

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 1270 of 2007****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE KS JHAVERI****and****HONOURABLE MR.JUSTICE K.J.THAKER**

- =====
- 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 ?
- =====

=====

THE COMMISSIONER OF INCOME TAX....Appellant(s)

Versus

NARANLALA LTD.....Opponent(s)

=====

Appearance:

MR SUDHIR M MEHTA, ADVOCATE for the Appellant(s) No. 1

MR BD KARIA, ADVOCATE for the Opponent(s) No. 1

=====

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

Date : 24/12/2014

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. Being aggrieved and dissatisfied with the impugned order dated 09.02.2007 passed by the Income Tax Appellate Tribunal, Ahmedabad 'D' Bench (hereinafter referred to as 'the Tribunal') in Income Tax Appeal No. 741/Ahd/2001 for the assessment year 1995-96, the revenue has preferred the present tax appeal.

2. This appeal was admitted by this Court on 14.07.2008 for consideration of the following substantial questions of law:

"[A] Whether on the facts and circumstances of the case and in law was the Appellate Tribunal is right in allowing the appeal of the assessee on depreciation claimed on the cylinders which were actually not in use in the previous year even though the same were kept ready for use and quash the order of the Assessing Officer ?

[B] Whether on the facts and circumstances of the case and in law was the Appellate Tribunal is right in deleting the addition made on account of closing stock and quash the order of the Assessing Officer relying on the judgment in the case of ITO V/s. Gujarat Processing Work, 58 TTJ 168 (Ahd.) ?"

3. The assessee company is engaged in the business of manufacturing distillery and alcohol based chemical plant. The assessee company had filed return of income showing income as Rs. 28,55,623/-. During the assessment proceedings the Assessment Officer disallowed the expenditure on account of depreciation on cylinders and made an addition on account of difference in stock. Being aggrieved by the same, the assessee preferred appeal before CIT(Appeals) and the said appeal came to be dismissed confirming the disallowance/addition by the Assessing Officer. The assessee thereafter preferred further appeal before the Tribunal and the Tribunal after hearing the parties, allowed the same. Being aggrieved by the same, the present appeal is preferred.

4. Mr. Sudhir Mehta, learned advocate for the revenue submitted that the decision of the Tribunal is erroneous inasmuch as the depreciation was disallowed on a clear finding that the cylinders have not actually been put to use before 31.03.1999. He submitted that there was difference in the stock as per books of accounts and therefore the order passed by the Tribunal is required to be quashed and set aside. Mr. Mehta has relied upon the decision of Karnataka High Court in the case of Deputy Commissioner of Income-Tax vs. Yellamma Dasappa Hospital reported in [2007] 290 ITR 353 (Karn) wherein it was held that the assessee's claim that since the machinery was kept ready for use was not entitled to depreciation.

5. Mr. B.D. Karia, learned advocate appearing for the assessee supported the impugned order and submitted that

the same having been passed in accordance with law does not call for any interference by this Court. He submitted that the Tribunal while deciding the issue has relied upon the following decisions:

(I) CIT vs. Geo Tech Construction Corporation reported in 244 ITR 452;

(II) CIT vs. Refrigeration and Allied Industries reported in 247 ITR 12;

(III) CIT vs. Pepsu Road Transport Corporation reported in 253 ITR 303.

5.1 Mr. Karia further submitted that the Tribunal is justified in passing the impugned order and therefore the appeal is required to be dismissed in limine.

6. We have heard learned advocates for both the sides and perused the orders passed by the CIT as well as the Tribunal. So far as question no. (A) raised in the present appeal is concerned, we are of the view that the Tribunal has rightly considered the material on record. The Tribunal in para 8 has rightly held as under:

“8. We have heard rival submissions and perused record. As the facts emerge, it has not been doubted that assessee purchased cylinders on 26-3-1995 and they were sent to Super Shine Gases and gas filled on 27-3-1995, cylinders were dispatched duly filled with gas on 30-3-1995. What is essential for claim of depreciation is ownership of assessee and its user for business purpose of assessee. Ownership is not disputed. According to AO objection is only that assessee has not actual user for the purpose of business. In our considered view, even constructive user or passive user are allowed for depreciation. Our view is fortified by Punjab and Haryana High Court (supra) in which engine kept in readiness is held to be used for the purpose of business. Cylinders are business assets of the

assessee and are to be first filled with gas and sending these cylinders for the purpose of filling of gas itself is for the purpose of business. In view thereof we hold that assessee is entitled to depreciation of cylinders. This ground of Assessee is allowed.”

6.1 The Tribunal has considered the decision in the case of Pepsu Road Transport Corporation (supr) and was justified in coming to the conclusion that cylinders are business assets of the assessee and are to be first filled with gas and sending these cylinders for the purpose of filling of gas itself is for the purpose of business. Learned advocate for the revenue has relied upon the decision in the case of Yellamma Dasappa Hospital (supra). However, considering the facts of the present case wherein the gas cylinders were used for business purpose as when needed, we find that the Tribunal has rightly considered that as the cylinders were filled and kept ready for use of business purpose, depreciation ought to have been allowed. Therefore, we answer question no. (A) in favour of the assessee and against the revenue.

7. So far as question no. (B) is concerned, we are of the opinion that the question raised is squarely governed by the decision of this Court dated 25.11.2014 rendered in Tax Appeal No. 16 of 2001 with Tax Appeal No. 229 of 2001 in the case of Alliance Industries vs. Income Tax Officer wherein this Court relying on the decision of the Apex Court in the case of **Commissioner of Income-Tax, Ahmedabad III v. Riddhi Steel And Tubes Pvt. Ltd., reported in 40 taxmann.com. 177** has answered the question in favour of the assessee. We therefore answer the question no. (B) against the revenue and in favour of the assessee.

8. In the premises aforesaid, appeal is dismissed. We

answer both the questions raised in the present appeal in the affirmative i.e. in favour of the assessee and against the revenue. We hold that the Tribunal is right in allowing the appeal of the assessee on depreciation claimed on the cylinders which were actually not in use in the previous year even though the same were kept ready for use and in deleting the addition made on account of closing stock. The impugned order passed by the Tribunal is upheld.

(K.S.JHAVERI, J.)

(K.J.THAKER, J)

divya