IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 117 of 2007

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COMMISSIONER OF INCOME TAX - Appellant(s)
Versus
M/S. JAYENDRAKUMAR HIRALAL - Opponent(s)

===

Appearance :
MR MANISH R BHATT for Appellant(s) : 1,
None for Opponent(s) : 1,

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CORAM : HONOURABLE THE CHIEF JUSTICE Y.R.MEENA

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 20/11/2007

ORAL ORDER

The following questions have been proposed for the admission of this appeal:-

> "(A) Whether the Appellate Tribunal is right in law and on facts in confirming the order passed by the CIT (A) deleting the disallowance of Rs. 24,22,063/- paid to Green Environment Cooperative Society on account of contribution for common effluent treatment plant?
>
> (B) Whether the Appellate Tribunal is right in law and on facts in not appreciating that the above payment was penal in nature and hence not allowable?
>
> © Whether the Appellate Tribunal is right in law and on facts in not appreciating that expending the above amount the assessee got an enduring benefit and, therefore also, the said payment was not allowable on revenue account?"

While considering the issues raised in these questions, the Tribunal has considered these issues as under:-

"After hearing both the parties, we find the matter stands covered in favour of the assessee by decision of the Tribunal in the case of JCIT Vs. Deversons Industries Ltd. in ITA No. 2008/Ahd/1999, wherein the Tribunal allowed the claim of the assessee by observing vide discussion in paragraph 14 of its order, which reads as under:-

"14. We take up the matter of examination of Rs. 3,70,000 first. The obligation of the assessee, as an industrial unit, under the law, being only to treat the effluent to the required degree prior to its discharge interest public drainage, the contribution made by it, on the direction of the Hon'ble Gujarat High Court, to contribute towards the laying of the net-work of pipelines required for the conveyance of the discharge, in view of the high cost the project entail, being outside the financial capacity of the relevant authority, being AMC, Ahmedabad, is only an obligation that it assumes as a responsible citizen, as in its absence, the entire scheme, as sought to be put in place by the said court, to alleviate a continuing hardship/problem, would become unworkable/unfeasible. That, it may have also been motivated, as a part of the group of participating industrial units of the area, to buy peace with the State Industries, or the Pollution Control, Department, or to safeguard themselves from the penal consequences that may visit on account of their violation of the law in the past, though relevant from business stand-point, are irrelevant to the purpose of the nature and scope of the obligation under the law. Rather, if at all, these considerations only go to support its (assessee's) argument of the said contribution being made only to protect its business as a ongoing entity, and thus, its business interest/profitability, with no concomitant financial benefit/interest, so that the expenditure is only a revenue incurred wholly and exclusively for its business. As such, we are inclined to agree with the arguments of the learned A.R that the said expenditure is revenue in nature, the only advantage the assessee deriving from the said expenditure being avoidance of protracted litigation and enabling its smooth conduct, and thus, protecting its business profits and assets; it being not charged under law to do so, and thus, is a revenue expenditure allowable in full. In doing so, we are aware that the cost of the pipeline would also include that from the respective polluting unit to the common ETP, which, strictly speaking, lies in the area of responsibility of the discharging unit. However, considering the totality of the facts, where the cost arises only on account of the assessee agreeing, for various business reasons, to participate in a scheme framed by the Hon'ble High Court, as a remedy to a perpetual public hazard i.e. a social cause, the same would form a part and parcel of the envisage project, and thus, the entire expenditure incurred for the purpose of the conveyance of its discharge would be deductible. "

> 4. We find that facts and circumstances in the above case are similar to that of the present appeal under consideration. Therefore, respectfully following the above decision of the Tribunal, we hold that the CIT (A) was justified in allowing the claim of the assessee. His order is, thus, upheld."

The CIT (Appeals) as well as the Tribunal has held that assessee has made only a contribution to protect its business as an ongoing entity. Considering the concurrent findings of the CIT (Appeals) as well as the Tribunal, that the assessee has made only a contribution for laying down pipeline for the purpose of carrying effluent discharge, we see no merit in this appeal. The appeal stands dismissed.

(Y.R. Meena, C.J.)

(Smt. Abhilasha Kumari, J.)

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