



* IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA No. 354 of 2009

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Decided on : 16th July, 2009.

THE COMMISSIONER OF INCOME TAX . . . Appellant
through : Mr. Sanjeev Sabharwal with Mr. Mohan Prasad Gupta and Mr. Arvind Kumar Verma, Advocate.

VERSUS

C.B. K.R. ENTERPRISES . . . Respondent
through: Mr. Prakash Kumar, Advocate.

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE VALMIKI J. MEHTA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

4. For orders, see ITA No. 729 of 2009.


(A.K. SIKRI)
JUDGE


(VALMIKI J. MEHTA)
JUDGE

July 16, 2009/pmc



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on : 16th July, 2009.

1) ITA No. 729/2009

THE COMMISSIONER OF INCOME TAX . . . Appellant
through : Mr. Sanjeev Sabharwal with Mr. Mohan Prasad Gupta and Mr. Arvind Kumar Verma, Advocate.

VERSUS

C.B. K.R. ENTERPRISES . . . Respondent
through: Mr. Prakash Kumar, Advocate.

2) ITA No. 719/2009

THE COMMISSIONER OF INCOME TAX . . . Appellant
through : Mr. Sanjeev Sabharwal with Mr. Mohan Prasad Gupta and Mr. Arvind Kumar Verma, Advocate.

VERSUS

C.B. K.R. ENTERPRISES . . . Respondent
through: Mr. Prakash Kumar, Advocate.

3) ITA No. 344/2009

THE COMMISSIONER OF INCOME TAX . . . Appellant
through : Mr. Sanjeev Sabharwal with Mr. Mohan Prasad Gupta and Mr. Arvind Kumar Verma, Advocate.

VERSUS

C.B. K.R. ENTERPRISES . . . Respondent
through: Mr. Prakash Kumar, Advocate.

4) ITA No. 347/2009

THE COMMISSIONER OF INCOME TAX . . . Appellant
through : Mr. Sanjeev Sabharwal with Mr. Mohan Prasad Gupta and Mr. Arvind Kumar Verma, Advocate.



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VERSUS

C.B. K.R. ENTERPRISES . . . Respondent
through: Mr. Prakash Kumar, Advocate.

5) ITA No. 354/2009

THE COMMISSIONER OF INCOME TAX . . . Appellant
through : Mr. Sanjeev Sabharwal with Mr. Mohan Prasad Gupta and Mr. Arvind Kumar Verma, Advocate.

VERSUS

C.B. K.R. ENTERPRISES . . . Respondent
through: Mr. Prakash Kumar, Advocate.

6) ITA No. 325/2009

THE COMMISSIONER OF INCOME TAX . . . Appellant
through : Mr. Sanjeev Sabharwal with Mr. Mohan Prasad Gupta and Mr. Arvind Kumar Verma, Advocate.

VERSUS

C.B. K.R. ENTERPRISES . . . Respondent
through: Mr. Prakash Kumar, Advocate.

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI
 THE HON'BLE MR. JUSTICE VALMIKI J. MEHTA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. CM Appl. No. 3098/2009 in ITA No. 329/2009, CM Appl. No. 3184/2009 in ITA No. 344/2009 & CM Appl. No. 3194/2009 in ITA No. 354/2009 (Exemption)



Exemptions in these applications are allowed, subject to just exceptions.

CMs stand disposed of.

2. CM Appl. No. 8655/2009 in ITA No. 719/2009 and CM Appl. No.8662/2009 in ITA No.729/2009 (delay)

For the reasons stated in these applications, we condone the delay in refilling the appeals.

CMs stand disposed of.

3. In all these appeals, common question is raised qua the same assessee. For this reason, Mr. Sanjeev Sabharwal, learned counsel appearing on behalf of the appellant, made consolidated arguments covering all these appeals. The assessee is a partnership firm and is engaged in the business of trading. Main business activities of the assessee is to act a commission agent of M/s. Marico Industries Ltd, who are the manufacturers of Saffola Oil, edible oil and non-edible oil (i.e., Hair & Care Oil). These goods manufactured by M/s. Marico Industries Ltd are supplied by the assessee to various Army, Air Force and Navy Canteens (CSD Canteens). The assessee receives commission from M/s. Merico Industries Ltd. on these supplies. In the returns filed by the assessee for all these years, the assessee has claimed to have spent money for "business promotion expenses" and deduction of these purported expenses was claimed. The Assessing



20%, which was increased by CIT(A) in appeals and the ITAT has affirmed this. It is under these circumstances, the present appeals are preferred by the revenue challenging the orders of the ITAT. For the sake of convenience, we are taking note of the facts as they appear in ITA No.729/2009 and the orders passed by the ITAT in the said case, which pertains to the Assessment Year 2000-01.

4. In the return filed for the above assessing year, the assessee had claimed to have spent a sum of Rs.18,73,588/- under the head of "business promotion expenses" and Rs.63,84,175/- on account of scheme or commission expenses, thus aggregating to Rs.82,27,763/- in all. The AO disallowed 80% of the expenses. When the matter was taken up by the assessee in appeal before the CIT(A), the CIT(A) sustained the disallowance of Rs.7,49,435/- being 40% of Rs.18,73,588/- and Rs.11,66,166/- being 30% of Rs.38,87,055/- under the head of "business promotion expenses" and "commission/scheme expenses" respectively. Both the assessee as well as revenue filed appeals there against before the ITAT as pointed out above, the ITAT has affirmed the order of CIT(A) thereby dismissing both the appeals on this aspects. It is not in dispute, and is found as a fact that the aforesaid amount was spent by the assessee in the form of:



b) Gifts to the customers for sale of various products including sale promotion, schemes, etc. viz., free sample, prizes distribution for the purpose of promotion of the product in CSD Canteens, etc.

5. The ITAT after discussing the findings arrived at by the CIT(A) came to the conclusion that these expenses were, in fact, incurred by the assessee for promotion of the sale of products. The expenses were also accounted for in the books of Accounts maintained by the assessee and no defects or material discrepancy or irregularity could be pointed out by the AO in those books of Accounts. Therefore, there was no reason to disbelieve that the amount as claimed in his account as expenses were in fact incurred by the assessee. The relevant discussion by the ITAT in its impugned judgment discussing this aspect and holding that such an expenditure would be admissible as business expenditure runs as under:

"26. In the present case, it is clear that whole of the business promotion expenses have not been disallowed as inadmissible. The A.O. has partly disallowed to the extent of 80%, which was reduced to 30% by the CIT (A). Similarly, commission and scheme expenses have also been partly disallowed. At this stage, it is pertinent to take note of the various observations of the CIT(A) that were made after considering various evidences and materials produced by the assessee before the AO as well as before him. The CIT (A) has rightly given a finding that the major items of gifts were below Rs.340/- and not in excess of Rs.340/-. The CIT(A) has also accepted that on number of occasions at various outlets of CSD canteen, sale-cum-service melas were organized, and some of the items were distributed free to the participants of the mela. The CIT(A) has also give a finding that the assessee produced certain evidences like certificate from the Canteen officers stating therein that the gifts were received by the customers for sale of various products.



agreement with Marico Industries Ltd., the cost of free samples, all the prizes distributed by the assessee for the purpose of promotion of the products in CSD canteens, would be borne by the assessee. The assessee had undertaken the job of promotion of sale of product was also accepted by the CIT(A). The various facts and findings noted by the CIT(A) in his order have not been found to be baseless or his order have not been found to be baseless or uncorroborated. The purchases invoices were also produced by the assessee. No adverse finding was given by the A.O. that the various items purchase by the assessee for free distribution where sold otherwise outside the books of account to earn secret profit. The books of accounts maintained by the assessee cannot said to be defective inasmuch as no material discrepancy or irregularities were pointed out by the A.O. Some expenses being not supported by vouchers are very nominal and in respect of which a separate addition has been made by the A.O. We are in further agreement with the CIT (A) that he was unable to sustain the rejection of books of accounts by invoking the provision of Section 145(3) of the Income Tax Act, 1961. In the light of the discussions made above, we are therefore unable to persuade ourselves to sustain disallowance of business promotion expenses and Scheme and commission expenses on ad-hoc basis. Having regard to the nature of the assessee's business and the various activities undertaken by the assessee to promote the sales of various products. We are of the considered opinion that the amount of Rs.38,87,055/- and Rs.18,73,588/- actually paid out during the year. On account of scheme or commission expenses and business promotion expenses respectively cannot be treated as inadmissible for the reason that the same were not incurred for the purpose of assessee's business. We, therefore, delete the disallowance made by the A.O. and further sustained by the CIT(A) out of the payment of Rs.38,87,055/- and Rs.18,73,588/- under the head 'commission and scheme expenses and business promotion expenses' respectively, and direct the A.O. to allow the same as deduction. Thus, the ground raised by the revenue and by the assessee on these issues relating to the part disallowance of the total payment of Rs.38,87,055/- and Rs.18,73,588/- under the head 'commission or scheme expenses' respectively are disposed off in the manner as indicated above."

6. Mr. Sabharwal submits that insofar as expenditure incurred under the second head, viz., free gifts, samples and prizes to the customers

and he has no quarrel about the same. However,



that amounts spent on gifts given to the officials could not be allowed as expenses. What we find from the orders of the ITAT, as per the aforesaid extracted portion, that the major items of gifts under the head were below Rs.340/- and not in excess of Rs.340/-. When the matter is to be examined from this angle, we fail to understand as to how this amount could not be treated as expenses. It is not a case that certain expensive gifts were given to the officials to elicit orders. It appears that as a normal business activity, gifts of minor nature were given to various persons, which included some officials also.

This would none-the-less remain as sale promotion gifts and such an act was an act of business expediency on the part of the assessee. These are all finding of facts recorded by the Tribunal. According to us, no substantial question of law arises for our consideration.

7. We, therefore, do not find any merit in these appeals and accordingly dismiss the appeals..


(A.K. SIKRI)
JUDGE


(VALMIKI J. MEHTA)
JUDGE

July 16, 2009.
pmc