

Commission paid to agent for providing liasoning services relating to govt. tender was allowable business exp.

Summary – The High Court of Allahabad in a recent case of Brijbasi Hi-Tech Udyog Ltd., (the Assessee) held that where there was no finding as to whether payment made by assessee towards commission was for business purposes or such payment was genuine or not, disallowance of expenditure under section 37(1) by Tribunal on ground that supply was made to government department would not be sustainable

Facts

- The assessee-company was engaged in the business of manufacture of firefighting vehicles and supply of the same to various government and non-government organizations. The Assessing Officer put notice to the assessee in respect of business expenditure claimed by the assessee towards payment of commission to one S for providing liasoning and other services to the assessee.
- The Assessing Officer required production of said S. On non-production of S, the claim of commission paid to him was rejected. The amount paid towards alleged commission was disallowed.
- On appeal, the Commissioner (Appeals) allowed said expenditure on the ground that there was no evidence to prove that the payee S had not rendered any service. He deleted the disallowance.
- On further appeal by the revenue, the Tribunal reversed the order of the Commissioner (Appeals). The Tribunal gave *further* reason that 'when supply was made to Government Departments, commission was not allowable unless it is established that commission was for services other than services related to supply of goods to Government Department'. The Tribunal upheld the disallowance made by the Assessing Officer.
- On appeal to the High Court :

Held

- While the Tribunal may be right in its reasoning that the Commissioner (Appeals) has not considered the matter in entirety and may have hastily recorded the finding in favour of the assessee, the reasoning given by the Tribunal to reject the claim, cannot be said to be based purely on conjectures. There was sufficient evidence on record to reach a final finding on the issue involved in this matter.
- However, the Tribunal has failed to consider the evidence but has recorded its findings based on its personal notions and view all extraneous and not-desirable to be considered while deciding issue of genuineness and allowability of particular payments made by the assessee in the peculiar circumstances of his business. Such an approach cannot be approved.

- It cannot be said that such an expenditure if found to have been actually incurred is not allowable. The finding of the Tribunal to the contrary is clearly unsustainable. What remains to be seen is whether as a fact such expenditure was allowable under section 37(1). It is thus to be established that the said expenditure had been incurred for the business purposes. For purpose of recording a finding on this issue, one way or the other, material evidence in the shape of agreement for sale of firefighting vehicles, payments made through banking channel, TDS having been made by the assessee, S had been assessed to tax (though upon return filed late) and his statement made by him before the Assessing Officer in the remand report proceedings and other evidence exist on record. They along with such other evidence as exists on record were required to be examined and weighed by the Tribunal before it could record its finding on the allowability of the commission claimed by the assessee.
- The Tribunal also appears to have chosen to read certain parts of the statement given by the S in isolation and not in entirety of the facts and circumstances of the case. In so far as the finding of such payment having been made for the business purposes or it is genuine we find that the Tribunal has not considered the entire material in light of the particular facts of the case but has got swayed by certain inconsistencies and deficiencies noted by making a microscopic examination of the statement of S as if it (Tribunal) were examining the case of that person whereas in the instant appeal it was only required to see if the expenditure claimed to have been borne by the assessee was genuine. If the answer on this issue were in favour of the assessee, then it would be of little consequence (in these proceedings) how S has dealt with the money received by him from the assessee.
- In view of the above, the order of the Tribunal is not sustainable and is, therefore, set aside and the matter is remitted to the Tribunal to decide the appeal afresh after affording opportunity of hearing to the parties.