

(2013) 04 CAL CK 0063

Calcutta High Court

Case No: ITAT No. 219 of 2012 and G.A. No"s. 2756 and 2757 of 2012

Commissioner of Income Tax

APPELLANT

Vs

Harbanslal Malhotra and Sons
(P.) Ltd.

RESPONDENT

Date of Decision: April 5, 2013

Citation: (2013) 262 CTR 94 : (2014) 361 ITR 82 : (2013) 217 TAXMAN 112

Hon'ble Judges: Tarun Kumar Das, J; Girish Chandra Gupta, J

Bench: Division Bench

Advocate: S. Mukherjee, for the Appellant; N.K. Poddar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The Assessing Officer was of the opinion that the assessee had violated the provisions of Chapter 17B of the I.T. Act in not deducting tax at source on the amount of Rs. 1,20,84,768/- paid to Malhotra Global Eximp Pvt. Ltd. and therefore the amount was disallowed u/s 40(a)(ia) of the I.T. Act. The reasoning advanced by the Assessing Officer is as follows:

The assessee's Authorised Representative stated during the proceedings dated 03.12.2007 that M/s. Malhotra Global Eximp Pvt. Ltd. is a group concern and is getting the advertisements done from J.J. Communications on behalf of the assessee company. The argument that Malhotra Eximp Pvt. Ltd. is a group company and the advertisements are arranged from J.J. Communications by this company on behalf of the assessee company does not exempt the assessee from deduction of tax at source while making payments or while crediting the amounts to Malhotra Global Eximp Pvt. Ltd. From the documents enclosed with the submission dated 10.12.2007, it cannot be concluded that the payments are mere reimbursements. It is a fact that M/s. Malhotra Global Eximp Pvt. Ltd. is an independent entity and is not a unit of the assessee company. It is also not established by the assessee by sufficient evidence as to why Malhotra Global Eximp Pvt. Ltd. would carry out some work on behalf of

the assessee company without a profit motive. When the entities are separate and independent, the transactions have to be viewed in terms of normal business transactions with a profit motive.

2. Aggrieved by the order, the assessee appealed before the CIT (Appeals). The CIT (Appeals) reversed the order of the Assessing Officer. Ultimately, the matter reached before the Tribunal at the instance of the revenue. The Tribunal opined as follows:

Therefore, these expenses cannot be disallowed to the assessee if MGEPL has deducted and paid TDS on behalf of the assessee without violating the condition mentioned in section 40(a)(ia). Since in this case the assessee has proved that amount of Rs. 1,20,84,768/- was paid on behalf of the assessee by its agent. Under these circumstances, we do not find any infirmity in the order of the learned Commissioner of income tax (Appeals) in allowing Rs. 1,12,84,318/- out of total disallowance of Rs. 1,20,84,768/- u/s. 40(a)(ia) of the Act made by the Assessing Officer. We uphold the order of the learned Commissioner of income tax (Appeals).

3. The revenue has once again come up in appeal.

4. There is an application for condonation of delay. According to the revenue, there is delay of 56 days, whereas according to the assessee, the delay is for 141 days.

5. Mr. Poddar, learned Senior Advocate, very fairly did not contest the prayer for condonation of delay. Therefore, the matter was taken up for hearing.

6. We already have indicated above the reasoning as to why the views expressed by the Assessing Officer were turned down both by the Appellate Authority as also the Tribunal. We may only add that there was sufficient evidence to show and as a matter of fact the Tribunal has recorded that the assessee had proved that MGEPL was acting as an agent. The question raised by the Assessing Officer as to why should MGEPL act without any profit motive is answered by section 185 of the Contract Act which provides as follows:

185. Consideration not necessary.-No consideration is necessary to create an agency.

We are as such of the opinion that no substantial question of law is involved and the appeal is thus disposed of.