(2014) 03 CAL CK 0144

Calcutta High Court

Case No: ITAT No. 225 of 2013 and G.A. No. 3825 of 2013

Commissioner of Income Tax		APPELLANT
	Vs	
Inbuilt Merchant Pvt. Ltd.		RESPONDENT

Date of Decision: March 14, 2014

Acts Referred:

- Evidence Act, 1872 - Section 32

Hon'ble Judges: Sudip Ahluwalia, J; G.C. Gupta, J

Bench: Division Bench

Advocate: P.K. Bhowmick, Advocate for the Appellant; Abhratosh Majumder, Soumitra Choudhury, Soumitra Mukherjee, Debasish Ghosh and Avra Majumder, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The appeal is directed against a judgment and order dated 23rd May, 2013 by which the learned Income Tax Appellate Tribunal held as follows:

6. We have considered the rival submissions. A perusal of the assessment order shows that the Assessing Officer has disallowed the commission payment in respect of 25 agents, who are the residents of the North East. The assessee has also deducted the TDS on the same, which is not disputed. A perusal of the order of the learned Commissioner of Income Tax (Appeals) has taken into consideration the fact that the commission has been paid through account payee cheques after deducting TDS. The learned Commissioner of income tax (Appeals) has also considered the fact that the agent were residents of North East. In the circumstances, we are of the view that the finding of the learned Commissioner of income tax (Appeals) on this issue is on a right footing and does not call for any interference. The same is upheld. This ground of the revenue''s appeal is dismissed".

2. Aggrieved by the aforesaid order, the Revenue has come up in appeal. Mr. Bhowmick, learned Advocate appearing for the appellant-revenue submitted that the notices issued to the recipients of commission came back unserved in most of the cases, picked up for scrutiny, and in the cases where notices were served, no reply was received. The Assessing Officer, in the circumstances, was of the opinion that the expenditure amounting to a sum of Rs. 68,09,845/- could not be allowed. He also drew our attention to the following views expressed by the Assessing Officer.

The submission of copy of ledger account in which payment made to have been shown through bank and deduction of TDS is not sufficient to prove that the transaction is genuine. The copy of the ledger account is nothing but the extracts of the books on the basis of which the assessee company claimed his expenses. It is made by the assessee company itself. Mere payment through banking channel is not sacrosanct nor could it make a non genuine transaction genuine. Therefore, the genuineness of payment of the commission to the agents who has submitted no reply in response to notice u/s. 133(6) is doubtful. Further, the identity of the agents to whom letters were sent u/s. 133(6) returned back unserved is also not proved and hence the commission claimed to have been paid to them is also not genuine. Therefore, Rs. 68,09,845/- is added to the income of the assessee company.

3. The views expressed by the Assessing Officer are erroneous in law. The Assessing Officer has overlooked the importance of the books of accounts maintained in the ordinary course of business. Reference in this regard may be made to sub-section (2) of Section 32 of the Indian Evidence Act, 1872. The books of accounts maintained in the ordinary course of business are relevant and they cannot be discarded in the absence of appropriate reasons. The mere fact that recipient did not reply in some cases or they were not found at the address furnished by the assessee does not in the least prove the fact that they were non existent or that the payments shown to have been made by the assessee were imaginary. With the advancement of technology, it has become possible to sell goods throughout the country through the internet. For that purpose, agents are required throughout the country. The mechanism in that regard has been disclosed by the assessee and has been recorded in the order of the CIT (Appeals). For the purpose of carrying on its business, the assessee has to recruit the agents. It may not be possible for the assessee to know them personally. Whatever address was furnished to the assessee, has been disclosed to the income tax Department. Payments were admittedly made by cheque after deduction of tax. The tax deducted as source has duly been deposited. The judgment in the case of Commissioner of Income Tax Vs. Precision Finance Pvt. Ltd., relied upon by Mr. Bhowmick does not really assist him. The aforesaid judgment is an authority for the proposition that mere payment by account payee cheque cannot establish that the transaction was genuine, but in the case before us, besides the fact that payment was made by cheque, there are other pieces of evidence available which are as follows:

a) Books of Accounts maintained by the assessee in the ordinary course of business;

b) Deduction of Tax at source;

c) Deposit of the money deducted at source;

d) Particulars of the recipient were duly furnished;

4. We are, as such, of the opinion that the views expressed by the learned Tribunal are unexceptionable. We, therefore refuse to admit the appeal. The appeal is thus dismissed.