THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

<u>I.T.T.A. No. 746 of 2014</u>

DATED:21.01.2015

Between:
The Commissioner of Income Tax-III,
Hyderabad.

… Appellant

And

M/s. Murari Trading Company,
Hyderabad.

….Respondent

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

I.T.T.A. No. 746 of 2014

Judgment: (per the Hon'ble the Chief Justice Sri Kalyan Jyoti Sengupta)

This appeal is sought to be preferred and admitted against the judgment and order of the learned Tribunal dated 23.7.2009 by the Revenue, however, without suggesting any question of law.

On a perusal of the impugned judgment and order of the learned Tribunal, we find that the learned Tribunal found that the assessee claimed deduction on account of payment of commission to the sub-agent. This claim of deduction was disallowed by the Assessing Officer as well as the Commissioner of Income Tax (Appeals), on appeal being preferred. Hence, the assessee approached the learned Tribunal, which reversed, after appreciation of fact and taking note of the agreements and materials placed before it and held that the factum of payment of commission by the assessee to the sub-agent is established. Hence, it has allowed the deduction.

Mr. B. Narasimha Sarma, learned counsel appearing for the Revenue in the aforesaid background facts and the decision states that it was not proper for the Tribunal to upset the finding of both the authorities while deciding the issue.

We are unable to accept his argument as we notice that the learned Tribunal has found that there has been no dispute as regards the agreement between the assessee and sub-agent for rendering services and there is no dispute that the sub-agent is not a fictitious body and it is a functional one and the Tribunal thought that since the sub-agent was systematically rendering the services, it cannot be said that they are the loss making companies. So, such claim of deduction is nothing but a step to deprive the revenue and if not to defraud the revenue.

We think that the learned Tribunal has correctly come to a fact finding basing on the materials that the relationship of assessee and the sub-gent is established for rendering business services. Therefore, this payment of commission is a genuine one particularly when the agreement was not questioned as to its genuinity. The Tribunal's fact findings cannot be interfered with by us in the absence of serious allegations of perversity and this fact finding is really the basis of granting deduction.

We therefore do not find any element of law for admission of the appeal.

The appeal is accordingly dismissed.

Consequently, the miscellaneous applications, if any pending, shall also stand closed. No order as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR,
J

21st January, 2015

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