

Sbw

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.2435 OF 2013

The Commissioner of Income Tax-1, Pune ..Appellant
Versus
Haworth (India) Pvt. Ltd. ..Respondent

.....
Mr. Tejveer Singh i/b. Vipul Bajpayee for the Appellant.
Mr. Nitesh Joshi i/b. Atul Jasani for the Respondent.
.....

**CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.**

DATE : 12th JULY, 2016

PC.:

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 27th December, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2004-05.

2. Mr. Tejveer Singh, the learned counsel appearing in support of the appeal urges only the following questions of law for our consideration :-

“Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the assessee was a service-provider and was thus entitled to commission whereas the agreement between the assessee and the Associated Enterprises clearly indicated that the assessee was a distributor of the Associated Enterprises?”

3. The Respondent-Assessee is a part of the Haworth Group of Companies which is a leading manufacturer of modular furniture. The short controversy which arises in this appeal is whether the agreements entered into by the Respondent-Assessee with its Associated Enterprises in Singapore and Thailand and the functions performed by the Respondent-Assessee would classify the Respondent-Assessee as a distributor or as a commission agent. The Transfer Pricing Officer while arriving at the transfer price adjustment held that the activities performed by the Respondent-Assessee is that of a distributor and not that of a service-provider i.e. Commission Agent. This led to enhancement of the Arm's Length Price.

4. In appeal, the CIT(A) on analysis of the agreements as well as on analysis of the activities performed by the Respondent-Assessee came to the conclusion that the Respondent-Assessee was a commission agent and not a distributor. This is so as it was a service-provider entitled to commission alone for the services rendered in respect of the goods sold by its Associated Enterprises in Singapore to Thailand to their customers in India. Thus deleted the addition made by the Assessing Officer consequent to the order of the Transfer Pricing Officer.

5. On appeal by the Revenue, the Tribunal on independent examination of the agreements as well as on examining the services/activities performed by the Respondent-Assessee in respect of the

modular furniture sold by its Associated Enterprises in Thailand and Singapore to consumers in India upheld the order of the CIT(A). In the result it held that the Respondent-Assessee cannot be characterized as a distributor but is a Common Agent.

6. The grievance of the Revenue before us is that the Respondent-Assessee is in fact a distributor and therefore, the Tribunal was not correct in holding that the services performed by the Respondent-Assessee were that of a service-provider and only entitled to commission. However, nothing has been shown to us which would evidence that the findings of fact reached by the two authorities concurrently is perverse. Both the authorities have on examination of the agreements as well of the activity performed by the Respondent-Assessee with regard to the sale of furniture by its Associated Enterprises in India concluded that it is a service-provider entitled to commission. Therefore, the view taken by the Tribunal is a possible view on facts and in the absence of the same being shown to be perverse, we see no reason to interfere.

7. The appeal is dismissed. No order as to costs.

(A. K. MENON, J.)

(M. S. SANKLECHA, J.)