

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**TAX APPEAL No. 2324 of 2009**

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**SHAKTI CARGO MOVERS PVT LTD - Appellant(s)**

**Versus**

**ASSISTANT COMMISSIONER OF INCOME TAX - Opponent(s)**  
=====

**Appearance :**

**MS. NITI SHETH FOR MRS SWATI SOPARKAR for Appellant(s) : 1,  
MR. M.M.BHATT for MRS MAUNA M BHATT for Opponent(s) : 1,**  
=====

**CORAM : HONOURABLE MR.JUSTICE K.A.PUJ**

**and**

**HONOURABLE MR.JUSTICE RAJESH H.SHUKLA**

**Date : 19/01/2010**

**ORAL ORDER**

**(Per : HONOURABLE MR.JUSTICE K.A.PUJ)**

1. The Appellant has filed this Tax Appeal under Section 260A of the Income Tax Act for assessment year 2001-02, proposing to formulate the following substantial

questions of law for determination and consideration of this Court:

(i) Whether in the facts and circumstances of the case the Income Tax Appellate Tribunal was right in law in reversing the order of the CIT(A) without in any way discussing the findings reached by the said authority and finding the same to be erroneous as it was a duty of the Tribunal to ascertain the reasons which were given by the Commissioner (Appeals) in whose order, the order of the Assessing Officer had merged before reversing the same? [257 ITR 297 (Gujarat)]

(ii) Whether, in the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in arbitrarily fixing the net profit rate at 4%?

(iii) Whether, in the facts and circumstances of the case the Income Tax Appellate Tribunal was right in law in rejecting the books of account of the appellant u/s 145 (1) of the Act?

2. This Court has issued notice on 7.12.2009 for final disposal of the Tax Appeal. Pursuant to the notice Mrs. Mauna M. Bhatt, the learned Standing Counsel filed her appearance on behalf of the Revenue.
3. Heard Ms. Niti Sheth, the learned Advocate appearing for Mrs. Swati Soparkar for the Appellant and Mr. M.R.Bhatt, the learned Standing Counsel appearing with Mrs. Mauna Bhatt, the learned standing Counsel for the Revenue.
4. Ms. Sheth has submitted that while disturbing the order passed by the learned CIT(Appeals), the Tribunal has not assigned any reason whatsoever and hence the order passed by the Tribunal is a non-speaking order and it is contrary to the law

laid down by this Court in the case of Mercury Metals (P) Limited v/s. Assistant Commissioner of Income Tax, 257 ITR 297(Gujarat). She has therefore submitted that the order passed by the Tribunal on this point is required to be quashed and set aside and the matter may be remanded to the Tribunal for deciding afresh in light of the observations made by this Court in the aforesaid decision.

5. The Assessing Officer has made an addition of Rs.20,53,076/- on the basis of fall in Net Profit Ratio as compared to last year. The order of the Assessing Officer was challenged before the CIT(Appeals), and while dealing with the said addition, the CIT (Appeals), has at length, discussed the entire issue and has given cogent reasons as to why such additions are not sustainable. Being aggrieved by the said order of the CIT(Appeals), the Revenue has filed an appeal before the Tribunal and the Tribunal while dealing with this issue simply observed in its order that on overall consideration of the materials brought on record, the Tribunal was of the view that the expenses claimed by the assessee are not open to verification in the absence of independent and third party vouchers. In this view of the matter, the Tribunal had come to the conclusion that the order of the Assessing Officer rejecting the book results is confirmed. The Tribunal has further come to the conclusion that net profit rate estimated by the Assessing Officer is on higher side and hence the same was restricted to the net profit rate to 4% after taking into consideration all the submissions made by the assessee. The Assessing Officer was directed to work out the net profit accordingly.
6. The Tribunal has not at all discussed about the findings recorded by the CIT(Appeals) and why the said finding is not sustainable. If the Tribunal were not

agreeable with the finding recorded by the CIT(Appeals), in that case, the Tribunal is supposed to deal with the finding recorded by the CIT(Appeals) and to give its own reasons as to why the said finding is not sustainable either on facts or in law. In absence of this exercise, the order passed by the Tribunal is not sustainable and hence the same is hereby quashed and set aside and the matter is restored back to the Tribunal to decide it denovo. The Tribunal is hereby directed to pass a speaking order dealing with the findings arrived at by the CIT(Appeals) and if the Tribunal is not in agreement with the finding recorded by the CIT(Appeals), the reasons for such disagreement should specifically be reflected in the order that may be passed.

7. With this direction, this Tax Appeal stands allowed to the aforesaid extent.

(K.A.Puj,J)

(Rajesh H. Shukla,J)