

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 753 of 2011

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COMMISSIONER OF INCOME TAX-III - Appellant(s)

Versus

SANJAYKUMAR MANSUKHLAL DHABBA - Opponent(s)

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Appearance :

Mrs MAUNA M BHATT for Appellant

None for Opponent

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MS JUSTICE SONIA GOKANI

7th December 2011

ORAL ORDER (*Per : HONOURABLE MR.JUSTICE AKIL KURESHI*)

Revenue is in appeal against the judgment of the Tribunal dated 16th December 2010, raising following questions for our consideration :-

[i] “Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in deleting the penalty of Rs. 24,09,735/= imposed by the Assessing Officer and confirmed by the Appellate Commissioner ?”

[ii] “Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal has committed an error in reversing the order of the Commissioner of Income-Tax (Appeals) IV, Rajkot, without assigning any cogent and relevant reasons ?”

[iii] Whether, on the facts and in the circumstances of the case, the order of the Income Tax Appellate Tribunal is suffering from non-application of mind and contrary to the evidence and material on the record of the case and, hence, perverse or not ?”

Upon perusal of the documents on record with the assistance of the learned counsel for the revenue, we notice that the Tribunal, though upheld the Revenue's stand that the assessee had made purchases outside the books, restricted the additions to 25% of such sum, relying principally on the decision of this Court in case of **Sanjay Oilcake Industries v. Commissioner of Income Tax** [(2009) 316 ITR 274 (Guj)].

In the said case of Sanjay Oilcake Industries [*Supra*], the Division Bench of this Court upheld the view of the Tribunal limiting the additions to 25%, where it was found that the goods were received from the parties other than the persons who had issued the bills of such goods. Though the purchases were shown to have been made by making payment to some other parties, the Commissioner as well as the Tribunal both came to the conclusion that under such circumstances, the likelihood of the purchase price being inflated could not be ruled out. It was in this background that the Division Bench upheld the restriction of additions to 25%. Facts are similar in the present case. No question of law, therefore, arises. Tax Appeal is dismissed.

{Akil Kureshi, J.}

{Ms. Sonia Gokani, J.}

Prakash*