

(2002) 09 MAD CK 0212

Madras High Court

Case No: Tax Case No. 386 of 1997

Commissioner of Income Tax

APPELLANT

Vs

Tuticorin Alkali Chemicals and
Fertilizers

RESPONDENT

Date of Decision: Sept. 18, 2002

Acts Referred:

- Income Tax Act, 1961 - Section 37(3A)

Citation: (2003) 261 ITR 80

Hon'ble Judges: R. Jayasimha Babu, J; K. Raviraja Pandian, J

Bench: Division Bench

Advocate: T. Ravikumar, for the Appellant; P.P.S. Janardhana Raja, for the Respondent

Judgement

R. Jayasimha Babu, J.

The question referred at the instance of the Revenue is,

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in its conclusion that commission and discounts on sales amounting to Rs. 9,15,115 should not be taken into account while considering the disallowance u/s 37(3A) of the Income Tax Act, 1961 ?"

2. The assessment year is 1985-86.

3. The assessee-company is a public limited company engaged in the manufacture of soda ash and ammonium chloride. It had incurred an expenditure of Rs. 9,15,115 in the relevant previous year towards commission and discounts on sales to its dealers. Its claim that that amount is outside the scope of Section 37(3A) of the Income Tax Act, inasmuch as commissions and discounts did not amount to sales promotion expense, was negated by the Assessing Officer and the Commissioner, but was allowed by the Tribunal.

4. The term "sales promotion" is not to be confused with the sales actually effected. While "sales promotion" are measures taken by the assessee to promote generally the sales of the products manufactured by it, or dealt with by it, individual sales made in the normal course of business on commercial terms either directly to the customer, or through its wholesale and other dealers to whom, under the terms of trade discounts and commissions are allowed, cannot be regarded as sales promotion.

5. This court in the case of [Commissioner of Income Tax Vs. India Pistons Ltd.](#), has held that sale of a product at a discount did not amount to a sales promotion expense. It was observed in that judgment that (page 280) :

"The sales promotion normally refers to an activity which is intended to promote the sale of all the products by way of advertisement or special campaigns. Offering a discount on the price in effect is only an instant of the sale of the company's product at a lower price and cannot be regarded as expenditure on sales promotion."

6. The question referred to us is required to be, and is answered against the Revenue, and in favour of the assessee.