THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Delivered on: 19.05.2010

\+ **ITA 587/2010**

THE COMMISSIONER OF INCOME TAX ... Appellant

- versus -

MICROMATIC MACHINE TOOLS P.LTD. ... Respondent

Advocates who appeared in this case:
For the Appellant : Mr Sanjeev Sabharwal
For the Respondent :

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE V.K. JAIN

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

V.K. JAIN, J. (ORAL)

1. This is an appeal impugning the order dated 30.01.2009, passed by the Income Tax Appellate Tribunal, whereby it dismissed the appeal filed by the Revenue, being ITA No.1253/Del/2007, against the order passed by the Commissioner of Income Tax (Appeals), allowing the appeal filed by the assessee, against the assessment order for the

Assessment Year 1998-99.

2. The assessee-company is engaged in the business of marketing machine tools for certain manufacturers. During the year in question, the assessee incurred expenses, amounting to Rs 20.42 lakhs for participating in the exhibition IMTEX-1998. The vouchers in respect of the aforesaid expenditure were produced before the Assessing Officer, who noticed that the expenditure incurred on the exhibition during the Assessment Year 1997-98 being only Rs 2,67,162/- there was an eight fold increase in the expenditure, though the commission income earned from the sale had decreased to Rs 2.15 crore in the Assessment Year 1998-99, as against Rs 2.43 crores earned in the Assessment Year 1997-98. The Assessing Officer, therefore, added back Rs. 18 lakhs out of the aforesaid expenditure, to the income of the assessee-company. In the appeal filed by the assessee, the Commissioner of Income Tax (Appeals) confirmed the disallowance only to the extent of Rs 9 lakhs.

3. Cross appeals against the order of the Commissioner of Income Tax (Appeals) were filed by the Revenue and the assessee. The Tribunal restored the issue back to the CIT (Appeals), taking the view that the basic question, which

needed to be addressed, was whether the expenditures were wholly for the business purposes or not. It was held that if the expenses were found to be incurred exclusively and wholly for the business of the assessee, it would be irrelevant that they have increased eight times.

4. During the course of hearing before the Commissioner of Income Tax (Appeals), after the matter had been remanded by the Tribunal, it was submitted on behalf of the assessee that as per the agreement of the assessee-company with its Principals, whose products were being marketed and serviced by it, the assessee-company had incurred expenditure on technical exhibition, to promote the products of the Principal Companies and part of the expenditure was to be borne by the assessee-company. It was pointed out that the assessee-company had borne only 31.6% of the expenses incurred on the exhibition and there was increase in the sale of the products, on account of sale promotion activities such as participation in the exhibitions. The eight fold increase in the expenses was attributed to the exhibition being held every three years. It was pointed out that in the past also, there was increase in the expenditure during Assessment Years 1992-93 and 1995-96, when exhibitions were held.

5. It was noted by the Commissioner of Income Tax (Appeals) that as per the agreement between the assessee and its Principals, the assessee was required to meet 50% of the expenditure incurred on exhibition, whereas it had contributed only 31.6% of the same, the balance having been contributed by the Principals. It was also noted that the IMTEX exhibition was held every three years and there was steep increase in the exhibition expenditure. He was of the view that since there was a direct co-relation between the commission earned by the assessee and the sale of the products of the Principals, any expenditure for the purpose of increasing sale would be a valid business expenditure in the hands of the assessee.

6. While dismissing the appeal filed by the Revenue, it was noted by the Tribunal that nothing had been brought on record, by the Assessing Officer, to suggest that the expenditure was not incurred for the business purpose of the assessee. In the opinion of the Tribunal, if somebody, other than the assessee, benefited from the expenditure incurred by it, that would not be a relevant factor if the expenditure was incurred wholly and exclusively for the business of the assessee.

7. Section 37(1) of the Income Tax Act, to the extent it is

relevant, provides that any expenditure, not being in the nature of capital expenditure or personal expenses of the assessee, laid out or expended wholly or exclusively for the purpose of the business or profession would be allowed in computing the income chargeable under the head "Profit and Gains of the Business or Profession."

8. In the case before us, there is no dispute that the assessee-company had actually incurred the expenses claimed by it for participating in the exhibition. The only question, which the Assessing Officer could examine, was whether the expenditure had been incurred solely for the purpose of business of the assessee-company or not. Admittedly, the assessee-company was the sole Selling and Servicing Agent for the products being manufactured by its Principals. The assessee-company was also engaged in selling the spare parts of the machinery being manufactured by its Principals. As noted by both, the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal, the agreement, between the assessee-company and its Principals, obliged the assessee-company to contribute 50% of the expenditure incurred on participation in the exhibition, though during the year in question, the assessee-company contributed only 31.6% of that

expenditure, the balance having been contributed by its Principals. Therefore, the assessee-company was under a contractual obligation to contribute half of the expenses incurred on participation in the exhibition. It would be difficult to say that the expenses incurred in performance of the contractual obligation of the assessee-company would not be expenditure for the business of the assessee-company. An obligation incurred, while entering into a commercial contract, has to be taken as a business expenditure within the meaning of Section 37 (1) of the Act unless it is shown that the contract itself was a sham document and was made with an ulterior motive. What is required to be established is a nexus between the expenditure incurred and the business purpose of the assessee. It is not permissible for the Assessing Officer to place himself in the position of the management of the assessee and take it upon himself to decide how much would be a reasonable expenditure for a particular business purpose. The matter has to be seen purely from the viewpoint of the management of the assessee, taking its commercial interests into consideration.

9. In the case before us, the genuineness of the contract between the assessee-company and its Principals for sharing

the expenditure incurred on participation has not been disputed by the Assessing Officer. In any case, since the assessee-company was the sole agency appointed for marketing and servicing, etc. of the machines manufactured by its Principals, participation in the exhibition was likely to be beneficial to the assessee-company, since increase in the sale of the product on account of promotional activities undertaken during the exhibition is to result in proportionate increase in the commission, being paid to the assessee-company, by its Principals. So long as the participation in the exhibition ensued to the benefit of the assessee-company in the form of increased commission on the products sold and serviced by it, it would be immaterial that part of the benefit on account of promotional activities undertaken during the exhibition would also accrue to the manufacturers of the machines being sold and serviced by the assessee-company. In any case, in the case before us, the Principals of the assessee-company have contributed more than 68% of the expenditure incurred on participation in the exhibition.

10. In **CIT vs. Chandulal Keshavlal & Co.**: *38 ITR 601*, the assessee, which was the Managing Agent, getting commission under an agreement with the managed company,

had waived a portion of the commission payable to it. Upholding the part waiver of the commission, it was held by the Supreme Court that if the payment or the expenditure is incurred for the purpose of the trade of the assessee, it does not matter that the payment may inure to the benefit of a third party. The Court was of the view that a sum of money expended, not of necessity and with a view to a direct and immediate benefit to the trade, but voluntarily and on the grounds of commercial expediency and in order indirectly to facilitate the carrying on of the business may yet be expended wholly and exclusively for the purpose of the trade.

11. In **Sassoon J. David and Co. Pvt. Ltd., vs. CIT, Bombay**: *118 ITR 261*, the Supreme Court observed that ordinarily it is for the assessee to decide whether any expenditure should be incurred in the course of its business and that such expenditure may be incurred voluntarily and without any necessity. The Court was of the view that if the expenditure is incurred for promoting the business and to earn profits, the assessee can claim deduction even though there was no compelling necessity to incur such expenditure. Relying upon its decision in the case of **Chandulal Keshavlal & Co.** (supra), it was held that the fact that somebody, other

than the assessee, also benefited by the expenditure should not come in the way the expenditure being allowed by way of a deduction. The case of the assessee before us stands on a stronger footing since, besides the expenditure being in the business interest of the assessee-company, it was also a contractual obligation incurred by it under the agreement it had with its Principals

12. For the reasons given in the preceding paragraphs, we find no reason to interfere with the view taken by the Income Tax Appellate Tribunal. No substantial question of law arises for our consideration.

The appeal is accordingly dismissed.

(V.K. JAIN)
JUDGE

(BADAR DURREZ AHMED)
JUDGE

MAY 19, 2010
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