

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 708 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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GUJARAT PETROSYNTHESIS LIMITED....Appellant(s)

Versus

ADDITIONAL COMMISSIONER OF INCOME TAX....Opponent(s)

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Appearance:

MRS SWATI SOPARKAR, 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

Date : 05/11/2014

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. Being aggrieved and dissatisfied by the order dated 29.11.2004 passed by the Income Tax Appellate Tribunal, Ahmedabad Bench being ITA No. 15/Ahd/2003 for the assessment year 1999-2000, the appellant has preferred the present appeal.

2. This appeal was admitted by this Court for determination of the following questions of law:

“(i) Whether on the facts and in the circumstances of the case, the Income – tax Appellate Tribunal was right in law in holding that the compensation received by the appellant from the Insurance Company on account of destruction of Wind Mill was taxable under Section 50 of the Income-Tax Act, 1961?”

“(ii) Whether on the facts and in the circumstances of the case, the provisions of Section 41(2) of the Income Tax Act, 1961 are applicable?”

3. The assessee, engaged in the manufacturing of petrochemicals and job work, filed original return of income on 30.12.1999 disclosing total income at Rs. 1,95,54,060/-. The assessee, thereafter filed revised return on 27.11.2000

and disclosed revised income at Rs. 2,23,68,340/-. The Assessing Officer assessed the total income of the assessee at Rs. 56939830/-. The assessee filed appeal before the CIT(A) challenging the same. The CIT(A) partly allowed the appeal filed by the assessee but sustained the addition made by the AO though on different ground. The assessee further appealed before the Tribunal and the Tribunal confirmed the addition made by the CIT(A).

4. Mr. S.N. Soparkar, learned Senior Advocate appearing for the appellant – assessee has drawn the attention of this Court to the circular no. 772 dated 23.12.1998 and the provisions of Sections 32, 41(2) and 50. He submitted that the Tribunal has erred in law in holding that the compensation received by the appellant on account of depreciation of Wind Mill from the Insurance Company was fully taxable u/s 50 of the Act.

4.1 Mr. Soparkar submitted that the Tribunal erred in law in not appreciating that section 45(1)(A) which could have treated such transaction as transfer for the purpose of capital gains tax came into the statute book only with effect from 01.04.2000 and therefore for the year under consideration such compensation could not have been taxed u/s 50 of the Act.

4.2 Mr. Soparkar contended that the Tribunal has erred in law in not following the decision of the Madras High Court in the case of Neelamal Agro Industries Limited vs. CIT reported in 259 ITR 651, reliance on which is placed by Mr. Soparkar in the present case.

5. Mr. Parikh, learned advocate appearing for the revenue supported the impugned orders passed by the Tribunal as well as the CIT(A) and submitted that the same having been passed after considering the facts on record, do not call for any interference by this Court.

6. Having heard learned advocates for both the sides and having gone through the records of the case, we are of the opinion that the question no. 1 is directly governed by the decision of the Madras High Court in the case of Neelamal Agro Industries Ltd. (supra). The Madras High Court in the said decision has held that when a thing was destroyed by fire the capital asset was no longer available for being owned, used or enjoyed by anyone. With the destruction of the asset, the rights of the assessee in that asset also would be destroyed. The destruction of such rights in an asset consequent upon the assets ceasing to exist was a situation which was not contemplated either in the definition of "transfer" or in the charging section and therefore the assessment as capital gains liable to tax arising out of the compensation amount received under the insurance on account of damage was not valid in law.

6.1 In fact the Act inserted section 50A to provide for the working of the cost of acquisition for the purposes of computation of capital gains in respect of such assets. It has been provided that where the capital asset is an asset in respect of which a deduction on account of depreciation under clause (i) of sub-section (1) of section 32 has been obtained by the assessee in any previous year, the provisions of sections

48 and 49 shall apply subject to the modification that the written down value as defined in clause (6) of section 43 of the asset as adjusted shall be taken as the cost of acquisition of the asset. We therefore answer question no. 1 in the negative.

7. So far as question no. 2 is concerned, we are of the opinion that the Tribunal committed an error in applying provisions of section 41(2) of the Act. Sub-section (2) in Section 41 was inserted in the Act to provide that where the moneys payable in respect of such assets together with the amount of scrap value if any exceeds the written down value so much of the excess as does not exceed the difference between the actual cost and the written down value shall be chargeable to income – tax as income of the business of the previous year in which the moneys payable become due.

7.1 Section 32 of the Act was amended the Amendment Act to provide for allowance of depreciation in the case of assets of an undertaking engaged in generation or generation and distribution of power on straight line method. Section 41 was amended to provide for computation of depreciation and also the amount chargeable to income tax when such an asset is sold, discarded, demolished or destroyed in the previous year.

7.2 The Tribunal has committed an error in upholding the conclusions of the CIT(A) after taking into consideration the facts and law which are not emanating from the orders of the lower authorities. The Tribunal ought not to have invoked the provisions of section 41(2) in the present proceedings . Considering the provisions of the Act and the materials on

record, we think it fit to answer the issues in favour of the assessee and against the revenue.

8. In the premises aforesaid, the impugned order passed by the Tribunal is modified. The questions raised for determination in the present appeals are answered in the negative and in favour of the assessee. Appeal is allowed to the aforesaid extent.

(K.S.JHAVERI, J.)

(K.J.THAKER, J)

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