

**(2002) 10 MAD CK 0171****Madras High Court****Case No:** Tax Case No. 18 of 1998 7 October 2002

Commissioner of Income Tax

APPELLANT

Vs

Sitalakshmi Mills Ltd.

RESPONDENT

**Date of Decision:** Oct. 7, 2002**Citation:** (2003) 131 TAXMAN 509**Hon'ble Judges:** R. Jayasimha Babu, J; K. Raviraja Pandian, J**Bench:** Full Bench**Advocate:** J. Naresh Kumar, for the Revenue, for the Appellant;**Judgement**

@JUDGMENTTAG-ORDER

K. Raviraja Pandian, J.

The question referred to us, at the instance of the revenue, for our consideration is, "whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that expenditure of Rs. 3,12,735 being the sales commission could not be subjected for disallowance u/s 37(3A) of the Income Tax Act, 1961. The assessment year is 1984-85".

2. The assessee is a company. During the assessment year 1984-85, a sum of Rs. 3,12,735 being sales commission paid by the assessee was claimed as an expenditure allowable u/s 37(1) of the Act and the same was fully allowed by the assessing officer. The Commissioner acting u/s 263, directed the assessing officer to allow that expenditure in accordance with section 37(3A) of the Act. The Tribunal upheld the validity of the Commissioner's order but held that the provisions of section 37(3A) are not applicable to the expenditure claimed by the assessee. Hence the present reference at the instance of the revenue.

3. Question similar to the one referred above has already been considered by this court in the case of [Commissioner of Income Tax Vs. Karnal Co-operative Sugar Mills Ltd.,](#) and answered in favour of the assessee. The court therein held that the

commission paid to the persons who effected the actual sale, at a percentage of the value of the product and the salary paid to employees such as marketing officers and sale personnel and persons manning the sales offices are obviously expenditure incurred for effecting normal sales, and do not amount to special sales promotion expenses. By and large, sales promotion expenses are expenses which are not directly related to any single sale, but are expenses aimed at generating interest among potential customers for the purchase of the product. Commission, on the other hand, is paid on the actual sales effected to the person through whose assistance the sale was concluded. The reason given in that decision is squarely applicable to the facts of the present case. We, therefore, answer the question referred to us in favour of the assessee and against the revenue.