

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 540 of 2011

For Approval and Signature:

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

=====

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
?

=====

COMMISSIONER OF INCOME TAX-II - Appellant(s)

Versus

GUJARAT GAS CO LTD - Opponent(s)

=====

Appearance :

MRS MAUNA M BHATT for Appellant(s) : 1,
MR MANISH J SHAH for Opponent(s) : 1,

=====

CORAM : HONOURABLE MR.JUSTICE V. M. SAHAI

and

HONOURABLE MR.JUSTICE N.V. ANJARIA

Date : 14/06/2012

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE V. M. SAHAI)

We have heard Mr. M.R. Bhatt, learned senior counsel for the Revenue, in this Tax Appeal. This Tax Appeal has been filed by the Revenue on the following proposed substantial question of law:

“Whether the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to exclude the entire principal component included in the lease rent i.e. Rs.2,46,90,915/- as against Rs.1,29,04,015/- allowed by the Assessing Officer and thereby directing the Assessing Officer to assess the income below the returned income?”

2. The Department filed an appeal before the Tribunal against the order dated 05.09.2008 passed under Section 154 of the Income Tax Act by the CIT(A) directing the Assessing Officer to exclude the entire principal component included in the lease rent of Rs.2,46,90,915/- as against Rs.1,29,04,015/- allowed by the Assessing Officer. The Tribunal dismissed the appeal of the Department relying on its own decision in ITA No.2868 and 3572/Ahd/2007 dated 12.05.2009 relevant to Assessment Year 2001-02. Against the order of the Tribunal dated 15.09.2009, the Department filed two appeals before this Court on the ground that all the concerned authorities are bound to ensure that the order passed by them does not result in income falling below the returned income as per the ratio of the decision of the Apex Court in the case of **Goetz India Ltd. (CIT 284 ITR 323)**. This Court has dismissed both the Tax Appeals being Tax Appeal No. 953 of 2010 and Tax Appeal No.954 of 2010 by a common judgement dated 10.08.2011.

3. Relying on the earlier order of the Tribunal dated 15.05.2009, which has been affirmed by this Court on 10.08.2011, Income Tax Appellate Tribunal has decided the Revenue's appeal, and has rejected it. We do not

find any error in the order passed by the Income Tax Appellate Tribunal. The proposed question of law is concluded by the judgment of this Court and no substantial question of law arises for consideration of this Court. This Tax Appeal is accordingly dismissed.

(V.M. SAHAI, J.)

(N.V. ANJARIA, J.)

(SN DEVU PPS)

