IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 941 of 2010

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI
HONOURABLE MS JUSTICE SONIA GOKANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - I - Appellant(s)
Versus
MANOJ B MANSUKHANI - Opponent(s)

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Appearance :
MRS MAUNA M BHATT for Appellant(s) : 1,
MR MANISH J SHAH for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI
and
HONOURABLE MS JUSTICE SONIA GOKANI

Date : 09/08/2011
ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. Revenue has filed this appeal challenging the judgment of the Tribunal dated 20.11.2009 raising the following questions for our consideration:-

> “(A) Whether the Appellate Tribunal is right in law and on facts in reversing the order passed by CIT(A) and thereby deleting the addition made on account of bogus claim of various expenses amounting to Rs.1,45,82,065/-?
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> (B) Whether the Appellate Tribunal is right in law and on facts in reversing the order passed by CIT(A) and thereby deleting the addition made on account of inflated/bogus expenses amounting to Rs.18,37,241/-?

(C) Whether the Appellate Tribunal is right in law and on facts in reversing the order passed by CIT(A) and thereby deleting the addition made on account of disallowance of capital expenses amounting to Rs.17,45,865/-?

(D) Whether the Appellate Tribunal is right in law and on facts in reversing the order passed by CIT(A) and thereby deleting the addition made on account of provision for expenses amounting to Rs.11,75,534/-?

(E) Whether the Appellate Tribunal is right in law and on facts in reversing the order passed by CIT(A) and thereby deleting the addition made on account of disallowance of exemption amounting to Rs.28,59,527/-?"

2. With respect to question no.A, counsel for the revenue vehemently contended that the Assessing Officer as well as the CIT Appeals had found sufficient evidence to hold that the expenditure of Rs.1,45,82,065/- claimed by the assessee was not genuine. She submitted that such conclusions were based on the evidence collected while framing the assessment which included the report of the stamp revenue authority indicating that the vouchers were stamped subsequently. Taking us through the orders passed by the Assessing Officer and CIT Appeals, she contended that the Tribunal ought not to have interfered with such findings which were based on the evidence on record.

3. We, however, find that the question of genuineness of the expenditure claimed by the assessee was examined by the Tribunal in detail. The Tribunal found that the Assessing Officer was not justified in rejecting the books of accounts of the assessee. This conclusion of the Tribunal was based inter-alia on the ground that the assessee had shown receipts of Rs.37.97 crores from its business operations and showed the net profit of Rs.168.90 lacs. The profit ratio comes to 4.45%. The assessee had also shown depreciation of Rs.3.74 crores. If such depreciation is considered separately, the profit of the assessee before depreciation would be at the rate of 14.31%. The Tribunal also recorded that in the assessee's own case for the assessment year 2003-04, the Tribunal had accepted the profit margin of 2.76%. Primarily on these grounds, the Tribunal was of

the opinion that the Assessing Officer ought not to have rejected the books of accounts. Even if the accounts were to be ignored, the Assessing Officer must not make assessment arbitrary or without any basis. The Tribunal recorded that the assessee had shown higher rate of net profit than others in the same line of business.

4. With respect to disallowance of truck freight expenses, the Tribunal noted that the assessee was engaged in the business of clearing, forwarding and stevedoring activities and has been providing various kinds of services like receiving cargo from clients, loading and unloading the cargo at godown at Gandhidham, repacking the goods for export quantity, loading it to the trucks, transferring the goods to Kandla and Mundra port etc. The Tribunal, therefore, was of the opinion that the assessee was engaged in labour oriented activities and various expenses were related to such labour charges. Expenses were paid by the supervisor who would not be familiar with the accounting system. The possibility of some discrepancy, therefore, cannot be ruled out. The Tribunal also recorded that the assessee had provided for expenses as on 31.3.2004. However, all services were provided to the respective parties prior to the end of the accounting year. This was substantiated by bills, vouchers. TDS was also deducted on such expenses and were produced on record. The assessee also filed the copy of accounts, copies of bills raised by the parties and also copies of the TDS certificates issued.

5. With respect to defects and discrepancies, the Tribunal recorded the assessee's contention that the accounts for the subsequent years filed on the basis of corrupt software as soon as such mistakes were noticed, even before issuing of show cause notice, the assessee corrected the accounts and submitted the same which also tally with audit accounts.

6. The Tribunal also recorded that considering the nature of business of the assessee, the truck fright expenses were

required to be incurred to carry on the business. The profit margin of the assessee was quite fair and reasonable as compared to the previous year also. The Tribunal compared the assessee's expenditure under the said heading under the previous year and found that the same were comparable to the consideration.

7. It can be also noticed from the orders of AO and that of CIT(A) that both these authorities concluded the issue against the assessee respondent by inquiring on random basis.

8. Out of 37 parties, only four were issued noticees by AO and only one cheque against each party was verified for deciding genuineness of transaction and this method for proving malafide was approved by CIT(A). Tribunal has rightly not endorsed to these findings of both the authorities which lack apparently wide and sound base for such conclusion.

9. From the above discussion, it can be seen that the entire issue is based on the evidence on record. The Tribunal having appreciated the evidence and given its findings on such evidence, in our view no question of law arises. The Tribunal being the final fact finding authority, its conclusion on facts would not be open to question before us unless of course such conclusions suffer from perversity. In the present case, we find that the Tribunal has given its findings on the basis of the evidence on record. No perversity is pointed out. This question is, therefore, not considered.

10. With respect to question no.B, we find that the Tribunal held in favour of the assessee making following observations:-

> “We have considered the rival submission. The issue in the present ground is that the AO called for details of account from 19 parties and out of such 19 parties few of them not complied with some details and therefore the AO made addition. The assessee has provided detailed reconciliation as regards transactions with these parties. It was stated on page no.22 of the paper book and details are summarized in the tabular form. In case of Dhiraj M. Vaghela, it was stated that the AO wrongly considered the

name, actually it is M/s. Dhiraj Tyres, the assessee has purchased tyres for the trucks. The assessee has furnished copy of bills, details of payment made to said party, it was also explained that the payments were made directly to M/s. J.K. Industries Ltd., the manufacturer and M/s. Dhiraj Tyres is only agent. In case of Tarun Shipping Services, the AO has disallowed as the confirmation letter was not filled. It was explained that since the proprietor is died therefore the confirmation letter could not be filled, the assessee had filled copy of accounts, bills, details of payment, Income Tax return, PAN etc. to prove the genuineness of expenses. With reference to M/s. Sunrise Heavy Lifters Pvt. Ltd., the addition was made as there was difference in closing balance, it was explained by the assessee that some of the bills are not accounted for by the said party therefore there is difference in the accounts, the assessee has furnished copy of accounts, contra accounts, bills, TDS certificates, the payment details and bank statement to prove the genuineness of expenses.

6. Therefore considering the facts and circumstances of the case, the assessee has provided all the relevant details to prove the genuineness of expenses and therefore merely because some of the details could not be furnished or the accounts were not reconciled because of mistake of other party, the addition could not be warranted. It is also observed that the clearing and forwarding expenses are quite fair and reasonable as compared to previous year. The profit margin is also fair as compared to previous year as well as in comparable cases. Therefore, looking to the totality of facts the addition is deleted. This ground of appeal is allowed."

11. From the above, it can be seen that the conclusions of the Tribunal were based on appreciation of evidence on record. No question of law arises.

12. With respect to disallowance of Rs.17,45,865/- claimed by the assessee by way of revenue expenditure and instead treating the same as capital expenditure by the revenue authorities, we find that the issue arises in the following factual background. The assessee had carried out repairs of its dumpers by replacing the body of the dumpers and claimed such expenditure as current repairs. The Assessing Officer was of the opinion that the expenditure was capital nature, disallowed the claim of the assessee for deduction thereof. The Tribunal following the decision of this Court in the case of Commissioner of Income Tax

Vs. Saravana Spinning Mills P. Ltd., 293 ITR 201 allowed the assessee's appeal and granted deduction as claimed. The Tribunal noted that the assessee was having its own trucks and dumpers which were being used for the local transportation to shift goods from one place to another. The assessee had to replace the body of dumper and such expenditure was claimed as revenue expenditure. The Tribunal taking note of Section 31 of the Income Tax Act, 1961 firmed the opinion that such expenditure would be in the nature of current repairs and thus, allowed the assessee's appeal on this aspect.

13. It is not in dispute that the vehicles in question were owned by the assessee and were being used for transportation of the goods in the course of its business. It is equally not in dispute that for carrying out repair works, the assessee had changed body of the dumper. The expenditure incurred in such repair was claimed by way of revenue expenditure or in the nature of current repairs. Section 31(1) of the Act reads as under:-

> “31. In respect of repairs and insurance of machinery, plant or furniture used for the purposes of the business or profession, the following deductions shall be allowed–
> (i) the amount paid on account of current repairs thereto;”

14. In case of Saravana Spinning Mills P. Ltd. (supra), the said provision came up for consideration before the Apex Court in background of the facts where the assessee had replaced the ring frames of its machineries installed in the textile mills while holding that such repair would form part of the current repairs, the Apex Court observed as under:-

> “13. An allowance is granted by clause (i) of Section 31 in respect of amount expended on current repairs to machinery, plant or furniture used for the purposes of business, irrespective of whether the assessee is the owner of the assets or has only used them. The expression "current repairs" denotes repairs which are attended to when the need for them arises from the viewpoint of a businessman. The word "repair" involves renewal. However, the words used in Section 31(i) are "current repairs". The

> object behind Section 31(i) is to preserve and maintain the asset and not to bring in a new asset. In our view, Section 31(i) limits the scope of allowability of expenditure as deduction in respect of repairs made to machinery, plant or furniture by restricting it to the concept of "current repairs". All repairs are not current repairs. Section 37(1) allows claims for expenditure which are not of capital nature. However, even Section 37(1) excludes those items of expenditure which expressly falls in Sections 30 to 36. The effect is to delimit the scope of allowability of deductions for repairs to the extent provided for in Sections 30 to 36. To decide the applicability of Section 31(i) the test is not whether the expenditure is revenue or capital in nature, which test has been wrongly applied by the High Court, but whether the expenditure is "current repairs". The basic test to find out as to what would constitute current repairs is that the expenditure must have been incurred to "preserve and maintain" an already existing asset, and the object of the expenditure must not be to bring a new asset into existence or to obtain a new advantage."

15. Bearing in mind the ratio of the decision of the Apex Court in the case of Saravana Spinning Mills P. Ltd. (supra) and coming back to the facts of the present case, it can be seen that by carrying out the repairs, the assessee did not bring into existence any new assets but was required to expend the amount to preserve and maintain the asset already in existence.

16. With respect to ground no.D, the Tribunal considered the issue making the following observations:-

> "5. We have considered the rival submission. We have also gone through various details furnished to claim such expenses. The assessee has provided such details on page no.28 of the paper book in the form of chart. It is found from such details that the said party has provided Stevedoring Services to various vessels arrived at Kandla Port, the bills are issued for three vessels arrived and services provided. The services are provided in the month of February 2004 and March 2004. The said party has issued debit note only in April 2004, however the services are provided in the earlier financial year, which can be found from the debit note and also the Administrative Body, details issued by Kandla Dock Labour Board. It is also found that the appellant has also made advance payment to such parties in the current financial years. The expenses are provided on the last date as the debit notes were issued only in the month of April 2004. Therefore, merely the debit notes issued in subsequent year, the expenses

> cannot be disallowed. In this regard, the Hon'ble Supreme Court has laid down the principle in the case of Bharat Earth Movers 245 ITR 428 (SC), it is held that "the law is settled – if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date, what should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied the liability is not a contingent one. The liability is in praesenti though it will be discharged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged in not certain." Therefore, respectfully following the decision of the Hon'ble Supreme Court, the addition made by AO is deleted. This ground of appeal is allowed in favour of the assessee."

17. From the above it can be seen that the Tribunal allowed the liability on the ground that the same had arisen during the year in question. We find no infirmity in the view of the Tribunal.

18. With respect to ground no.E, we find that the Tribunal considered the issue in the following manner:-

> "5. We have considered the rival submission. The assessee is having food processing unit at Kandla SEZ. The assessee is doing various processing for the food grains exported. The various processes are involved like clearing the goods, shorting out goods and removing waste material, applying medicines as per the export standards, again shorting out goods of good quality, packing into export quantity and then finally exporting them. All these processes are carried out with huge automatic machine. The assessee has to follow international standard to bring the goods to export quality and acceptable in the international market. Since the issue is covered by the assessee's own case vide ITA No. 407/RJT'2006, however, as the CIT (A) has raided some different issue let us examine in this context also. As per section 10 A, the section talks about the words "begins to manufacture or produce such articles or things." The word manufacture and production has been recently defined by the Hon'ble Supreme Court in the case of India Cine Agencies 308 ITR 98 (SC), vide Para 11 has defined "Production includes (i) packing, labeling, relabeling of contgainers (ii) repacking of bulk packages to retail packages and (iii) the adoption of any other method to render the product marketable." Therefore, the production as defined above is

much wider terms than manufacturing. The section 10A also includes production of things, therefore the activity of the assessee is eligible as production as defined by the Hon'ble Supreme Court. The another issue raised by the AO is that the assessee is not earning in foreign currency, the assessee has furnished various documents and papers to prove that the earnings are in foreign currency the assessee has submitted the bank advice in which the amount are received and credited in foreign currency, the copy of bills are raised to various parties in foreign currency, in the shipping bill also the name of the assessee has been mentioned as processor. All these evidences clearly prove that the goods are proceeded at SEZ and the same is exported outside India and the assessee has earned the receipt in foreign currency. Therefore, all the conditions are duly fulfilled. Therefore, the assessee is eligible for deduction u/s. 10A of the I.T. Act. this ground of appeal is allowed."

19. From the above quoted portion of the Tribunal's order, it can be seen that the Tribunal on the basis of available evidence on record, came to the conclusion that the assessee fulfilled all requirements for claiming exemption under Section 10A of the Act. The Tribunal recorded that the evidence clearly proves that the goods were produced at special economic zone and the same were also exported outside India and the assessee had earned the receipts in foreign currency. We do not find any infirmity in the Tribunal's order. In the result, no question of law arises. The appeal is, therefore, dismissed.

[AKIL KURESHI, J.]

[MS. SONIA GOKANI, J.]

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