

Sanctity of employee's commission couldn't be doubted if same was paid for extra services provided by employees

Summary – The High Court of Bombay in a recent case of Emerald Cruises., (the Assessee) held that where assessee paid commission to taxi drivers and travel agents to procure more business, action of Tribunal to disallow said commission without scrutinizing material on record was not justified

Facts

- The assessee paid commission (a) to taxi drivers, travel agents *etc.* to procure more business for assessee and (b) to its staff for sale of tickets.
- The Assessing Officer disallowed deduction of said commission.
- The Commissioner (Appeals) examined material and other evidence on record and allowed deduction to the extent amounts were verified and disallowed deduction for amounts which could not be verified.
- The Tribunal reversed findings of the Commissioner (Appeals) but allowed straightaway deduction of 35 per cent of said commission.
- On appeal before the High Court:

Held

- The Commissioner, whilst coming to the conclusion that the assessee was entitled for deduction in respect of commission paid to taxi drivers, travel agents *etc.*, has minutely scrutinized the material on record, but, however, on perusal of the impugned order, it appears that the Tribunal has not at all scrutinized the material whilst reversing the findings of the Commissioner. In fact, there are no reasons recorded in the impugned order of the Tribunal to hold that the findings of the Commissioner cannot be sustained. Besides that, the documents relied upon by the Commissioner, including the Memorandum of Agreement, as well as the vouchers, *etc.*, produced on record have not at all be considered. Non-consideration of such material would itself lead to perversity in the findings of fact, arrived at by the Tribunal which would call for interference of Court in the present appeal.
- As far as claim of the assessee towards deduction on account of commission paid to the staff is concerned, The Tribunal can re-examine the matter on its own merits in the light of the judgment of the Supreme Court in the case of *Shahzada Nand & Sons v. CIT* AIR 1977 SC 1182 wherein Supreme Court accepted that there can be cases where commission can be paid also to the staff for carrying out extra services.