Court No. - 32

Case :- INCOME TAX APPEAL No. - 134 of 2001

Petitioner :- M/S Luxco Electronics, Allahabad
Respondent :- The Commissioner Of Income Tax
Petitioner Counsel :- R.R. Kapoor,Suyash Agarwal
Respondent Counsel :- S.S.C.,B.J.Agarwal

Hon'ble Sunil Ambwani,J.
Hon'ble Aditya Nath Mittal,J.

1. We have heard Sri R.R. Agarwal for the appellant. Sri Govind Krishna appears for the respondent.

2. This Income Tax Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) has been filed against the order dated 15.11.2001, passed by the Income Tax Appellate Tribunal, Allahabad Bench, Allahabad in Income Tax Appeal No. 1068(Alld)/1994 for Assessment Years 1990-91, connected with Income Tax Appeal No. 1069 (Alld)/1994 for assessment year 1991-92, by which the appeal of the revenue was allowed.

3. The appeal was admitted on the following substantial question of law:-

> "Whether the Tribunal is legally justified in confirming the part disallowance of commission without making out any case that during the year under consideration, appellant has not rendered the same services as have been rendered in previous years?

4. The brief facts giving rise to this appeal are that the assessee-appellant was engaged in the business of manufacturing and selling of loud speakers and electronic components. The Company entered into an agreement with M/s. Laxmi & Co., to act as sole selling agent for the assessee. The assessee claimed allowances for the commission paid to M/s. Laxmi & Co., on the basis of services rendered by M/s. Laxmi & Co. to the assessee. The AO disallowed the expenses partly, on the ground that in the previous assessment year, similar relief was given, and by applying the provisions of Section 40-A (2) (a) of the Act, commission @ 1.5 % only was reasonable. The CIT (A) deleted the addition. The Income Tax Appellate Tribunal in the appeal filed by the revenue, set aside the order of the CIT (A) and restored the order of AO on the point of disallowance of a part of expenditure having incurred on account of commission by invoking the provisions of Section 40-A (2) (a) of the Act

5. The findings recorded by the AO, as summarized in the order of the the Income Tax Appellate Tribunal, in paras 4, 5 and 6 of the order are as follows:-

> "4. On verification, it is found that constitution of M/s. Laxmi & Co., a partnership firm consists of following partners: 1. Sri LC Gupta, (HUF) - represented by Sri LC Gupta; 2. (late) Sri H.P. Gupta (HUF) - represented by Smt. Shanti Devi Gupta widow of (Late) H.P. Gupta; 3. Smt. Saroj Gupta wife of Sri H.C. Gupta; and 4 Smt. Ram Janki wife of Sri G.C. Gupta.
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> 5. It is further seen that Sri H.C. Gupta holding 27 % share of the assessee firm is husband of Smt. Saroj Gupta, partner of M/s. Laxmi & Co., Smt. Shanti Devi, another partner holding 27 % share in the assessee firm is wife of Sri H.P. Gupta, a partner in M/s. Laxmi and Co., Sri G.C. Gupta another partner holding 27 % share in assessee firm is brother of Sri L.C. Gupta and Smt. Meera Gupta holding 19 % share in assessee firm is wife of Smt. L.C. Gupta. In other words relatives within the meaning of Section 241 of the I.T. Act, hold 100 % in the firm M/s. Laxmi & Co., and, therefore, the provision of Section 40-A (2) of the I.T. Act are clearly applicable. The assessee was therefore, asked to furnish the details to explain that any service was actually rendered by M/s. Laxmi & Co. and justifying that the payment was reasonable having regard to the fair market value of the services for which the payment is made. In the reply, the assessee furnished photo copy of some correspondence between M/s. Laxmi & Co., the assessee and the parties to whom speakers were supplied. It was further claimed that since commission at the same rate was paid in the earlier years also, it should be considered reasonable and, therefore, allowed.
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> 6. The contention of assessee is not acceptable. The copies of the

correspondence submitted during the assessment proceedings only shows that the product of assessee firm passed through M/s. Laxmi & Co. in a routine manner,. From these documents it cannot be said that any reasonable services has been provided in respect of manufacturing of sale of assesee's product to justify such a huge commission payment. There is substantial fall in the sale of speakers during the year and the parties to whom supply has been made are also almost the same as in the earlier years. It is further seen that the constitution of M/s. Laxmi & Co. show that except Sri L.C. Gupta (HUF) rest of other members are ladies and house wives representing interest of HUF. They are not in a position to offer any professional advice on matters relating to production, market survey or procurement of orders etc. Sri L.C. Gupta is engaged as Manager (Finance) with the assessee firm also. Considering all the facts and circumstances and without prejudice to any finding of Hon'ble Appellate authorities for the earlier years, I am holding that the services rendered by M/s. Laxmi & Co. to the assessee firm are nominal and the amount of commission paid is excessive and unreasonable having regard to the fair market value of the services rendered. As discussed above, since only nominal services have been rendered, by applying the provision of Section 40 A (2) (a) I am holding commission @ Rs.1.5 % only is reasonable. Thus out of commission paid of Rs.5,29,058/-, Rs.3,96,793/- is disallowed. Addition Rs.3,96.793"

6. Learned counsel for the appellant submits that there was an agreement between the assessee and M/s. Laxmi & Co., to give commission on the sales, and that commission was increaed to 6 % in case total sales exceed Rs.35 lacs. In case the sale exceed Rs.75 lacs, the selling agents was also payable incentive commission. It is submitted that in the previous year also the CIT (Appeals) set aside the addition made by AO, and the order of CIT (A) was upheld by the Tribunal.

7. Under the Income Tax Act, assessment has to be made for each year. The Tribunal confirmed the order of AO, disallowing the commission paid by the assessee, with the findings that in the year in question, the sales had come down as compared to earlier year. This fact was noticeable from the order of AO in which it was found that the sale had come down from Rs.1,25,48,169/- to Rs. 88,60,591. The Tribunal also found that since constitution of M/s. Laxmi & Co shows Sri L.C. Gupta (HUF) and others were ladies and house wives representing the interest of HUF, they were not in a position to offer any professional advise on matters relating to production, market survey or procurement of orders etc. Sri L.C. Gupta was engaged as Manager (Finance) with the assessee firm. The Tribunal also upheld the finding that assessee has taken substantial amount as loan from the relatives including partners of Commission Agent M/s. Laxmi & Co, and had paid a high rate of interest. The findings recorded by the Tribunal that there was no service provided by the partners of M/s. Laxmi & Co. in respect of manufacture and sale of production to justify huge commission are findings of fact, which does not call for any interference.

7. We further find that the questions whether assessment of commission was excessive or unreasonable is subject of discretion of the income tax authorities to be exercised under Section 40 A (2) (a) of the Act on the basis of material on records. In the present case, the findings have been recorded on the basis of materiel produced before the income authorities.

9. The Income Tax Appeal does not raise any substantial question of law as posed before us, and is accordingly **dismissed**.

Order Date :- 20.9.2012
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