

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INCOME TAX APPEAL NOS. 1268, 1270 AND
1317 TO 1321 OF 2008**

M/s.Monika Gems, Mumbai ... Appellant
(In all appeals)

v/s

Assistant Commissioner of Income-Tax,
Central Circle - 24, Mumbai ... Respondent
(in alls appeals)

ALONGWITH

INCOME TAX APPEAL NOS. 1269 & 1348 OF 2008

M/s.Sangeeta Impex ... Appellant
(in all appeals)

v/s

Assistant Commissioner of Income Tax,
Central Circle - 24, Mumbai. ... Respondent
(in all appeals)

ALONGWITH

**INCOME TAX APPEAL NOS. 1271, 1310, 1313 TO
1316 OF 2008**

M/s.Mahavir Corporation ... Appellant
(in all appeals)

v/s

Assistant Commissioner of Income Tax,
Central Circle-24, Mumbai. ... Respondent
(in all appeals)

ALONGWITH

INCOME TAX APPEAL NOS. 1322 TO 1325 OF 2008

M/s.Dineshkumar Jain ... Appellant
(in all appeals)

v/s

Assistant Commissioner of Income Tax,
Central Circle-24, Mumbai. ... Respondent
(in all appeals)

ALONGWITH

INCOME TAX APPEAL NOS.1326 TO 1332 OF 2008

Sanjay S. Jain ... Appellant
(in all appeals)

v/s
 Assistant Commissioner of Income Tax,
 Central Circle-24, Mumbai. ... Respondent
 (in all appeals)

ALONGWITH
INCOME TAX APPEAL NOS. 1336 TO 1341 OF 2008

Shantilal M. Jain ... Appellant
 (in all appeals)

v/s
 Assistant Commissioner of Income Tax,
 Central Circle-24, Mumbai ... Respondent
 (in all appeals)

ALONGWITH
INCOME TAX APPEAL NOS. 1342 TO 1345 OF 2008

Omprakash K. Jain ... Appellant
 (in all appeals)

v/s
 Assistant Commissioner of Income Tax,
 Central Circle-24, Mumbai ... Respondent
 (in all appeals)

AND
INCOME TAX APPEAL NOS. 1346 & 1347 OF 2008

M/s.Malay Gems ... Appellant
 (in both appeals)

v/s
 Assistant Commissioner of Income Tax,
 Central Circle-24, Mumbai ... Respondent
 (in both appeals)

Mr.Atul K. Jasani and Mr.S.S.Shetty for the appellant
 in all appeals.

Mr.Y.P.Patki with Mr.B.M.Chatterji and Mr.P.S.Sahadevan
 for the respondent in all appeals.

CORAM: F.I.REBELLO AND
R.S.MOHITE, JJ.

DATED: 19TH JANUARY, 2009

P.C.:

1. All these appeals are being disposed of by this common order.

2. These appeals are filed by the assesseees on the following questions of law:-

(1) Whether on the facts and in the circumstances of the case and in law the Tribunal was justified in upholding the ad-hoc 1/3 disallowance out of the Foreign Travel expenses incurred by the appellant ?

(2) Whether on the facts and in the circumstances of the case and in law the order of the Tribunal confirming the ad-hoc disallowance of 1/3 of Foreign Travel expenses made by the assessing officer is perverse and/or contrary to material on record inasmuch as it overlooked the evidence filed by the appellant in support of the impugned expenses and the Tribunal itself having come to the conclusion that it is not possible to make any ad-hoc disallowance in expenses of this nature ?

3. It is not necessary to set out the facts in detail in view of the order to be passed.

4. The Assessing Officer proceeded on the footing that the persons in respect of whom the allowance was sought, are not the employees of the assessee. After so holding, the Assessing Officer has disallowed 1/3rd of the expenses incurred. The order of the A.O. was upheld by the C.I.T.(A). The matter thereafter went in appeal. The Tribunal, in the impugned order, insofar as the issue is concerned, in para 29, proceeded on the footing that the expenses of this nature can either be allowed or disallowed. After having so sought, the Tribunal thereafter proceeded to uphold the disallowance of 1/3rd of the expenses. In our opinion, this was a total misdirection in law. The expenses incurred can either be in the course of the business or not related to the assessee's business. To that extent the findings are totally erroneous and consequently the order will have to be set aside.

5. The submission made on behalf of the appellant is that these are expenses incurred on what are known as Foreign Travel Expenses. In the industry, there are free lancers who are known as assesseees, who are normally, as per the practice, go to the foreign country for and on behalf of the assesseees to assess the diamonds. In these facts and circumstances the

expenditure is allowable.

6. We do not want to record any findings on that issue, but to that extent set aside the orders and remand the matter to the A.O. for deciding the issue afresh. It will be open to the assesseees to lead additional evidence to which they are entitled to.

7. In the light of that, the issues framed will not be answered.

8. All questions are left open for consideration before the Assessing Officer.

(R.S.MOHITE, J.)

(F.I.REBELLO, J.)