

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 750 of 2013**

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COMMISSIONER OF INCOME TAX RAJKOT II....Appellant(s)

Versus

M B PATEL....Opponent(s)

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Appearance:

MR PRANAV G DESAI, ADVOCATE for the Appellant(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE M.R. SHAH**
and
HONOURABLE MS JUSTICE SONIA GOKANI

Date : 15/10/2013

ORAL ORDER

(PER : HONOURABLE MS JUSTICE SONIA GOKANI)

1. Present Tax Appeal is preferred under Section 260A of the Income Tax Act,1961 (hereinafter referred to as "the Act") against the order of the Income Tax Appellate Tribunal (hereinafter referred to as "the Tribunal") dated 18.4.2013 proposing following substantial questions of law:-

"(A) Whether ITAT is justified in law as well as on fact in deleting the addition made by the Assessing Officer and duly confirmed by the CIT(A) of Rs.39,34,358/- in respect of purchase of JCB?

(B) Whether ITAT is justified in law as well as on fact in deleting the addition of Rs.7,60,000/- made by

the Assessing Officer and duly confirmed by the CIT(A) on account of capital introduced by the partners in view of the no books of accounts produced before the Assessing Officer?

(C) Whether ITAT is justified in law as well as on fact in deleting the addition of Rs.24,98,000/- made by the Assessing Officer and duly confirmed by the CIT(A) on account of credited in the bank account in view of the no books of account produced before the Assessing Officer?"

2. We have heard learned counsel Mr.P.G. Desai for the Revenue, who has fervently submitted before us that the Tribunal has committed serious error in appreciating material on record, and therefore, order deserves indulgence.

3. Having thus heard learned counsel and on giving deep consideration to the orders of all the Revenue authorities, before adverting to the questions of law, brief facts are necessary to be reproduced.

3.1 The assessee firm is engaged in the field of civil construction in the Assessment Year 2007-08. The total income reflected in the return of income is nil. This return was taken in scrutiny assessment under section 143(3) of the Act. Various notices were issued under sections 143(1) and 143(2) of the Act, calling for various

details. Eventually, the Assessing Officer, assessed his income to the tune of Rs.73,97,890/- and also levied penalty under section 271(1)(c) of the Act for alleged concealment of particulars. With regard to the question of purchase of JCB machines, the Assessing Officer noted the purchase of two JCB Machines for the sum of Rs.19,85,410/- and Rs.19,48,948/-. He made addition in the asset amounting to Rs.39,34,358/- on the ground that no books of accounts were produced and in absence of any details or supporting evidence such purchases were made from undisclosed sources.

4. This was challenged before CIT(Appeals), which concurred with the findings of the Assessing Officer and upheld the action on the very same ground of lack of any valid explanation as also the absence of any supporting evidence. The Revenue went in appeal before the Income Tax Appellate Tribunal. The Tribunal noted with regard to such addition of Rs.39,34,358/- that the assessee in his return submission dated 6.11.2009 had explained that the purchase of 2 JCB machines were made from Yantraman Automac Pvt.Ltd., Baroda and both these purchases were

on hypothecation with Centurion Bank of Punjab. The purchase bills also reflected hypothecation with the Bank. The company was established from 1998 and the Centurion Bank of Punjab eventually merged with HDFC Bank. The Tribunal also noted that the books of accounts were audited under section 44AB and the Tax Audit Report under the said provision had been duly furnished before the Assessing Officer, which was also evident from the assessment order. Thus, having noted the audited books of accounts in accordance with the provision of law being section 44AB and the availability of the funds in the balance-sheet filed on 31.3.2007, the Tribunal noted that the Tax Auditor did not point out any discrepancy in the entire report. Not only the purchase bills filed by the assessee reflected such hypothecation with the Bank but the repayment schedule also was furnished before the Assessing Officer. Hence, the Tribunal was of the opinion that in the event of any doubt, the Assessing Officer could have verified further those details and accordingly, it had deleted such amount.

5. We are in complete agreement with the order of the

Tribunal. In fact, the entire question is in the realm of facts and there is nothing to point out any perversity in the conclusion arrived at by the Tribunal. Not only there was an audited account in accordance with the provisions of section 44AB but substantive document with regard to the hypothecation with the Centurion Bank, which eventually merged with the HDFC Bank were adduced and the Revenue not having doubted the genuineness of any of these documents, there was no justification of either the Assessing Officer or CIT(Appeals) having doubted the transactions. The Tribunal's decision gives no rise to the substantive question of law.

6. Second and third questions are different facets of the same question and, therefore, are being dealt with together.

7. The Assessing Officer made addition of Rs.24,98,000/- credited in the bank account by issuing show cause as to why the said amount be not treated as unexplained income and likewise the sum of Rs.7,60,000/-, being the capital introduced by the partner as an unexplained income, in alleged absence of any

evidence, the respondent assessee filed two written submissions on 6.11.2009 pursuant to the show cause notice. However, both these funds had been added to the income of the assessee by the Assessing Officer and, therefore, this was challenged before the CIT(Appeals), which concurred with the Assessing Officer. On this ground also, therefore, the assessee approached the Tribunal for quashment of such order. It would be apt to reproduce the order of the Tribunal, which observed as under:-

“11. Having heard both the sides, we have carefully gone through the orders of the authorities below. It is pertinent to note that in respect of capital introduced by the partners amounting to Rs.7,60,000/-, the assessee has furnished the necessary evidence which is evident from the written submissions dated 6.11.2009 which is reproduced by the AO in the assessment order. Therefore, keeping in view the judgment of the Hon'ble Gujarat High Court in the case of Pankaj Dyestuff Industries (supra), the AO ought to have accepted the capital amounting to Rs.8,90,000/- introduced by the partners as explained. We, therefore, delete the addition of Rs.8,90,000/- made by the A.O.

12. In the assessment order the AO made addition of Rs.24,98,000/- which is sustained by the ld.CIT(A) in the impugned order. In respect of this addition, we have heard both the sides. The counsel of the assessee pointed out that this addition has been made on doubt and suspicion. As against this the ld. DR relied on the reasoning given by the AO.

12.1 It is pertinent to note that the deposit in bank

account of Rs.8,90,000/- stood explained as capital introduced by the partners. The receipt of contract work amounting to Rs.13,73,671/- is also stood explained as AO himself estimated profit at the rate of 8% on this civil contract receipt of Rs.13,73,671/-. The ld. Counsel of the assessee explained that Rs.2,34,329/- is out of opening balance of Rs.10,64,074/-. It is pertinent to note that books of accounts are audited. Under these circumstances, we are convinced that the deposit of Rs.24,98,000/- is stood fully explained. We, therefore, deleted the addition of Rs.24,98,000/-. This ground of appeal is allowed.

13. In the result, the appeal of the assessee is allowed.”

8. The Tribunal has rightly held that the audited accounts were produced before the Assessing Officer and both the accounts had been duly explained with substantial evidence. Predominantly, both the issues are concerning the factual domain. No substantial questions of law arise. Tax Appeal is dismissed.

(M.R.SHAH, J.)

(MS SONIA GOKANI, J.)

SUDHIR