

Yearly commission paid by Co. to its agents not doubted by revenue was to be allowed as deduction: Delhi HC

Summary – The High Court of Delhi in a recent case of Hind Nihon Proteins (P.) Ltd., (the Assessee) held that where commission paid by assessee to its agents regularly year after year and not doubted by revenue, was to be allowed

Facts

- The assessee had entered into agreements with two partnership firms in which the parties related to the director of the respondent assessee were partners. Payment of commission was paid to the partnership firms on the basis of sales.
- The Assessing Officer disallowed commission payment on the ground that commission was paid to firms related to directors only to avoid tax or divert income.
- On appeal, the Commissioner (Appeals) affirmed the addition made by the Assessing Officer.
- On further appeal, the Tribunal deleted the addition on facts that the assessee had been paying commission to the Agents regularly year after year and it was not doubted by the revenue then and was accepted and that the receipt of the commission was duly shown by those partnership firms in their balance sheets and profits and loss accounts and that they had paid the tax thereon which was also accepted by the revenue.
- On appeal to the High Court:

Held

- The reasoning given by the Tribunal and the factual matrix being contrary to the reasoning given by the Assessing Officer and the Commissioner (Appeals), the impugned order cannot be treated as perverse. While considering the question of perversity of a finding of fact, the test applicable is rather strict. The finding should be such which is arrived at without any material, or upon a view of the facts which could not reasonably be entertained or the facts found are such that no person acting judicially and properly instructed as to the relevant law would have come to the determination. This test and benchmark is to be satisfied. It is not possible to hold so in the present case, and interfere. The facts were not required to be reappraised by the instant court as an Appellate Court to arrived at a different factual finding and conclusion.
- In view of the aforesaid, the decision of the Tribunal is not perverse.