



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

+ **ITA No.162/2009**

Dated: 10th August, 2009.

SAGA DEPARTMENTAL STORES LTD.

...Appellant.

Through: Mr. Ajay Vohra, Ms. Kavita Jha, Mr.
Amit Sachdeva and Mr. Sriram Krishna,
Advocates.

VERSUS

COMMISSIONER OF INCOME TAX(APPEALS)

....Respondent

Through: Mr. Sanjeev Sabharwal, Sr. Standing
counsel with Mr. Arvind Vasova and Mr.
Mohan Prasad Gupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE A. K. SIKRI

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers 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?

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VALMIKI J. MEHTA, J.

1. This appeal is preferred by the assessee against the order dated 29.8.2008 of the Income Tax Appellate Tribunal (I.T.A.T). According to us, no substantial question of law arises and the appeal is therefore, liable to be dismissed.



2. The only issue in this case pertains to the claim of the assessee expenditure incurred by it for payment of commission to taxi drivers, guides and other commission agents. The assessee carries on the business of departmental stores in which various handicrafts items, carpets etc. are sold to tourists. For the Assessment Year in question i.e. 2005-2006, the assessee claimed expenditure towards commission paid to the taxi drivers, guides and other commission agent to the tune of Rs.11,45,47,937/-. The Assessing Officer allowed Rs.1,21,55,213/- as expenditure out of the aforesaid amount claimed by the assessee. The assessee declared a total income of only 1.43 crores on a turnover of Rs.55,45,91,631/-. The declared gross profit rate was 54.15% and the net profit rate was only 1.93%. The Assessing Officer noticed that payment to the middlemen was around 18-20% of the total turnover. The A.O. noticed that the majority of the expenditure of commission, being Rs.10,23,92,724 (Rs.11,45,47,937- 1,21,55,213), was actually the payments made below Rs.2500/- on which TDS is not compulsory. The AO arrived at a finding that the rule of consistency cannot be applied to a case where the business practice is full of flaws and defects and the ratio of profit is unreasonably low. The AO further found in view of the fact that the gross profit rate was 55.14% and net profit rate was only 1.93% which showed that the expenses are unreasonably inflated. It was noticed that in the past also on various grounds, disallowance was made of different amounts from the expenses claimed towards payment of commission. The assessee challenged the order before the CIT(A) and the



CIT(A) increased the amount of expenditure allowed from Rs.1,21,55,213/- 3,69,05,109/-. The CIT(A) noted that onus is on the assessee to prove that the commission has been paid for rendering the actual services and it was found in the instant case that the assessee had not furnished credible evidence in the form of name, addresses etc. of the person to whom commission was paid. The CIT (A) also noticed that none of the persons who were paid commission were brought for verification before the A.O. The CIT(A) noticed that the assessee had shown different number of persons, with reference to each sale, for example, in respect to one sale made on 1.10.2004 (sale value Rs.1,50,891/-) the assessee claimed to have paid commission to 26 person and in each case the amount is less than Rs.2500/-. Similarly, on a single sale worth Rs.3,37,500/- the assessee claimed to have made payments to 35 persons wherein the commission is shown at less than Rs.2500/- i.e. Rs.2,458/- per head. It was further noticed from the details that the name of a person is not repeated in a month and that was an improbability taking the human probability into consideration that any commission agent such as a taxi driver or a guide when he is benefited by commission he would normally visit again by bringing tourists. The CIT(A) further noted that payments were made to various persons in odd figures such as Rs.2,378/-, Rs.2,458/- Rs.2,462/- etc. Considering the aforesaid facts, CIT(A) allowed the aforesaid amount of Rs. 3,69,05,109/- which works out to a deduction at the rate of Rs.14% of the total turnover. The I.T.A.T. besides noting the above facts has also noticed that most of the



vouchers are self made and the assessee did not produce any of the recipien

The I.T.A.T noticed that in the earlier years , some disallowance was regularly sustained which in itself indicated that the assessee's books are not fullproof and on each year the expenditure was estimated. The I.T.A.T duly noticed that the additional factor in that year under consideration was that both the AO as well as CIT(A) have made a detailed enquiry to highlight the improbability of the payments claimed by the assessee and thus, it was a just case to deviate from the consistent method claimed to have been followed earlier. In view of the facts of the case, especially with regard to paying of TDS, only for an amount of Rs. 1,21,55,213/-, out of the total expenditure, claimed of Rs.11,45,47,937/-; the fact that none of the recipients were produced; various transactions were questionable; extremely low figure of net profit as compared to the gross profit; the fact that there were dis-allowances also in the earlier years and so on, the I.T.A.T allowed commission at the rate of 16% of the total turnover as against 14% fixed by the learned CIT(A).

3. Therefore, the very limited dispute is whether the commission amount payable which is allowed as expenditure should be 16% as held by the I.T.A.T or 18-20% or so, as claimed by the assessee, the ITAT having in any case increased the expenditure to 16%, from 14% as allowed by the CIT(A).

4. In view of the insufficiency in the probative value and probability value of the expenditure incurred on account of facts detailed above, the factual



findings have been arrived at by the I.T.A.T. The counsel for the appellant has strenuously urged that either the entire commission should have been allowed or the books of accounts should have been rejected. We do not think this contention is correct in the facts of the present case in as much as the authorities below have clearly noted the deficiency in the proofs and that various transactions were found to be questionable. In various cases, where transactions run into huge numbers i.e. of hundreds or thousands, it is not unusual to take a sample basis to arrive at a decision. Having done so, in the facts of the case, and taking such facts in that totality, these findings of facts have been arrived at by the I.T.A.T to allow expenditure towards commission at 16%. We do not find any valid justification to interfere under Section 260-A of the Income Tax Act, 1961 with the order of I.T.A.T. as the aforesaid facts do not raise any substantial question of law.

The appeal is, therefore, dismissed.

A. K. SIKRI, J

VALMIKI J. MEHTA, J

AUGUST 10, 2009/ib