ORDER SHEET

IN THE HIGH COURT AT CALCUTTA

Special Jurisdiction
[Income Tax]

ORIGINAL SIDE

ITAT No. 49 of 2013
GA No. 480 of 2013
GA No. 483 of 2013

THE COMMISSIONER OF OINCOME TAX, KOL-III, KOL.

Versus

RAJARANI EXPORTS PVT. LTD.

BEFORE:

The Hon'ble JUSTICE GIRISH CHANDRA GUPTA

The Hon'ble JUSTICE TARUN KUMAR DAS

Date : 24th April, 2013.

For Appellant : Mrs. Smita Das De, Advocate

For Respondent : Mr. J. P. Khaitan, Senior Advocate with
Mr. R. L. Mitra with Ms. Priyanka Dhar, Advocates

The Court : There is delay of 90 days. Mr. Khaitan, learned senior advocate appearing for the assessee-respondent, very fairly submitted that he does not stand in the way of prayer for condonation of delay.

Accordingly, the prayer for condonation of delay is allowed with the caution to the department to be more careful in future because in the next matter they may not get such cooperation from the other side, and we may not be inclined to allow the prayer merely for asking, regard being had to the judgment of the Apex Court in the

case of Office of the Chief Post Master General & Ors. vs. Living Media India Ltd. & Anr., reported in AIR 2012 SC 1506.

Accordingly, the application for condonation is disposed of.

The question suggested by the Revenue is as follows:

" *Whether on the facts and in the circumstances of the case the Tribunal was justified in law to dismiss the appeal of the revenue by confirming the order of the CIT(A) on account of disallowing the commission payments in view of Explanation to Section 37(1) of the said Act.*"

Against the order of the Assessing Officer, the assessee preferred an appeal before the CIT(A), who in his order allowing the appeal, held as follows:

"*It is observed that the commission on export activity had been fully disclosed in all correspondences and activities in relation to export, the commission was paid through banking channel of RBI approval and it was paid pursuant to an agreement approved by Government of India and UN. The payment of commission was for business consideration and there was apparently no illegality in making payment of commission. Besides this, nothing has brought on record to show that the transactions relating to payment of commission are non-genuine or are excessive and unreasonable. The Volker Commission report had discussed about the utilization of money by the recipient of the commission in parting some of the fund so received as commission with the Government of Iraq and such parting of commission with the Government of Iraq was objected to by the Volker Commission report which was a pact between the Iraq*

Government and the UN wherein, as it appears, neither the appellant company is involved nor Government of India is involved."

Aggrieved by the order of the CIT(A), the Revenue preferred an appeal before the Tribunal. The Tribunal dismissed the appeal holding, inter alia, as follows:

" *The assessee has made payment for commission and has been rendered services in consideration of the same. As a matter of fact, it is not even revenue's case that no services have been rendered at all. The fact that services have been rendered by a party other than the agent to whom commission is paid is wholly immaterial so far as deductibility in the hands of the assessee is concerned.*

As for the position that the payment was highly excessive vis-à-vis the local costs, even if that be so, that aspect of the matter does not affect the deductibility in the hands of the assessee either. The assessee is concerned with commercial expediency of the said payment and not with what are the actual costs incurred in rendering the services for which the payment is made. As we have seen earlier in this order, from the extracts of the Volker Committee report itself, it was absolutely necessary for the assessee to make the impugned payments and, in any event, the commercial expediency of these payments has not even been called into question by the Assessing Officer. The case of the revenue is confined to invoking the Explanation to Section 37(1).

The objections to the said commission payments are, therefore, not sustainable in law, so far as deductibility under section 39(1) is concerned."

The department has come up in appeal. Mrs. Smita Das De, learned advocate appearing in support of the appeal, could not satisfy us as to why were the

findings indicated above as recorded by the CIT(A) and the Tribunal incorrect either on fact or in law. There is, as such, no reason why the appeal should be entertained.

The appeal is, therefore, dismissed.

(GIRISH CHANDRA GUPTA, J.)

(TARUN KUMAR DAS, J.)

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