

**(2004) 08 AHC CK 0253****Allahabad High Court****Case No:** Income-tax Appeal No. 170 of 1999

Deputy Commissioner of Income  
Tax

APPELLANT

Vs

Super Tannery (India) Ltd.

RESPONDENT

**Date of Decision:** Aug. 11, 2004**Citation:** (2005) 274 ITR 338**Hon'ble Judges:** R.K. Agarwal, J; K.N. Ojha, J**Bench:** Division Bench**Advocate:** Shamboo Chopra, for the Appellant; S.K. Garg, for the Respondent**Final Decision:** Dismissed

### **Judgement**

1. For the assessment year 1986-87, in order to get duty draw-back of Rs. 25 lakhs released from the Central Government, the assessee had incurred expenses of Rs. 2,37,000 which was paid to the commission agent. The Assessing Officer had disallowed a sum of Rs. 1,23,130 out of the aforesaid amount on the ground that it is excessive payment. The Commissioner of Income Tax (Appeals), however, deleted the disallowance. The Tribunal upheld the order of the Commissioner of Income Tax (Appeals).

2. We have heard Shri Shamboo Chopra, learned standing counsel appearing for the Revenue, and Shri S. K. Garg, appearing for the assessee. The court takes judicial notice of the fact that nowadays it is very difficult to get back lawful amount from the Government and other departments without incurring unavoidable expenses. Apart from it, a lot of harassment is also caused. As a prudent businessman, the assessee had engaged a commission agent and had incurred a sum of Rs. 2,37,000, which is approximately 10 per cent. of the amount, it cannot be said to be excessive or uncalled for. If an assessee, in order to avoid delays and harassment to get money which is lawfully due to him at an early date in order to enable him to use the same in his business, utilises the services of a third person or a middle man, it cannot be said that the expenditure has not been laid out for the purpose of

business. Moreover, the nature of expenditure has to be seen from the view point of the assessee and the Assessing Officer has neither the expertise of running a business nor has any specialisation to sit in judgment over the assessee as to whether such an expenditure was incurred for commercial expediency or not. Apart from it, there is no provision to disallow a part of such expenditure on the ground of excessiveness when the expenditure has been found to be genuine.

3. Thus, the Tribunal was justified in allowing the deduction. The order of the Tribunal does not raise any question of law much less any substantial question of law which may require any consideration by this court. The appeal is dismissed in limine.