

Sale commission couldn't be disallowed if invoice raised contained sum payable after recovery of commission

Summary – The High Court of Kerala in a recent case of Olam Exports (India) Ltd., (the Assessee) held that where assessee claimed deduction of sales commission paid to its agent, in view of fact that there were transactions between parties and invoices raised in name of agent contained gross sale price and net amount payable after recovery of 5 per cent towards commission, said claim was to be allowed

Facts

- For relevant years, assessee filed its returns revealing that it had paid substantial amounts towards sales commission to 'L' Enterprises, for consignment sales.
- The Assessing Officer disallowed said claim on the ground that the existence of such agent itself was in doubt. The First Appellate Authority confirmed the order of assessment.
- The Tribunal noted that the evidence produced by assessee indicated that it had received only 95 per cent of the invoice price and thus the assessee could not have been taxed for an income which they had not received.
- The Tribunal thus allowed the appeal of the assessee.
- On revenue's appeal:

Held

- There are circumstances which are capable of creating a reasonable suspicion about the existence of the Agency, 'L' Enterprises, but fact remains such a concern had CST Registration. There were transactions between the assessee and the said concern and the invoices raised by the assessee in the name of the agent also contained the gross sale price and the net amount payable, after recovery of 5 per cent towards commission and other expenses due. Based on such transactions, the amounts were realised by the assessee through banking channels and F forms under the CST Act were also obtained by them from the agent.
- These admitted facts, therefore, show that the assessee had received only 95 per cent of the gross price and the revenue has no material before it that the assessee had received anything in excess thereof either directly or otherwise. It is well settled that the assessee could be taxed only for the income that it has derived. If that be so, despite the contentions raised regarding the doubtful existence of the agent, the assessee having received only 95 per cent of the gross value, could have been taxed, only for what it had actually received.
- In that view of the matter, the Tribunal was justified in coming to the factual conclusion that the assessee could not have been taxed anything more than what it had received.
- In the result, revenue's appeal fails and is accordingly dismissed.