IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 351 of 2011
With
TAX APPEAL No. 352 of 2011

==

COMMISSIONER OF INCOME TAX-II - Appellant(s)
Versus
GUJARAT MINERAL DEVELOPMENT CORPORATION LTD - Opponent(s)

==

Appearance :
MRS MAUNA M BHATT for Appellant(s) : 1,
None for Opponent(s) : 1,

==

CORAM : HONOURABLE THE ACTING CHIEF JUSTICE MR.BHASKAR BHATTACHARYA

and

HONOURABLE MR.JUSTICE J.B.PARDIWALA

Date : 01/05/2012

COMMON ORAL ORDER

(Per : HONOURABLE THE ACTING CHIEF JUSTICE MR.BHASKAR BHATTACHARYA)

This Appeal (Tax Appeal No.351 of 2011) under Section 260A of the Income Tax Act is at the instance of the Revenue and is directed against order dated September 17, 2010 passed by the Income Tax Appellate Tribunal, Ahmedabad Bench 'D' in ITA No.1181/Ahd/2007 for assessment year 2000-2001 by which the Tribunal dismissed the appeal preferred by the Revenue.

2. Being dissatisfied, the Revenue has come up with the

present appeal.

3. The following facts are not in dispute:-

3.1 The assessee preferred appeal before CIT (Appeals) against order passed under Section 154 of the Income Tax Act. The assessee's representative claimed that in the relevant appellate order the CIT (Appeals) while upholding the action of the Assessing Officer in holding lease transaction as not genuine, subsequently directed the Assessing Officer to eliminate the principal component included in the lease rentals. However, while giving effect to the order, the exclusion was restricted to depreciation disallowed and the appeal effect was not given. The CIT (Appeals) accepted the grievance of the assessee and directed the Assessing Officer to exclude as the transaction of leasing was treated as financial one. The Assessing Officer was directed to pass appropriate orders on due appreciation of elimination of principal component in full. It further appears that by order of the CIT (Appeals) for the same assessment year 2000-2001 dated November 11, 2004, the CIT (Appeals) accepted alternative argument of the assessee that only interest element of the same is required to be taxed excluding the principal amount recovered from GSRTC. The CIT (Appeals) followed the findings given in the order dated November 26, 2004 for the assessment year 1998-99.

3.2 In view of the above fact, the Tribunal below decided not to interfere with the order passed by the CIT (Appeals) and observed that what the CIT (Appeals) had earlier directed the Assessing Officer to do should have been complied with.

4. Mrs Bhatt, the learned advocate appearing on behalf of the appellant by relying upon the decision of the Supreme Court in the case of Goetze India Ltd. vs. Commissioner of Income Tax reported in (2006) 284 ITR 323 strenuously contended before us that the Tribunal below should have held that unless the assessee claimed the said deduction by way of filing revised return, there was no justification of granting the benefit conferred upon the CIT (Appeals).

5. We are, however, not at all impressed by the aforesaid submission of Mrs Bhatt. It is now settled law as reiterated by the Supreme Court in the case of National Thermal Power Company Ltd. vs. Commissioner of Income Tax reported in (1998) 229 ITR 383 that if it is found that a non-taxable item is taxed or permissible deduction is denied, there is no reason why the assessee should be prevented from raising that question before the Tribunal even if it was not earlier raised so long as the relevant facts are on record in respect of the item. In the case before us, in the past by way of proposition of law it has already been held that only interest element of the amount is required to be taxed excluding the principal amount recovered from Gujarat State Road Transport Corporation. Such being the position, there was no justification of granting the just relief which is claimed. For the purpose of giving the deduction claimed, no new investigation of fact is necessary. All the facts and materials are already on record.

6. Thus, we find that in the facts of the present case, the Tribunal below rightly dismissed the appeal preferred by the Revenue. We are quite conscious that the position would have been different if the basic material for claiming the deduction

was not available on record and in that case we would have accepted the contention of Mrs Bhatt.

7. We thus find that no substantial question of law is involved in this appeal and consequently the same is dismissed.

8. We find that similar question is involved in Tax Appeal No.352 of 2011 where same question relates to a subsequent assessment year. For the selfsame reasons indicated above, we consequently dismiss Tax Appeal No.352 of 2011.

(BHASKAR BHATTACHARYA, ACTING CJ.)

(J.B. PARDIWALA, J.)

zgs/-