

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

% Judgment delivered on 18.04.2012

+ ITA 1281/2011

CIT ... Appellant

versus

Printer House Pvt. Ltd. ... Respondent

&

+ ITA 1282/2011

CIT ... Appellant

versus

Printer House Pvt. Ltd. ... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Sanjeev Rajpal

For the Respondent: Mr. Abhishek Arora

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

BADAR DURREZ AHMED, J. (ORAL)

1. These appeals pertain to the assessment years 2005-06 and 2006-07. The Revenue is aggrieved by the common order dated 29.4.2011 passed by the Income

Tax Appellate Tribunal, Delhi Bench, New Delhi. These appeals arise out of the Revenue's appeals before the Tribunal being ITA Nos. 3227 and 3228/Del/09 in respect of assessment years 2005-06 and 2006-07.

2. The common ground raised by the Revenue in both the appeals before the tribunal pertained to the deletion of the addition of Rs.1,75,04,863/- out of the total addition of Rs.1,84,26,108/- made by the Assessing Officer on account of commission claimed to have been paid to various agents in respect of sale of machinery produced by the assessee company. There was a similar deletion made by the Commissioner of Income Tax (Appeals) in the assessment year 2006-07 to the extent of Rs.1,54,21,119/-.

3. Both the deletions made by the Commissioner of Income Tax (Appeals) have been confirmed by the Tribunal by virtue of the impugned order dated 29.4.2011. Being aggrieved thereby, the Revenue is in appeal before us in the above mentioned appeals.

4. The questions that are proposed by the Revenue as substantial questions of law in respect of assessment year 2005-06, are:

“1. Whether the assessing officer was not right in disallowing the payment of Rs.1,84,26,168/- by the respondent as commission on sales for the relevant year as revenue expenditure u/s 37(1) of the Income Tax Act, 1961 though the same was found to be neither genuine nor required for its business exigencies?

II. Whether the appellate authorities below did not fail to appreciate that there has been change in the circumstances on the expenditure incurred by the respondent towards payment of commission for effecting sales of its product during the relevant year in comparison to the previous year?

III. Whether the order of the ITAT in the present case impugned before this Hon'ble Court is not perverse?"

5. The questions that are proposed by the Revenue as substantial questions of law in respect of assessment year 2006-07, are:

I. Whether the assessing officer was not right in disallowing the payment of Rs.1,54,21,119/- by the respondent as commission on sales for the relevant year as revenue expenditure u/s 37(1) of the Income Tax Act, 1961 though the same was found to be neither genuine nor required for its business exigencies?

II. Whether the appellate authorities below did not fail to appreciate that there has been change in the circumstances on the expenditure incurred by the respondent towards payment of commission for effecting sales of its product during the relevant year in comparison to the previous year?

III. Whether the order of the ITAT in the present case impugned before this Hon'ble Court is not perverse?"

6. We have heard counsel for the parties at length and with their consent, we propose to dispose of these appeals at this stage itself.

Assessment Year 2005-06:

7. We shall first take the assessment year 2005-06. In so far as this year is

concerned, we feel that the substantial question of law which does arise for our consideration is the following:

“Whether the assessing officer was not right in disallowing the payment of Rs.1,84,26,168/- by the respondent as commission on sales for the relevant year as revenue expenditure u/s 37(1) of the Income Tax Act, 1961 though the same was found to be neither genuine nor required for its business exigencies?”

8. The facts of the case in brief are that the assessee has been selling its products which are in the nature of web offset printing machines. These machines are being sold both in India as well as abroad. According to the assessee, these machines are being sold, inter alia, through commission agents. It is also an admitted position that the practice of selling these machines through commission agents has been going on for several years. In so far as the assessment year 2004-05 is concerned, a similar question had arisen as to whether the commission paid to such commission agents would be in the nature of business expenditure, and therefore, would be allowable expenditure in so far as the assessee is concerned, and the same came up for consideration before the Tribunal which held in favour of the assessee. The matter came up before this Court, which confirmed the view taken by the Tribunal and the Special Leave Petition preferred by the Revenue was also dismissed by the Supreme Court. Thus, in so far as the general question as to whether the commission paid to such commission agents would fall within the

prescription of business expenditure and would qualify as Revenue expenditure under Section 37(1) of the Income Tax Act, 1961, is concerned, the same stands concluded in favour of the assessee. However, the learned counsel for the Revenue pointed out that in the year in question i.e., 2005-06 there was a difference on facts which has not been noticed by the Tribunal and it is for this reason that the finding of the Tribunal is based on no evidence. It was contended by the learned counsel for the Revenue that there were seven buyers who had stated categorically before the Assessing Officer in their written responses that in the transactions of purchase made by them of the web offset printing machines from the assessee, no commission agent was involved.

9. This fact is stated in the assessment order in paragraph 5.2 thereof. The said paragraph reads as under:

“5.2 In order to ascertain fact of services from buyers, summons u/s 131 of Income Tax Act were issued to the Buyers with a request to intimate (i) How these buyers identified M/s The Printers Houser Pvt. Ltd., New Delhi for purchase of machinery and (ii) Whether any services was provided by any agent working as commission agents. Seven buyers have submitted the following denials.

Name of Parties	Gist of reply received
1. Chintha Printing & Publishing Co. (P) Ltd.	The previous machinery purchased from them was performing well to our satisfaction and we had received good technical support from them, hence we had short-listed them as OLH-supplier. We had dealings with Printer House

	Pvt. Ltd. from the 1980's onwards for the purchase of web-offset printers for our sister concerns. The deal was completed directly with M/s The Printers House Pvt. Ltd. and no brokers/commission agents were involved as far as we are concerned.
2. Neutral Publishing House Ltd.	The purchased machinery was an Add-on unit of the machinery already purchased from The Printers House Pvt. Ltd. earlier. There was no any commission agent/broker involved in the deal.
3. Chandan Publishing Pvt. Ltd.	M/s Printer House Pvt. Ltd. is an established and reputed company in the area of manufacturing printing press in India. Therefore, we shortlist the company for procuring quality product. There was no commission agent/broker involved in the transactions.
4. Kanak Printers Pvt. Ltd.	M/s Printer House Pvt. Ltd. is an established and reputed company in the area of manufacturing printing press in India. Therefore, we shortlist the company for procuring quality product. There was no commission agent/broker involved in the transactions.
5. The Indian National Press (Bombay) Ltd.	We short-listed M/s The Printer House Pvt. Ltd. as a reputed manufacturer in the printing machine industry. Earlier we contacted M/s Manugraph Industries Ltd. their rate was higher compared to others, delivery schedule did not suit us according to our time schedule, ultimately we found The Printers House Pvt. Ltd. matched with our all requirement. No commission agent or broker involved in the in deal.
6. Himanshu Printers & Publishers	As we are very new in this line of activity and going to purchase machinery we discussed with various old printers and publishers of Assam as to which machinery we should purchase for smooth running. Then we came to know from market report that The Printers

	House Pvt. Ltd., New Delhi is one among the good quality printing machine manufacturers in India. We contacted other companies and also make a market survey but found that machinery quality is better of Printers House Pvt. Ltd., New Delhi. Our Representative personality visited several manufacturers of machinery and after considering the supply time frame of delivery and other conditions we had short listed them as our vendor.
7. Software laboratories	We selected the above vendor (The Printer House) on the merits of product quality and competitive price. There was no a broker or commission agent in this deal.

The aforesaid seven purchasers have denied of having taken any services of any commission agents while making purchases of web offset machine from the assessee company. In some cases the order is a repeat order and therefore there was no need for any mediator to introduce the assessee company to the buyers for the purchase of the said machines.

The assessee was confronted with this fact vide this office letter dated 20.12.2007, that the seven buyers have denied of availing any services of Commission agents. No explanation has been tendered by the assessee company in this regard. In these circumstances, it can be concluded that the product of the assessee company is a quality product which does not require any commission agents for sales. Thus any expenses booked by the assessee on this account are not for the purposes of business and are to be disallowed. The commission paid by the assessee on above sales is thus disallowed and added to taxable income.”

10. As indicated in the said extract from the assessment order, the assessee had been confronted with this fact by a letter dated 20.12.2007 but no explanation has

been tendered by the assessee in this regard. It is on the basis of this that the Assessing Officer came to the conclusion that the expenses booked by the assessee on this account were not for the purposes of business and were to be disallowed in as much as in point of fact there was no agent involved in the sale transactions.

11. In so far as this aspect of the matter is concerned, we find that the Tribunal has not at all considered the same. The Tribunal has mainly gone by its earlier decision in respect of assessment year 2004-05 which had attained finality by the dismissal of Special Leave Petition by the Supreme Court as already indicated above. But, the facts of the assessment year 2004-05 were slightly different from the current assessment year i.e., 2005-06 in as much as in this year there was clear evidence produced by the Department to the effect that in respect of some of the sales for which the assessee was claiming that it had paid commission to the commission agents, the buyers had categorically and in writing informed the Assessing Officer that no commission agents were involved. The onus had shifted on the assessee to explain as to how it had claimed business expenditure in respect of such sales to the said seven buyers. Unfortunately, for the assessee, it has not been able to discharge that burden as no explanation whatsoever was tendered by the assessee in this regard. Consequently, the only conclusion that can be arrived at in so far as the said seven buyers are concerned is that there was no commission agent involved in the transactions with them. As a result, any amount paid by way

of commission to persons in respect of these seven buyers cannot be regarded as business expenditure, and therefore, the same would not be allowable as Revenue expenditure under Section 37(1) of the Income Tax Act, 1961.

12. In so far as the other payments by way of commission are concerned, there is no evidence which has been produced by the Revenue to indicate that they were not actually paid by way of commission in connection with their respective sales of machinery. Therefore, the conclusion on facts arrived at by the Commissioner of Income Tax (Appeals) as well as the Income Tax Appellate Tribunal to this extent cannot be faulted. However, in so far as the amounts paid by way of commission in respect of the said seven buyers are concerned, the same would have to be disallowed as business expenditure and would have to be added to the income of the assessee for the assessment year 2005-06. This exercise has to be done by the Assessing Officer. Therefore, to this extent, the question is answered in favour of the Revenue and against the assessee.

Assessment Year 2006-07:

13. In so far as the assessment year 2006-07 is concerned, we find that the facts are no different from the assessment year 2004-05. They are, however, different from the assessment year 2005-06 in as much as in the assessment year 2006-07, there is no evidence from any of the buyers indicating that there was no commission agent between them and the assessee company. Thus, there is no

material on record nor is there any other evidence which the Revenue could produce to indicate that the commission paid to the commission agent was not genuine. Consequently, the entire amount of commission paid to the commission agent in the year 2006-07 is allowable as business expenditure. We find that the Tribunal has returned a finding of fact after considering all the relevant material on record in so far as the assessment year 2006-07 is concerned. In so far as this year i.e., the assessment year 2006-07, is concerned we find that no substantial question of law arises, and therefore, the appeal by the Revenue is liable to be dismissed. It is ordered accordingly.

In view of the foregoing, the appeals stand disposed of.

BADAR DURREZ AHMED, J

V.K.JAIN, J

APRIL 18, 2012

‘raj’