



Sr. No.	Date	Orders
		<p>* IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p>+ ITA 142/2006</p> <p>COMMISSIONER OF INCOME TAX Appellant Through Ms. P.L. Bansal</p> <p>versus</p> <p>M/S GENESIS COMMET P.LTD. Respondent Through Dr. Rakesh Gupta</p> <p>CORAM: HON'BLE MR. JUSTICE MADAN B. LOKUR HON'BLE MR. JUSTICE VIPIN SANGHI</p> <p><u>ORDER</u> % 25.08.2006</p> <p>The Revenue is aggrieved by an order dated 29th April, 2005 passed by the Income Tax Appellate Tribunal, Delhi Bench "F" in ITA No.5568/Del/2004 relevant for the assessment year 2001-02.</p> <p>The Assessing Officer disallowed commission payment made by</p>



Sr. No.	Date	Orders
		<p>the Assessing Officer to three parties, that is Sh. Rajesh Singhal, proprietor of M/s. Rajesh Traders, Smt. Renu Bhagwan and M/s Jagdish Rai Jai Bhagwan.</p> <p>Feeling aggrieved, the Assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner accepted the appeal in respect of one of the parties, that is Smt. Renu Bhagwan.</p> <p>Against the order of the Commissioner, the Assessee filed an appeal before the Tribunal which accepted the appeal and that is why the Revenue is before us.</p> <p>The Tribunal has noted that in so far as M/s. Rajesh Traders is concerned, it had given the names and addresses of the parties whom it had introduced to the Assessee as result of which the Assessee had made sales to these parties to the extent of Rs. 50,62,849/-. M/s. Rajesh Traders confirmed the receipt of commission and gave details of services rendered by it as per its letter dated 11th October, 2003 in response to summons issued by the Assessing Officer under Section 131</p>



Sr. No.	Date	Orders
		<p>of the Income Tax Act. M/s. Rajesh Traders also appears to have been given a copy of the accounts of the assessee as maintained in its books of account.</p> <p>In so far as M/s. Jagdish Rai Jai Bhagwan is concerned, the Assessee furnished a copy of the accounts of this party containing the details of commission paid. The assessee also disclosed the names of the parties from whom business had been procured by the Assessee through the said commission agent. M/s. Jagdish Rai Jai Bhagwan also confirmed the receipt of commission.</p> <p>Despite all this material, it appears that the Assessing Officer required the presence of the commission agents for cross-examination. The Assessee has pointed out that M/s. Rajesh Traders has sent the information and as regards M/s. Jagdish Rai Jai Bhagwan, there are some differences that the Assessee had with that party and, therefore, it was not in a position to produce the said party.</p> <p>However, the Assessing Officer did not take any coercive</p>



Sr. No.	Date	Orders
		<p>measures to enforce attendance of any of the parties except issuing summons under Section 131 of the Income Tax Act in response to which necessary information was filed.</p> <p>The Tribunal took a view that the fact that the Assessee was not in a position to produce the two commission agents is not its fault and the Assessing Officer could have exercised powers available to him to summon and cross-examine these two parties if, for some reason, he did not accept the statement furnished by these two parties. The Assessing Officer could also have made independent enquiries from the customers of the assessee. However, none of this was done.</p> <p>Therefore, we are of the opinion that the Tribunal has not committed any error in the view that it has taken. The Assessee produced all the material that it could possibly produce and if the Assessing Officer was not inclined to believe the material produced, he could have used the coercive powers available to him, which he failed to exercise.</p>



Sr. No.

Date

Orders

Therefore, we are of the view that in this case no substantial question of law arises for our consideration.

Dismissed.

MADAN B. LOKUR, J

VIPIN SANGHI, J

AUGUST 25, 2006

Upreti