* **HIGH COURT OF DELHI : NEW DELHI**

+ 1. ITA No.1466 of 2006

Judgment reserved on: February 21, 2008

% Judgment delivered on: March 04, 2008

Delhi Milk Scheme
New Delhi …Appellant

Through Mr. P.N. Monga with Mr. Manu Monga, Advocates

Versus

1. Commissioner of Income-tax, Delhi-II
C.R. Building, I.P. Estate, New Delhi

2. Deputy Commissioner of Income Tax
Circle 4(1), C.R. Building, I.P. Estate
New Delhi …Respondents

Through Ms. Rashmi Chopra, Advocate

WITH

2. ITA No. 636 of 2007

Delhi Milk Scheme
New Delhi …Appellant

Through Mr. P.N. Monga with Mr. Manu Monga, Advocates

Versus

1. Commissioner of Income-tax, Delhi-II
C.R. Building, I.P. Estate, New Delhi

2. Deputy Commissioner of Income Tax
Circle 4(1), C.R. Building, I.P. Estate
New Delhi …Respondents

Through Ms. Rashmi Chopra, Advocate

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

MADAN B. LOKUR, J.

The assessee is aggrieved by an order dated 20th January, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench 'C' in ITA (TDS) No.102 and 103/Del/2003 relevant for the assessment years 2002-2003 and 2003-2004 respectively.

2. The issue that arises in this case is whether the assessee was liable to deduct tax at source on milk and milk products sold by it through `concessionaires' appointed by it.

3. A survey operation under Section 133A of the Income Tax Act, 1961 (the Act) was carried out on 12th June, 2002 on the basis of information that the assessee was not deducting tax at source on the commission paid by it to its agents (called concessionaires) who sell milk on behalf of the assessee. During the course of survey, it was found that the information was correct and it was also found that the assessee has appointed a large number of agents all over Delhi to sell milk and milk products from booths which are owned by the assessee. The assessee appoints its agents by issuing appointment letters to them and also enters into an agreement with them specifying the terms and conditions of the appointment. A commission is paid to the agent for the goods sold. In respect of the milk which is not sold, the same is taken back by the assessee. Cash collections are daily made by the assessee from the concessionaires.

4. According to the assessee, there was no principal to agent relationship between the assessee and the concessionaires but it was a principal to principal relationship and, therefore, commission as defined in the Explanation to Section 194-H of the Act was not applicable.

5. The contention urged by the assessee was rejected by the Assessing Officer as well as by the Commissioner of Income Tax (Appeals) and by the Tribunal and that is how the assessee is now before us in an appeal under Section 260-A of the Act.

6. It was submitted by learned counsel for the assessee that in fact the assessee was giving a discount to the concessionaires and there was no question of any commission being paid to them.

7. Looking to the facts of the case, namely, that the ownership of the milk booth rests with the assessee who does not charge any rent for the use of the booths from the concessionaires; the unsold milk is taken back by the assessee from the concessionaires who are prohibited from selling any other product of any other brand; the sale collections of the concessionaires are collected in cash by the concerned clerk of the assessee from them on a daily basis, there can be no doubt that the concessionaires are selling milk for and on behalf of the assessee and are being paid a commission for it.

8. The expression 'commission' has been defined in the

Explanation to Section 194-H of the Act as follows:

> "**Commission or brokerage**
>
> **194-H**. xxx xxx xxx
>
> *Explanation*. – For the purposes of this section, –
>
> (i) "commission of brokerage" includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities;
>
> (ii) to (iv) xxx xxx xxx"

9. On the other hand, the word 'discount' had come up for consideration in ***Harihar Cotton Pressing Factory v. Commissioner of Income-tax, [1960] 39 ITR 594***. In that decision, it was held that a discount or a drawback is another word for a rebate which is a remission or a payment back and of the nature of a deduction from the gross amount. In other words, it includes a refund to the purchaser of a thing or commodity of a portion of the price paid by him.

10. In a slightly different but nevertheless an apposite context, the Supreme Court described a `trade discount' in ***A.K. Roy v. Voltas***

Ltd., (1973) 3 SCC 503 as a percentage deduction from the regular list or catalogue price of goods.

11. On the facts of the case, it is quite clear that the milk and milk products are not sold by the assessee to the concessionaires. On the contrary, unsold milk is taken back by the assessee from the concessionaires, without any price reduction. Therefore, whichever way one looks at the matter, from the point of view of the definition of the word 'commission', as appearing in the Explanation to Section 194-H of the Act or from the meaning of the word 'discount', the transaction between the assessee and the concessionaires is a principal to agent transaction and not a principal to principal transaction.

12. The Tribunal has found, as a matter of fact, that the milk booths are owned by the assessee; the assessee has a right to enter the milk booth and take charge thereof any time without assigning any reason or without any intimation to the concessionaires; unsold milk is taken back by the assessee from the concessionaires; cash collection is daily handed over to the assessee by the concessionaires; the concessionaires only render a service to the assessee for selling milk to

the customers; and finally ownership of the goods does not pass from the assessee to the concessionaires inasmuch as there is no sale of the milk or milk products to the concessionaires. No material has been brought on record to controvert these findings of fact.

13. We also do not find any perversity in the findings of fact that have been arrived at by the Tribunal on the basis of the agreement entered into between the assessee and the concessionaires and the terms of their appointment.

13. That being the position, we are of the opinion that no substantial question of law arises.

14. The appeal is dismissed. No costs.

MADAN B. LOKUR, J

March 04, 2008 **V.B. GUPTA, J**

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