

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****TAX APPEAL NO. 38 of 2005****With****TAX APPEAL NO. 39 of 2005****TO****TAX APPEAL NO. 41 of 2005****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE KS JHAVERI****and****HONOURABLE MR.JUSTICE K.J.THAKER**

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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, 1950 or any order made thereunder ?
  - 5 Whether it is to be circulated to the civil judge ?

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PRIYANKA CARBON & CHEMICALS INDUSTRIES PVT. LTD.....Appellant(s)

Versus

INCOME TAX OFFICER....Opponent(s)

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Appearance:

MR. S.N. SOPARKAR, SENIOR ADVOCATE WITH MRS SWATI SOPARKAR,  
ADVOCATE for the Appellant(s) No. 1

MR NITIN K MEHTA, ADVOCATE for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**  
and  
**HONOURABLE MR.JUSTICE K.J.THAKER**

Date : 24/12/2014

**COMMON ORAL JUDGMENT**

**(PER : HONOURABLE MR.JUSTICE KS JHAVERI)**

1. All these appeals arise from the common order of the Income Tax Appellate Tribunal, Ahmedabad, therefore, these appeals are being heard and decided together by this common judgment.

2. By way of these appeals, the appellants-assesseees have challenged the common order dated 30.08.2004 passed by the Income Tax Appellate Tribunal, Ahmedabad (for short "***the Tribunal***") in ITA No. 1308 to 1311/Ahd/1995, whereby the appeals filed by the revenue for the Assessment Years 1989-90 and 1991-92 were allowed and the appeals for the Assessment Years 1992-93 and 1993-94 were partly allowed.

3. The facts as well as the question of law involved in these appeals are identical, therefore, we discuss the facts of Tax Appeal No.38 of 2005 for our convenience.

4. The facts, in brief, are that the assessee had filed its return for the Assessment Year 1989-90. After scrutiny, the Assessing

Officer passed order under Section 143(3) of the Income Tax Act and disallowed sales commission of Rs.2,66,040/- paid to M/. C.V. Mehta & Co. However, the said order of the Assessing Officer was quashed by the Appellate Authority and remanded the matter for re-examination. Thereafter the Assessing Officer again examined the matter and passed order under Section 143(3) of the Income Tax Act.

4.1. Against the said order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). The CIT(A), vide order dated 28.12.1995 allowed the appeal of the assessee. Against the order of the CIT(A), the revenue filed appeal before the Tribunal. The Tribunal after examining the matter passed the impugned order, as stated hereinabove. Hence, these appeals are filed at the instance of the assesseees.

5. While admitting these appeals on 28.02.2005, the Court had formulated the following substantial question of law:-

*"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that no services were*

*rendered by Mr. B.V. Mehta to the assessee and hence, commission paid is not allowable expenditure ?"*

6. Mr. Soparkar, learned senior advocate appearing for the appellants-assesseees has vehemently submitted that the Tribunal while reversing the order of the CIT(A) has relied on the affidavit filed by Mr. B.V. Mehta, wherein he has categorically averred that "I contacted several companies which require products manufactured by PCCI, ACC being one of them and assured them about the background of PCCI, its financial stability, business integrity, its ability to make regular supplies etc. I also impressed upon them that in dealing with PCCI they will not have to undergo any risk".

6.1. Learned senior advocate submitted that against the impugned order, the assesseees filed review applications being M.A. No.213 to 216 /Ahd/2004 before the Tribunal and mentioned the aforesaid facts in the applications. However, the Tribunal has not considered the aforesaid fact and rejected the Miscellaneous Applications.

6.2. By making such submissions, learned senior advocate has urged that this Court may remand the matters before the Tribunal for fresh consideration.

7. Learned advocate for the respondent-revenue has supported the impugned order of the Tribunal and submitted that the Tribunal after appreciating all the materials on record has passed the impugned order. Therefore, he urged that there is no germane reason to interfere with the impugned order of the Tribunal.

8. We have heard Mr. Soparkar, learned senior advocate for the appellants-assesseees and Mr. Mehta, learned advocate for the respondent-revenue and perused the material on record. We have seen the documents and find substance in the submissions of learned advocate for the appellants-assesseees that the Tribunal while reversing the order of the CIT(A) has not properly appreciated the material on record in its true spirit. The Tribunal has committed grave error in neglecting the affidavit filed by Mr. B.V. Mehta and in reversing the findings of the CIT(A). It appears that against the impugned order, the assesseees have filed review applications before the Tribunal and pointed out the fact that the Tribunal has not properly appreciated the affidavit filed by Mr. B.V. Mehta. However, the Tribunal has not considered the same and rejected the said Review applications.

9. In that view of the matter, we are of the considered opinion that the present matters deserve to be remanded to the Income Tax Appellate Tribunal, Ahmedabad Bench "A" for deciding the matters afresh. It will be open for both the parties to raise their contentions, which is permissible under the law before the Tribunal. It is clarified that we have not expressed any opinion on the merits of the matters.

10. Accordingly, all these appeals are remanded to the Income Tax Appellate Tribunal, Ahmedabad, Bench "A" for deciding the matters afresh. The order of the Tribunal is hereby quashed and set aside. The appeals stand disposed of accordingly.

**(K.S.JHAVERI, J.)**

**(K.J.THAKER, J)**

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