IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 30 of 2017

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH **Sd/-**
and
HONOURABLE MR.JUSTICE B.N. KARIA **Sd/-**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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PR. COMMISSIONER OF INCOME TAX....Appellant(s)
Versus
PRAGATI INDUSTRIES....Opponent(s)

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Appearance:
MR SUDHIR M MEHTA, 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

Date : 23/01/2017

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

[1.0] Feeling aggrieved and dissatisfied with the impugned judgment and order dated 06.04.2016 passed by the learned Income Tax Appellate Tribunal, Ahmedabad (hereinafter referred to as “Tribunal”) in ITA No.1447/Ahd/2012 for AY 2009-10 by which the learned Tribunal has dismissed the said appeal preferred by the Revenue, the Revenue has preferred the present Tax Appeal with the following proposed substantial questions.

> *"(1) Whether on the facts and in the circumstances of the case and in law the ITAT is justified in deleting the addition of Rs.2,72,78,269/- made by the AO on the basis of the impounded document found during the survey proceedings ignoring that the primary onus to rebut the contents of the said document is on the assessee and the assessee has failed to discharge the onus?*
>
> *(2) Whether on the facts and in the circumstances of the case and in law the ITAT is justified in deleting the addition of Rs.14,88,789/- made by the AO on account of the difference in stock, without appreciating that the said addition was made on the basis of physical stock inventory taken on the date of survey and the stocks as per the books of account on the date of survey itself?"*

[2.0] Facts leading to the present appeal in nut-shell are as under:

[2.1] There was a survey action in the premises of the assessee on 16.09.2008and 17.09.2008. During the course of the survey statement of the managing partner of the assessee was recorded. The assessee filed a letter before the learned Additional Commissioner of Income Tax, Vapi offering a sum of Rs.1,10,00,000/- as the income for AY 2009-10 determining tax liability of Rs.37,38,900/-. He rightly paid the tax to the extent of Rs.7 lakh. However, subsequently, an affidavit was filed by the Assessing Officer on 07.12.2010 rebutting the statement recorded during the course of the survey action which was 449 days after the date of survey action carried out at the premises of the assessee. The Assessing Officer did not take cognizance of the affidavit holding that the same was an afterthought as the same was filed after a long gap of time. That during the survey some incriminating materials were collected /

impounded which included one paper of profit and loss account in which net profit was stated to be Rs.2,88,20,686.85 ps. On the said paper some figures were also stated by handwriting and profit was stated to be Rs.15,42,418/-. During the course of the assessement proceedings the assessee explained the said letter. However, going by what was stated in the said paper, the Assessing Officer made additions to the extent of Rs.4,94,77,160/- as against the income return of Rs.73,55,530/- and has refused to Rs.87,10,030/-. While passing the assessment order the Assessing Officer made an addition of Rs.2,72,78,269/- as undisclosed net profit. The Assessing Officer also made the addition of Rs.14,83,789/- on account of difference in stock.

[2.2] Feeling aggrieved and dissatisfied with the order passed by the learned Assessing Officer in making the addition of Rs.2,72,78,269/- as undisclosed net profit and in making addition of Rs.14,83,789/- on account of difference in stock, the assessee preferred appeal before the learned CIT(A). That the learned CIT(A) allowed the said appeal partly by deleting the addition of Rs.2,72,78,269/- made by the Assessing Officer on the basis of the impounded document found during the survey proceedings and made as undisclosed net profit. The learned CIT(A) restricted the addition to Rs.63,597/- on account of difference in stock and deleting the remaining addition made by the Assessing Officer on account of difference in stock.

[2.3] Feeling aggrieved and dissatisfied with the order passed by the learned CIT(A) in deleting the addition of Rs.2,72,78,269/- made by the learned Assessing Officer as undisclosed net profit and restricting the addition made by the learned Assessing Officer on account of difference in stock to Rs.63,597/- (from Rs.14,83,789/- as done by the learned Assessing Officer), the Revenue preferred appeal before the learned Tribunal. By impugned judgment and order the learned Tribunal has dismissed the said appeal which has given rise to the present appeal at the instance of the Revenue.

[3.0] We have heard Shri Sudhir Mehta, learned Counsel appearing on behalf of the Revenue at length.

[4.0] Shri Mehta, learned Counsel appearing on behalf of the Revenue has taken us to the findings recorded by the learned Assessing Officer made while making addition of Rs.2,72,78,269/- made as undisclosed net profit and while making the addition of Rs.14,83,789/- on account of difference in stock. We have considered the findings recorded by the learned CIT(A) as well as the learned Tribunal while deleting the addition as undisclosed net profit and while restricting the addition on account of the difference in stock to Rs.63,597/-.

[4.1] Now, so far as the question with respect to the addition of Rs.2,72,78,269/- made by the learned Assessing Officer as undisclosed net profit is concerned, the learned Assessing Officer has discussed the same in para 10A. The relevant discussion by the learned CIT(A) while deleting the aforesaid addition is in para 7 and more particularly in para 7.9. Para 7.9 of the order passed by the learned CIT(A) reads as under:

> *"7.9 I have carefully considered the findings of the AO and the detailed submissions made by the ld. AR. The fact is that the AO relied on a provisional P&L A/c. for a part of the year to make such huge addition. He has not brought any materials/evidence on record why the contention of the appellant was not acceptable. He has accepted the year ending P&L a/c and not doubted any expenditures what so ever claimed by the appellant but made such huge additions. The common sense is that whether the type of business carried on by the appellant can fetch such exorbitant N.P. At 46.34%. The clever thing the AO should have done was to draw a P&L A/c. as on the survey date after considering all income and expenditures. In this case no such attempt was made by the AO before making such addition. Looking to the nature of the business of the appellant, which is spread over different geographical area, it requires time to record accounting*

entries and the appellant could not record all the transactions as on 13.09.2008. Considering the facts and circumstances, I am convinced that the submissions of the ld. AR has force to dispel the arbitrary addition made by the AO. The AO failed to justify the addition made by him by bringing adequate evidences on record. His conclusion also smack of logic and accounting principle. In this circumstances, such addition cannot sustain the legal scrutiny and therefore, the AO is directed to delete the addition made in this ground. Accordingly, this ground is allowed."

The aforesaid has been confirmed by the learned Tribunal in para 3.4, which reads as under.

"3.4 From the above, it is clear that the Assessing Officer has relied on the provisional P&L A/c. for a part of the year to make such large addition. He has not brought any materials on record to prove that why the contention of the appellant was not acceptable. He has accepted the year ending P&L a/c and not doubted any expenditures whatsoever claimed by the assessee, but made such huge addition. It does not appeal to the common sense about such huge net profit at 46.43/% especially for the type of assessee's business. The Assessing Officer should have drawn the P&L a/c. as on the survey date after considering all income and expenditures. In this case no such attempt was made by the Assessing Officer before making such addition. Therefore, looking to the nature of the business of the assessee, which is spread over different geographical area, it requires time to record accounting entries and the assessee could not record all the transactions as on 13.09.2008. Considering these facts and circumstances of the case, CIT(A) has rightly deleted the addition in question; therefore, these reasoned and factual findings of the CIT(A) do not require any interference from our side and the same is upheld. Thus, this ground of Revenue is dismissed."

[4.2] Having heard Shri Mehta, learned Counsel appearing on behalf of the Revenue and having gone through the orders passed by the learned Assessing Officer, CIT(A) and the learned Tribunal, it appears that the addition of Rs.2,72,78,269/- was made by the Assessing Officer as undisclosed net profit solely relying upon one piece of paper which was provisional P&L Account subject to further verification of the accounts of entire unit. It is required to be noted that as such the learned Assessing Officer did not dispute other expenses and/or the amount mentioned in the final P&L account and/or audited account. There was no other material available with the learned Assessing Officer while making addition of Rs.2,72,78,269/- as undisclosed net profit. The provisional P&L Account was explained by the assessee in detail which has been accepted by the learned CIT(A) as well as the learned Tribunal. We are in complete agreement with the view taken by the learned CIT(A) and the learned Tribunal while deleting the addition of Rs.2,72,78,269/- made by the learned Assessing Officer as undisclosed net profit. There was no other material available with the learned Assessing Officer while making the addition of Rs.2,72,78,269/- as undisclosed net profit except one piece of paper / provisional P&L account which was explained by the assessee. Under the circumstances, present Tax Appeal deserves to be dismissed *qua* proposed question No.(1).

[5.0] Now, so far as the question No.(2) is concerned, the same is with respect to addition made by the learned Assessing Officer on account of difference in stock. The learned Assessing Officer made the addition of Rs.14,83,789/- on account of difference in stock which came to be restricted to Rs.63,597/- by the learned CIT(A) and the learned Tribunal. Considering the material on record it appears that the stock valued by the survey team was of Rs.22,38,770/- and the learned Assessing Officer considered the opening stock as Rs.7,54,972/- on the basis of one of the copy of the P&L account found in the impounded documents. However, the assessee placed on record the last audited balance-sheet showing the closing balance as Rs.11,78,729/-. It appears that the learned Assessing Officer did not take into consideration the transactions between the date of survey and commencement of the financial year. As rightly observed by the learned CIT(A) and the learned Tribunal, the learned Assessing Officer was justified in neglecting the transactions in between the period. The learned CIT(A) also placed much reliance on the audited accounts. On reconsideration of the stock statement the stock difference was arrived at at Rs.63,597/- and therefore, the learned CIT(A) rightly restricted the addition made on account of difference in stock to Rs.63,597/-. Considering the aforesaid it cannot be said that both the learned CIT(A) and the learned Tribunal have committed any error. The findings recorded by the learned CIT(A) and the learned Tribunal are on appreciation of evidence and the material on record. No substantial question of law arise. We are in complete agreement with the view taken by the learned CIT(A) and the learned Tribunal while restricting the addition to Rs.63,597/- on account of difference in stock. Under the circumstances, question No.(2) also deserves to be dismissed.

[6.0] In view of the above and for the reasons stated above, present Tax Appeal deserves to be dismissed and is, accordingly, dismissed. No costs.

Sd/-
(M.R. SHAH, J.)

Sd/-
(B.N. KARIA, J.)

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