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

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**Date of Decision : December 08, 2011**

+ ITA 1249/2011

CIT

..... Appellant

Through: Mr. Kamal Sawhney, Sr. Standing  
Counsel

versus

SIDDARTHA TRADE LINKS PVT LTD ..... Respondent

Through

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

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

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

The present appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('the Act', for short) is directed against the order of the Income Tax Appellate Tribunal (the 'Tribunal', for short) dated 29.4.2011.



2. The Revenue has raised two contentions/issues before us.
3. The first issue pertains to addition of Rs. 31,26,718/- on account of failure of the assessee to show justification and explain the nature of cash discount. This addition was made by the Assessing Officer recording the following reasons:-

“The reply of the assessee has been considered. It may be mentioned that Trade discounts are generally allowed on catalogue prices. Cash discounts are allowed to give an incentive for prompt payments. These discounts vary from trade to trade and from place to place. It should be seen that such discounts are duly accounted for by the assessee. But, in case of such discounts, the onus is cast on the assessee to ensure that the price entered in the accounts is “net” and not “gross”. Similarly, the onus is cast on the assessee to substantiate and prove that full credit for cash discount received has been given by the assessee. However such onus has not been discharged by the assessee. The assessee could have discharged such onus by the other leading evidences by filing confirmations from those parties who received cash discounts. Nothing of this sort has been done by the assessee. Under the circumstances, an amount of Rs. 31,26,718/- is disallowed and added back to the Income of the Assessee. Penalty proceeding u/s. 271(1) (C) of the IT Act, 1961 are initiated on this issue for furnishing inaccurate particulars of Income.”

4. The aforesaid addition was deleted by the CIT (A) and this has been affirmed by the Tribunal. They have accepted the stand of the assessee,



which has been reproduced in the order passed by the CIT (A). For the of convenience we are reproducing the said stand, which reads as under:-

**“3.1 The Ld AR stated as below:**

The appellant gives cash discount to the customers who make the payment within 60 days of the raising of the bill. The accounting practice followed by the appellant is that when a bill of Rs. 1,00,000/- is raised, the parties account is debited and the sales account is credited by Rs.1,00,000/-. If the party does not make payment within 60 days, the accounting treatment remains unchanged. In case the customers makes payment within 60 days of Rs. 98,000/- (after availing of the discount), then the customer’s account is credited by Rs.1,00,000/-, and bank account is debited by Rs.98,000/- and cash discount account is debited by Rs. 2,000/-. The suggestion given by the Ld AO to accounting for, on net basis is not practicable as at the time of raising of the bill, the appellant has no information as to who were the customers would be making payment within 60 days and hence the suggestions is not justified. Your reference is invited to p-103/APB-I. In all the cases after deducting CST /ST the appellant has given 2% discount on each payment which can be verified from the confirmation of accounts of M/s Hosiery Linkers.”

5. The findings recorded by the CIT (A) and accepted by the Tribunal in view of the stand of the respondent-assessee are findings of fact. The factual position asserted by the assessee was not adverted to and examined by the Assessing Officer in the reasons mentioned above. The Assessing Officer



took a very myopic view and had opined that the assessee should followed the “net accounting system” and not “gross accounting system”. Assessee has right to adopt an accounting system of his choice. Interference is permissible if the accounting system adopted is contrary to the prescribed accounting standards etc. under Section 145/145A of the Act. No such finding or justification has been recorded. The Assessing Officer has further recorded that the assessee had failed to discharge the onus by filing confirmations, but as per the appellate authorities, the assessee had submitted the details of the bills and the discount given on prompt payment. This has not been denied or stated to be factually incorrect. The first ground fails.

6. The second condition/issue raised by the assessee pertains to payment of commission to 16 persons. The Assessing Officer disallowed the commission payment on the ground that the addresses of some of the recipients were same though the persons/individuals were different. In the assessment order it is also mentioned that in some cases PAN number or addresses were not finished. The Assessing Officer had recorded the following reasons:-

“The assessee company has submitted that commission or brokerage is being paid to agents, to book orders and take responsibility of collections or outstanding payment from



customers on our behalf. It has further submitted that these are all genuine payment and incidental to business. However, the assessee company has failed to establish by corroborating and leading evidence as to what actual services were rendered by them for the business. Onus is cast on the assessee to prove that an amount claimed as an expenditure was laid out or expended wholly and exclusively for the purpose of the business and this has not been fortified and proved/discharged by the assessee.”

7. The CIT (A) confirmed the said addition holding, inter alia, that there was no material on record to suggest any special job was undertaken to earn the said commission. But the CIT (A) had accepted that there were agreements between the assessee and the agents and the fact of actual payment was established. He disallowed the claim on the ground that the assessee was not able to prove that payments were allowable as business expenditure under Section 37 of the Act.

8. The Tribunal, however, deleted the said addition recording as under:-

“14. Before the Ld. Commissioner of Income Tax (Appeals) assessee submitted as under:-

“In most of the cases sales are effected through sales representatives / agents. On behalf of the appellant they procure the sales order, promote new products, follow up collection etc.

For this, commission is paid to such agents. According to Assessing Officer, no evidence of rendering of service could be produced. In the remand stage, the Assessing Officer raised the ground as to why the evidence of commission payment was not



produced during the course of hearing. In reality the appellant has produced the books of accounts and filed copies of bills relating to commission. As there was no specific question the same could not be answered, nevertheless the appellant paid commission to 16 parties out of which 14 persons are maintaining their PAN and the appellant has made TDS @ 5.1% on the said amount and quarterly TDS return in soft form has been filed evidencing the TDS payment made on such commission amount.”

14.1 Considering the above, Ld. Commissioner of Income Tax (Appeals) observed that there is no material on record to suggest that these persons have done special job so that commission is given which is allegedly claimed to be allowable u/s 37 of the Act. Hence, he proceeded to confirm the disallowance holding that there is no evidence of rendering the corresponding services by such persons. Accordingly, he confirmed the Assessing Officer's action.

15. Against this order the assessee is in appeal before us.

16. Ld. counsel of the assessee has duly submitted before the Ld. Commissioner of Income Tax (Appeals) that assessee has specified the purpose in which the commission was given, this included (i) procuring sales orders, (ii) promotion of new products and schemes launched, (iii) follow up for collections from the customers, (iv) collection of C-Forms and other statutory documents, (v) settlement of accounts with the customers, (vi) information on competitor activities and (vii) day to day communication.

16.1 In the paper book, Ld. counsel of the assessee submitted various documents pertaining to the ledger accounts, commission paid, bills raised and correspondence with the parties to whom commission has been paid.



17. We have heard the rival contentions and perused the records. We find that in view of the voluminous evidence submitted by the assessee in this regard, it cannot be said that assessee, as failed to establish that there was no evidence of rendering the corresponding services by such persons. We find that assessee has duly submitted various documents pertaining to ledger accounts, commission paid, bills raised and correspondences in this regard. The services provided have also been duly explained. It is a settled law that revenue authorities cannot sit into the shoe of the businessman. In this regard, we place reliance upon the decision of the Hon'ble Apex Court in the case of CIT, Bombay Vs. Walchand and Co. Private Ltd. in 65 ITR 381, wherein it was held that "in applying the test of commercial expediency for determining whether an expenditure was wholly and exclusively for business, the expenditure has to be adjudged from the point of view of the businessman and not of revenue". Accordingly, we hold that assessee has duly established that sufficient services were rendered for the payment of the commission involved in this regard. Accordingly, we set aside the orders of the authorities below on this issue and decide the issue in favour of the assessee."

9. The Tribunal has highlighted that out of 16 parties, PAN number of 14 parties were submitted to the Assessing Officer. The respondent has also deducted TDS at the rate of 5% and TDS returns was filed. With regard to the work performed by the agents in paragraph 16 the Tribunal has recorded the submission of the assessee with regard to the nature of work performed. It is noticeable that the Assessing Officer did not issue any summons or call



upon the assessee to produce the said agents for examination. Agreeer  
with agents and actual payments were established. The view taken by the  
Tribunal cannot said to be perverse or something which ignores relevant  
materials on record or take into consideration irrelevant factors. The view is  
plausible and not absurd or based on surmises or conjectures.

The appeal is accordingly dismissed. No costs.

**SANJIV KHANNA, J.**

**R.V.EASWAR, J.**

**DECEMBER 08, 2011**  
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