

IN THE HIGH COURT OF GUJARAT

AT AHMEDABAD

Tax Appeal No. 2343 of 2010

COMMISSIONER OF INCOME TAX-II

Vs

PRIYANK GEM

Akil Kureshi and Sonia Gokani, JJ

Dated: May 09, 2011

JUDGEMENT

Per: Akil Kureshi:

Revenue is in appeal against the judgment of the Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad ["**Tribunal**" for short] dated 31st May 2010, raising following questions for our consideration :-

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in deleting addition on account of diamonds purchased out of undisclosed source of income in the sum of Rs. 67,93,643/- made by the Assessing Officer and confirmed by the Appellate Commissioner ?"

Issue pertains to diamonds worth Rs.67,93,643/= which were seized by the Income Tax Department during the search operations carried out in a mini-bus belonging to one M/s. Ambalal Hargovandas & Company. The Department believing that such diamonds were not accounted for by the assessee, added the sum of Rs. 67,93,643/- in the income of the assessee, as such income from undisclosed sources. The Assessing Officer, on the basis of evidence collected as well as after examination of the assessee and giving him opportunity to explain certain adverse materials, formed an opinion that such diamonds were not reflected in the accounts of the assessee. The CIT[A] confirmed the view of the Assessing Officer and dismissed the assessee's appeal. Issue was carried in further in appeal before the Tribunal. The Tribunal, by way of impugned judgment, allowed the assessee's appeal holding that the assessee had sufficiently explained the source of such diamonds and had formed part of its stock. Though previously, the Revenue had sought to make additions substantively in the hands of M/s. Patel Somabhai Kanchanlal & Company – Angadia , and protectively in the hands of the assessee, in appeal, since the said M/s. Patel Somabhai Kanchanlal & Company succeeded, the additions were made substantively in the hands of the present respondent-original assessee. So far M/s. Patel Somabhai Kanchanlal and Department both are concerned, this issue rested at that stage. No further appeal was filed by Angadia firm.

The Tribunal, in the impugned judgment, observed that before the Assessing Officer, the assessee produced documentary evidence in the form of bills of purchase

evidencing the source of the stock of goods seized, even the stock register was produced. The Tribunal also took into account other evidences such as average weight of the seized diamonds, which matched with the purchase bills. The Tribunal also observed that both the sellers *ie.*, Someya International and Harsona Diamonds were assessed to tax having GST and CST numbers. The Tribunal also found that the seized diamonds were matching very closely with the closing stock shown by the assessee as on 31.03.2005. The Tribunal also recorded that the return of income for the AY 2003-2004 was filed much before the date of search and the audited financial statements of the years ending on 31.03.2003; 31.03.2004 and 31.03.2005 and the closing stock shown by the assessee included the stock seized. The Tribunal also observed that the valuation shown by the assessee of the diamonds in question at Rs. 67,66,360/- matched very closely with the valuation made by the Department at Rs. 67,93,643/-. On all these grounds, the Tribunal was of the opinion that there was enough evidence to suggest that the purchases were made from disclosed sources as the stock was fully disclosed in the books of accounts in the return of income filed even before the search operation.

Having perused the orders of the Assessing Officer; CIT[A] and the Tribunal with the assistance of the learned counsel for the parties, we are of the opinion that the entire issue is based on appreciation of evidence on record. The Tribunal has given cogent reasons to come to the conclusion that several facts pointed to the seized diamonds being those shown by the assessee in the books of account. The declaration by the assessee, even before the search, in the course of return previously filed and the valuation of the closing stock and the valuation of the seized diamonds as per the Department were same. All these factors persuaded the Tribunal to come to the conclusion that the seized diamonds did not form part of undisclosed source of the assessee.

We are of the view that the Tribunal's finding cannot be said to be *perverse* . At best, the view taken by the Assessing Officer, as confirmed by the CIT[A] could also be one of the plausible views. *Nevertheless*, when the Tribunal, on the basis of evidence on record, has come to a certain factual findings, simply because the Tribunal's view was different from the one held by the Assessing Officer, in our view, would not permit us to interfere with the order under challenge.

No substantial question of law arises. Tax Appeal is, therefore, dismissed.