

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 822 of 2019

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THE PRINCIPAL COMMISSIONER OF INCOME TAX-4

Versus

VISHAL ENGINEERING AND GALVANIZERS

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Appearance:

MRS MAUNA M BHATT(174) for the Appellant(s) No. 1
for the Opponent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 13/01/2020

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)

1. This tax appeal under Section 260A of the Income Tax Act, 1961 [for short '*the Act, 1961*'] is at the instance of the revenue and is directed against the order passed by the Income Tax Appellate Tribunal, Ahmedabad Bench 'D', Ahmedabad dated 25/06/2019 in the ITA No.2945/AHD/2015 for the A.Y 2008-09.

2. The revenue has proposed a solitary question as a substantial question of law involved in this tax appeal:-

“Whether the Appellate Tribunal has erred in law and on facts by deleting the addition of Rs.20,08,977/- made on account of commission expense?”

3. On the proposed question of law, we first take notice of the findings recorded by the CIT (Appeals).

“I have considered the facts of the case and the submissions of the appellant. The appellant has placed on record debit-note cum confirmation of both the commission agents which include details such as PAN as well as name and confirmation cum ledger of parties to whom sales have been made through such agents. The arrangement between the appellant and the commission agents is such that the commission agents are to provide details of potential customers as well as solicit the orders. Such commission agents are also required to provide any other information, report or statement of account of the customers as desired by the appellant from time to time. However, no formal agreement has been reduced into writing to this effect. I am of the view that merely not entering into such a formal agreement cannot be a ground for disallowing commission. The Assessing Officer has further mentioned that no reply has been received from the commission agents in response to certain details called for from them by the Assessing Officer. I am of the view that the fact that such commission agents did not reply to the Assessing Officer cannot come in the way of establishing the fact that such agents have rendered their services to the appellant. Also inaction at the end of the commission agents as to not replying to the Assessing Officer cannot be a ground for disallowing commission in the hands of the appellant since such commission agents are independent parties and the appellant doesn't have any hold over them. In any case, since the appellant had furnished PAN and other requisite details of such commission agents, it was open for the Assessing Officer to call for such details from such commission agents u/s.133(6) or issue summons to such agents as well. However, nothing of that sort has been done by the Assessing Officer. Hence, addition cannot be made even on that score. However, on perusal of documentary evidences furnished by the appellant, it transpires that the only service rendered by the commission agents is that of introducing potential customers to the appellant. In my opinion, mere introducing of potential customers doesn't fall within the ambit of “Service” so as to make the claim of commission eligible for deduction u/s.37 of the Act. Hence, the addition is hereby sustained.”

4. The appellate tribunal while dismissing the appeal preferred by the assessee observed as under:-

“We have carefully considered the judgment as cited above. It is a settled principle of law that commission paid to persons for referring names of customers is allowable u/s.37 of the Act for introducing potential customers to the assessee falls within the ambit of service. We thus find the order passed by the Learned CIT(A) not incoherence with ratio laid down by the judgment as cited above. We thus delete the addition. In the result, assessee's appeal is allowed.”

5. The appellate tribunal took the view that the CIT (Appeals) ought not to have confirmed the dis-allowance only on the ground that the only service rendered by the commission agents was that of introducing the potential customers to the assessee, which would not fall within the ambit of "Service" so as to make the claim of commission eligible for deduction under Section-37 of the Act. The tribunal takes the view that the commission paid to the persons for referring the names of the customers, is allowable under Section-37 of the Act for the purpose of introducing potential customers to the assessee and the same would fall within the ambit of "Service".

6. We are in agreement with the view taken by the appellate tribunal as regards the deduction available under Section-37 of the Act.

7. In such circumstances referred to above, we are of the view that the proposed question cannot be termed as a substantial question of law.

8. In the result, this appeal fails and is hereby dismissed.

THE HIGH COURT
OF GUJARAT

(J. B. PARDIWALA, J)

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(BHARGAV D. KARIA, J)

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