IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 2291 of 2010

FOR APPROVAL AND SIGNATURE :
HONOURABLE Mr. JUSTICE M.R. SHAH
and
HONOURABLE Mr. JUSTICE B.N. KARIA
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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 or any order made thereunder ?	

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COMMISSIONER OF INCOME TAX-II....Appellant(s)
Versus
PARTH LABORATORIES PVT LTD....Opponent(s)
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Appearance :
Mr PRANAV G DESAI, ADVOCATE for the Appellant(s) No. 1
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CORAM: HONOURABLE Mr. JUSTICE M.R. SHAH
and
HONOURABLE Mr. JUSTICE B.N. KARIA
17th January 2017

ORAL JUDGMENT (PER : HONOURABLE Mr. JUSTICE M.R. SHAH)

1. Feeling aggrieved and dissatisfied with the *impugned* judgment and order dated 14th May 2010 passed by the Income Tax Appellate Tribunal, Rajkot Bench, Rajkot in I.T.A No. 1177/Rjt/2009 for A.Y 2006-2007, the Revenue has preferred the present Tax Appeal with the following proposed question of law :

> **"Whether the Appellate Tribunal is right in law and on facts in deleting the addition made by the Assessing Officer on account of suppressed sales and whether the order of Appellate Tribunal is *perverse* ?"**

2. Respondent-assessee filed return of income declaring total loss of Rs. 7,62,624/=. Subsequently, the case was selected for scrutiny assessment. The assessee was engaged in the business of manufacturing and selling of bulk drugs, intermediates and chemicals. During the year under consideration, the assessee shown total sales of Rs. 1,88,18,394/=, on which the gross profit declared was Rs. 33,04,290/=, which in terms of percentage comes to 17.56%. The

said gross profit declared was found to be lesser than the gross profit of 27.71% declared in the immediately preceding year on the sales of Rs. 2,14,06,161/=, on which the gross profit was declared as Rs. 59,30,736/= by computing the value of suppressed sales on the basis of consumption of various raw materials and production ratio.

3. Feeling aggrieved and dissatisfied with the assessment order and the order passed by the Assessing Officer in rejecting the book result and in making the addition of Rs. 2,65,93,526/= on account of suppressed sales, the assessee preferred an appeal before the learned CIT [A]. The learned CIT [A] deleted the additions made by the Assessing Officer on account of suppressed sales.

4. Feeling aggrieved and dissatisfied with the order passed by the learned CIT [A] in deleting the addition made by the Assessing Officer on suppressed sales, the Revenue preferred appeal before the learned Tribunal. By the *impugned* judgment and order, the learned

Tribunal dismissed the said appeal, confirming the order passed by the learned CIT [A] deleting the aforesaid addition on suppressed sales.

5. Feeling aggrieved and dissatisfied with the *impugned* judgment and order passed by the learned Tribunal, the Revenue has preferred the present Tax Appeal with the following proposed question of law :

> **“Whether the Appellate Tribunal is right in law and on facts in deleting the addition made by the Assessing Officer on account of suppressed sales and whether the order of Appellate Tribunal is perverse ?”**

6. Shri Pranav G. Desai, learned counsel appearing on behalf of the Revenue has vehemently submitted that in the facts and circumstances of the case, the learned Tribunal has materially erred in confirming the deletion made by the learned CIT [A] solely considering its earlier order passed with respect to the preceding years *ie.*, A.Y 2004-2005 and AY 2005-2006. It is submitted that the learned Tribunal has not properly

appreciated the fact that in the present case, considering the difference in the gross profit declared in the current year as well as declared in the immediate preceding year, the Assessing Officer rejected the book results and thereafter, on appreciation of the evidence with respect to consumption of raw-materials, etc., decided to make additions on account of suppressed sales. It is submitted that therefore the learned Tribunal ought not to have mechanically relied upon its earlier decisions with respect to AY 2004-2005 and AY 2005-06. It is submitted therefore when it was found by the Assessing Officer that there was a sharp fall in the gross profit from 27.71% in the AY 2005-2006 to 17.56% in the current year, and considering the raw material consumed to produce 1 kilogram of finished goods and thereafter, when the Assessing Officer was satisfied that there was suppressed sales and thereby addition was made, the same ought not to have been deleted by the learned Tribunal. Making the above submissions, it is requested by the learned counsel to admit the present Tax Appeal.

7. Heard Shri Pranav Desai, learned counsel appearing on behalf of the Revenue.

8. At the outset, it is required to be noted that while making the additions on account of suppressed sales arrived on the basis of consumption of various raw materials cum production ratio, the Assessing Officer as such considered the figures of raw materials consumed during A.Y 2005-2006 and thereafter due to decline in the gross profit, the Assessing Officer made addition on account of suppressed sales.

8.1 It is also required to be noted that similar addition was made in the earlier years *ie.*, AY 2004-2005 and AY 2005-2006 which reached upto the Tribunal and the learned Tribunal confirmed the order passed by the CIT [A] deleting the additions made on suppressed sales. The order passed by the learned Tribunal in the earlier years has been considered by the learned Tribunal in para 4 of its order.

9. Considering the aforesaid facts and circumstances,

when similar additions made by the Assessing Officer, which were on similar ground *viz.*, suppressed sales, came to be set-aside for A.Y 2004-2005 and AY 2005-2006 and considering the same, when learned Tribunal has deleted the addition of suppressed sales, it cannot be said that the Tribunal has committed any error. The findings recorded by the learned CIT [A], while making deletion are on appreciation of evidence and there was justification for decline in the gross profit in the earlier years, which also came to be considered by the learned Tribunal.

10. In view of the above and for the reasons aforestated, we see no reason to interfere with the impugned judgment and order dated 14th May 2010 passed by the Income Tax Appellate Tribunal, Rajkot. No question of law arises in the present Appeal. Hence, the present Tax Appeal deserves to be dismissed and is accordingly dismissed.

[M.R Shah, J.]

[B.N Karia, J.]

Prakash