

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 109 of 2007

FOR APPROVAL AND SIGNATURE:**HONOURABLE MR.JUSTICE KS JHAVERI****and****HONOURABLE MR.JUSTICE K.J.THAKER**

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- 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, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
- =====

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

Versus

GUJARAT ALKALIES & CHEMICALS LTD.....Opponent(s)

Appearance:

MR KM PARIKH, ADVOCATE for the Appellant(s) No. 1

MR MANISH J SHAH, ADVOCATE for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**
and
HONOURABLE MR.JUSTICE K.J.THAKER

Date : 23/12/2014

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. This is an appeal by the appellant-Revenue, seeking to challenge the order of the learned ITAT, Ahmedabad Bench 'D' ('the Tribunal')

for short), Dated : 24.05.2006, rendered in ITA No.745/Ahd/2001 for the A.Y. 1991-92, whereby, the Tribunal dismissed the appeal filed by the Revenue.

2. The brief facts of the case are that the assessee-respondent, herein, filed its return of income along with computation of income, audit report etc. for the year under consideration on 30.12.1991, declaring its total income at 'Nil'. The case of the assessee came to be processed and it was issued notices under Sections 143(2) and 142(1) of the Income Tax Act, 1961 (for short, 'the Act'). At the end of the assessment proceedings, the concerned AO made certain additions / disallowances to the income of the assessee. Hence, the assessee approached the learned CIT(A), who partly allowed the appeal filed by the assessee. Being aggrieved and dissatisfied with the same, the Revenue approached the Tribunal by filing an appeal, wherein, the Tribunal passed the impugned order, as referred to in Para-1, herein above. Hence, the present appeal.

3. At the time of admission, this Court framed the following questions of law;

"(A) Whether on the facts and circumstances of the case, the

Appellate Tribunal was right in law in confirming the order of the CIT(A) allowing the claim of Rs.2,38,77,468/as revenue expenditure made for the first time in the course of assessment proceedings by filing a letter dated 01.02.1994 without revising the return of income?

(B) Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in holding that lease rent paid under an arrangement with Gujarat Lease and Financials Ltd. for imported machinery and equipments for establishing a new Soda Ash Plant by the assessee, manufacturing caustic soda, for the period the new plant had not commenced production, was revenue expenditure?

(C) Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in confirming the order of the CIT(A) whereby he had deleted the disallowance of interest on hire purchase in relation to new Soda Ash Plant and interest and commitment charges in relation to expansion of Chloromethane Plant?"

4. Mr. M.J. Shah, learned Advocate for the respondent-assessee, at the outset submitted that the questions framed in this appeal are covered by the various decisions of the Apex Court and of this Court. In that view of the matter, we propose to deal with each question framed, herein, one by one.

5. So far as question (A) framed, herein, is concerned, Mr. Shah, learned Advocate for the assessee-respondent, herein, submitted that the same is covered by a decision of this Court in the case of "**CIT VS. ARVIND PRODUCTS LTD.**", [2011] 339 ITR 643 (Guj.), wherein, this Court, while answering the similar question framed in that appeal in favour of the assessee, observed and held as under in Paragraph-9;

"9. However, factually, the submission that the Tribunal has not recorded any finding on facts is an incorrect statement. The findings recorded in earlier part of paragraph No.9 of the order of Tribunal categorically record that Explanation 2 to Section 43(6) of the Act will not apply in the case of the assessee. This is preceded by narration of facts and reasons as to why the said Explanation is not applicable. In the circumstances, the submission that there is no finding on merits by the Tribunal is without any substance."

6. Mr. Shah, therefore, submitted that the question (A) framed, herein, be answered in favour of the assessee.

7. Mr. Parikh, learned Advocate for the appellant-Revenue, is unable to controvert the same. In that view of the matter, we answer question (A) in affirmative and held that the

Appellate Tribunal was right in law in confirming the order of the CIT(A) allowing the claim of Rs.2,38,77,468/as revenue expenditure made for the first time in the course of assessment proceedings by filing a letter dated 01.02.1994 without revising the return of income.

8. So far as question (B) is concerned, Mr. Shah, learned Advocate for the respondent-assessee, submitted that this Court had an occasion to deal with the similar question in the case of **"COMMISSIONER OF INCOME TAX VS. NIRMA LTD."**, [2014] 367 ITR 12 (Guj), wherein, while answering the similar question in favour of the assessee and against the Revenue, this Court observed and held as under;

"If the facts as recorded by the Commissioner of Income-Tax (Appeals) and the Tribunal can be said to have achieved finality, it would emerge that the assessee through its existing administrative mechanism started a new facility for production of soda ash and had also set up facility for production of a material called "lab" for its captive consumption for the purpose of its existing manufacturing business. It is no doubt that the assessee is engaged in the business of manufacture of soap and the soda ash and "lab" so produced is used by way of captive consumption. When such facts viewed in light of the findings of the Commissioner of Income-tax (Appeals)

and the Tribunal, we have no reason to interfere with the ultimate conclusion. Had it been a case of entirely a new project undertaken by the assessee as canvassed by the Counsel for the Revenue, a serious question of claim pre-operative expenditure of interest by way of revenue expenditure would arise. However, when the authorities below found that it was an expansion of the existing business, applying the tests laid down by this Court in the case of Alembic Glass Industries Ltd. (supra) in view of the decision of the Supreme Court in the case of Deputy CIT v. Core Health Care Ltd. [2008] 298 ITR 194 (SC), the fact whether the borrowing is capital or revenue expenditure would be of no consequence."

9. Mr. Shah, further, invited our attention to a decision of this Court in Tax Appeal 25 of 2002 and the allied matters, wherein, this Court has also followed the decision in "**COMMISSIONER OF INCOME TAX VS. NIRMA LTD.**" (Supra). Mr. Shah, therefore, submitted that the question (B) be also answered in favour of the assessee.

10. Mr. Parikh, learned Advocate for the appellant-Revenue, is not in a position to show any judgment of the Apex Court or of this court, taking a contrary view than the one taken by this Court in **COMMISSIONER OF INCOME TAX VS. NIRMA LTD.**" (Supra). We, therefore, answer question (B) in affirmative and in favour of the assessee and

against the Revenue, holding that the Appellate Tribunal was right in law in holding that lease rent paid under an arrangement with Gujarat Lease and Financials Ltd. for imported machinery and equipments for establishing a new Soda Ash Plant by the assessee, manufacturing caustic soda, for the period the new plant had not commenced production, was revenue expenditure.

11. As regards question (C), Mr. Shah, learned Advocate for the respondent-assessee, placed reliance on a decision of the Apex Court in "**DY. CIT VS. GUJARAT ALKALIES AND CHEMICALS LTD.**", [2008] 299 ITR 85 (SC), wherein, the Apex Court, while confirming the decision of the High Court, held that the "commitment charges" were an admissible deduction under section 37 and there was no infirmity on the part of the Appellate Tribunal in allowing the deduction.

12. Mr. Parikh, learned Advocate for the appellant-Revenue, fairly submitted that in view of the law enunciated by the Apex Court in "**DY. CIT VS. GUJARAT ALKALIES AND CHEMICALS LTD.**" (Supra), question (C) framed, herein, be answered in favour of the assessee. We, therefore, answer question (C) in affirmative and in favour of the assessee and against the Revenue and held that the Appellate Tribunal was right in law in

confirming the order of the CIT(A), whereby he had deleted the disallowance of interest on hire purchase in relation to new Soda Ash Plant and interest and commitment charges in relation to expansion of Chloromethane Plant.

13. In the result, present appeal fails and stands **DISMISSED**. The questions (A), (B) and (C) framed in this appeal are answered in affirmative and in **FAVOUR** of the respondent-assessee and **AGAINST** the appellant-Revenue, accordingly.

(K.S.JHAVERI, J.)

(K.J.THAKER, J)

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