

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/TAX APPEAL NO. 404 of 2018****[On note for speaking to minutes of order dated 16/07/2018 in
R/TAXAP/404/2018]**

PR. COMMISSIONER OF INCOME TAX-4 AHMEDABAD.

Versus

SANGHI INFRASTRUCTURE LTD.

Appearance:

MR NITIN K MEHTA(3286) for the PETITIONER(s) No. 1

MRS MAUNA M BHATT(174) for the PETITIONER(s) No. 1

for the RESPONDENT(s) No. 1

CORAM: **HONOURABLE MR.JUSTICE M.R. SHAH**

and

HONOURABLE MR.JUSTICE A.Y. KOGJE**Date : 30/07/2018****ORAL ORDER (PER : HONOURABLE MR.JUSTICE M.R. SHAH)**

In the order dated 16.07.2018 passed in Tax Appeal No.404 of 2018, in para-1, in place of "ITA No.2516/Ahd/2012", it should be read as "ITA No.2576/Ahd/2012".

Present Note for Speaking to Minutes stands disposed of accordingly.

Registry is directed to issue fresh order accordingly.

(M.R. SHAH, J)**(A.Y. KOGJE, J)**

SHITOLE

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 404 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE M.R. SHAH

and

HONOURABLE MR.JUSTICE A.Y. KOGJE

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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CORAM: HONOURABLE MR.JUSTICE M.R. SHAH

and

HONOURABLE MR.JUSTICE A.Y. KOGJE

Date : 16/07/2018

ORAL JUDGMENT

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

[1.0] Feeling aggrieved and dissatisfied with the impugned order dated 30.09.2016 passed by the learned Income Tax Appellate Tribunal, Ahmedabad "B" Bench, Ahmedabad (hereinafter referred to as "Tribunal") in ITA No.2516/Ahd/2012 for the Assessment Year 2009-10, the Revenue has preferred the present Tax Appeal with following proposed questions of law.

“[A] Whether the Appellate Tribunal is right in law and on facts in deleting the disallowances to the tune of Rs.4,24,30,623/-?

[B] Whether the Appellate Tribunal is right in law and on facts in confirming the order of the CIT(Appeals) in deleting the disallowances made on account of Lease rental payments, disallowance of Rs.70,00,000/- u/s 37(1) of the Act on account of Operating & Maintenance charges and repairs & maintenance charges of Rs.60,00,000/- u/s 40(a)(ia) of the Act on the payments on which the TDS was not deducted by the assessee?

[C] Whether the Appellate Tribunal is right in law and on facts in not appreciating the facts that the payment were reimbursed by the assessee company without deducting the TDS?”

[2.0] We have heard Mrs. Bhatt, learned Counsel appearing on behalf of the Revenue at length. We have considered in detail the assessment order passed by the Assessing Officer, the order passed by the learned CIT(A) as well as the order passed by the learned Tribunal and the reasonings and findings recorded by the learned CIT(A) as well as the learned Tribunal.

[3.0] Now, so far as the proposed question No.A viz. deleting disallowance to the tune of Rs.4,24,30,623/- by the learned CIT(A) and confirmed by the learned Tribunal is concerned, at the outset it is required to be noted that dis-allowance were made by the Assessing Officer under Section 40(a)(ia) of the Income Tax Act (hereinafter referred to as "IT Act") on the ground that the TDS amount was not deducted by the assessee. However, considering the material on record, the learned CIT(A) as well as the learned Tribunal have observed that infact the payments were reimbursement of lease rent charges paid to lessor viz. SREI Infrastructure Ltd. by Sanghi Industries Ltd. (SIL) and the TDS was deducted and paid by the concerned assessee - SIL. Considering the above, it cannot be said that the learned CIT(A) as well as the learned Tribunal committed any error in deleting such disallowance.

[4.0] Now, so far as the proposed question No.B viz. deleting dis-allowance made on account of lease rental payments, dis-allowance of Rs.70 lakh under Section 37(1) of the IT Act on account of operating and maintenance charges and repairs and maintenance charges of Rs.60 lakh under Section 40(a)(ia) of the IT Act on the payments on which TDS was not deducted by the assessee is concerned, it is required to be noted that in the year under consideration, no TDS was deducted as the same was contingent liability and the bills were not issued which were issued subsequently and on that the TDS was deducted as and when the final bills were received. Considering the above, no error has been committed by the learned CIT(A) as well as the learned Tribunal in deleting the dis-allowance. We are in complete agreement with the view taken by the learned Tribunal as well as the learned CIT(A).

[5.0] Now, so far as the proposed question No.C is concerned, the same is consequential to question No.B, which is held against the Revenue as observed hereinabove.

[6.0] In view of the above and for the reasons stated above, no substantial question of law arise in the present Tax Appeal and the same deserves to be dismissed and is, accordingly, dismissed.

(M.R. SHAH, J.)

(A.Y. KOGJE, J.)

Ajay**