

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 125 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

HONOURABLE MR.JUSTICE Z.K.SAIYED

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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 - Applicant(s)

Versus

DIGVIJAY CEMENT CO.LTD. - Respondent(s)

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Appearance :

MR MANISH R BHATT for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

and

HONOURABLE MR.JUSTICE Z.K.SAIYED

Date : 13/02/2008

ORAL JUDGMENT

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

1. This Reference raises following common question of law which has been referred by the Income-Tax Appellate Tribunal, Ahmedabad Bench-"A" under Section 256(2) of the Income-Tax Act, 1961 ("the Act") at the instance of the Commissioner of Income-tax.

"Whether the Appellate Tribunal is right in law and on facts in confirming the order made by the Commissioner of Income-tax (Appeals) rejecting the Application made by the Assessing Officer u/s. 154 for excluding interest on deferred payment on purchase of machineries in view of Explanation 8 to Section 43(1) with retrospective effect?"

2. The Assessment years are 1982-83 and 1983-84, but, for the Assessment year 1982-83 the controversy emanates from two different proceedings – one from the assessment under Section 143(3) of the Act which was carried in Appeal before the Commissioner (Appeals) and after an order was made by the Commissioner (Appeals) the Revenue invoked the provision of Section 154 of the Act seeking rectification of

Order which was rejected by the Commissioner (Appeals); the second emanating from exercise of powers under Section 154 of the Act by the Assessing Officer himself. However, the issue in all the three Appeals, before the Tribunal, relates to one point, namely, whether it was open to the Assessing Officer to invoke the provision of Section 154 of the Act and exclude interest on deferred payment towards purchase of machineries in view of Explanation-8 to Section 43(1) of the Act.

3. Heard Mr. M.R. Bhatt, learned Senior Standing Counsel for the applicant – Revenue. Though served, there is no appearance on behalf of the respondent – assessee.

4. The fact of the matter is that rectification proceedings were undertaken by the Assessing Officer on 1.7.1988 by placing reliance on Explanation – 8 to Section 43(1) of the Act which was inserted by Finance Act, 1986 with retrospective effect from 1.4.1974 to withdraw

depreciation and investment allowance on the component of interest which had been capitalized. The assessee resisted the action by placing reliance on the decision of Madras Bench of the Tribunal in the case of **INDIA PISTONS REPCO LTD. v/s. INSPECTING ASSISTANT COMMISSIONER**, which was rendered on 14.1.1988, wherein identical issue had been decided in favour of the assessee. The Assessing Officer did not accept the contention of the assessee that the issue was debatable in nature and in light of two contrary views, in relation to the same provision, Section 154 of the Act was not applicable.

5. The assessee carried the matter in Appeal before the Commissioner (Appeals), who accepted the submissions of the assessee and held that rectification was not permissible under Section 154 of the Act considering the fact that the issue was debatable in nature. The Tribunal vide impugned order dated __.12.1994 up-held the order of Commissioner (Appeals) by placing

reliance on the Apex Court's decision in the case of **T.S.BALARAM, INCOME-TAX OFFICER, COMPANY CIRCLE-IV, BOMBAY v/s. VOLKART BROTHERS & OTHERS**, reported in 82 ITR 50.

6. In light of the aforesaid decision the day when rectification proceedings were undertaken by the Assessing Officer the Tribunal's decision rendered by Madras Bench was available and was expressing a contrary view in relation to the same provisions and hence the view expressed by the Commissioner (Appeals) and the Tribunal concurrently, that the Issue, being debatable, cannot form subject matter of rectification proceeding merits acceptance in light of settled legal position. The Apex Court has consistently held that where in relation to interpretation of a provision there are conceivably two opinions rectification cannot be resorted to. In the circumstances, the Tribunal was justified in confirming the order made by the Commissioner (Appeals) rejecting the Application made by the Assessing Officer under Section 154 of the Act

for excluding the interest on deferred payment on purchase of machineries for the purposes of calculating the actual cost for computing allowable depreciation and investment allowance. The question referred for the opinion of this Court is, therefore, answered in affirmative i.e. in favour of the assessee and against the Revenue.

7. Reference stands disposed of accordingly with no order as to costs.

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(D.A.MEHTA, J.)

THE HIGH COURT
OF GUJARAT

(Z.K.SAIYED, J.)

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