IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 526 of 2018
With
R/TAX APPEAL NO. 527 of 2018

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PRINCIPAL COMMISSIONER OF INCOME TAX 4
Versus
SYNPOL PRODUCTS PVT LTD

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Appearance:
MRS MAUNA M BHATT(174) for the PETITIONER(s) No. 1
MR.BANDISH SOPARKAR, ADVOCATE for the RESPONDENT(s) No. 1

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

Date : 11/06/2018

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

1. These appeals filed by the Revenue arise out of the common judgment of the Income Tax Appellate Tribunal concerning the same respondent assessee and pertained to the assessment year 2007-08.

2. Following questions have been presented for our consideration:

> *"[A] Whether the Appellate Tribunal has substantially erred in law and on facts in deleting the disallowance of excess claim of exemption of Rs.30,87,259/-[80,19,695-49,32,336] u/s of 10B of the Income Tax Act?*
>
> *[B] Whether the Appellate Tribunal has substantially erred in law and on facts in deleting the disallowance of Rs.48,637/- u/s*

14A of the the Income Tax Act, 1961?

[C] Whether the Appellate Tribunal has substantially erred in law and on facts in deleting the disallowance of Rs.11,29,452/- u/s 40(a)(ia) for non-deduction of TDS ?"

3. In a separate order passed today in Tax Appeal No.524 of 2018 and connected appeal, we have considered all these three questions in following manner:

"3. Question-A pertains to disallowance of claim of exemption under section 10B of the Income Tax Act, 1961 ('the Act' for short), ordered by the Assessing Officer on the ground that the assessee had inflated the profit of the unit eligible for exemption, being an EOU unit. The Commissioner of Income Tax (Appeals) examined the individual heads where the Assessing Officer had found inflation and partially confirmed the Assessing Officer's finding while giving partial relief to the assessee. The Tribunal in further appeal by the assessee, deleted the entire disallowance, inter alia, observing that the assessee had maintained separate books of accounts for both the units; eligible and ineligible. The Assessing Officer ought to have pointed out a particular expenditure incurred for earning income in the EOU. He could not have artificially apportioned the expenditure merely on the basis of production of the stakes. The Tribunal also noted that in the earlier years, the accounting method adopted by the assessee was not disturbed by the Assessing Officer.

4. From the perusal of the materials on record, it can be seen that entire issue is factual in nature. The Tribunal having *found that the accounts of the assessee were properly maintained and could not have disturbed by the Assessing Officer mechanically applying the ratio of production or sell of two units, no question of law arises.*

5. Question-B pertains to a sum which is extremely small and we are therefore do not entertain this question on this ground.

6. Question-C pertains to disallowance under section 40(a)(ia) on the ground that on several payments made in excess of Rs.50,000/- though required, tax was not deducted at source. The Tribunal in this respect confirmed the view of the Commissioner of Income Tax (Appeals) and to that extent held in favour of the Revenue. While doing so, the Tribunal provided that the Assessing Officer would separate out those disallowances pertaining to the EOU unit. If a particular disallowance of expenditure pertains to EOU unit, the profit of such unit would increase and resultantly, the claim of exemption may also go up. We find no error in the view of the Tribunal.

7. In the result, both the Tax Appeals are dismissed."

4. In the result, both the Tax Appeals are dismissed.

(AKIL KURESHI, J)

(B.N. KARIA, J)

ANKIT SHAH