IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 879 of 2017

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PRINCIPAL COMMISIONER OF INCOME TAX 1....Appellant(s)
Versus
ASAHI SONGWON COLORS LIMITED....Opponent(s)
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Appearance:
MR MR BHATT, SR. ADVOCATE with MRS MAUNA M BHATT, ADVOCATE for the Appellant
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CORAM: **HONOURABLE MS.JUSTICE HARSHA DEVANI**
and
HONOURABLE MR.JUSTICE A.S. SUPEHIA

Date : 29/11/2017

ORAL ORDER
(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. In this appeal under section 260A of the Income Tax Act, 1961 (hereinafter referred to as the "Act"), the appellant-revenue has challenged the order dated 7.2.2017 made by the Income Tax Appellate Tribunal, Ahmedabad Bench "C" (hereinafter referred to as the "Tribunal") in ITA No.2633/Ahd/2013, by proposing the following question, stated to be a substantial question of law:

> *"Whether the Appellate Tribunal has erred in law and on facts by deleting the disallowance of Rs.34,50,445/- made on account of fluctuation in rates on foreign exchange, from the deduction under section 10B?"*

2. The assessment year is 2008-09 and the relevant accounting period is the previous year 2007-08. During the course of assessment proceedings, the Assessing Officer found that in the claim for deduction under section 10B of the Act, the assessee had considered Rs.34,50,445/- being the exchange rate fluctuation as eligible for the claim for deduction under section 10B of the Act. The Assessing Officer was of the opinion that this income was not eligible for deduction under section 10B of the Act as it was not derived from such industrial undertaking and accordingly, denied the claim to this extent.

3. The assessee carried the matter in appeal before the Commissioner (Appeals), who deleted the disallowance made by the Assessing Officer. The revenue carried the matter in further appeal before the Tribunal, which dismissed the appeal and upheld the order passed by the Commissioner (Appeals). Being aggrieved, the revenue has filed the present appeal.

4. Mr. M.R. Bhatt, Senior Advocate, learned counsel for the appellant submitted that the income derived on account of fluctuation in the exchange rate cannot be said to be derived from export of articles or things as provided in section 10B of the Act and hence, the Tribunal has erred in allowing such deduction under section 10B of the Act.

5. In the opinion of this court, the controversy involved in the present case is no longer res integra inasmuch as this court in ***Commissioner of Income-tax v. Priyanka Gems***, *[2014] 367 ITR 575 (Guj),* has, in the context of the provisions of section 80HHC of the Act, held that the foreign exchange gain arising out of fluctuation in the rate of foreign exchange

cannot be divested from the export business of the assessee. Once export is made, due to a variety of reasons, the remission of the export sale consideration may not be made immediately. Under accounting principles, therefore, the assessee, on the basis of accrual, would record sale consideration at the prevailing exchange rate on the quoted price for the exported goods in the foreign currency rates. If during the year of the export, the remission is made, the difference in the rate recorded in the accounts of the assessee and that eventually received by way of remission either positive or negative, would be duly adjusted. May be the accounting standards require that the same may be recorded in separate foreign exchange fluctuation account. Nevertheless, any deviation either positive or negative must have direct relation to the export actually made. Payment would be due to the assessee due to the factum of export. Current price of the goods so exported would also be pre-decided in the foreign exchange currency. The exact remittance in Indian rupees would depend on the precise exchange rate at the time when the amount is remitted. The court was of the opinion that this fluctuation and possibility of increase or decrease can have no bearing on the source of such receipt. Primarily and essentially, the receipt would be on account of the export made. If that be so, any fluctuation thereof must also be said to have arisen out of the export business. Mere period of time and the vagaries of rate fluctuation in international currencies cannot divest the income from the character of the income from the assessee's export business. The court, accordingly, turned down the revenue's contention that the income cannot be said to be derived from the export business.

6. Thus, what is held in the above decision is that the income or loss in case of fluctuation in the exchange rate of foreign currency arises out of the export business of the assessee and does not change the character of the income from the assessee’s export business.

7. The above view of the court finds support in the decision of the Supreme Court in ***Oil and Natural Gas Corporation Ltd. v. Commissioner of Income-tax***, *[2010] 322 ITR 180 (SC)*, wherein the court held that the loss suffered by the assessee, maintaining accounts regularly on mercantile system and following accounting standards prescribed by the Institute of Chartered Accountants of India (ICAI), on account of fluctuation in the rate of foreign exchange as on the date of balance sheet was an item of expenditure under section 37(1) of the Act, notwithstanding that the liability had not been discharged in the year in which the fluctuation in the rate of foreign exchange occurred.

8. Section 10B of the Act provides for deduction of such profits and gains as are derived by a hundred per cent export-oriented undertaking from the export of articles or things or computer software for the period and subject to the conditions stipulated there under. Therefore, the deduction is permissible if such profits and gains as are derived from the export of articles and things. As held in the above decision, the exact remittance in connection with such export would depend on the precise exchange rate at the time when the amount is remitted. The receipt would be on account of the export made and therefore, the fluctuation thereof must also be said to arise out of the export business. Merely because of fluctuation

in the international currencies, the income does not get divested of the character of income from export business. The Tribunal, therefore, did not commit any error in deleting the addition made on account of fluctuation in foreign exchange rates from the deduction under section 10B of the Act.

9. In the light of the above discussion, it is not possible to state that there is any legal infirmity in the impugned order passed by the Tribunal so as to give rise to any question of law, much less, a substantial question of law, warranting interference. The appeal, therefore, fails and is summarily dismissed.

(HARSHA DEVANI, J.)

(A. S. SUPEHIA, J.)

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