IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 379 of 2018

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PR. COMMISSIONER OF INCOME TAX, SURAT-1, SURAT
Versus
JUNED B. MEMON

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Appearance:
MR.NIKUNT K. RAVAL, ADVOCATE for MRS KALPANAK RAVAL(1046) for the PETITIONER(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE B.N. KARIA

Date : 25/04/2018

ORAL ORDER
(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. This appeal is filed by the Revenue to challenge the judgment of the Income Tax Appellate Tribunal dated 14.07.2017 raising following questions for our consideration:

> *"(i) Whether on the facts and circumstances of case and in laws, the Appellate Tribunal is justified in not deciding the primary question as to whether the assessee has violated the provisions of section 40A(3) r.w. Rule 6DD(k) of the Income-tax Rules, 1962 or not?*
>
> *(ii) Whether on the facts and circumstances of case and in laws, the Appellate Tribunal is justified in holding that the Assessing Officer had rejected the books of accounts u/s. 145(3), and therefore, GP addition was reasonable without considering the fact that Assessing Officer had not rejected the books of accounts u/s. 145(3) and no such*

> *intention is also drawn while giving the final conclusion?"*

2. The respondent assessee is an individual and is engaged in the business of trading of art silk cloth (domestic and export-import). For the assessment year 2009-10, the assessee had filed the return of income which was taken in scrutiny by the Assessing Officer. During such scrutiny assessment, the Assessing Officer noticed that the assessee had made various payments totaling to Rs.2.08 crores (rounded off) during the relevant previous year through the mode other than account payee cheque or bank draft though each payment exceeded Rs.20,000/- per day. If the assessee would have noticed since he desire to disallow such expenditure in terms of sub-section (3) of section 40A of the the Income Tax Act, 1961 ('the Act' for short), the assessee tried to justify such payment made through bearer cheques, *inter alia*, on the ground that the payments were made to one GMCPL. Some of the payments were required to be made to the parties in Surat under the instructions of GMCPL. It was a trade practice, under which, under the instructions of GMCPL, the assessee had handed over the cheques for purchases made by them to the agents

of GMCPL who in turn either passes on the same to GMCPL or to the persons to whom GMCPL has to make payment.

3. The Assessing Officer, however, discarded such explanation. While doing so, he observed as under:

> *"7.9 The above ambiguities and discrepancies clearly indicate that the assessee might have inflated his purchases by way of getting substantial fictitious bills from GMCPL and accordingly suppress his profit. The cooked up story regarding handing over the cheques to the agent of GMCPL is nothing but a colourable device used by the assessee and his representative to save the assessee from the disallowance u/s. 40A(3) of the IT Act."*

4. Eventually, the Assessing Officer disallowed the expenditure of Rs.2.08 crores and added the same to the total income of the assessee.

5. Thus, while examining the angle of disallowance under section 40A(3) of the Act which pertains to payments in excess of Rs.20,000/- made through mode other than account payee cheque or bank draft, the Assessing Officer examined the genuineness of such expenditure. He was of the opinion that the assessee would have inflated the purchase expenditure by raising bogus claims.

6. The assessee carried the matter in appeal before the Commissioner. Commissioner was of the opinion that in essence, the Assessing Officer had disputed the expenditure claimed by the assessee and indirectly applied section 37 of the Act. He was of the opinion that not the entire expenditure which is under cloud but the profit element embedded therein should be brought to tax. He applied the principles laid down by this Court in case of ***Vijay Proteins Pvt. Ltd. Vs. CIT*** reported in ***58 ITD 428*** and limited the disallowance to Rs.47.28 lakhs (rounded off). In the process, he revised the assessee's declared gross profit ratio to 5.8% from the declared gross profit ratio of 2.9% by the assessee. He noted that in the earlier year, the gross profit ratio was 5.2%. He noted that the assessee's unverifiable purchases of Rs.2.08 crores is 12.9% of the total purchases.

7. The Revenue carried the appeal before the Tribunal. The Tribunal confirms the view of the Commissioner of Income Tax (Appeals). Hence, this appeal.

8. We are broadly in agreement with the view of the

Commissioner of Income Tax (Appeals) as confirmed by the Tribunal. When the Assessing Officer had doubted the genuineness of the expenditure, he would require bringing to tax the profit element so avoided by the assessee. As noted, the Commissioner of Income Tax (Appeals) while limiting the additions, brought the assessee's declared gross profit ratio at the same rate as in the previous year which was even otherwise in tune with the percentage of the assessee's doubtful purchases.

9. No question of law arises. Tax Appeal is dismissed.

(AKIL KURESHI, J)

(B.N. KARIA, J)

ANKIT SHAH