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IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" NEW DELHI
BEFORE SHRI P.N.PARASHAR AND SHRI G.S. PANNU

ITA no. 3050/Del/02
Asstt. Yr: 1998-99

M/s Anupam Synthetics Pvt. Ltd. Vs. JCIT Spl. Range-37,
4806, 1st Floor, Ram Bazar, New Delhi.
Cloth Market, Chandni Chowk,
Delhi-110006.

(Applicant)

(Respondent)

Appellant by : Shri Ved Jain & Smt. Rama Jain CA
Respondent by : Shri Shantanu Dhamija DR

ORDER

PER P.N.PARASHAR, J.M.:

This appeal, filed by the assessee, arises out of CIT(A)'s order dated 28-3-2002 relating to A.Y. 1998-99.

2. Shri Ved Jain FCA along with Smt. Rama Jain CA appeared on behalf of the assessee whereas Shri Shantanu Dhamija DR, appeared on behalf of the Revenue.

3. Ground no. 1 is general in nature and requires no specific adjudication.

4. Ground no. 2: This ground runs as under:

"That the learned Commissioner of Income Tax (Appeals) has erred in sustaining the disallowance of a sum of Rs. 12,54,388/- being the amount incurred as business development expenses, which is not based on any facts and is illegal."

5. The assessee is engaged in the business of manufacture and sale of fabrics. On examination of the P&L A/c during the course of assessment proceedings the Assessing Officer noticed that the assessee had claimed business development expenses at Rs. 12,54,388/-. The AO directed the assessee to prove the genuineness of the expenses and allowability. It was explained by the assessee that the assessee was manufacturing fabrics on its own powerlooms and in this business there was serious decline and on account of

sluggishness in business, the assessee was exploring the possibility any other business opportunities and in the process contacted one Mr. G.R. Vakil of M/s Associated Projects & Marketing, a consultancy firm which was specialist in government tenders and which was operating from Srinagar. It was further submitted that the assessee participated in the tender floated by J&K Government for supply of school uniform cloth. Through the guidance and assistance of Mr. Vakil and negotiation it could get the contract during the year for supply worth Rs. 5,01,75,520/-. It was thus submitted that for procuring this voluminous business the assessee paid a sum of Rs. 12,54,388/- as commission to the proprietor of the company, namely, Mr. Vakil who utilized his good offices and rendered services in getting the orders from the government department and in receiving the payment etc. In support of this version, confirmation from the proprietor was also filed before the AO. This confirmation was obtained through fax message.

5.1. The AO, on examination of the circumstances including the fact that the recipient of the commission was stationed at Srinagar and was not assessed to tax and also the fact that he was not produced before the AO, doubted the genuineness of the transaction and disallowed the claim of the assessee.

5.2. In appeal, before the learned CIT(Appeals) it was submitted that the amount of Rs. 12,54,388/- was paid to Mr. Vakil, proprietor of M/s Associated Projects & Marketing for helping the assessee in securing J&K Government tender for supply of school uniform cloth and ensuring timely supplies thereof and also for securing timely payment. It was contended that as per the understanding with the payee it was agreed that the assessee will pay business development fee @ 2.5% of the value of supplies made against all government tenders which matured through M/s Associated Projects & Marketing. It was pointed out that the assessee made supplies worth Rs. 5,01,75,520/- in a period of less than 2 months and various activities including approval of quality, quantity and quick realization of payments were all looked after by M/s Associated Projects & Marketing in whose favour the assessee had also executed authority to represent it. Regarding lack of written agreement between the assessee and Mr. Vakil, it was submitted that the assessee was looking for some business opportunities for its survival and therefore it could not press Mr. Vakil for any written agreement. The assessee also highlighted certain additional facts and circumstances before the learned

CIT(Appeals) and made a request for some more time by giving address of Mr. Vakil and his bank account. It was pointed out that even the advertisement of J&K Government was supplied by Mr. Vakil and the revised tender was filed on his guidance. The learned CIT(Appeals), however, held that the assessee could not bring on record the evidence in support of this contention to establish that Shri Vakil had rendered any genuine service justifying the payment of commission of Rs. 12,54,388/-. He, thus, held that in absence of evidence to establish that the commission was paid for business purpose, the deduction u/s 37 could not be allowed. In reaching to this conclusion he relied upon the decisions in the cases of Swedeshi Cotton Mills Co. Ltd. Vs. CIT 63 ITR 57(SC); and Lachmi Narayan Madan Lal Vs. CIT 86 ITR 439(SC). Regarding rendering of services also it was held by him that there was no evidence to show that the agent rendered services to the assessee. On this issue reference was made to the ratio of decisions in the cases of Vishnu Agency Pvt. Ltd. Vs. CIT 117 ITR 754 (Cal.); and Chemauax Pvt. Ltd. Vs. CIT 109 ITR 705(Bom.).

6. The learned counsel for the assessee has assailed the findings of the learned CIT(Appeals). After explaining the circumstances of the matter he submitted that the assessee was working in Delhi and could file tenders in J&K only on the guidance of Mr. Vakil. He pointed out that without his assistance it was not possible for the assessee to procure the business in such huge volume from a government department of J&K. He submitted that the assessee had filed confirmatory letter from the commission agent to show that the transactions were genuine. It was pointed out by him that the payment of Rs. 6 lakh was made in this year through cheque which has been duly shown in the ledger account and bank account and the payment of remaining amount was made in the next year. The learned counsel took us through the whole process from the advertisement to the filing of tender and revised tenders, supply of the material and receipt of the payments and stated that all these activities were done through Mr. Vakil who also effectively supervised the timely supply of the goods and their quality and quantity. The learned counsel made reference to page 39 of the paper book to show that the correspondence to the Financial Advisor & CAO, Education Department, Civil Secretariat, Govt. of J&K, Jammu was made under due intimation to Shri Vakil to whom letters were faxed for looking after the interest of the assessee. According to the learned counsel, a certificate

has been given by Union Bank of India for showing that the demand draft no. 1035695 dated 30th March 1998 for a sum of Rs. 6 lakh favouring M/s Associated Projects & Marketing, payable at J&K was given by the assessee which was duly debited in the account of the assessee. In this regard also our attention was invited to the certificate dated 3rd February 2001 available at page 42 of the paper book. The learned counsel also drew our attention to various documents which related to the supply of the material, transportation of the material and receipt of the amount. He also argued that if the agent was not assessed to tax then the assessee should not be made to suffer on that basis. It was also pointed out by him that assessee went right to produce Mr. Vakil but it was not possible and if the learned CIT(A) wanted to examine him, she could have directly summoned him. He also pointed out that the payment was made through banking channel and department has not brought out any material on record to show that the transactions for making the payment were vague.

7. The learned DR, on the other hand, supported the order of the learned CIT(Appels). He submitted that there is no proof of service nor is there any written agreement regarding rendering of service and in absence of proper confirmation, the onus cannot be said to have shifted to the department. It was pointed out by him that there is no evidence regarding the fact that the tender was revised at the instance of Mr. Vakil. He also submitted that there is no proof to show that Mr. Vakil participated in the negotiation for obtaining the order.

8. In rejoinder, the learned counsel for the assessee submitted that the negotiations could be finalized in January 1998 and payments were made in March 1998 and this could be possible only through the good services of the agent. It was pointed out by the learned counsel that in the normal business the assessee was utilizing its staff but no expenses were incurred on the deal relating to supply of school uniform cloth to J&K government. It was finally submitted by the learned counsel that the assessee had no previous experience of working in J&K and in view of the considerable distance, different working culture and strange parties, the work could not be completed without services of the agent. He, thus, concluded that the assessee had made payment only for services rendered by Mr. Vakil during the course of business operations and for business activities and therefore the deduction for business promotion was allowable u/s 37 of the

Act. In support of his argument the learned counsel placed reliance on the decision reported in 135 ITR 546; 98 ITR 69; and 254 ITR 377.

9. We have carefully considered the entire material on record. Following facts remained undisputed –

- (1) The assessee who was carrying on business activities in Delhi undertook the work of supply of uniform for the first time in J&K in this year;
- (2) The volume of business of the assessee tremendously increased as he could get order of supply worth Rs. 5,01,75,520/-. The payments were received by the assessee from the government through banking channel. The agent also received the payment through banking channel;
- (3) The agent was duly authorized by the assessee in writing to act on his behalf;
- (4) The letter was also obtained and the same was filed by the assessee before the AO;
- (5) The agent received a sum of Rs. 6 lakh during this year through bank draft from the assessee;
- (6) The amount was duly debited in the account of the assessee;

9.1. In the light of the above facts and circumstances, which have been pointed out by the learned counsel for the assessee, a strong presumption and inference can be drawn that the assessee could not have been able to procure business from government offices of J&K without the help, assistance and guidance from the agent who was locally stationed at Srinagar. Although the confirmation was received through fax but the genuineness of the document cannot be doubted. If the AO or the learned CIT(Appeals) had any doubt regarding the authorship of the letter or contents thereof etc., then the department could have directly summoned Mr. Vakil whose address was also given by the assessee.

9.2. In view of the above circumstances, the supply of the goods by the assessee stood fully established. Thus, there remains no doubt about the volume of business done by the assessee and the payments received by it from J&K government. So far as the issue relating to rendering of service is concerned, the confirmatory letter was filed by the assessee. It was pointed out by the learned counsel for the assessee that in subsequent

year also the same agent worked for the assessee and procured orders from the same department of the government of J&K. On this aspect also, no further enquiry was made. In our opinion, therefore, the learned CIT(A) was not justified in sustaining the disallowance when assessee had in fact discharged its burden by filing the confirmatory letter and other evidence to which reference has been made in the body of this order and in support of which documents have been filed in the paper book before us also. It was for the department thereafter to have brought on record factors to show that the payment was not made to the agent by the assessee for rendering the service or that the expenditure was not incurred for business purposes.

9.3. In the light of above facts and also in view of the documentary evidence filed on record, it is established that the volume of business of the assessee company assumed big boost on account of supply of garments to the government of J&K. In the immediately preceding year the assessee had shown net profit of Rs. 2,171/- only whereas in the assessment year under consideration its net profit went up to Rs. 13,06,958/-. This boost was definitely on account of the contract for supply of school uniforms cloth by the assessee. The documentary evidence filed by the assessee is credible and cogent and the span of time within which the tenders were awarded in favour of the assessee, supplies made after getting the work done from other manufacturers and timely payment received, show the hand of the agent who was instrumental for all these transactions. The assessee made supplies of uniforms cloth worth Rs. 5 crores within two months to the government of J&K. The supplies were approved on the basis of inspections done and the payments were also released. All this was possible only through effective services rendered by the agent. From the date of calling of tenders for supply of the school uniforms cloth to the date of payment, in several stages, Shri Vakil might have rendered very effective services for securing the tenders, in making negotiations with the concerned officers in ensuring timely supplies and in getting the release of payment. The assessee has filed confirmation of Shri Vakil through which not only receipt of the payment is confirmed but it is specifically written that the amount has been received as introduction fee/ business development for the supply of school uniforms cloth. It is also mentioned in this letter that the fee was charged and received by him for guiding the assessee in the matter of participating in the business, making timely supplies in securing full payments. From this

certificate also it is clear that the agent had rendered services to the assessee. The assessee had also endorsed copies of the correspondence made by it to various authorities in J&K, which is evident from the reference on the photo copies filed before us. The assessee had also executed authority letter in favour of Shri Vakil which is available at page no. 32 of the paper book, filed before us. The assessee has written letters dated 9-1-02 and 4-2-2002 to Shri Vakil requesting him to appear before the learned CIT(Appeals). On these letters, the address is also the same. This shows that the assessee made efforts to produce the commission agent before the learned CIT(Appeals). It is quite possible that Shri Vakil might have avoided to appear before the learned CIT(Appeals), may be due to the reason that he might not have shown the income from commission to the Income-tax Department. In any case, if the agent was not assessed to tax or if he did not appear before the learned CIT(Appeals) despite request of the assessee, the assessee cannot be blamed for the same. So far as the rendering of service is concerned, there may not be a written agreement but the circumstances of the present matter strongly establish that without the services of the commission agent the assessee could not achieve such business result as has been achieved by him. The business development expenses are, therefore, fully justified as the rendering of service is proved from the circumstances of the present matter.

9.4. The learned CIT(Appeals) has placed reliance on the ratio of decisions in the case of Lachmi Narayan Madan Lal Vs. CIT and Swedeshi Cotton Mills Co. Ltd. vs. CIT (supra), but the same are distinguishable on facts from the present matter.

9.5. On going through the entire documentary evidence, filed on record and in particular on appreciating the circumstances of this matter we find force in the submissions of the learned counsel for the assessee and hold that the payment of commission by the assessee was for business purposes and the same was fully justified. We, therefore, set aside the finding of the learned CIT(Appeals) and delete the disallowance of Rs. 12,54,388/-. Ground is allowed.

10. Ground no. 3: This ground runs as under:

“That the learned Commissioner of Income Tax (Appeals) has erred in sustaining disallowance of a sum of Rs. 31,288/- on account of donation alleging it to be inadmissible for deduction u/s 80G which is not based on any facts and is illegal.”

10.1. The learned CIT(A) has adjudicated the issue by observing as under:

“Regarding the disallowance of deduction of Rs. 31,288/- u/s 80-G, the AO has added the donation claimed at Rs. 69,091/- in the computation of income. However, during the course of appellate proceedings, the appellant has not taken up this ground for furnishing of any information or details so as to invite any interference in the order of the AO. Since the appellant has not brought on record any evidence to show that it was entitled to deduction u/s 80G at Rs. 31,288, no relief can be allowed to the appellant.”

10.2. Before us also the learned counsel for the assessee could not effectively argue the ground. Therefore, we are unable to interfere in the order of learned CIT(A). Ground fails.

11. Ground no. 4 is general in nature and requires no specific adjudication.

12. In the result, assessee's appeal is partly allowed for statistical purposes only.

Order pronounced in the open court today i.e. 17-3-06.

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMEBR
Dated: 17th March, 2006.
MP

Sd/-
(P. N. PARASHAR)
JUDICIAL MEMBER

Copy to:

1. Assessee *By hand*
2. AO
3. CIT
4. CIT(A)
5. DR

Assistant Registrar
Income Tax Tribunal
Delhi