IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 279 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MR.JUSTICE Z.K.SAIYED Sd/-

===

1 Whether Reporters of Local Papers may be allowed to see the judgment ? NO

2 To be referred to the Reporter or not ? NO

3 Whether their Lordships wish to see the fair copy of the judgment ? NO

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 ? NO

5 Whether it is to be circulated to the civil judge ? NO

===

SANJAY OILCAKE INDUSTRIES - Applicant(s)
Versus
COMMISSIONER OF INCOME-TAX - Respondent(s)

===

Appearance :
MRS SWATI SOPARKAR for Applicant(s) : 1,
MR BB NAIK for Respondent(s) : 1,

===

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MR.JUSTICE Z.K.SAIYED

Date : 04/03/2008

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1 This Reference, though shown to be at the

instance of the assessee-applicant in fact involves cross References for Assessment Years 1983-84, 1984-85 and 1985-86. In fact, there are as many as 11 References arising from 7 Appeals before the Tribunal. However, the Tribunal has drawn up a consolidated statement of case as broadly the controversy is divided into two issues.

2 In so far as the assessee-applicant is concerned the following six questions have been raised under section 256(1) of the Income Tax Act, 1961 (the Act) by Income Tax Appellate Tribunal, Ahmedabad Bench 'C'.

> *"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in rejecting the evidence in the form of certificates and statements filed during the course of assessment proceedings ?*
>
> *(2) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the purchases of tins plates for manufacture of this were not made on the basis of weight but were made on the basis of number of component parts?*
>
> *(3) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the value of 4266 tins in A.Y. 1983-84 and the value of 3012 tins in A.Y. 1984-85 was to be added in the income of the assessee ?*
>
> *(4) Whether on the facts and in the circumsmtances of the case, there was evidence to justify the finding of the Tribunal that*

there was suppression of production of 4266 tins in A.Y. 1983-84 and 3012 tins in A.Y. 1984-85 by the assessee ?

(5) Whether on the facts and in the circumstances of the case, the Tribunal was justified in rejecting the evidence led by the appellant in support of his contention that the purchases were made on the basis of weight and not on the basis of numbers ?

(6) Whether on the facts and in the circumstances of the case, the conclusion drawn by the Tribunal against the appellant are perverse, in that, no reasonable person could have reached these conclusion on the basis of the evidence on the record of the case?"

3 It is an accepted position between the parties that the issue raised by the aforesaid six questions at the instance of the assessee stands concluded by a decision in this regard rendered in assessee's own case for Assessment Year 1982-83. In fact the Tribunal has followed its own order for Assessment Year 1982-83 in relation to this issue.

4 Hence, it is not necessary to set out the facts and contentions in detail. For the reasons stated in judgment rendered on 22.06.2005 in the case of *Commissioner of Income Tax Vs. Sanjay Oil Cake Industries (2005) 197 CTR (Guj.) 520,* the aforesaid six questions referred at the instance of the assessee

are answered in the Negative i.e. in favour of the assessee and against the revenue.

5 In relation to the second issue both the assessee and revenue are in cross References. The Tribunal has raised and referred the following questions for the opinion of this Court.

"<u>At the instance of Assessee</u>:

<u>Asstt. Years:- 1984-85 and 1985-86</u> :

(1) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee had inflated the prices to the extent of 25% for purchases from the four parties (referred to in the order relating to A.Y. 1984-85 and six parties referred to in the order relating to A.Y.1985-86) and was justified in directing for the disallowance of 25% of purchases from the four parties?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the aforesaid parties had become conduit pipes between the asessee and the sellers of the raw materials ?

<u>At the instance of Revenue</u> :
<u>[For Asstt. Year :- 1984-85]</u>

(3) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in confirming the order made by the CIT(A) whereby he had confirmed the addition to the extent of 25% of the

amounts claimed in respect of bogus and sham purchases?

<u>Asstt. Year :1985-86</u> :
(4) Whether the Appellate Tribunal was right in law and on facts in confirming the order made by the CIT(A) whereby he had confirmed the addition to the extent of 25% of the amounts claimed in respect of bogus and sham purchase?"

6 The facts in relation to these questions have been summarised by the Tribunal in the statement of case as under :

"7. During the asstt. year 1984-85 the assessee had made purchases of oilcake from the following parties:

1	M/s.Shyam Inds. Rajkot	Rs. 8,11,776/-
2	M/s.Sailesh Inds. Junagadh	Rs. 7,94,078/-
3	M/s.Ganesh Inds. Morvi	Rs.12,85,625/-
4	M/s.Geeta Inds. Keshod	Rs. 2,08,732/-
		Rs.41,00,211/-

During the asstt.year 1985-86 the assessee had made purchases of oilcake from the following parties:

1	Ganesh Industries, Morvi	Rs.2,46,955/-
2	Shailesh Inds.Junagadh	Rs. 17,578/-
3	Shyam Industries, Rajkot	Rs.4,28,926/-
4	Geeta Industries, Keshod	Rs.3,47,762/-
5	Lucky Industries, J'gadh	Rs.1,27,321/-
6	Jagdamba Indus., Morvi	Rs. 67,889/-

Rs.12,90,431/-

The Assessing Officer subjected to verification the above noted parties from whom the purchases had been allegedly made as he had information that these purchases were Hawala entries. It was found that these parties were not traceable. The assessee gave full address of the parties but there was no success in tracing out the parties. Some brokers were produced by the assessee through whom alleged purchases had been made and they confirmed before the ITO that they acted as brokers between the assessee firm and the above noted parties. It was submitted by the assessee that the payments for the purchases were made through Account Payee Cheque and it was found that the amounts were credited on account of cheques of the assessee firm and they were being withdrawn by some unknown person whose address or whereabouts could not be known. From the inquiries made, the Assessing Officer concluded that the above noted parties were bogus parties and the alleged purchases made from them were bogus. He accordingly added the amounts of Rs.41,00,211/- for AY 1984-85 and Rs.12,90,431/- for A.Y.1985-86."

7 The assessee carried the matter in Appeal before the Commissioner (Appeals). The Appellate Authority considered the evidence produced before him and

came to the conclusion that the purchases shown by the assessee were genuine in as much as the details furnished by the assessee establish the vehicles in which the goods were brought to the premises of the assessee, the total quantity of the goods received by the assessee, the consumption of such goods by the assessee after reflecting the same in the stock book production of oil and sales thereof, and accounting of the profits in the Books of Accounts regularly maintained by the assessee. However, the Commissioner (Appeals) accepted the finding of the Assessing Officer to the extent that the four parties for A.Y.1984-85 and six parties for A.Y.1985-86 from whom the goods were shown to have been purchased were not traceable and hence, admittedly, the goods in the form of raw materials were purchased at a price which was lower than the market price, that no purchase bills at the said price were available, and accordingly, apparent sellers were providing accommodation entries to the assessee so as to enable the assessee to enter the goods purchased from third parties in the regular Books of Account. Accordingly, Commissioner (Appeals) came to the conclusion that 25% of the value of the purchase price could not be treated as genuine, or in other words,the purchase price to the extent of 25% was inflated and hence the addition made by the Assessing Officer was accordingly restricted to 25% of the amount paid to the parties from whom the Assessing Officer had disallowed the entire purchases.

8 Being aggrieved with the order made by Commissioner (Appeals) both the Revenue and the assessee approached the Tribunal with cross Appeals. The Tribunal after hearing both the sides confirmed the order made by Commissioner (Appeals). The assessee,feeling aggrieved moved the Tribunal by way of Miscellaneous Application seeking recall/modification of the order made by the Tribunal on the ground that the Tribunal had failed to consider various pieces of evidence enumerated in the application moved by the assessee. The Tribunal vide its order dated 29.09.1994 rejected the application moved by the assessee holding that there was no apparent error on record which would permit the Tribunal to undertake review of its own order. That

in fact, the Tribunal had duly considered all the papers/documents filed before the Tribunal both by revenue and the assessee and the Tribunal was not in a position to discuss each and every line of the Paper Book in the body of the order.

9 Mrs. Swati Soparkar, learned Advocate appearing on behalf of the assessee submitted that various pieces of documentary evidence on which reliance had been placed and which were forming part of the Paper Book filed before the Tribunal were not considered in proper perspective by the Tribunal. That there was no material before the Tribunal for upholding the addition to the extent of 25% of the value of the purchases, considering the evidence in form of comparative charts filed by the assessee wherein it was shown that the assessee had received similar raw materials in similar manner from other parties and had paid the same purchase price; secondly the charts also reflected purchases by persons other than the assessee from third parties engaged in similar line of business reflecting the same purchase price. It was contended that on the basis of the aforesaid

pieces of evidence no ground was made out for retention of addition to the extent of 25% of the value of purchase. That once the Tribunal had found that purchases were genuine, goods had been received by the assessee, consumed and sale price recorded in books there was no occasion to make any addition on an assumption. That in fact there was no evidence before the Tribunal to uphold the findings of Commissioner (Appeals) that 25% of the total purchase price was inflated purchase price in light of the evidence produced by the assessee. The learned Advocate also referred to various pieces of evidence to show that the sellers had obtained sales tax registration number, payment had been made by A/c. Payee Cheques by the assessee etc., to submit that not a single piece of evidence had been considered or found to be false by the Tribunal so as to warrant any addition.

10 Mr. B.B.Naik, learned Standing Counsel appearing for Revenue submitted that the order made by the Assessing Officer was a detailed order. That for the reasons assigned by the Assessing Officer the

Tribunal was not justified in holding the purchases to be genuine and granting relief to the extent of 75% without any basis.

11 Having heard the learned Advocates appearing for the respective parties it is apparent that no interference is called for in the impugned order of Tribunal dated 29.04.1994 read with order dated 29.09.1994 made in Miscellaneous Application. In the principal order the Tribunal has recorded following findings :

> *"8.3. We have considered the rival submissions and perused the facts on record. In our opinion the action of the CIT(A) confirming 25% of the amounts claimed is fair and reasonable and no interference is called for. The CIT(A) has gone through the purchase prices of the raw material prevalent at the time and rightly came to the conclusion that the disallowance to the extent of 25% was called for. It is established that the parties were not traceable; they opened the bank accounts in which the cheques were credited but soon thereafter the amounts were withdrawn by bearer cheques. That fairly leads to the conclusion that these parties were perhaps*

creation of the assessee itself for the purpose of banking purchases into books of accounts because the purchases with bills were not feasible. Thus the above noted parties become conduit pipes between the assessee firm and the sellers of the raw materials. Under the circumstances, it was not impossible for the assessee to inflate the prices of raw materials. Accordingly an addition at the rate of 25% for extra price paid by the assessee than over and above the prevalent price is fair and reasonable and we accordingly confirm the finding of CIT(A)".

12 Thus, it is apparent that both Commissioner (Appeals) and the Tribunal have concurrently accepted the finding of the Assessing Officer that the apparent sellers who had issued sale bills were not traceable. That goods were received from the parties other than the persons who had issued bills for such goods. Though the purchases are shown to have been made by making payment thereof by Account Payee Cheques, the cheques have been deposited in Bank Accounts ostensibly in the name of the apparent sellers, thereafter entire amounts have been withdrawn by bearer cheques and there is no trace or identity of the person withdrawing the amount from

the bank Accounts. In light of the aforesaid nature of evidence it is not possible to record a different conclusion, different from one recorded by Commissioner (Appeals) and the Tribunal concurrently holding that the apparent sellers were not genuine, or were acting as conduit between the assessee firm and the actual sellers of the raw materials. Both Commissioner (Appeals) and the Tribunal have therefore come to the conclusion that in such circumstances, the likelihood of purchase price being inflated cannot be ruled out and there is no material to dislodge such finding. The issue is not whether the purchase price reflected in the Books of Accounts matches the purchase price stated to have been paid to other persons. The issue is whether the purchase price paid by the assessee is reflected as receipts by the recipients. The assessee has, by state of evidence available on record, made it possible for the recipients not being traceable for the purpose of inquiry as to whether the payments made by the assessee have been actually received by the apparent sellers. Hence, the estimate made by the two Appellate Authorities does not warrant interference.

Even otherwise, whether the estimate should be at a particular sum or at a different sum, can never be an issue of law.

13 In the aforesaid set of facts and circumstances of the case, the impugned order of the Tribunal is an order which is made in accordance with law and does not require any interference. The questions referred at the instance of the assessee as well as revenue are therefore answered in the affirmative i.e. in favour of the revenue and against the assessee in relation to the questions at the instance of the assessee, and in favour of the assessee and against the revenue in relation to the questions at the instance of the revenue.

14 The Reference stands disposed of accordingly. There shall be no order as to costs.

Sd/-
(D.A.Mehta, J.)
Sd/-
(Z.K. Saiyed, J)

M.M.BHATT