

*** THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on : 31.07.2008

+ ITA No.607/2006

SHRI P.N.SEHGAL THRU Appellant

SHRI VIKRAM SEHGAL

versus

COMMISSIONER OF INCOME TAX Respondent

Advocates who appeared in this case:

For the Appellant : Mr.M.K.Arora

For the Respondent : Mr.R.D.Jolly

CORAM :-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE RAJIV SHAKDHER

1. Whether the Reporters of local papers may be allowed to see the judgment ?
2. To be referred to Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. The issue involved in this appeal is with regard to payments made by the assessee to Kush Printers Pvt. Ltd and Rathi Industries Ltd. According to the assessee, these payments were made by way of commission for services rendered by the said parties. The assessee books advertisements which are placed in various

publications and journals. In the present case, it is the assessee's contention that Great Eastern Impex Pvt. Ltd was introduced to the assessee by Kush Printers Pvt. Ltd. Thereafter the assessee obtained orders from Great Eastern Impex Pvt. Ltd and placed the same in various journals and publications for which the assessee received commission from the said journals and publications. Out of the said commission the assessee paid part of the commission to Kush Printers Pvt. Ltd for having introduced the assessee to Great Eastern Impex Pvt. Ltd. Although there was no written agreement between the assessee and Kush Printers Pvt. Ltd there was an understanding that 10% commission would be paid by the assessee for all business which is been procured through them and relating to Great Eastern Impex Pvt. Ltd.

2. In the impugned order it has been noted by the Tribunal that the payment made to Kush Printers was through drafts and that Kush Printers Pvt. Ltd had even shown the said payment as income and they had been assessed to tax. Despite this finding, the Tribunal came to the conclusion that the assessee was unable to establish that the payment was made to Kush Printers Pvt. Ltd for having rendered services to the assessee.

3. The second payment with which this appeal is concerned, is the payment of commission to Rathi Industries Limited. The case of the assessee is that Rathi Industries Limited was paid commission by the assessee for having introduced the assessee to the Ministry of Labour, which placed orders on the assessee and, in turn, advertisements were booked in various publications and journals by the assessee. As in the case of Kush Printers, the assessee paid commission to Rathi Industries Limited out of the commission received by it from the various publications and journals. It is the case of the assessee that there was a written agreement between the assessee and Rathi Industries.

4. It may be noted that it is not in dispute that there were written confirmations from both Rathi Industries Limited and Kush Printers Pvt. Limited. Copies of the said confirmations are at Pages 87 and 88 of the present paper book. They indicate the income tax numbers and the wards where the assessments of the said Rathi Industries Limited and Kush Printers Pvt. Ltd. are carried out. According to the appellant/assessee, it had done all that it could do to establish that the said payments were made by way of commission for services rendered by the said parties.

5. Having gone through the impugned order, we are of the view that certain material which had been placed by the assessee on record which would go to establish the assessee's case has not been considered by the Tribunal and a finding has been returned adverse to the assessee by ignoring such material. Consequently, we feel that it would be appropriate that the matter is remanded to the Tribunal for considering the entire material on record including the confirmation letters and returning a finding in respect thereof. We set aside the impugned order on the findings noted above. The matter stands remanded to the Tribunal, as stated above, for afresh adjudication on these issues.

6. In view of this order CM No. 4693/2006 also stands disposed of.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

July 31, 2008
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