

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 87 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-

and

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

ANIL STARCH PRODUCTS LTD.

Appearance:

1. INCOME TAX REFERENCE No. 87 of 1987
MR AKIL QURESHI FOR MR MANISH R BHATT for Applicant.
MR MANISH J.SHAH FOR MR JP SHAH for Respondent.
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CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 31/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1 At the instance of the revenue, the following two questions have been referred to this Court for its opinion under section 256(1) of the Income-tax Act, 1961.

"1 Whether, the Appellate Tribunal has not erred in law and on facts in holding that the reimbursement of medical expenses, personal accident insurance premium and house rent allowance cannot be treated as perquisites for disallowance under section 40(c) of the Income-tax Act,1961?

2 Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that cash payment of house rent allowance is neither salary nor perquisite and hence is not includible for the purpose of computing disallowance under section 40A(5) of the Income-tax Act,1961?"

2. Learned Advocate Mr.Akil Qureshi has appeared for the applicant whereas learned Advocate Mr.Manish J.Shah has appeared for respondent-assessee.

3. So far as the first question is concerned, it has been already decided by the different judgments delivered by different Courts. The said question is bifurcated into three parts.

4. So far as the question which pertains to reimbursement of medical expenses is concerned, it has been held in the case of Gujarat Steel Tubes Ltd. Vs. C.I.T.,210 I.T.R.358 that reimbursement of medical expenses is to be added in the perquisite for computing the limit as per the provision of section 40(c) of the Act and, therefore, so far as the said portion of the first question is concerned, we answer the same in favour of the revenue and against the assessee.

So far as the amount of expenses which pertains to personal accident premium is concerned, in view of the law laid down in the case of C.I.T. vs. Cama Motors Pvt.Ltd. 234 I.T.R.699, we answer the same in favour of the assessee and against the revenue.

So far as House Rent Allowance is concerned, in view of the judgment delivered in the case of C.I.T. Vs. Mafatlal Gangabhai And Co.(P) Ltd., 219 I.T.R.644, we decide the same in favour of the assessee and against the revenue.

5. So far as the second question is concerned, it has also been decided by the Hon'ble Supreme Court in the

case of C.I.T. Vs. Mafatlal Gangabhai And Co.(P) Ltd,
219 I.T.R. 644. We accordingly answer the same in the
affirmative i.e. in favour of the assessee and against
the revenue.

6. The Reference thus stands disposed of accordingly
with no order as to costs.

Sd/- Sd/-

(A.R.Dave, J) (D.A.Mehta, J)

m.m.bhatt