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% 16.12.2010

Present: Ms. P.L. Bansal, Adv. for the Revenue.

+ITA No.1715/2010

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A finding of fact is arrived at by the CIT(A) as well as the Income Tax Appellate Tribunal that the amount debited to the commission account was in fact job work charges paid to outside parties for the work done for the assessee. The expenditure was found to have been incurred by the assessee for business purposes, though it had been inadvertently debited in the books of account by the assessee as commission. The Tribunal while accepting the findings of the CIT (A) has observed as under:

"6. The order of the learned CIT(A), it is seen, is a detailed and speaking order. It has been found that the amount debited to the commission account was nothing other than job work charges paid to outside parties for the work done for the assessee. The AO had directed the assessee to produce the five recipients. The assessee complied. Their statements were recorded. All of them agreed to have received the payment from the assessee for the job work done by them for the assessee. The expenditure was found to have been incurred by the assessee for business purposes, though it had been advertently debited in the books of account of the assessee as commission. Was found to be 38.16% of the total expenses. This was found by the Id. CIT(A) to compare favourably with the percentage of 38.19% in the immediately preceding assessment year. The direct labour expenses were in fact found to be showing a downward trend over the past five years from this, the Id. CIT(A) concluded that it was not a case of increase of percentage of expenses abnormally during the year. The AO had mentioned the Inspector's report, who did not find the recipients at their given address. In this regard, the learned CIT(A) observed that the AO had himself reproduced the assessee's reply dated 22.12.2008 to the AO in response to a show cause notice. With that reply, the assessee had filed confirmations from Danish alias Dinesh




and from Lal Babu also along with evidence. Further, letter from Shri Nagender and Lal Babu Mandal and certain other persons were also filed, explaining that the recipients were small workers, often from outside Delhi, coming to Delhi only for a job and that as such, they did not have any permanent address in Delhi, that they lived in a room together in a temporary jhuggi, that they had made small payments for the work done by them; that the work being manual, it could not be carried out within the business premises of the assessee; that it was, therefore, that the assessee got small works of corrections, alterations etc. done by these persons. This explanation of the assessee was rejected by the AO. Statements of few workers were, however, recorded. Importantly, all of these workers confirmed having worked for the assessee and having received payments ranging from ₹3,000/- to ₹4,000/-. None of them stated that they had not rendered any services to the assessee."

We have gone through the statements of the said persons, which were recorded by the Assessing Officer and are of the opinion that the finding of the Tribunal is not perverse but plausible.

These are pure findings of fact. No question of law arises.

This appeal is accordingly dismissed.


A.K. SIKRI, J.


SURESH KAIT, J.

DECEMBER 16, 2010
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