



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

ITR No.220-21 of 1991

% *Date of Decision: August 04, 2010.*

COMMISSIONER OF INCOME TAX . . . Appellant

through : Ms.Sonia Mathur, Advocate

VERSUS

M/s. PARAMOUNT PRODUCTS (P) LTD. . . . Respondent

through: Mr.Manu K. Giri, Advocate

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MS. JUSTICE REVA KHETRAPAL

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. These two references pertain to same assessee and are in respect of two assessment years, viz., assessment years 1982-83 and 1983-84. Common question of law which has been referred for decision for both the assessment years is as follows:

“Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was entitled to weighted deduction under section 35B(1)(b)(iv) of the Income-tax Act on the amount of commission paid to foreign agents?”

2. It would be appropriate to take note of the provisions of Section 35(B) of the Act as well as the interpretation given thereto by the Supreme Court. In the first instance we refer to the two judgment of the Apex Court in the case **Commissioner of Income Tax v.**



Stepwell Industries Ltd and Ors. 228 ITR 171 a

Commissioner of Income -Tax vs. Sterling Foods 237 ITR

579. From a conjoint reading of the two judgments, the following principles may be culled out:

1. When a claim for weighted deductions under Section 35B of the Act is made it is for the assessee to satisfy the Income Tax Officer that the expenditure falls under any of the sub-clauses of Clause (b) of Section 35B(1) of the Act. That means the onus is on the assessee to prove that he is entitled to weighted deductions allowed under Section 35.
 2. In order to get these deductions it is for the assessee to prove that the expenditure was incurred during the previous year wholly and exclusively for the purposes set out in Clause (b) of Section 35B(1). This provision has to be strictly satisfied.
 3. As per Section 35B(1)(b)(iv), the expenditure which would qualify for deduction will have to be expenditure incurred outside India on the maintenance outside India of a branch, office or agency for the promotion of sales outside India.
3. The assessee herein is claiming weighted deductions under Clause (iv). Therefore, it was the obligation of the assessee to prove that expenditure incurred by it was not only outside India but it related to the maintenance of branch, office or agency outside India. In the instant case the assessee claimed weighted deductions in respect of commissions paid by it to its agents abroad. The



assessing officer disallowed the same on the ground that there was no such branch, office or agency maintained for payment of such commission to its agents on sales. The CIT(A), however, reversed this decision while accepting the explanation of the assessee that it had entered into an agreement with the foreign party for promotion of its sales and had paid commission in regard of the same; and that this agreement for payment of commission was approved by the Reserve Bank of India and thus it amounted to having an agency outside India for promotion of sales and expenses incurred there. The ITAT has approved this view of the CIT(A). What would amount to having an agency outside India has been discussed by the Supreme Court not only in 237 ITR 284, but the High Courts as well in the following cases:

- (i) ***Commissioner of Income Tax v. Velvet Carpet and Co., 296 ITR 252;***
- (ii) ***Commissioner of Income Tax v. Chillies Export House Ltd., 253 ITR 327;***
- (iii) ***Commissioner of Income Tax v. Goodrick Group Ltd., 251 ITR 187***
- (iv) ***Commissioner of Income Tax v. Modern Carpet Co., 248 ITR 316.***

4. Learned counsel for the assessee has also drawn our attention to two judgments, namely ***Commissioner of Income Tax v. Assam Frontier Tea Ltd.*** 253 ITR 549 and the other that of the Gujarat High Court i.e. ***Commissioner of Income Tax v. Cadila Laboratories (P) Ltd.*** 221 ITR 35. There is no doubt about the



principles laid down in the aforesaid cases. However, for want of requisite information and particularly for want of the agency agreement which was entered into between the assessee and the foreign agent, it is not possible for us to come to a definite decision as to whether payment of the commission to a foreign agent would amount to maintaining 'agency' outside India. We, therefore, set aside the order of the Tribunal and remit the case back to the Tribunal for decision afresh in the light of the principles laid down in the aforesaid judgments and having regard to the facts of this case.

(A.K. SIKRI)
JUDGE

(REVA KHETRAPAL)
JUDGE

AUGUST 04, 2010
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