



* **HIGH COURT OF DELHI : NEW DELHI**

ITA No.327/2007

% Judgment reserved on : 9th January, 2008

Judgment delivered on : 19th February, 2008

SCHNEIDER ELECTRIC INDIA LTD
Max House, 1 Dr. Jha Marg,
Okhla, New Delhi Appellant

Through:Mr. R.M. Mehta, Adv.

versus

1.COMMISSIONER OF INCOME TAX DELHI
C.R.Building, New Delhi

2.Deputy Commissioner of Income Tax,
Company Circle 7(1),
C.R. Building, New DelhiRespondent

Through:Mr. R.D.Jolly with
 Mr. Mohit Jolly, Advs.

CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

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

MADAN B.LOKUR, J.

The Assessee is aggrieved by an order dated 31st



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January, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench 'A' in ITA No.3729/Del/2001 relevant for the assessment year 1997-98.

2. The Assessee is engaged in the business of trading of industrial and electronic items and it commenced production activity in electrical equipments, such as circuit breakers. During the previous year relevant to the assessment year 1997-98 the Assessee claimed expenses on account of commission and discount of Rs.18,78,623/-. Out of this we are concerned with an amount of Rs.9,05,862/- said to have been paid as commission to M/s. Ram Agencies.

3. According to the Assessee it had made total sales of Rs.1,50,97,708/- and on this amount M/s. Ram Agencies was paid commission @ 6 per cent pertaining to the financial years 1994-95, 1995-96 and 1996-97.

4. The Assessing Officer found that there was no agreement between the Assessee and M/s. Ram Agencies and there was no document on the basis of which it could be said that commission was due and payable to M/s. Ram



Agencies from the Assessee.

5. The only document on record, in favour of the Assessee was an internal note dated 31st August, 1996 signed by its officers to the effect that commission would become payable to M/s. Ram Agencies only after they have procured a minimum business of Rs.150 lakhs. The Assessing Officer, on these broad facts came to the conclusion that the Assessee had failed to discharge the onus with regard to the claim of sales commission as business expenses and, therefore, the amount claimed by the Assessee was disallowed.

6. The Assessee preferred an appeal before the Commissioner of Income Tax (Appeals) [CIT (A)] who held that the Assessee was a new player in the field of manufacture of circuit breakers for industrial use and since there was severe competition from established companies, therefore, the Assessee utilised the services of M/s. Ram Agencies for procuring orders since it did not have any contacts and infrastructure at distant places. Negotiations were held between the Assessee and M/s. Ram Agencies



and it was mutually agreed that commission @ 6 per cent would be paid to M/s. Ram Agencies on the business procured through them.

7. It was held that even though there was no written agreement between the Assessee and M/s. Ram Agencies, there was an internal note of the Assessee regarding payment of commission and M/s. Ram Agencies had also raised a bill for payment of commission. It was held that the details of invoices were supplied by M/s. Ram Agencies and payments were made to M/s. Ram Agencies by account payee cheques. It was consequently held that there was no reason to doubt the genuineness of the transactions between the parties. On this basis, the assessment order was set aside by the CIT(A).

8. Feeling aggrieved, the Revenue preferred an appeal before the Tribunal which was allowed and that is how the Assessee is before us in appeal under Section 260A of the Income Tax Act, 1961 (for short as 'Act').

9. On a perusal of the material on record, and after hearing learned counsel for the parties, we find that the



only material in support of the case of the Assessee is the internal note dated 31st August, 1996 to the effect that commission would become payable to M/s. Ram Agencies after they have procured a minimum business of Rs.150 lakhs. The other evidence in support of the case of the Assessee is the bills raised by M/s. Ram Agencies and the fact that payment was made to M/s. Ram Agencies by account payee cheques although there was no written agreement between the parties. Learned counsel for the Assessee contended, on the basis of *Cellular Operators Association of India and Others vs. Union of India and Others, (2003) 3 SCC 186 at 207* that the approach of the Tribunal was wholly erroneous and non-consideration of materials on a vital issue by the Tribunal would constitute a substantial question of law .

10. On the other hand, the material against the Assessee is that there were absolutely no details of any services rendered by M/s. Ram Agencies in the form of sale orders etc. There was no confirmation of any arrangement between the parties and that there was considerable doubt,



that in the normal course of business dealings, such a transaction could be entered into on the basis of an oral understanding particularly when there was nothing to suggest that the Assessee and M/s. Ram Agencies had any long standing relationship.

11. With regard to the existence or otherwise of a written agreement between the parties, our attention has been drawn to *Lachminarayan Madan Lal vs. Commissioner of Income Tax, West Bengal, [1972] 86 ITR 439* wherein it has been held by the Supreme Court that even if there is an agreement between the Assessee and its selling agents or payment of certain amounts as commission, assuming there was such payment, that does not bind the Income Tax Officer to hold that the payment was made exclusively and wholly for the purposes of the assessee's business. The Supreme Court observed as follows:-

"Although there might be such an agreement in existence and the payments might have been made, it is still open to the Income Tax Officer to consider the relevant factors and determine for himself whether the commission said to have been paid to the selling agents or any part thereof is properly deductible under



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section 37 of the Act.”

12. On the basis of the above principle and facts, the Assessing Officer as well as the Tribunal examined the entire case of the Assessee but were not satisfied with the explanation given. It has been contended that it is possible on the facts of this case to take the view that the CIT (A) did. While this may be so, we cannot substitute our view for that of the Tribunal which is the final fact finding authority.

13. We agree with the Tribunal that there is absolutely no material on record to suggest that M/s. Ram Agencies had procured any sale orders for the Assessee. The production of a few bills or payments having been made by account payee cheques cannot by itself show that M/s. Ram Agencies had procured sale orders for the Assessee. Apart from an internal note, there is no evidence of any correspondence or any personal meetings etc. between the Assessee and M/s Ram Agencies to suggest that there was any relationship on the basis of which M/s. Ram Agencies procured some orders for the Assessee for which it was



entitled to receive commission. Moreover, we find that the understanding between the parties was an oral understanding and it appears to be doubtful that such an oral understanding can be arrived at without any long standing relationship having been established between the Assessee and M/s. Ram Agencies. It seems a bit out of place that the parties entered into an oral business relationship involving such huge amounts of money over a period of time.

14. What is a substantial question of law has been dealt with by the Supreme Court on several occasions and the guiding tests have been culled out in *Mahavir Woollen Mill v. Commissioner of Income Tax (2000) 245 ITR 297* wherein it is held as follows:-

"The words "substantial question of law" has not been defined. But the expression has acquired a definite connotation through a catena of judicial pronouncements. Usually five tests are used to determine whether a substantial question of law is involved. They are as follows:-

1) whether, directly or indirectly, it affects substantial rights of the parties, or



2) the question is of general public importance, or

3) whether it is an open question in the sense that the issue has not been settled by pronouncement of the Supreme Court or Privy Council or by the Federal Court, or

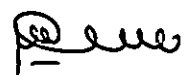
4) the issue is not free from difficulty, and

5) it calls for a discussion for alternative view."

We are of the opinion on the basis of our conclusions above that the case made out by the Assessee does not fall in any one of these categories and, therefore, no substantial question of law arises for our consideration.

15. Accordingly, the appeal is dismissed.


MADAN B. LOKUR, J


V.B. GUPTA, J

February 19, 2008
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