IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 80 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
GANDHINAGAR BOTTLING PVT.LTD. - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
MR SN SOPARKAR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

and

HONOURABLE MR.JUSTICE Z.K.SAIYED

Date : 29/01/2008

ORAL JUDGMENT

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

1. The Income Tax Appellate Tribunal, Ahmedabad Bench-C, has referred the following question at the instance of Revenue under section 256(1) of the Income Tax Act, 1961 ('the Act').

1. “Whether, the Appellate Tribunal is right in law and on facts in directing the A.O. To grant benefit of carry forward of loss, when the return was filed late, on a presumption on the part of the assessee that extention of time sought by it might have been granted by the department ?”

2. The assessment year is 1985-86 and the relevant accounting period is 31.12.1984. The assessee claimed benefit of carry forward of loss in the return of Income Tax filed by the assessee but the same was not allowed to be carried forward as according to the Assessing Officer the return had not been filed on or before the statutory date for filing the return of Income. The assessee succeeded in appeal before the first Appellate Authority, namely Commissioner, (Appeals). The Tribunal dismissed the second appeal preferred by the Revenue.

3. Heard Mrs M.M. Bhatt learned Standing Counsel for the applicant – Revenue and Mrs. S.A. Soparkar for the respondent – assessee. It is an admitted position between the parties that the issue raised by

the question referred stands answered by the judgment of this Court in the case of **Mehsana Ice and Cold Storage P. Ltd. vs. Commissioner of Income Tax,** reported in **(2005) 275 ITR 601** as well as the decision in the case of **Commissioner of Income Tax vs. Swastik Sanitary Works Ltd.,** reported in **(2006) 286 ITR 544.**

4. The relevant dates have been recorded by the Tribunal in the statement of case as under:

> "As regards question No. 2, the facts are that the assessee filed return declaring loss on 25th November, 1985, whereas, the due date for filing of the return under sec. 139(1) was 30th June, 1985. As the return was not filed within the statutory period, the business loss determined by the A.O. Was not allowed to be carried forward. On appeal, it was contended that the assessee has made an applicatyion on 27th June, 1985 seeking time for filing of the return upto 30th September, 1985. Another application was made on 25th September, 1985 seeking extention of time upto 31st December, 1985. The assessee did not receive any intimation from the department about the fate of the application filed. The assessee, therefore, presumed that is request for extention of time was acceded to. Reliance was placed on the decision of the Hon'ble Gujarat High Court in the case of Gordhanbhai Jethabhai 142 ITR 84. The first appellate authority on these facts directed the A.O. To grant benefit of carry forward of loss. The Tribunal on second appeal, upheld the order of the first appellate authority."

5. Applying the ratio of the aforesaid decisions of this Court, it is apparent that the extention

applications filed by the assessee were neither granted nor rejected and hence the assessee was entitled to presume that the applications for extention of time had been granted. The return of Income has been filed within the extended period. Hence, the assessee was entitled to carry forward the computed business loss.

6. The Tribunal was, therefore, right in law in directing the Assessing Officer to grant benefit of carry forward of loss. The question referred to this Court for opinion is, therefore, answered in negative, that is, in favour of assessee and against the Revenue. The Reference stands disposed of accordingly with no order as to costs.

(D.A. MEHTA, J.)

(Z.K. SAIYED, J.)

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