

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL No. 84 of 2000****For Approval and Signature:**

HONOURABLE MR.JUSTICE AKIL KURESHI
HONOURABLE MS.JUSTICE HARSHA DEVANI

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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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ASSTT. C.I.T. - Appellant(s)

Versus

S.K. PATEL FAMILY TRUST - Opponent(s)

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Appearance :

MR MR BHATT, SR. ADVOCATE with MRS MAUNA M BHATT for Appellant
MR SN SOPARKAR for Respondent

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MS.JUSTICE HARSHA DEVANI

Date : 19/06/2012

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. Revenue is in appeal against the judgement of the Income Tax Appellate Tribunal ("the Tribunal" for short) dated 8.3.2000. While admitting this appeal, by an order dated 20.9.2000, Division Bench of this Court had formulated the following two questions of law :

"[1] Whether the Appellate Tribunal is right in law and on facts in directing to allow depreciation under section 32 on plant and machinery relating to toilet soap unit, which were not put to use during the year?"

"[2] Whether the Appellate Tribunal is right in law and on facts in holding that if interest under section 234B is not levied specifically in the assessment order, the same cannot be charged in the demand notice?"

2. The appeal involves assessment year 1991-92. The respondent – assessee had claimed depreciation on plant and machinery installed in its toilet soap unit. The Assessing Officer on the premise that such plant and machinery was not put to use during the year under consideration, disallowed the assessee's claim of depreciation relatable to such plant and machinery. The assessee carried the matter in appeal. The Commissioner (Appeals) confirmed the view of the Assessing Officer. The matter was carried further in appeal before the Tribunal by the assessee. Before the Department as well as the Tribunal, the assessee had contended that the toilet soap was produced in the earlier years and for the plant and machinery in question, depreciation was also allowed in the earlier years. It was contended that since depreciation is to be calculated with reference to a block of assets, individual assets would lose its significance and such depreciation cannot be disallowed merely on the ground that temporarily such asset was not put to use during the year under consideration. The Tribunal

upheld the contention of the assessee and allowed the appeal making following observations :

"[15] After hearing both the parties and the evidence on record, we find that the legal issue in this case has been considered by the ITAT in the decision above quoted. We find force in the contention raised by the assessee especially in view of the fact that the assets in question were put to use in the earlier years and form part of block of assets and in view of the fact that the entire block of assets is to be considered for the purposes of applying the rate of depreciation subject to adjustment at the time of such asset being sold, demolished or destroyed as provided in sub-section (6) of section 43. Hence respectfully following the decision of the Tribunal in the case of Packwell Printers cited supra, we hold that the disallowance of depreciation is uncalled for. Accordingly, we reverse the orders of the authorities below on this point. Reliance in this connection is also placed on the decision of the Gujarat High Court in the case of Khimji Vishram and Sons v. CIT, 209 ITR 293 (Guj) which has been relied on by the Tribunal, Ahmedabad Bench "C" in the case of the very same assessee while disposing of the appeal for the A.Y. 1988-89 on a similar issue in ITA Nos.5218 and 5503/Ahd/91 and C.O. No.814/Ahd/95 dated 3.3.1999."

3. First question formulated by this Court pertains to this conclusion of the Tribunal. Having heard the counsel for the parties, we notice that the view of the Tribunal is fortified by the decision of Division Bench of this Court in case of **Commissioner of Income Tax v. Sonal Gum Industries**, reported in (2010) 322 ITR 542 (Guj). In the said case also, the revenue authorities sought to disallow depreciation on certain assets which had been allowed in the past on the ground that such assets were not actually put to use during the year under consideration. The Tribunal ruled in favour of the assessee and held that such depreciation was allowable. On further appeal,

the High Court confirmed the view of the Tribunal making following observations :

“5. It is not possible to find any legal infirmity in the aforesaid view adopted by the first appellate authority and confirmed by the Tribunal. In fact the assessment order itself reveals that it is not the case of the Assessing Officer that the assets were not put to use at all. Once the factory building is put to use it is not possible to restrict the depreciation on the said building by stating that only a portion thereof has been put to use. Similarly in relation to the block of assets, it is not possible to segregate items falling within the block for the purposes of granting depreciation or restricting the claim thereof. Once it is found that the assets are used for business, it is not necessary that all the items falling within plant & machinery have to be simultaneously used for being entitled to depreciation.”

4. In the result, question No.1 is answered in the affirmative, that is, in favour of the assessee and against the revenue.
5. Question No.2 pertains to demand of interest under section 234B of the Act when the same was not levied in the assessment order itself. The assessee contended that when there was no direction for collecting interest under any of the provisions in the assessment order itself, any demand for such interest thereafter would not be valid. The Tribunal upheld the contention of the assessee observing that in the assessment order, the Assessing Officer had not passed any specific order relating to interest. In fact, the order of assessment was silent about the charging interest under any section. The Tribunal relying on the decision of the Patna High Court in case of **Uday Mistanna Bhandar & Co. v. Commissioner of Income Tax**, reported in 137 CTR 376, held that the levy of interest was unwarranted.

6. Having heard the learned counsel for the parties, we find that the issue is squarely covered by the decision of the Apex Court in the case of **Commissioner of Income Tax and others v. Ranchi Club Ltd.**, reported in (2001) 247 ITR 209. In the said decision, the Apex Court held that in absence of any specific direction giving reference to the section charging interest in the assessment order, no interest can be levied through a notice of demand.
7. Counsel for the revenue, however, made faint attempt to contend that even though the order of assessment may not specify charging of interest under the provisions of the Income Tax Act, nevertheless if the computation sheet accompanying such an assessment order includes such demand, the notice for demand may still be valid. We would not like to express any opinion on such a contention since in the present case, no such facts have been presented before us. It was never argued before the Tribunal, nor any material is produced before us to hold that the computation sheet accompanying the assessment order provided for such interest. In absence of any factual matrix, we refrain from entertaining such a contention. In the result, question No.2 is answered in the affirmative, that is, in favour of assessee and against the revenue.

8. Tax appeal is dismissed.

[AKIL KURESHI, J.]

[HARSHA DEVANI, J.]

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