

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 847 of 2013

With

TAX APPEAL NO. 848 of 2013

TO

TAX APPEAL NO. 849 of 2013

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DATTANI AND CO.....Appellant(s)

Versus

INCOME TAX OFFICER....Opponent(s)

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Appearance:

MR RK PATEL, ADVOCATE for the Appellant(s) No. 1

MR PRANAV G DESAI, ADVOCATE for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE M.R. SHAH**
and
HONOURABLE MS JUSTICE SONIA GOKANI

Date : 21/10/2013

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE M.R. SHAH)

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THE HIGH COURT OF GUJARAT
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1.00. As common question of law and facts arise in this group of Appeals, they are disposed of by this common order.

2.00. All these Tax Appeals have been preferred by the common appellant - assessee challenging the common impugned judgement and order passed by the Income Tax

Appellate Tribunal, Rajkot Bench, Rajkot in ITA Nos.1249 to 1252 of 2010 with respect to Assessment Years 2002-03, 2004-05 and 2006-07.

2.01. It is required to be noted that in the respective appeals, the appellant proposed the following substantial questions of law :

TAX APPEAL No.847 of 2013 :-

“1. Whether Tribunal is right in law and on facts in confirming addition of Rs.24,151/-, Rs.4,443/- & Rs.4,70,000/- towards alleged bogus purchases/sales in contravention of settled principles of law?

2. Whether on facts and in law, the Tribunal has substantially erred in not resorting to provision of section 255 for referring the matter to Full Bench/Special Bench and deciding the disputed issue of purchases & sales in conflict with earlier Tribunal’s decision of the same Bench pressed into service by the appellant?

3. Whether on facts and in law, the Tribunal’s and conclusion for confirming addition towards purchases and sales for the year under consideration is in ignorance of relevant material on record and taking aid of irrelevant factors not germane to subject matter of appeal with the result that the finding and conclusion of the Tribunal is “vitiating” on facts and in law?”

TAX APPEAL No.848 of 2013 :-

“1. Whether Tribunal is right in law and on facts in

confirming addition of Rs.3,42,311/- & Rs.1,42,908/- towards alleged bogus purchases/sales in contravention of settled principles of law?

2. Whether on facts and in law, the Tribunal has substantially erred in not resorting to provision of section 255 for referring the matter to Full Bench/Special Bench and deciding the disputed issue of purchases & sales in conflict with earlier Tribunal's decision of the same Bench pressed into service by the appellant?

3. Whether on facts and in law, the Tribunal's and conclusion for confirming addition towards purchases and sales for the year under consideration is in ignorance of relevant material on record and taking aid of irrelevant factors not germane to subject matter of appeal with the result that the finding and conclusion of the Tribunal is "vitiating" on facts and in law?"

TAX APPEAL No.849 of 2013 :-

"1. Whether Tribunal is right in law and on facts in confirming addition of Rs.6,42,769/- & Rs.1,83,168/- towards alleged bogus purchases/sales in contravention of settled principles of law?

2. Whether on facts and in law, the Tribunal has substantially erred in not resorting to provision of section 255 for referring the matter to Full Bench/Special Bench and deciding the disputed issue of purchases & sales in conflict with earlier Tribunal's decision of the same Bench pressed into service by the appellant?

3. Whether on facts and in law, the Tribunal's and conclusion for confirming addition towards purchases

and sales for the year under consideration is in ignorance of relevant material on record and taking aid of irrelevant factors not germane to subject matter of appeal with the result that the finding and conclusion of the Tribunal is “vitiating” on facts and in law?”

2.02. By order dtd. 1/10/2013 passed in the respective Tax Appeals, we dismissed all these Tax Appeals so far as proposed Question Nos.2 and 3 are concerned and issued notice to consider proposed Question No.1 and observed as under :

“Now, so far as the proposed substantial question of law i.e. question No.1 is concerned, Shri Patel, learned counsel appearing on behalf of the appellant assessee has heavily relied upon the decision of this court in the case of Commissioner of Income Tax vs. President Industries reported in 258 ITR 654, which seems to be not dealt with and/or considered by the learned Tribunal.

Hence, for the aforesaid, NOTICE returnable on 21st October 2013. Direct service is permitted.”

2.03. Mr.R.K. Patel, learned advocate appearing on behalf of the appellant has vehemently submitted that with respect to addition made towards alleged bogus purchases / sales, the assessee heavily relied upon the decision of this Court in the case of Commissioner of Income Tax vs. President Industries, reported in 258 ITR 654. It is submitted that though the said decision was cited before the learned tribunal and even the same was so stated in the Written Submission before the learned tribunal, the tribunal has not considered and/or

dealt with the same at all.

2.04. Mr. Pranav Desai, learned advocate appearing on behalf of the respondent – revenue has tried to support the common order of the tribunal impugned in the main Tax Appeal, however, he has fairly conceded that the learned tribunal has not considered and dealt with the decision in the case of Commissioner of Income Tax vs. President Industries reported in 258 ITR 654, relied upon by the assessee and even cited by the assessee in the written submission before the learned tribunal.

3.00. Considering the fact that the decision of this Court in the case of Commissioner of Income Tax vs. President Industries (supra), which was relied upon by the assessee, was cited and pointed out before the learned tribunal, the learned tribunal at least ought to have considered and dealt with the same. From the written submissions, it also appears that the aforesaid decision was cited before the learned tribunal. From the impugned Judgement and Order passed by the learned tribunal it appears that the learned tribunal has not considered and/or dealt with the aforesaid decision relied upon by the assessee at all.

4.00. Whenever any decision has been relied upon and/or cited by the assessee and/or any party, the authority/tribunal is bound to consider and/or deal with the same and opine whether in the facts and circumstances of the particular case, the same will be applicable or not. In the instant case, the tribunal has failed to consider and/or deal with the aforesaid decision cited and relied upon by the assessee. Under the

circumstances, all these appeals are required to be remanded to the tribunal to consider the addition made by the Assessing Officer towards alleged bogus purchases/sales and to take appropriate decision in accordance with law and on merits and after considering the decision of this Court in the case of Commissioner of Income Tax vs. President Industries reported in 258 ITR 654. However, it is clarified that we have not expressed any opinion on merits whether in the facts and circumstances of the case, the decision of this Court in the case Commissioner of Income Tax vs. President Industries (supra) will be applicable or not. It is ultimately for the learned tribunal to consider the same in the facts and circumstances of the case.

5.00. With this, all these appeals are allowed in part and the same are remanded to the learned tribunal to consider the issue with respect to addition made towards alleged bogus purchases/sales and to consider the decision of this Court in the case of Commissioner of Income Tax vs. President Industries reported in 258 ITR 654. As stated hereinabove, so far as Question nos.2 and 3 are concerned, by our earlier order dtd. 1/10/2013 we have already dismissed the present appeals. Present appeals are allowed in part to the aforesaid extent only.

(M.R.SHAH, J.)

(MS SONIA GOKANI, J.)

Rafik.

