IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 832 of 2007
With
TAX APPEAL NO. 833 of 2007

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

Versus

JOINT VENTURE OF MCL & MMCL (AOP)....Opponent(s)

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Appearance:

MR KM PARIKH, ADVOCATE for the Appellant(s) No. 1

MRS SWATI SOPARKAR, 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. Both these appeals arise from the common order of the Income Tax Appellate Tribunal, Ahmedabad, therefore, they are being head and decided by this common judgment.

2. By way of these appeals, the appellant-revenue has challenged the common order dated 24.03.2006, passed by the Income Tax Appellate Tribunal, Ahmedabad (for short "***the Tribunal***") in ITA Nos. 1641 and 1642/Ahd/2001, whereby the appeals preferred by the assessees were allowed by the Tribunal.

3. The facts as well as the question of law of both these appeals are similar, therefore, we discuss the facts of Tax Appeal No.832 of 2007 for our convenience.

4. The facts, in brief, are that the assessee had filed its return for the Assessment Year 1996-97 on 30.10.1996, declared total income of Rs.20,35,000/-. Thereafter, the return was processed under Section 143(1)(a) of the Income

Tax Act. The Assessing Officer, after scrutiny, passed order under Section 143(3) of the Income Tax Act and the amount of registration fee paid to SEBI was disallowed as capital expenditure. Against the said order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). The CIT(A) partly allowed the said appeal. Being aggrieved and dissatisfied by the said order, the assessee filed an appeal before the Tribunal. The Tribunal vide impugned order dated 24.03.2006 allowed the appeal of the assessee. Hence, these appeals are filed at the instance of the assessess.

5. While admitting Tax Appeal No.832 of 2007 on 12.12.2007, the Court had formulated the following substantial question of law:-

> *"Whether, on the facts and circumstances of the case, the Appellate Tribunal was right in law in allowing the fee of Rs.1,00,000/- paid to the Securities & Exchange Board of INdia (SEBI)as revenue expenditure ?"*

6. While admitting Tax Appeal No.833 of 2007 on 12.12.2007,the Court had formulated the following substantial question of law:-

"Whether, on the facts and circumstances of the case, the Appellate Tribunal was right in law in allowing the fee of Rs.2,50,00,000/- paid to the Securities & Exchange Board of India (SEBI)as revenue expenditure ?"

7. Learned advocate for the appellant-revenue has submitted that the Tribunal has committed error in allowing the appeals of the assessees and in deleting the disallowance. It is the contention of learned advocate for the appellant-revenue that while deciding the appeals the Tribunal has wrongly relied on the decision of this Court in the case of *DCIT v. Core Health Care Ltd. 251 ITR 61* and the decision of the Tribunal in the case of Market Creator Ltd. Baroda v. ACIT in ITA No.5029/Ahd/1996. Therefore, he urged that this Court may allow these appeals and answer the question raised in these appeals in favour of the revenue and against the assessee.

8. Learned advocate for th respondent-assssee has supported the order of the Tribunal and contended that the question raised in these appeals is already concluded by the Karnataka High Court in the case of ***Commissioner of Income-Tax and Another v. Vysya Bank Ltd.,*** reported in

[2009] 313 ITR. Therefore, learned advocate for the respondent-assessee has urged that in view of the above decision the present appeals deserve to be dismissed.

9. We have heard learned advocate for both the parties and perused the material on record. We have also perused the decision relied on by the learned advocate for th respondent-assesse and find that the question of law involved in these appeals is already concluded in favour of the assessee and against the revenue. In paragraph Nos. 3 to 6 of the said decision, the Court has observed as under:-

> " 3. We have accordingly heard learned counsel for the parties.
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> *4. At the outset, learned counsel Sri S.Parthasarthi, appearing for the assessee made a statement at the Bar that on enquiries being made by him, it has been found that the aforesaid sum of Rs.5,00,000 deposited by other banking companies with SEBI has throughout been treated as revenue expenditure. It has also been contended that this would go to show that the assessee has not been accorded the same treatment, which has been accorded to other similarly situated assessees. Thus, a case of discrimination was tried to be putforth before us.*
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> *5. Even though we had granted time to learned counsel for the appellants to*

ascertain this statement of fact made by learned counsel for the assessee, but he was not able to gather necessary information nor was in a position to controvert the statement made by learned counsel for the assessee.

6. In light of the statement made at the Bar by learned counsel for the respondent, we find that there is no merit or substance in this appeal. If the Revenue had been treating the amount of Rs. 5,00,000deposited by the similarly situated assessees with SEBI as revenue expenditure, then there is no reason why a different treatment should be meted out to the present assessee. In light of the foregoing discussion, we are of the opinion that there is no substance in this appeal.

10. Since the issue involved in these appeals is already concluded by the above decision, no elaborate reasons are required to be assigned by this Court. In that view of the matter, we are of the considered opinion that the present appeals deserve to be dismissed and the same is accordingly dismissed. The question of law raised in these appeals is answered in favour of the assessee and against the revenue. Accordingly, we hold that the Tribunal was right in allowing the fee paid to the Securities & Exchange Board of India (SEBI) as revenue expenditure .

(K.S.JHAVERI, J.)

(K.J.THAKER, J)

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