

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 689 of 2010**

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COMMISSIONER OF INCOME TAX - I....Appellant(s)

Versus

M/S NANGALIA FABRICS PRIVATE LIMITED....Opponent(s)

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Appearance:

MR SUDHIR M MEHTA, ADVOCATE for the Appellant(s) No. 1

NOTICE SERVED for the Opponent(s) No. 1

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

Date : 22/04/2013

ORAL ORDER

(PER : HONOURABLE MS.JUSTICE SONIA GOKANI)

1. Aggrieved by the order of the Income Tax Appellate Tribunal dated 28.10.2009, revenue has challenged the said order in this tax appeal proposing following substantial questions of law:

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in deleting Rs. 1,27,02,869/- made by the assessing officer on account of unverifiable purchases?"

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in deleting disallowance of Rs. 72,37,808/- made by the Assessing Officer on account of brokerage commission?"

2. We have heard learned counsel Mr. Mehta for the revenue and learned senior counsel, Mr. Soparkar for the

assessee-respondent. The first question pertains to the addition made by the Assessing Officer and reduced by 5% from the total amount of Rs. 1.27 crores (rounded off) by the CIT and deleted in its entirety by the Tribunal.

3. The question pertains to the purchases made by the assessee-respondent. On account of unverifiable purchases, the Assessing Officer made additions to the tune of Rs. 1.27 crores. He was of the opinion that none of the parties could be located and therefore, such purchases were held to be bogus. When it was challenged before the CIT(A), the CIT(A) was of the opinion that they could not be held bogus as the corresponding sales had been effected by the respondent in the next year. In subsequent year also and in the past, such purchases were made which were never questioned. When challenged before the Tribunal on the basis of the facts presented before us, it held that these purchases could not be held bogus by holding thus:

“13. We have considered the rival submissions and the materials placed on record. The purchases are supported by bills, entries in the books of account, payment by cheque and quantitative details. Assessing Officer did not find any inflation in purchase price or inflation in consumption or suppression the production. The addition had been made only on the ground that the parties are not traceable. Assessee had made payment through crossed cheques and assessing officer did not find that payment made came back to assessee. Assessing Officer has made addition in respect to the outstanding amount as on 31.3.2001 which has been cleared in the succeeding years. The ratio of the creditor to the purchases is normal considering the past records of the assessee. The creditors were outstanding owing to liquidity as assessee is also required to get credit in

respect of sales also. Even otherwise provision of section 68 is not attracted to amounts representing purchases made on credit as held in the case of Panchan Dass Jain cited supra. The addition for bogus purchases cannot also be sustained in full or in part in view of the various cases laws cited by the assessee and in view of the facts that the decision of Vijay Proteins Ltd. and Sanjay Oil Cake Industries are not applicable to the facts of the assessee's case. Assessee's case is covered by the decision of Hon'ble Gujarat High Court in case of Kashiram Textile Mills. In view of the matter, addition made by the assessing officer is deleted. Ground No.1 of Assessee's appeal is allowed and ground No.1 of Revenue's appeal is dismissed."

4. The issue is essentially based on facts. The Tribunal, having been satisfied by genuineness of the purchases as also specially considering the payments made through the cheques, was of the opinion that such addition could not be sustained. Issue, essentially and pre-dominantly based on facts, requires no consideration as no question of law arises.
5. The second question pertains to brokerage commission of Rs. 72,37,808/- disallowed by the Assessing Officer. The Assessing Officer disallowed the commission on the ground that *M/s. Shree Shantinath Silk Industries* did not maintain its record and its name did not appear on sale bill. When it was challenged before the CIT(A) it was of the opinion that the only one party had been examined by the Assessing Officer and the person examined for and on behalf of such party in fact was not dealing with sales, and therefore, would not be having any knowledge of the brokerage. After dealing with the issue at length, it sustained addition of Rs. 36.18 lacs (rounded off).

6. When CIT(A)'s order was challenged before the Tribunal, the Tribunal deleted the entire addition by observing thus:

“23. We have heard the rival submissions and the materials placed on record. We are inclined to agree with the submission made on behalf of the assessee and find that no evidence had been placed on record that the commission expense is bogus. Assessee made payment of commission expenses is bogus. Assessee made payment of commission through account payee cheques for sales canvassed by the party and also in consideration of the collection recovered from purchaser. Payments cannot be unreasonable particularly when M/s. Shree Shantinath Silk Industries is not related to the assessee and so even disallowance made by CIT(A) is not proper. We therefore delete the full disallowance of Rs. 72,37,808/- made by the assessing officer. Hence assessee's ground of appeal is allowed and revenue's ground of appeal is dismissed.”

7. This issue is again based on facts. Essentially, the Tribunal has, with cogent reasons dealt with the issue, no question of law, much less any substantial question of law arises. The Tax appeal is, resultantly, dismissed.

(AKIL KURESHI, J.)

(MS SONIA GOKANI, J.)

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