

## AO couldn't question genuineness of commission when agents were liable to recover price of goods from customers

**Summary – The High Court of Calcutta in a recent case of Landis+ GYR Ltd., (the Assessee) held that where agents procured orders for assessee and made themselves liable to recover price of goods sold by them, commission paid to them would be allowable**

### Facts

- The assessee debited certain sums on account of commission to the profit and loss account. The aforesaid sums were paid to company C and company S who were agents of the assessee company.
- The Assessing Officer held that the mere payment and making TDS without rendering of service did not prove the genuineness of commission transaction. He disallowed the payment made to both companies C and S.
- On appeal, the Commissioner (Appeals) held that the nature of services rendered by the recipient companies was not established by the assessee; thus, he upheld the decision of the Assessing Officer.
- On appeal, the Tribunal upheld the order of the Commissioner (Appeals).
- On appeal before the High Court :

### Held

- The case of the assessee is that Company S was appointed as a selling agent for the purpose of dealing with CESC Ltd. and Company C was appointed for the purpose of dealing with the buyers located in Andhra Pradesh. From the documents it would appear that CESC Ltd. was informed about S having been appointed by the assessee as its agent CESC by its letter agreed to deal with the aforesaid agent of the assessee. The agent by its letters dated 20-10-2002 and 25-3-2003 forwarded the purchase orders collected from CESC. The assessee by its letter dated 27-3-2003 confirmed acceptance of the order collected by the agent for 40000 meters. The letter dated 3-8-2002 addressed by the agent to the assessee goes to show that the former was taking steps to have the goods inspected. The letters dated 25-10-2002 and 27-2-2003 go to show that the agent was also collecting dues of the assessee. The letters go to show that the agent C was taking steps for acceptance of the goods delivered by the assessee and was also collecting price of the goods sold by the assessee to the customers located in Andhra Pradesh.
- The documentary evidence, adduced by the assessee, discussed above could not have been dismissed by saying that they were mere correspondences. They were correspondences with respect to the various activities undertaken in discharge of the obligation undertaken by the agents under the contracts dated 4-4-2002 respectively.

- The Tribunal in deciding the matter was under an impression that the customers, with whom the agents were liaising on behalf of the assessee, were '*Government Undertakings who purchase the goods direct from the seller i.e. without any via media.* In this instant case, the role of any middle man in form of commission agent is not applicable.'
- It is not in dispute, pursuant to notice issued by the Assessing Officer, both the agents confirmed in writing that they had rendered services to the assessee. The assessee has, before making payment, deducted tax at source.
- The C in its letter dated 15-2-2006 addressed to the Assistant Commissioner has confirmed that they were appointed marketing agent of the assessee. They have also disclosed extract of their books of account in order to show the dealings and transactions between the assessee and the aforesaid agent. They have also disclosed their PAN card number. By their letter dated 20-3-2006 they once again wrote to the Assistant Commissioner furnishing various information including that the amount of commission earned by them had been indicated in their books of account and had also been offered for taxation and assessment was made which was also disclosed by them. The other agent namely, S by its letter dated 22-3-2006 furnished to the Assistant Commissioner, a copy of the extract of the ledger from its books of account disclosing the dealings and transactions between the assessee and the aforesaid agent and the copies of their balance sheet for the relevant period together with their PAN card number.
- The assessee had adduced such proof as it was in its power to prove. It is at this juncture that the judgment relied upon by assessee in the case of *Collector of Customs v. D. BhoorMall* [1974] 2 SCC 544 becomes relevant. It goes without saying that it was in the power of the revenue to have contradicted the evidence adduced by the assessee and its agents to the extent that the income earned by them on account of commission paid by the assessee was not offered for taxation or that the particulars of the final accounts or the final accounts themselves disclosed by the agents were not in accordance with the Returns of income which they may have filed. It is difficult to believe that it did not occur either to the Assessing Officer or to the Commissioner (Appeals) that they could seek these information from their counterparts who may have been in *seisin* of the income-tax files of the aforesaid two agents. Therefore, the only inference, which may be drawn, is that these facts were not contradicted because they were factually undeniable.
- Far less any finding at any stage to show that it was even remotely suggested that the payment was collusive or the same was not genuine.
- The fact that the agents made themselves liable to recover the price of goods sold and delivered pursuant to the orders procured by them is a pointer to show that they were del credere agents well-known in the commercial world. This fact was not at all taken into consideration, nay, it did not occur to them when they held that 'no evidence has been brought on record to show that any services were rendered by the said agents to the assessee.'
- In that view of the matter, the judgment of the Tribunal under challenge is perverse and cannot be sustained. The question originally formulated is answered in favour of the assessee.