

HC upheld disallowance of commission as assessee failed to prove nature of services rendered by sub-agents

Summary – The High Court of Bombay in a recent case of Umakant B. Agrawal, (the Assessee) held that since appellant failed to produce evidence regarding sub-agency commission paid by showing nature of services rendered by sub-agents, said expenditure could not be allowed.

Facts

- The assessee was trader and dealer in cement and cement products. To procure business through the assessee, company 'G' appointed assessee as its agent. The agreement allowed assessee to engage services of sub-agents on commission basis. The assessee, in turn, got into touch with 'S' and 'P' for such services. The commission amount paid to these two entities was booked as expenses by pointing out that 'P' and 'S' assisted in obtaining details of business.
- The Assessing Officer while probing, found that payment of Rs. 1.20 crores were made to certain entities like 'P' and 'S'. The Assessing Officer called upon assessee to prove nature of services provided by these two entities. The assessee filed copies of agreements, copies of bills raised by these entities and other details. The Assessing Officer found that one of entities 'P' was not in business of trading in cement but was a pharmaceutical company and held that there was no evidence on record to show that assessee procured business with the help of services of brokers and bills raised by sub-agents on assessee for commission was suspicious. The Assessing Officer came to conclusion that the assessee could not prove services rendered by brokers with evidence and disallowed the expenditure incurred by the assessee.
- On appeal, the Commissioner (Appeals) reversed the order of the Assessing Officer.
- On second appeal, the Tribunal upheld the order of the Assessing Officer.
- On appeal to High Court:

Held

- The appellant has not been able to discharge the burden and it is not impossible. It is a primary onus and which was to be discharged and which has been held as not discharged by providing the requisite details.
- These are not matters which were to be knowledge of the Assessing Officer and the assessee was called upon to clarify them. It was a matter solely to the knowledge of the appellant. It was personal to him. It was the assertion of the appellant and which was being probed, however, in greater details.
- It was a clear case where the onus which was resting on the assessee in law, has not been discharged by producing the details with regard to the matters which are to the personal knowledge

only of the assessee. It is assessee's assertion that the two entities have been approached by him for procuring business not only for himself but through him for 'G'. It is in these circumstances that the Tribunal found that the three judgments relied upon by Mr. Mistry before us will not assist the assessee any further.

- The reasons assigned by the Tribunal consistent with the material produced are not vitiated by perversity or an error of law apparent on the face of the record which would enable us to exercise our powers under section 260A of the Act. The reasons assigned in the impugned order would indicate that the Tribunal corrected the error which was committed by the Commissioner (Appeals) of interfering in findings of facts and which were not demonstrated to be perverse.
- In the peculiar facts and circumstances of the case do not give rise to any substantial question of law.