IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 162 of 2005

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 ?

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AIMS OXYGEN LTD.....Appellant(s)

Versus

ADDITIONAL CIT....Opponent(s)

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Appearance:

MR SN DIVATIA, ADVOCATE for the Appellant(s) No. 1

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

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

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Date : 01/12/2014

ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. Being aggrieved and dissatisfied with the impugned order dated 20.08.2004 passed by the Income Tax Appellate Tribunal, Ahmedabad 'A' Bench (hereinafter referred to as 'the Tribunal') in Income Tax Appeal No. 3707/Ahd/2003 for the assessment year 1996-97, the assessee has preferred the present tax appeal.

1.1 The following substantial question of law was raised while admitting the appeal:

> *"Whether on the facts and in the circumstances of the case, the Income – Tax Appellate Tribunal was justified in law in holding that interest was rightly charged under Section 234B(4) of the Income-tax Act, 1961 despite the fact that no interest had beenlevied under Section 234B(1) of the Act at the time of framing regular assessment under Section 143(3) of the Act?"*

2. The assessee company is engaged in the business of manufacturing and trading in industrial gases. The assessee company filed its return of income for the assessment year in question after having set off of brought forward business loss and unabsorbed depreciation of earlier years. The Assessing Officer allowed the claim of set off and no interest u/s 234B was charged. The Assessing officer on 13.11.2000 modified the income on account of change in the quantum of unabsorbed depreciation and business loss. Accordingly

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interest u/s 234B was levied. The assessee therefore filed an application for rectification on 22.02.2001 against the fresh levy of interest under section 234B of the Act which was rejected vide order dated 09.11.2001.

2.1 Being aggrieved by the same, the assessee preferred appeal before CIT(Appeals) but the said appeal came to be dismissed. The assessee company thereafter preferred appeal before the Tribunal and the Tribunal after hearing the parties, also dismissed the appeal. Being aggrieved by the same, the present appeal is preferred by the assessee.

3. Mr. S.N. Divatia, learned advocate appearing for the appellant company submitted that the Tribunal as well as CIT(A) erred in confirming the rectification made by the Assessing Officer. He submitted that the authorities below erred in not appreciating the provisions of section 234B(4) of the Act. It is submitted that the said provision envisages increase or reduction of the interest already charged under sub-section (1) or sub section (3) of section 234B of the Act. He has relied upon the decision of the Calcutta High Court in the case of **Emami Ltd. vs Commissioner of Income tax, Kolkatta reported in [2011] 12 taxmann.com 64 (Cal.).**

THE HIGH COURT OF GUJARAT WEB COPY

4. Mr. K.M. Parikh, learned advocate appearing for the revenue supported the impugned order and submitted that the Tribunal has rightly observed that since in the subsequent order, the assessee’s income turned in positive figure, it was liable to pay interest and the assessee should have anticipated these circumstances. He submitted that the Tribunal has rightly considered the decision of the Apex Court in the case

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of **CIT vs. Ranchi Club reported in 247 ITR 209.** He has relied upon the decision of the Himachal Pradesh High Court in the case of **CIT vs. Ruchira Papers Ltd reported in [2013] 212 taxman 9**. He submitted that the present appeal lacks merit and therefore deserves to be dismissed.

5. We have heard learned advocates for both the sides and perused the orders passed by the CIT as well as the Tribunal. At this juncture it shall be relevant to peruse Section 234B(4) of the Act and the same is reproduced hereunder:

> "234B. Interest for defaults in payment of advance tax
> ...
>
> (4) Where, as a result of an order under section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under subsection (4) of section 245D, the amount on which interest was payable under sub- section (1) or sub- section (3) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and-
> (i) in a case where the interest is increased, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply, accordingly;
> (ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded. "

5.1 Thus it is clear that section 234B(4) of the Act authorises the Assessing Officer to enhance or reduce the interest as the case may be when an order u/s 154 is passed. The Tribunal has rightly observed in para 8 as under:

> "8. We have duly considered the rival

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contentions. As far as the first submission of the assessee is concerned, that while framing the assessment order u/s 143(3) of the Act, the ld. Assessing Officer has not directed tolevy the interest u/s 234-B. Therefore, while passing the order u/s 154 rws 155 of the Act, he cannot levy the interest afresh in view of the Hon’ble Supreme Court’s decision rendered in the case of CIT vs. Ranchi Club (247 ITR 209). Since the income of the assessee in the original assessment was determined at NIL there was no occasion for charging the interest under the above provisions, otherwise as far as levy of interest is concerned, it is a mandatory and while giving the consequential effect, the ld. AO has rightly charged the interest. To this effect, we are fortified by the judgement of the Hon’ble Supreme Court rendered in 252 ITR 1 in the case of CIT vs. Anjum Ghaswala.”

5.2 The finding of fact by the authorities below is just and proper. We have considered the decisions cited by the learned advocates for both the sides and we have come to the conclusion that the question of law raised in the present appeal is required to be answered in favour of the revenue and against the assessee.

6. In the premises aforesaid, appeal is dismissed. The impugned order passed by Tribunal is confirmed accordingly. No costs.

(K.S.JHAVERI, J.)

(K.J.THAKER, J)

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