

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 977 of 2009
With
TAX APPEAL NO. 170 of 2010
With
TAX APPEAL NO. 108 of 2010
With
TAX APPEAL NO. 208 of 2010
With
TAX APPEAL NO. 881 of 2010
With
TAX APPEAL NO. 1102 of 2010
With
TAX APPEAL NO. 959 of 2010
With
TAX APPEAL NO. 1271 of 2010

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE M.R. SHAH -sd/-

and

HONOURABLE MS JUSTICE SONIA GOKANI -sd/-

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, 1950 or any order made thereunder ?	NO
5.	Whether it is to be circulated to the civil judge ?	NO

COMMISSIONER OF INCOME TAX-I....Appellant(s)

Versus

ANJANI FABRICS LTD....Opponent(s)

Appearance:

TAX APPEAL NO.977 OF 2009

MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1

RULE SERVED for the Opponent(s) No. 1

TAX APPEAL NO.170 OF 2010

Mr. K.M. PARIKH, ADVOCATE for the Appellant No.1
RULE UNSERVED for the Opponent(s) No. 1

TAX APPEAL NO.108 OF 2010

MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1
Mr. Hardik Vora, Advocate for the opponent

TAX APPEAL NO.208 OF 2010

MRS Paurami B. Sheth, Advocate for the Appellant
RULE SERVED for the Opponent(s) No. 1

TAX APPEAL NO.881 OF 2010

MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1
RULE UNSERVED for the Opponent(s) No.1

TAX APPEAL NO.1102 of 2010

MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No.1
MRS Swati Soparkar

TAX APPEAL NO.959 of 2010

MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1
RULE UNSERVED for the Opponent(s) No.1

TAX APPEAL NO.1271 of 2010

MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1
RULE SERVED for the Opponent(s) No.1

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CORAM: HONOURABLE MR.JUSTICE M.R. SHAH

and

HONOURABLE MS JUSTICE SONIA GOKANI

Date : 30/09/2013

ORAL JUDGMENT

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

1.0. As common question of law and facts arise in this group of appeals, they are disposed of by this common judgment and order.

2.0. Tax Appeal No. 977 of 2009 has been preferred by the appellant-revenue challenging the order dated 19.10.2007 passed by the learned Income Tax Appellate Tribunal, Ahmedabad (hereinafter referred to as the "ITAT") passed in ITA No. 2318/AHD/2007 for

assessment year 2004-05, by which, the learned ITAT had dismissed the said appeal preferred by the revenue solely on the ground of low tax effect.

2.1. Tax Appeal No.170 of 2010 has been preferred by the appellant-revenue challenging the order dated 7.8.2009 passed by the learned ITAT in ITA No. 325/Ahd/2005 for assessment year 1998-99, by which, the learned Tribunal has dismissed the said appeal preferred by the revenue on the ground of low tax effect.

2.2. Tax Appeal No.108 of 2010 has been preferred by the appellant-revenue challenging the order dated 9.7.2009 passed by the learned ITAT in ITA No. 2618/Ahd/2007 for assessment year 2002-03, by which, the learned Tribunal has dismissed the said appeal preferred by the revenue on the ground of low tax effect.

2.3. Tax Appeal No.208 of 2010 has been preferred by the appellant-revenue challenging the order dated 3.7.2009 passed by the learned ITAT in ITA No. 802/Ahd/2006 for assessment year 2002-03, by which, the learned Tribunal has dismissed the said appeal preferred by the revenue on the ground of low tax effect.

2.4. Tax Appeal No.881 of 2010 has been preferred by the appellant-revenue challenging the order dated 15.5.2009 passed by the learned ITAT in ITA No. 2146/Ahd/2006 for assessment year 1998-99, by which, the learned Tribunal has dismissed the said appeal preferred by the revenue on the ground of low tax effect.

2.5. Tax Appeal No.1102 of 2010 has been preferred by the appellant-revenue challenging the order dated 13.2.2009 passed by the

learned ITAT in ITA No. 2737/Ahd/2005 for assessment year 2002-03, by which, the learned Tribunal has dismissed the said appeal preferred by the revenue on the ground of low tax effect.

2.6. Tax Appeal No.959 of 2010 has been preferred by the appellant-revenue challenging the order dated 30.6.2008 passed by the learned ITAT in ITA No. 3437/Ahd/2002 for assessment year 1993-94, by which, the learned Tribunal has dismissed the said appeal preferred by the revenue on the ground on low tax effect.

2.7. Tax Appeal No.1271 of 2010 has been preferred by the appellant-revenue challenging the order dated 29.4.2009 passed by the learned ITAT in ITA No. 2385/Ahd/2007 for assessment year 2003-04, by which, the learned Tribunal has dismissed the said appeal preferred by the revenue on the ground of low tax effect.

3.0. In all these appeals following substantial question of law arise to be considered.

“Whether the Appellate Tribunal is right in law and on facts in dismissing the Tax Appeal of the revenue on the ground of low tax effect, though the notional tax effect exceeded the monetary limit prescribed by the board?”

4.0. Heard Mrs. Mauna Bhatt, Shri K.M. Parikh and Mrs. Paurami Sheth, learned counsel appearing on behalf of the revenue in respective appeals and Shri B.S. Soparkar and Shri Hardik Vora, learned counsel appearing on behalf of respondent in Tax Appeal No. 108 of 2010 and Tax Appeal No.1102 of 201. Though served, nobody appears on behalf of the respondent in other appeals.

5.0. Learned counsel appearing on behalf of the revenue have

vehemently submitted that by impugned orders the learned Tribunal has dismissed the appeals without entering into the merits, on the premises that being loss declared by the assessee, there would be only notional tax effect. It is submitted that appropriate computation loss would be necessary and may have relevance, if in, subsequent years, the assessee declares profits. It is submitted that in the present cases the amount involved is in excess of the limit laid down in the circular prevailing at the relevant time. It is submitted that while dismissing the appeals solely on the ground of low tax effect, if the learned Tribunal has not appreciated and / or considered the fact that the notional tax effect would exceed the monetary limit prescribed by the Board. Learned counsel appearing on behalf of the revenue has submitted that as such the question raised in the present appeal is squarely covered by the decision of the this Court in Tax Appeal No. 1601 of 2003 and other allied appeals as well as recent decision of this Court in Tax Appeal No. 735 of 2013 and other allied matters. Making above submissions and relying upon the above decisions, it is requested to quash and set aside the impugned orders passed by the learned ITAT and remand the same to the learned Tribunal to decide the said appeals afresh in accordance with law and on merits.

6.0. Learned counsel for the respective assessee are not in a position to dispute the above. They are also not in a position to dispute that a question raised in the present appeals is squarely covered by the decision of this Court in Tax Appeal No. 1601 of 2003 and other allied appeals as well as recent decision of this Court in Tax Appeal No. 735 of 2013 and other allied appeals.

7.0. Heard learned advocates for the respective parties and considered the impugned orders passed by the learned Tribunal. It

appears that by impugned orders learned ITAT has dismissed the appeals solely on the ground of low tax effect and on the ground that the amount of tax involved is below monetary limits prescribed by the Board. While dismissing the appeals, learned ITAT has not entered into the merits of the case at all and has dismissed the appeals solely on the aforesaid ground. However, learned ITAT has not properly appreciated the fact that appropriate computation of law should be necessary and may have relevance, if any, subsequent years, the assessee declares profits. It is the case on behalf of the revenue that the aforesaid would have been considered, the amount involved in each of the appeals is in excess of limit laid down in the circular prevailing at the relevant time.

8.0. Identical question came to be considered by the Division Bench of this Court in Tax Appeal No.1601 of 2009 and other allied appeals and the Division Bench considered the same / similar substantial question of law, which reads as follows;

“Whether the appellate tribunal is right in law and on facts in dismissing the tax appeal of the revenue on the ground of low tax effect, though the notional tax effect exceeded the monetary limit prescribed by the Board ?”

9.0. The aforesaid decisions of this Court in Tax Appeal No.1601 of 2009 have been subsequently considered and followed by this Court in recent decision in Tax Appeal No. 735 of 2013 and other appeals.

9.1. In view of the aforesaid decisions of the Division Bench in Tax Appeal No. 1601 of 2009 and other allied appeals and recent decision of this Court in Tax Appeal No. 735 of 2013 and other allied appeals, all these appeals are required to be allowed and the impugned orders passed by the learned ITAT under challenge are to be quashed and set aside and appeals are required to be remanded to the learned

ITAT to decide the same on merits.

10. In the result all these Tax Appeals are allowed. Respective impugned orders of the Tribunal dismissing the respective appeals are hereby quashed and set aside and the appeals are remanded to the learned ITAT to decide the same on merits and issue arising in the appeals to be decided in accordance with law after issuing notice to the concerned assessee. All these appeals are accordingly allowed to the aforesaid extent. No costs.

sd/-

(M.R.SHAH, J.)

sd/-

(MS SONIA GOKANI, J.)

Kaushik