

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No.345 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	NO
5	Whether it is to be circulated to the civil judge ?	NO

CORONATION FLOUR MILLS. - Appellant(s)

Versus

ASST. C.I.T. - Opponent(s)

Appearance :

**MS SWATI SOPARKAR for Appellant(s) : 1,
MRS MAUNA M BHATT for Opponent(s) : 1,**

**CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

Date : 04/03/2009

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

On 18.10.2000, while admitting the appeal, following two questions have been formulated by this Court:

1. Whether, in the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the amount of Rs.25,880 paid to M/s. Corona Machine Works could be disallowed under sec. 40A(2) of the Income Tax Act without giving a finding on the market value of the services received by the assessee?
2. Whether, in the facts and circumstances of the case, the ITAT was right in law in holding that the amount of Rs.67,500/- paid to M/s. P. K. Gujarati & Co., Chartered Accountant could be covered u/s 40A(12) of the Act?

1. The Assessment Year in question is 1988-89. The appellant-assessee, a partnership firm, is engaged in manufacturing of Maida, Suji, Bran, etc. and in the course of its business activities it incurred certain expenses. One of the said expenses was towards payment of Rs.54,000/- to M/s. Corona Machine Works on account of professional services claimed to have been availed by the appellant @ Rs.4,500/- p.m. The second expenditure was in relation to payment made to M/s. P.K. Gujarati & Co., Chartered Accountants, under the head 'Legal and Professional Charges' along with payment under the said head to two others.
2. The Assessing Officer, while framing assessment order dated 27.03.1991 under Section 143(3) of the Income-tax Act, 1961 (*the Act*) disallowed a sum of Rs.25,880/- paid to M/s. Corona Machine Works under Section 40A(2) of the Act on the ground that M/s. Corona Machine Works was an entity which fulfilled the requirement prescribed by Section 40A(2) of the Act, because M/s. Corona Machine Works is a proprietary concern of Shri R. N. Shah, husband of one of the partners, Smt. K.R. Shah, of the assessee-firm. After calling upon the assessee to explain as to why excessive payment should not be disallowed and after considering the explanation tendered by the assessee the Assessing Officer found that totally a sum of Rs.1,25,880/- was paid towards job work charges for repairs and maintenance. That over and above this, payment for repairs was made separately. No record had been maintained in respect of quantum of the

repairs. Therefore, the payment made for repairs and maintenance was excessive considering the legitimate needs of the business.

3. The assessee carried the matter in appeal before Commissioner (Appeals), but failed. In the second appeal before the Tribunal also the assessee did not succeed on this count.
4. The second disallowance has been made by the Assessing Officer under Section 40A(12) of the Act in relation to legal and professional charges out of which a sum of Rs.87,679.50 has been disallowed after granting deduction of Rs.10,000/- as provided in the section. In relation to this issue also the assessee did not succeed in appeals filed before Commissioner (Appeals) and the Tribunal.
5. *Learned advocate appearing for the appellant-assessee submitted in relation to the first question that provisions of Section 40A(2) of the Act require that the Assessing Officer form an opinion that an expenditure, which is considered as falling within that section, is excessive or unreasonable having regard to the fair market value of the services rendered, but in the present case, no such finding has been recorded by the Assessing Officer.* It was submitted that the Assessing Officer has not made any attempt to actually find out what is the fair market value of the services rendered and Commissioner (Appeals) and the Tribunal have erred in confirming such a disallowance.

1. In relation to the second disallowance the contention is that M/s. P.K. Gujarati & Co. had undertaken work in relation to preparing search and seizure case after scrutinizing the seized material and preparing data from seized material which involved accounting work and hence, provisions of Section 40A(12) of the Act were not attracted. That all the three authorities had erred in holding that such services were hit by provisions of Section 40A(12) of the Act.

7. Learned advocate appearing for the respondent-revenue submitted that in so far as the first ground is concerned, *both the Assessing Officer and Commissioner (Appeals) have found that there was no evidence for any services being rendered* and hence, the disallowance made by invoking provisions of Section 40A(2) of the Act was proper.
 1. In so far as the second disallowance is concerned, learned advocate relied on the findings recorded concurrently by Commissioner (Appeals) and the Tribunal and submitted that the disallowance had been correctly made.

8. In relation to the disallowance under the provisions of Section 40A(2) of the Act, a plain reading of the provision reveals that where an assessee incurs any expenditure in respect of which payment is required to be made or has been made to any person referred to in clause (b) of Section

40A(2) of the Act and the Assessing Officer is of the opinion that such expenditure is excessive or unreasonable having regard to

(a) fair market value of the goods, services or facilities for which the payment is made; OR

(b) the legitimate needs of the business of the assessee; OR

(c) the benefits derived by or accruing to the assessee on receipt of such goods, services or facilities, then the Assessing Officer shall not

allow as a deduction so much of the expenditure as is so considered by the Assessing Officer to be excessive or

unreasonable. Therefore, it becomes apparent that the Assessing Officer is required to record a finding as to whether the expenditure

is excessive or unreasonable in relation to any one of the three requirements prescribed, which are independent and alternative to

each other. All three requirements need not exist simultaneously. In a given case if any one condition is shown to be satisfied the

provision can be invoked and applied, if the facts so warrant. **The**

contention raised on behalf of the appellant-assessee that the fair

market value having not been ascertained by the Assessing Officer

no disallowance could have been made therefore does not merit

acceptance. As already noted hereinbefore, the Assessing Officer

has held a part of the expenditure to be excessive having regard to

the legitimate needs of the business and for recording such a finding cogent reasons are assigned by the Assessing Officer.

9. In the first appeal the assessee was granted one more opportunity by Commissioner (Appeals) by calling upon the assessee to furnish evidence regarding regular services rendered by M/s. Corona Machine Works for maintenance of machinery, but the assessee expressed its inability to produce such evidence on the ground that no record was maintained for the services rendered in connection with maintenance of machinery. Commissioner (Appeals), therefore, held that in absence of any such evidence it was difficult to believe that the connected concern was rendering sufficient services commensurate with the lump-sum payment of Rs.54,000/- in addition to the regular repairing charges paid on job work basis. These findings have been confirmed by the Tribunal.
10. In light of the aforesaid position in law and the findings recorded by Commissioner (Appeals) and the Assessing Officer, it is not possible to hold that there is any legal infirmity in the impugned order of the Tribunal so as to warrant interference.
11. In relation to second ground the Assessing Officer has recorded that no explanation was furnished as regards the nature of services rendered by M/s. P.K. Gujarati & Co. and hence, the entire amount, after granting statutory deduction, was disallowed. Before Commissioner (Appeals) the following break up was submitted by the appellant-assessee:

1) Paid to Vijaybhai L Shah for income tax assessment and stay application

Rs. 12,000

2) Paid to Shri K.T. Thakore for consultation in connection with appeal before CIT(A).

Rs. 3,500

Rs. 15,500

3) Paid to M/s. P.K. Gujarati & Co., C.As. for preparing search and seizure cases of the assessee firm, scrutinising seized materials and preparing date from the seized materials

Rs. 67,500

Rs. 73,000/-

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Commissioner (Appeals) has recorded that in so far as Item Nos.1 and 2 are concerned, learned advocate appearing before Commissioner (Appeals) had conceded that the same were covered by provisions of Section 40A(12) of the Act. In relation to the third item viz. Rs.67,500/- paid to M/s. P.K. Gujarati & Co., it was submitted that the same was also in respect of accounting work relating to seized papers and, therefore, did not fall within the purview of Section 40A(12) of the Act. Alternatively,

it was contended before Commissioner (Appeals) that only part of the said fees may be considered as being hit by provisions of Section 40A(12) of the Act. Commissioner (Appeals) did not accept submissions made and held that the preparation of data and other materials from the seized papers was primarily for income tax proceedings and, therefore, the entire fee is covered under Section 40A(12) of the Act. This finding has been confirmed by the Tribunal.

12. Provisions of Section 40A(12) of the Act specifically, in the opening portion, provide that no deduction shall be allowed in excess of Rs.10,000/- for any assessment year in respect of any expenditure incurred by an assessee by way of fees or other remuneration paid to any person for services in connection with any proceedings under the Act before any income-tax authority. It is not necessary to refer to the other part of the provisions. The use of the phrase "any proceedings under the Act" indicate that the applicability of the section is very wide. The assessee has not been able to show that the finding recorded by Commissioner (Appeals) is incorrect in any manner. Considering the nature of services rendered by M/s. P.K. Gujarati & Co., the aforesaid provision stands attracted and it is not possible to state that the Tribunal has committed any error in law in confirming the findings recorded by Commissioner (Appeals).

13. In the result, both the questions are answered in the affirmative i.e. in favour of the revenue and against the assessee. The appeal is accordingly dismissed with no order as to costs.

Sd/-

[D. A. MEHTA, J]

Sd/-

[S.R. BRAHMBHATT, J]