



\$~3, 12, 13, 15 & 16

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

+ ITA 45/2012  
+ ITA 1161/2011  
+ ITA 1177/2011  
+ ITA 1214/2011  
+ ITA 8/2012

*Date of decision: 16<sup>th</sup> February, 2012*

CIT ..... Appellant  
Through: Mr. Sanjeev Rajpal, Adv.

versus

SHRIRAM PISTONS & RINGS LTD .... Respondent  
Through: Mr. Ajay Vohra with Ms. Kavita  
Jha & Mr. Vijay Kumar Punna

**CORAM:**  
**HON'BLE MR. JUSTICE SANJIV KHANNA**  
**HON'BLE MR. JUSTICE R.V.EASWAR**

**SANJIV KHANNA, J.: (ORAL)**

**C.M. APPL. No.804/2012 (for exemption) in ITA No.45/2012**

Exemption allowed subject to all just exceptions.

The application stands disposed of.



**ITA 45/2012, ITA 1161/2011, ITA 1177/2011, ITA 1214/2011 & ITA 8/2012**

These appeals by the Revenue under Section 260A of the Income Tax Act, 1961, (Act, for short) pertain to the assessment years 1998-99, 2000-01, 2001-02, 2002-03 & 2004-05. We are inclined to dispose of these appeals by this common order as the issue raised is *ibidem* and identical. The appeal for the assessment years 2000-01 to 2002-03 were disposed of by the Income Tax Appellate Tribunal (Tribunal, for short) vide order dated 25<sup>th</sup> February, 2011 and the appeals for the assessment years 1998-99 and 2004-05 were disposed of by the tribunal vide order dated 31<sup>st</sup> May, 2011.

2. We note one distinguishing factor in respect of assessment year 1998-99. The tribunal by an earlier order dated 24<sup>th</sup> April, 2003 in ITA No.1814/2002 had passed an order of remit and restored the matter to the Assessing Officer to examine the question the payment of commission to agents.



3. Ld. counsel for the Revenue has relied and referred to the assessment order in respect of assessment year 1998-99. He has drawn our notice to the letters/communications received from various State Road/Municipal Transport Corporation/Undertakings in response to the queries raised by the Assessing Officer. These letters have been quoted. The State Road/Municipal Transport Corporation/Undertakings have stated that they did not recognize any agent and they did not communicate with any agent. Further, payments were directly made for the goods supplied by the respondent-assessee. In these letters it is also stated that supplies were made at the stipulated rate agreed and fixed by the Association of State Road Transport Undertaking. The terms and conditions of sales were stipulated by the Association of State Road Transport Undertaking. It is highlighted that the State Road/Municipal Transport Corporation/Undertakings have denied that any of the agents were allowed to procure orders, obtain amendments or arrange inspections and were involved with clearance of payment



4. In the assessment year 1998-99, the Commissioner of Income Tax (Appeals) had allowed the application filed by the respondent-assessee for additional evidence under Rule 46A of Income Tax Rules, 1962. The respondent-assessee had placed on record the new supply contract issued by the Association of the State Road Transport Undertakings, which included names of the agents. The CIT (Appeals) referred to the factual matrix/accounts and had highlighted the fact that the assessee had claimed commission expense of Rs.3.34 crores and discount of Rs.14.58 crores during the year. Out of this, commission of Rs.22,94,485/- was paid to various agents in respect of supplies made to State Road/Municipal Transport Corporation/Undertakings. The Assessing Officer had disallowed commission payment on the supplies made to the State Road/Municipal Transport Corporation/Undertakings and not in respect of other sales. We may only note here that the figures are virtually identical or similar in other years. The CIT(Appeals) allowed the appeal of the respondent-assessee but restricted the claim of commission to 4.5% of the total sales made to



the State Road/Municipal Transport Corporation/Undertakings.

5. The Tribunal by the impugned order dated 31.5.2011 has dismissed the appeal of the Revenue and has accepted the cross appeal against the order of the CIT(Appeals), restricting the claim of commission to 4.5%. It may be stated that the commission paid to different agents varied between 4% to 5%.

6. The order dated 31.5.2011, relies upon the earlier order dated 25.2.2011 of the tribunal. This order dated 25.2.2011 is elaborate and detailed. The respondent-assessee had furnished names and details of the 14 agents appointed by them in different parts of the country. The tribunal has referred to the sample agreement of payment of commission entered into between the respondent-assessee and one of the agents. The tribunal noticed that the agreement refers to procurement of order as per the price and terms were already determined, postulates of follow up and other activities to be undertaken by the agent. The relevant clauses of the agreement read:-



*“(i) To procure orders from State Road/Municipal Transport Corporation/Undertakings as per price and terms already determined.*

*(ii) To commit delivery schedule on receipt of confirmation in writing from the assessee.*

*(iii) To provide regular feedback on competitor’s activities.*

*(iv) To complete follow-up till realization of full payment as under :-*

*(a) Realization of payment within 60 days from the date of bills.*

*(b) Realization of all debit note for price difference/excise duty etc. within 120 days from the date of debit notes.*

*(v) To submit a brief monthly report.”*

7. It was noticed that the respondent-assessee has effected sales to private parties through agents and payment of commission to the said agents has been accepted. Further the payment to the agents have been made directly. The tribunal records the said agents were not bogus or non-existing parties, and there was no such allegation or finding. Their addresses and PAN numbers were furnished to the Assessing Officer. The agents were paid by crossed cheque, only after realization of bills



from the State Road/Municipal Transport Corporation/Undertakings. The tribunal further observed that as per the agreements the agents were to perform several obligations/duties in form of providing regular feedback of competitors activities, price and supplies, follow up with the buyers for realization of full payment, submission of monthly reports and also to ensure that the delivery schedule was accepted.

8. One of the issues and contention raised before the tribunal was whether the commission payment in fact represented illegal gratification paid to some of the officers of the State Road Transport Corporation/ Municipal/ Undertakings. The tribunal noticed that there was no direct evidence or material to support the said contention. We may only record here that the Assessing Officer did not summon or examine any of the agents and make further inquiries regarding deposit of money in the account of the agent, withdrawal etc. to verify the said aspects. The tribunal has observed that the prices were fixed pursuant to national competition bids. These bids were examined by the



standing committee and accepted. The standing committee had fixed the rates and the standard terms and conditions. The supplies were, therefore, made as per the rates fixed by the standing committee of Association of State Road Transport Undertakings, who had not only approved the rate but also broadly approved the terms and conditions of supply. The tribunal after referring to the evidence on record, crystallized their findings :-

*“We further find that the following facts are undisputed: -*

- (1) None of the agents are related to the assessee.*
- (2) Payments have actually been made by account payee cheques.*
- (3) Most of the agents were working for the assessee for the last so many years and rendering similar services. These agents are Income-Tax assesseees.*
- (4) These agents were recognized by the Association of State Road Transport Undertaking.*
- (5) The AO has not brought any evidence on record to show and establish that the payment made by the assessee to commission agents for rendering various services to the assessee is prohibited by law or is an offence or is against*



*the public policy. The AO has stated so merely on his assumptions and presumptions without considering the various services rendered by the commission agents to the assessee since last so many years.*

- (6) *It is not the case where commission has been paid for procuring only orders from the State Transport Undertaking but has been paid for rendering various services as noted above.”*

9. The conclusion reached by the tribunal is a finding of fact. The tribunal weighed the evidence before them and on preponderance of possibilities has accepted the claim/contention of the respondent- assessee. The contention of the Revenue is that the existence of the agency agreement, payment to the agent did not prove and establish that the commission paid was an allowable expense under Section 37 of the Act. However, the contention does not notice that the tribunal has not merely relied on the agreement and the actual payment, but has accepted and agreed that evidence exists to show and establish nature of services actually rendered by various agents at different places throughout India. The order dated 25.2.2011 refers to a paper book



filed by the respondent-assessee in support of his contention that the agents were interacting with the State Road/Municipal Transport Corporation/Undertakings. It was observed that there was no evidence or material, except suspicion or a surmise that the commission payment, in fact, represents illegal gratification paid to unknown officers and therefore, should not be allowed as a deduction. A factual decision is perverse if the authority has acted without any evidence or on a view of facts cannot be reasonably entertained. A perverse finding is one, if it is arrived at without any material or if it is arrived at or inference is made on material which would not have been accepted or relied upon by any reasonable person. It is based on surmises, conjectures or suspicions and is not rationally possible. A factual conclusion is regarded as perverse, when no person duly instructed or acting judicially could upon the record before him, have reached the conclusion arrived at the tribunal/ authority. [See *CIT Vs. S.P. Jain* (1973) 87 ITR 370 (SC)]. On the basis of material referred to and the reasoning given by the tribunal it is no possible to hold that findings



recorded are rationally illogical, inconsistent with the facts on record or not supported by evidence and material. The appeals are dismissed on the ground that no substantial question of law arises. No costs.

**SANJIV KHANNA, J**

**R.V.EASWAR, J**

**FEBRUARY 16, 2012**  
hs/vld