

ANDHRA PRADESH HIGH COURT

Vizagapatnam Sugars

Vs

Commissioner of Income Tax

(Chandrasekhara Sastry,J.)

30.08.1961

JUDGEMENT

Chandrasekhara Sastry,J.

(1.) THIS is a reference under S. 66(1) of the Indian IT Act. The assessee is a public limited company incorporated in 1935 manufacturing sugar and its bye products. The assessments relate to the years 1950 51, 1951 52 and 1952 53, the accounting years being the three years ending with 30th June, 1949, 30th June, 1950 and 30th June, 1951. In respect of its business, the company resolved to issue mortgage debentures of the value of Rs. 2.5 lakhs. The resolution of the board of directors relating thereto is dated 15th April, 1941. This resolution of the board of directors was confirmed by a resolution of the company at its extraordinary meeting held on 4th June, 1941. It was further resolved that the company do pay brokerage not exceeding 2.5per cent and such commission on the sales of sugar for such period as the company may determine to such person or persons as may negotiate in connection the of said debentures in due course, the debentures of the value of Rs. 2.5 lakhs were issued and subsequently allotted. The brokerage of 2.5per cent mentioned above was also paid. As regards the commission on the sales of sugar mentioned above, an agreement was entered into between the assessee company and Jivanchand Ratanchand Motishaw of Bombay on 28th Dec., 1941, that he was to be paid a commission of 4 annas per Bengal maund of sugar sold during the period commencing from 1st Jan., 1941, and ending with 31st Dec., 1961. In respect of the three years to which the concerned assessments are made, the commission so paid to the underwriters was Rs. 45,503, Rs. 13,362 and Rs. 40,465 respectively. These amounts were claimed by the assessee as admissible deductions in the respective assessment years. The ITO and the AAC as well as the Tribunal, Hyderabad Bench, disallowed this claim. The assessee filed three applications before the Tribunal to refer to the High Court the question of law which arose out of the decision of the Tribunal. The three applications were consolidated and the Tribunal referred the following question to the High Court for decision : "Whether, on the facts and circumstances of the case, the sums of Rs. 45,503, Rs. 13,362 and Rs. 40,465 are admissible deductions in respect of the assessments for the asst. years 1950 51, 1951 52and195253respectively?"

(2.) THE relevant portion of the resolution dated 15th April, 1941, of the board of directors is as follows : "Agenda : I. (1) To issue first mortgage participating debentures of Rs. 2.5 lakhs on the

security of the plant and machinery of both the sugar factory and distillery for repaying the loan to the Central Bank and the share capital of the society as per agreements dated 29th June, 1938. .. III. (a) That the company hereby approves the agreement to be entered into between the company on the one part and Mr. J. R. Motishaw, share and stock broker, Bombay, on the other part and the terms contained therein for giving a brokerage of 2.5 per cent. on the debenture loan... (c) That in consideration of the valuable services rendered, the company do hereby enter into an agreement with Mr. J. R. Motishaw of Bombay as per terms of the agreement submitted to the meeting giving four annas as commission on every Bengal maund of sugar sold, for a period of twenty years commencing from 1st Jan., 1941." In the agreement dated 28th Dec., 1941, entered into between the assessee company and Jivanchand Ratanchand Motishaw of Bombay, it is provided that : "Whereas the said Motishaw negotiated and procured subscription of the said debentures of the face value of Rs. 2,50,000 (Rupees two lakhs and fifty thousand) which have been duly allotted by the company and whereas in consideration aforesaid the company agreed to pay 2 1/2 (two and half) per cent. brokerage on the amount of the said debentures and commission at the rate of 4 (four) annas on the sale of every Bengal maund of the company's sugar effected for a period of 20 years and whereas the company has already paid to the said Motishaw the amount of the said brokerage..... It is hereby agreed by and between the parties herein as follows : 1. In pursuance of the said agreement and in consideration of the promises and in consideration of the negotiating for procuring the subscription of the said debentures the company hereby agree to pay to the said Motishaw commission at the rate and on the basis of four annas on the sale of every Bengal maund of the company's sugar during the period commencing from the 1st day of January, 1941, and ending with the 31st day of December, 1961."

(3.) IT is on these facts that the assessee claimed the three amounts of Rs. 45,503, Rs. 13,362 and Rs. 40,465 as admissible deductions in respect of the assessments for the three assessment years. The claim of the assessee that these three amounts are admissible deductions is based on S. 10, Clause (2), sub cl. (xv), of the Indian IT Act, which is as follows: "10. (2) Such profits or gains shall be computed after making the following allowances, namely : (xv) any expenditure (not being an allowance of the nature described in any of the cls. (i) to (xiv) inclusive, and not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purpose of such business, profession or vocation." ;