact that the sale of shares was effected by the Assessee after taking professional help in the matter and the Assessee was able to sell shares worth Rs. 10/- at Rs. 35/- each. The services were therefore availed not just for sale of the shares but also for procuring the appropriate price for them. The Tribunal also went into the documentary evidence available on record which showed that professionals were involved in the transfer of shares and substantial expenditure was incurred by them in negotiations with the foreign buyers. On this basis the Tribunal has accepted the claim of the Assessee for a deduction of the entire amount.

We are of the view that since the authorities, including the Assessing Officer, proceeded on the basis that the expenditure incurred was wholly and exclusively for the transfer of the shares, the issue of the quantum of expenditure incurred was really a matter of appreciation of evidence. The Tribunal has come to the conclusion on an appreciation of the evidence that the Assessee had made out a case justifying the deduction of the entire expenditure incurred.

There is no perversity that has been shown to us in this view taken by the Tribunal and in the appreciation of evidence. No doubt has been cast on the necessity of engaging professionals for the transaction and for securing the



best available price for the shares.

Under the circumstances, no substantial question of law arises for our consideration inasmuch as the issue involves only a consideration of the evidence which has been rightly appreciated by the Tribunal.

Dismissed.

A handwritten signature in cursive script, appearing to read 'Madan Lokur', written over the printed name.

MADAN B. LOKUR, J

A handwritten signature in cursive script, appearing to read 'Vipin Sanghi', written over the printed name.

VIPIN SANGHI, J

SEPTEMBER 08, 2006

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