

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
TAX APPEAL No. 1011 of 2011**

For Approval and Signature:

**HONOURABLE MR.JUSTICE V. M. SAHAI
HONOURABLE MR.JUSTICE N.V. ANJARIA**

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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-IV - Appellant(s)

Versus

TORRENT PHARMACEUTICALS LTD - Opponent(s)

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Appearance :

MS PAURAMI B SHETH for Appellant(s) : 1,
None for Opponent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE V. M. SAHAI
and
HONOURABLE MR.JUSTICE N.V. ANJARIA**

Date : 30/08/2012

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE N.V. ANJARIA)

The Revenue has preferred the present appeal under section 260A of the Income Tax Act, 1961 against the order dated 11.2.2011

of the Income Tax Appellate Tribunal Ahmedabad Bench 'C' in ITA No. 241 of 2008.

1.1 Following two questions are proposed by the appellant as substantial question of law :

“[A] Whether the Appellate Tribunal is right in law and on facts in deleting the disallowance out of garden expenses of Rs. 24,32,322/- by treating such expenditure as revenue expenditure?

[B] Whether the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to treat the expenditure of Rs. 28,14,355/- incurred on foreign registration fees as revenue expenses?”

2. We heard learned advocate Ms. Paurami B. Sheth, learned counsel for the appellant.

2.1 At the time of considering the return of income of the respondent-assessee in respect of Assessment Year 1999-2000, the Assessing Officer by his assessment order dated 29.12.2006 disallowed Rs. 24,32,322/- which was the amount debited by the assessee as garden expenses treating it to be a revenue expenditure. Secondly, the assessing officer disallowed Rs. 28,14,355/- as revenue expenditure being the amount with regard to the foreign registration fees. Against the said assessment order, the assessee preferred appeal before the Commissioner of Income Tax (Appeals) which came to be allowed on both the aforesaid counts.

3. For claiming garden expenses as revenue expenditure the explanation of the assessee was that the said expenditure was required to be incurred for gardening inside the factory premise so as to control the pollution. The CIT(A) observed that in the assessee's own case for the Assessment Year 2003-2004, he was given the benefit for such expenditure as revenue expenditure. In respect of the second disallowance, the CIT(A) was of the view that the registration fees in foreign countries for the purpose of export was paid on recurring basis depending upon validity of various registrations and the same would have to be repaid on expiry of registration. According to the CIT(A), the assessee was entitled to treat the said expenditure as revenue expenditure.

3.1 The department preferred an appeal against order of the CIT(A) which culminated into the impugned order. As far as the question of treating garden expenses is concerned, the Tribunal held that the issue was covered in favour of the assessee by its decision in assessee's own case in ITA No. 1347 of 2007 for the Assessment Year 2003-2004. The Tribunal relied on its own observations in para 29 of the judgment in the said appeal and accordingly confirmed the order of the CIT(A). With regard to foreign registration fees, the Tribunal concluded that said expenses were incurred for obtaining registration in the foreign country for marketing the products overseas, which was expenditure for sales promotions, without which the assessee

company would not have been able to market its product in the overseas market.

4. The Tribunal in the impugned order recorded the findings inter-alia as under :

“Further, these payments are made to drug regulatory authorities in various countries for the products market in the respective countries. Furthermore, these fees are to be paid on recurring basis depending upon the validity of the various registrations. The fees have been paid on expiry of the registration and out of total payment of Rs. 8,03,706/- is in respect of product registration in Poland. Likewise payments have been made in Vietnam, Russia, Ghana and China etc. We find that the exports over the years have increased from the export sale of Rs. 26 crores in financial year 1998-1999 to the exports have grown to Rs. 160 crores in financial year 2005-2006 an increase of more than 600%. Accordingly, these expenses are rightly allowed by CIT(A) and we confirm the same.”

5. The findings of the Tribunal are justified on both the issues. The garden expenditure was for the purpose of maintaining garden to control the pollution. The company had put up an affluent treatment plant and pollution used to generate because of release of pollutants. The maintaining a garden helped in controlling pollution arising from the pollutants. It cannot be gainsaid that the expenses for garden had nexus with business activity. It can well be treated for business purpose and can be claimed as revenue expenditure. Similarly the expenses for foreign country registration was for business purpose only, because the same helped the assessee in marketing its products in the foreign countries and promoting the sales.

6. For the aforesaid reasons, the Tribunal committed no error. Its findings are proper and in no way are perverse. No substantial

question of law arises for consideration.

7. This Tax Appeal is accordingly dismissed.

[V.M.SAHAI, J.]

[N.V.ANJARIA, J.]

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