

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY**

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

ITA.No. 87 of 2015 ()

**AGAINST THE ORDER IN ITA NO.399/COCH/2014 of I.T.A.TRIBUNAL,COCHIN BENCH
DATED 21-11-2014**

APPELLANT(S)/APPELLANT/APPELLANT/ASSESSEE:

**MIL CONTROLS LTD,
MELADOOR PO, MALA 680741,
REPRESENTED BY ITS DIRECTOR
SRI VERGHESE OOMMEN.**

**BY ADVS.SRI.ANIL D. NAIR
SRI.R.SREEJITH
SMT.C.S.SULEKHA BEEVI
SMT.ROSIE ATHULYA JOSEPH**

RESPONDENT(S)/RESPONDENTS/RESPONDENTS/REVENUE:

**THE ADDL.COMMISSIONER OF INCOME TAX,
RANGE 1,KOCHI.**

BY SRI.CHRISTOPHER ABRAHAM, SR. STANDING COUNSEL FOR INCOME TAX.

**THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON 21-05-2015,
THE COURT ON 27.05.2015 DELIVERED THE FOLLOWING:**

P.T.O.

I.T.A NO.87 OF 2015

APPENDIX

APPELLANT'S EXHIBITS:

- | | |
|---------------------|--|
| ANNEXURE - A | TRUE COPY OF THE ORDER OF ASSESSMENT FOR THE YEAR 2009-10 ISSUED TO THE APPELLANT. |
| ANNEXURE - B | TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX. |
| ANNEXURE - C | TRUE COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH DATED 21.11.2014. |

RESPONDENT'S EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

I.T.A No.87 OF 2015

Dated this the 27th day of May, 2015

JUDGMENT

Shaji P. Chaly, J.

This appeal is preferred against the order of the Income Tax Appellate Tribunal, Cochin Bench in I.T.A No.399/Coch/2014. The short facts required for the disposal of the appeal are only narrated. The assessment concerned is of the year 2009-2010. The assessee had filed return of income on 30.09.2009 for the year 2009-2010 declaring taxable income of Rs.18,36,08,783/-. The said return was processed under Sec.143(1) and thereafter the said case was selected for scrutiny and notice under Sec.143(2) was issued on 31.08.2010. Further, a notice under Sec.142(1) was also issued on 31.01.2011 calling for information and the case was heard on various dates, the last being on 22.11.2011. The assessee Company is involved in production of Pumps. The holding company of the assessee is a German company. From

the returns filed, the assessing authority has found that the assessee had debited an amount of Rs.77,32,280/- as commission paid and due for the assessment year 2008-2009, consequent to which, a query was raised why the amount of Rs.45,26,029/- which is the actual remittance made during the period towards commission should not be the actual debit and not Rs.77,32,218/-. In answer to the query, the assessee stated that as per accrual system of accounting, the commission had become due and hence the debit of Rs.77,32,218/- and further that the commission is based on sales and becomes due only as and when the proceedings are completed.

2. According to the assessee, the actual remittance alone should be debited in the Profit & Loss Account, since that is the amount accrued and due on account of commission, and that the commission is solely dependent on actual sale or export of goods. Therefore, the assessee contended that in the absence of sale not realized, commission will not become due. Overruling the contentions raised by the appellant, assessment was finalized disallowing the excess commission debited, amounting to Rs.31,06,189/-since this amount relating to

commission payable had not become due nor accrued.

3. The said order of assessment was challenged in appeal by the assessee and vide an order dated 21.11.2014, the 1st appellate authority confirmed the addition made by the assessing officer amounting to Rs.31,06,189/-. Aggrieved by the same, appellant preferred an appeal before the concerned Tribunal, which also affirmed the order in appeal in favour of the revenue.

4. Heard the learned counsel for the appellant and the Senior Standing Counsel appearing for the respondent. We also perused the records and evaluated the facts and circumstances of the case and appreciated the legal propositions canvassed.

5. In this appeal, appellant has raised the following questions of law:

"(i) In the facts and circumstances of the case, ought not the Tribunal to allow the deduction of commission expenses of Rs.31,06,189/- which was accrued in the financial year relevant to the A.Y.2009-10 on accrual basis?"

(ii) In the facts and circumstances of the case, ought not the Tribunal allow accept the method of accounting of commission expenses on accrual basis being the method of accounting followed by appellant in the past years?"

6. The learned Tribunal after evaluating the entire facts and circumstances of the case has confirmed the order of the lower authority, holding that there is no infirmity in the order passed by the authorities below and held as follows in the last paragraph of the order:

"We have heard the parties and perused the relevant material on record. We have also gone carefully gone through the order of the authorities below and also the agreement entered between the assessee and KSB Singapore (Asia-Pacific) Pvt. Ltd., Singapore. Clause 4 of the agreement reads as under:

"4 For all export orders materializing during the period of this contract, the company will pay KSB Singapore (Asia Pacific) a commission at the rate not exceeding 12.5% (Twelve and a half percent) for all countries of the world of the FOB value of the order in the currency in which the order is placed. These charges will fall due for payment on receipt of payment from the clients. This would cover the usual services of KSB Singapore (Asia Pacific) for securing the order and the expenses incurred in connection with the same."

3.1 As per clause 4 of the agreement, the commission payable to KSB Singapore (Asia Pacific) at the rate not exceeding 12.5% on FOB value of the order in the currency in India in which the order is placed. These charges will fall due for payment on receipt of payment from the clients. Being so, it is clear that the payment of commission accrued only on realization of sale value. The assessee's claim is that it is booking expenditure on the basis of sale value and not on the basis of sale realization and this system has been accepted by the department in earlier years as well as in the subsequent year. In our opinion, we are not concerned with the any other year which are not before us. In our opinion, if the department has accepted in earlier year, it was a mistake and there is no merit in continuing the same mistake in the assessment year under consideration. The payment of commission accrued only on realization of sale value and it is to be allowed when the realization of sale value which is in compliance with the agreement cited supra and disallowance is based on the above agreement brought on record by the authorities and hence, we do not find any infirmity in the orders of the authorities below, which is confirmed."

7. Considering the facts and circumstances noticed by the Tribunal and urged in the appeal also we are of the considered opinion that there are no reasons warranting interference with the order passed by the learned Appellate Tribunal by invoking the powers conferred on us under Sec.260A of the Income Tax Act, 1961 and necessarily the appeal has to be dismissed and accordingly, we do so.

In the facts and circumstances of the case, there is no order as to costs.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**SHAJI .P. CHALY
JUDGE**

//true copy//

P.S. to Judge

St/-