IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 1174 of 2014

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

Versus

NANGALIA IMPEX....Opponent(s)

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Appearance:

MR SUDHIR M MEHTA, ADVOCATE for the Appellant(s) No. 1

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

Date : 25/11/2014

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. This is an appeal by the appellant-revenue, challenging the order of the learned

ITAT (for short, ‘the Tribunal’), Dated : 22.11.2013, rendered in ITA No. 745/Ahd/2013, whereby, the Tribunal dismissed the appeal of the revenue.

2. The brief facts of the case are that the respondent-assessee is a firm, engaged in the business of export of silk. The assessee filed its return of income for A.Y. 2004-05 on 31.12.2004 showing total loss at Rs.16,760/-. The case of the assessee came to be selected for scrutiny and its total income came to be assessed at Rs.57,85,560/-. Being aggrieved thereby, the assessee approached the CIT(A), which allowed the appeal filed by the assessee. Hence, the Revenue carried the matter before the Tribunal, wherein, the Tribunal passed the impugned order. Hence, the present appeal, raising the following questions for our consideration;

> “[A] Whether on the facts and circumstances of the case and in law, the Hon’ble Tribunal is justified in upholding the decision of CIT(A) in deleting the addition of Rs.52,50,000/- made on account of unexplained purchases without appreciating the fact there was a discrepancy between the stock shown in the books of accounts and stock shown in the statement submitted to the Bank?
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> [B] Whether on the facts and circumstances of the case and in law, the Hon’ble Tribunal is justified in

upholding the decision of CIT(A) in deleting the addition of Rs.52,50,000/- without any material on record to the contrary to prove that the assessee had not disclosed such excess stock to the Bank?

[C] Whether on the facts and circumstances of the case and in law, the Hon'ble Tribunal is justified in upholding the decision of CIT(A) in deleting the addition of Rs.5,25,000/- made on account of estimation of profit on the suppressed sales without appreciating the fact that the sales were not recorded in the books of account and even after the stock has been sold out?"

3. Mr. Mehta, learned Advocate for the appellant-revenue, submitted that the CIT(A) as well as the Tribunal failed to appreciate the material on record and thereby committed a grave error in passing the impugned order. He submitted that the the Tribunal ought to have appreciated the fact that the statement of stock submitted to the bank contained less stock, then, the stock shown in the books of accounts. He, hence, submitted that the Tribunal ought to have held that there was purchase made by the assessee from unaccounted source. Therefore, he prayed that the appeal be allowed.

4. Heard, Mr. Mehta, learned Advocate for the appellant-revenue, and perused the material on record as well as the orders passed by the

CIT(A) and the Tribunal.

5. Before proceeding with the matter, here, it would be relevant to refer to a decision of this Court in "***CIT, AHMEDABAD-III VS. RIDDHI STEEL AND TUBES (P.) LTD.***", [2013] 40 taxmann.com 177, wherein, the AO made certain additions to the income of the assessee, therein, for the A.Y.-2009-10, by invoking the provisions of Section 69B of the Act, on the ground that there was difference in quantity and the value of stock shown in books as against the stock shown to the Bank. In that case, this Court found that the assessee had shown inflated value of stock and had also explained the value as well as the quantity aspect satisfactorily. Under the circumstances, this Court held that the addition to income made by AO was not justified.

6. In the case on hand also, the case of the assessee was selected for scrutiny, during which the concerned AO found that the stock statement given by the assessee to the Bank and the actual stock lying with it was not tallying. The CIT(A) in its order recorded that the assessee had shown processed stock in the Books of Account for Rs.91.76/- for June & July, 2003, Rs.91.74/- lacs in August, 2003 and Rs. 91.76/- lacs in September and October, 2003. The CIT(A),

further, recorded that during the course of assessment, the assessee produced before AO all the details of opening stock, purchase and sales made by it etc. and the same were neither disputed nor any discrepancy was found, therein. Apart from that the AO did not produce any material to show that the assessee had made purchases out of undisclosed income. It is not the case of the revenue or for that matter AO that the Bank had physically verified the stock lying with the assessee. On the contrary, from a perusal of the assessment order, it transpires that the assessee had shown more stock in books than in the statement submitted to the Bank. We are, therefore, of the opinion that the CIT(A) as well as the Tribunal committed no error in passing the impugned order.

7. In the result, this appeal fails and stands ***DISMISSED***, as being without merit. The question of law is answered in favour of the assessee and against the revenue, accordingly. No order as to costs.

(K.S.JHAVERI, J.)

(K.J.THAKER, J)

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