

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 109 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

GURUBACHHAN SINGH J.JUNEJA - Respondent(s)

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Appearance :

MR BB NAIK for Applicant(s) : 1,
2MR MANISH J SHAH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

and

HONOURABLE MR.JUSTICE Z.K.SAIYED

Date : 12/02/2008

ORAL JUDGMENT

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

1. Income-Tax Appellate Tribunal, Ahmedabad Bench "C" has referred the following question for the opinion of this Court under Section 256(1) 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 deleting the addition of Rs.10,85,003/- made on account of unaccounted cash sales ?"

2. The Assessment Year is 1984-85. The relevant accounting period being year ended on 30th June, 1983. The assessee, an individual, is engaged in business of trading in Tyres under the name and style of "M/s. Punjab Tyres". Search proceedings under Section 132 of the Act were carried out on 6th and 7th September, 1984 at the residential and business premises of the assessee. In the course of search, various Books of Accounts and documents were seized. Annexures "C/4 to C/15" were some of the loose sheets which were seized during the course of Section 132 proceedings and the said sheets reflected sales made on various dates for the period from 15.7.1983 upto the end

of June, 1984. The sales so recorded were effected by M/s. Punjab Tyres as well as M/s. Paul Tyres (a proprietary concern of one Shri Jitendra Pal Singh, son of the assessee). The loose sheets were examined and tallied by the Inspector of the Department and it was found that for the period up to 31st March, 1984 sales to the extent of Rs.10,85,003/- were not found in the Books of Accounts of either Concern. After issuing Show Cause Notice and considering the reply filed by the assessee, the Income-tax Officer did not agree with the assessee's explanation and made addition of Rs.10,85,003/-, being the value of unaccounted sales by observing as under :

“There assessee's explanation as regards the difference of sales not recorded in the books of accounts is not convincing because for each sale entry in the loose sheets there must be corresponding entry in the regular books of accounts. Besides each sale which are found in the cash book might not have been entered in the loose sheets and have been directly recorded in the books of accounts. In the circumstances it is not possible to give any relief for unaccounted

cash sales found. The entry in the unaccounted sales of Rs.10,85,003/- are included in the total income of the assessee."

3. The assessee carried the matter in Appeal before the Commissioner (Appeals), who, vide order dated 26th August, 1987, partly allowed the Appeal by holding as under :

"The ITO's finding that the sales in the regular books of accounts might not have been entered in the loose sheets is based only on surmises. The ITO's presumption of ticked or unticked as well as rounded or unrounded sales transaction has no valid and tenable basis. In this background, I am inclined to accept the contention of the appellant to a major extent. The addition made is deleted but I sustain the G.P., addition on difference of sales of Rs.2,43,339/-"

4. The Revenue, being aggrieved with the order of Commissioner (Appeals) carried the matter before the Tribunal. At the time of hearing there was difference of opinion between the two Members of the Tribunal. Ultimately, the matter was

referred to 3rd Member of the Tribunal, who agreed with the view adopted by the Accountant Member. The Tribunal held that the assessee could not be taxed on the entire amount of Rs.10,85,003/-, but, was liable to be taxed only on the gross profit earned on the said sales. The basis of this finding is the fact that all the purchases are from reputed companies and/or their dealers and such purchases are fully vouched.

5. Heard Mr. B.B.Naik, learned Standing Counsel for the applicant – Revenue and Mr. M.J.Shah, learned Advocate for the respondent – assessee. Mr. Naik has not been able to dislodge the findings recorded by the Tribunal that the Revenue had not proved, by bringing any material on record, that the assessee had made any investment to make the alleged unaccounted sales.
6. Hence, in absence of any material on record to show that there was any unexplained investment

made by the assessee which was reflected by the alleged unaccounted sales the finding of the Tribunal that only the gross profit on the said amount can be brought to tax does not call for any interference. The Tribunal was, therefore, justified in deleting the addition of Rs.10,85,003/- made on account of unaccounted cash sales.

7. The question referred for the opinion is, therefore, answered in the affirmative i.e. in favour of the assessee and against the Revenue.
8. Reference stands disposed of accordingly. There shall be no order as to costs.

THE HIGH COURT
OF GUJARAT

(D.A.MEHTA, J.)

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(Z.K.SAIYED, J.)

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