



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

Judgment reserved on : 04.09.2008
 % Judgment delivered on : 06.11.2008

+ **ITA No. 10/2007**

**COMMISSIONER OF
INCOME TAX.**

..... Appellant

-versus-

SHRI RAVINDER NATH GOEL

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Prem Lata Bansal
 For the Respondent : Mr C S Aggarwal, Sr Advocate with Mr
 Prakash Kumar

CORAM :-

**HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE RAJIV SHAKDHER**

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

RAJIV SHAKDHER, J

1. This is an appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") against the judgment



dated 28.04.2006 passed by the Income Tax Appellate Tribunal (hereinafter referred to as the “Tribunal”) in ITA No. 1613/Del/2003, in respect of, assessment year 1998-99.

2. The issue which arises in the present appeal pertains to the additions made by the Assessing Officer on account of the disallowance of commission and service charges to the extent of Rs 26,21,460/- and Rs 3,22,765/- respectively, paid by the assessee to one M/s Chemline India Limited, in which the assessee was a director, which was, in turn sustained by the Commissioner of Income-tax (Appeals) [hereinafter referred to as the CIT(A)] but reversed by the Tribunal by virtue of the impugned judgment.

2.1 While passing the impugned judgment in favour of the assessee the Tribunal agreed with the view taken by the Tribunal Delhi, Bench ‘E’ in ITA No. 180/Del/2000 and ITA No. 595/Del/2005 vide judgment dated 23.12.2005, in respect of, the assessment year 1996-97. This was despite the fact that the Department had attempted to persuade the Tribunal to hold to the contrary by alluding to the fact that to what had impressed the earlier Bench of the Tribunal while



passing the judgment dated 23.12.2005, in respect of, the aforementioned appeals was that the increase in sales in the assessment year 1996-97 when compared to the immediately preceding year was more than two fold, whereas in the year under consideration, increase in sale was less than 15% when compared to the immediately preceding year.

2.3 The Tribunal in paragraph No. 6 of the impugned judgment has negatived this contention of the Department, in our view correctly, by holding that this fact alone is neither material nor relevant for deciding the issue relating to the admissibility of the expenses on account of commission claimed to have been paid by the assessee to M/s Chemline India Limited. The Tribunal went on to observe that, it cannot be expected of the consignment agent that it would maintain the growth rate of sale at the same or higher level year after year and especially when, the factum of service is established with the resultant sale due to rendering of such services by the commission agent the commission paid for such services is required to be allowed at the agreed rate. The Tribunal further noted that in the present



case, the factum of such service was accepted by the Assessing Officer himself while allowing the commission paid by the assessee to M/s Chemline India Limited at the rate of 15%, and also that, this vital aspect was duly taken into account by the Tribunal while deciding similar issues in favour of the assessee for the assessment year 1996-97. The Tribunal concluded by holding that a perusal of the order of the Tribunal passed for the assessment year 1996-97 would show that the facts and circumstances involved, in respect of, the assessment year 1996-97 were similar to the circumstances obtaining, in respect of, the assessment year under consideration and there being no material change, they had no hesitation in holding that the issue involved in the present appeal regarding disallowance of commission and service charges paid to M/s Chemline India Limited, was squarely covered in favour of the assessee by the order of the Tribunal in the assessee's own case passed, in respect of, the assessment year 1996-97.

3. On having heard the learned counsel for the parties and on examining the orders passed by the authorities below, we are of the



view that the approach of the Tribunal cannot be faulted with. We have by a separate judgment delivered today upheld the judgment of the Tribunal dated 23.12.2005 passed in ITA No. 180/Del/2000 and ITA No. 595/Del/2000. We are, thus, of the view no substantial question of law arises in the present appeal.

4. In the result, the appeal is dismissed.

RAJIV SHAKDHER, J

BADAR DURREZ AHMED, J

November 06, 2008

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