IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision : 10.2.2020

ITA-222-2001 (O&M)

Venus Industrial Corporation ...... Appellant

Versus

Asst. Commissioner of Income Tax ...... Respondent

ITA-223-2001 (O&M)

Venus Industrial Corporation ...... Appellant

Versus

Asst. Commissioner of Income Tax ...... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
: HON'BLE MR.JUSTICE AVNEESH JHINGAN
***

Present : Ms. Manveen Narang, Advocate
for the appellant.

Mr. Rajesh Katoch, Sr. Standing counsel with
Ms. Pridhi Jaswinder Sandhu, Jr. Standing counsel
for the respondent.

***

<u>AJAY TEWARI, J. (Oral)</u>

1. Vide this common order we shall dispose of above said two appeals as the common question of law and facts are involved therein. For the sake of convenience, facts are being taken from **ITA No.223-2001.**

2. This appeal has been filed by the assessee against the order dated 22.11.2000 of the Income Tax Appellate Tribunal (for short 'the

Tribunal) declining a relief in respect of commission allegedly paid to Indian resident for booking orders for export under Section 37 (1) of the Income Tax Act, 1961 (for short 'the Act'). The following substantial questions of law have been raised :-

> *"(i) Whether in the facts and circumstances of the case the orders Annexure P-2 & P-4 are legally sustainable ?*
>
> *(ii) Whether in the facts and circumstances of the case the order disallowing the commission paid to the agents is legally sustainable, the same being based on mere conjectures, presumptions and surmises and misinterpretation of the provisions of the agreement?*
>
> *(iii) Whether the commercial aspect and the undisputed transactions including payments could be legally excluded while interpreting the terms of the agreement ?"*

3. Brief facts of the case are that the assessee was an exporter of hand-tools, fastener and other engineering tools. It had appointed agents in different parts of the world and all of those agencies had entered into an agreement with the asseessee-appellant which had the following clauses :-

> *"1. That the Agent will book orders for the Products offered for sale by the Principal in the territories of UK and South East Asia.*
>
> *2. That the Agent shall be responsible for getting the Letters of Credit opened by the Buyers in favour of the Principal for the orders booked by the Agent and Accepted by the Principal.*
>
> *3. That the Agent shall be responsible for all payments and also getting the bills honoured, in time, as may be drawn by the Principal on the buyers.*
>
> *4. That the Principal will redirect all enquiries received directly indirectly from the Buyers within territory referred*

to hereinabove, to the Agent.

5. That the Agent shall be entitled to receive the commission etc. from the Principal, as stipulated hereunder:-

(a) For U.K.:-

(i) Commission @7% on the F.O.B., value of the goods supplied upto the F.O.B., value of Rs 7 lacs. In addition, a sum of Rs. 25,000/- will be paid by the Principal to the Agent to defray the first tour expenses of the Agent for UK.

(ii) Conmission @5% on the F.O.B. value of the goods supplied by the Principal to U.K. over and above the F.O.B., value of Rs 7 Lacs.

NOTE:- *All kinds of tour expenses will, henceforth be borne by the Agent.*

(b) At 3% of the F.O.B., value of the goods supplied to the buyers in the territory of South East Asia, namely:- Thailand Indonesia Malaysia Singapore and Philippines etc.

NOTE:- *All kinds of tour expenses will be borne by the Agent himself.*

6. That commission as stipulated in Para 5 above, will be paid only on the orders executed by the Principal for which total payment has been received by the Principal. No commission on unexecuted orders, or payment not received will be paid to the Agent.

7. That the account of commission will be settled by the Principal every year or earlier if required.

8. That this agreement is valid for a period of three years, from date hereof whereafter, it maybe extended for a further period as may be agreed upon between the parties hereto.

9. In case of any dispute touching this agreement, the same will be referred to arbitration under the Indian Arbitration Act, then inforce and a decision of such of the arbitration will be binding on the parties hereto.

4. The conclusion of the Tribunal is that to justify the payment of commission the assessee had to prove in every case that the order had been obtained from the agent. While the contention of the assessee was that as per the agreement, the assessee was to pay commission on whatever sale was generated within the territory of the agent. The crucial clause in this regard is Clause 4 (supra). The Tribunal held that this clause would not supersede Clauses 1 to 3 and 5.

5. In our opinion, the interpretation of the Tribunal is incorrect. Those clauses nowhere stipulates that the assessee is not bound to report to the agent any enquiry which may have received directly or indirectly. From reading of the agreement it is clear that no order can be processed by assessee without services the agent and if that is so, the assessee was bound to pay commission on any sale which was taken place in the territory of an agent (subject to condition 7 supra). In these circumstances, we hold that Clause (4) of the said agreement has wrongly been interpreted by the Tribunal in the facts and circumstances of the case.

6. Resultanly, the petitions are allowed.

7. Since the main cases have been decided, the pending application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(AVNEESH JHINGAN)
JUDGE

10.2.2020
anuradha

Whether speaking/reasoned - Yes/No
Whether reportable - Yes/No