

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 4 of 2009

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COMMISSIONER OF INCOME TAX-III - Appellant(s)

Versus

RAMDEV FOOD PRODUCTS LTD - Opponent(s)

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Appearance :

MR M.R. BHATT, SR. COUNSEL with MRS MAUNA M BHATT for Appellant(s) :

1, MR SAURABH SOPARKAR, SR. COUNSEL with MS. VAIBHAVI PARIKH AND MRS SWATI SOPARKAR for Opponent(s) :

CORAM : **HONOURABLE THE CHIEF JUSTICE MR.
K.S.RADHAKRISHNAN**
and
HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 29/07/2009

ORAL ORDER

(Per : HONOURABLE THE CHIEF JUSTICE MR. K.S.RADHAKRISHNAN)

The question raised by the Revenue is reproduced below:-

Whether the Appellate Tribunal is right in law and on facts in confirming the order passed by CIT (A) in deleting the addition made on account of unaccounted sales of Rs. 1,02,49,622/-? After hearing learned Advocates for both sides, we are of the view that the question raised by the Revenue is purely a question of fact. On going through paragraph 19.1 of the order of the Tribunal, which is extracted hereunder, we find that the Commissioner as well as Tribunal on facts concurrently found that there is justification in deleting addition made

by the Assessing Officer.

*19.1 - On the contrary, we after having gone through the various documents to which our attention was drawn by the AR during the course of hearing, placed on record and have been listed in para No.15 of this order, are of the opinion that the assessee had furnished all possible evidences, though, of course, except paper-cuttings, to establish the launch of scheme, having inserted the advertisements in six newspapers, having supplied the quantity of Hing to be distributed free of cost, having paid cost reward of Rs. 1/- per newspaper cutting to dealers, retailers, etc., evidence with respect to having maintained complete account and, evidence for having taken the goods outside the factory were furnished before the Assessing Officer **and if some evidence was not furnished, it was because of Assessing Officer's failure to give the assessee a proper opportunity as is evident from the fact that the first show-cause notice requiring the assessee to furnish the details justifying its claim of various schemes, admittedly, was served upon the assessee at 4.53 p.m on 13.6.2000, whereby the assessee was required to comply with by 11.00 a.m on 15.3.2000 and thereafter, the assessee was asked on 22.3.2000 to furnish the required details by 11.00 a.m on 24.3.2000. In our opinion, the time given by the Assessing Officer to the assessee asking so many voluminous details and evidence, cannot, in any way, be said to be a reasonable or sufficient opportunity. In our opinion, practically the assessee was not allowed any opportunity to furnish the evidence and therefore, the learned DRs objection that the assessee having failed to furnish evidence before the Assessing Officer had failed to discharge the onus put on him and therefore, CIT (Appeals) was not justified in entertaining the fresh evidence cannot be sustained.***

The question being purely a question of fact, we see no reason to entertain this appeal. Appeal is dismissed.

(K.S. Radhakrishnan, C.J.)

(Akil Kureshi, J.)

**/Mohandas*