

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No.274 of 1999

For Approval and Signature:

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

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

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| 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 |

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DY.COMMISSIONER OF INCOME TAX - Appellant(s)

Versus

SUN PHARMACEUTICAL IND. LTD. - Opponent(s)

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**Appearance :**

**MR KM PARIKH for Appellant(s) : 1,  
MR SN SOPARKAR, Senior Advocate, with MS NITI P SHETH & MS PAURAMI B SHETH,  
ADVOCATES, for the Opponent**

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

**Date : 23/03/2009**

**ORAL JUDGMENT**

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

At the time of admission on 26.07.2000 following substantial question of law came to be formulated by this Court:

1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in reversing the Commissioner of Income-tax (Appeal)'s order and deleting the disallowance of Rs.48,02,616/- being lease rent paid to G.I.D.C. on the ground that it was revenue expenditure?

2. The Assessment Year in question is 1994-95, the relevant Accounting Year being Financial Year ended on 31.03.1994. The assessee, a Company, claimed deduction of a sum of Rs.48,02,616/-, being payment to Gujarat Industrial Development Corporation (GIDC). The Assessing Officer called upon the assessee to substantiate the said claim. *It was contended that the lease rent in respect of the land allotted to the assessee-company being very nominal, i.e. @ Rs.40/- per year, the said payment was nothing else but advance rent and hence, allowable as revenue expenditure.*  
After going through the lease agreement the Assessing Officer disallowed the claim holding that the assessee had acquired *a benefit of enduring nature in the form of use of land for a period of 99 years.* That the land had been transferred through a Registered Deed involving transfer of immovable property and thus, the assessee had acquired a fixed asset in the form of a parcel of land.
3. The assessee carried the matter in appeal before Commissioner (Appeals) but failed. In Second Appeal before Tribunal the assessee succeeded. It is this order of Tribunal dated 17.02.1999 which is under challenge.
4. Learned advocate for the appellant-revenue has assailed the impugned order of Tribunal by referring to the phrase allotment price used in the *lease agreement to submit that the payment in question was towards premium for acquiring leasehold rights and thus was capital in nature. It was submitted that the Tribunal failed to appreciate the transaction*

between the parties. That the lease was for a period of 99 years and thus virtually the assessee had acquired ownership rights. In support of the submissions made reliance has been placed on the Apex Court decision in case of Assam Bengal Cement Co. Ltd. Vs. Commissioner of Income-tax, [1955] 27 ITR 34 (S.C.) to contend that the payment having been made once and for all for bringing into existence an advantage of enduring nature, the same was on capital account. The learned counsel therefore, submitted that the Tribunal had committed an error in law in treating the said payment on revenue account.

5. On behalf of the respondent-assessee learned Senior Advocate invited attention to decision of Karnataka High Court in the case of Commissioner of Income-tax Vs. H.M.T. Ltd. (No.3), [1993] 203 ITR 820 (Kar.), to submit that the said decision had considered judgment of Madras High Court in the case of Commissioner of Income-tax Vs. Madras Auto Service Ltd., [1985] 156 ITR 740 (Mad.), which had since been confirmed by the Apex Court in the case of Commissioner of Income-tax Vs. Madras Auto Service Ltd., [1998] 233 ITR 468 (S.C.). That the Apex Court decision in case of *CIT Vs. Madras Auto Services Pvt Ltd. (supra)* as well as earlier decision of the Apex Court in the case of Empire Jute Co. Ltd. Vs. Commissioner of Income-tax, [1980] 124 ITR 1 (S.C.) has been applied and followed by the Tribunal. Thus, the Tribunal having applied the ratio of Apex Court

decisions had made an order in accordance with law which was not required to be interfered with.

6. The facts are not in dispute. The lease agreement entered into between the assessee and GIDC has been analyzed and relevant terms summarized by the Tribunal. It is not necessary to refer to the said terms in detail in the present proceedings. Suffice it to state that the Tribunal, on appreciation of the Deed in question, has recorded following findings of fact:

It is not disputed that the land which has been leased out to the assessee did not cease to be belonging to GIDC, the lessor. The lease deed was registered because as per the Registration Act it is compulsorily registrable, but it has not changed the ownership. It is not also disputed that the lease rent is very nominal and by obtaining this land by lease the capital structure of the company has not been changed. ...

... Thus, by this payment the assets of the assessee company had not been increased because the land continued to be the land of GIDC. The benefit the assessee got is only of an advantage of carrying on the business more profitably by paying nominal rent on the land. The issue can be considered in another angle. It cannot be disputed that if the land is not obtained by the assessee it would not be possible for it to carry on the business. ...

7. The Tribunal has thus, after referring to two decisions of Supreme Court, held that the land in question was not acquired by the assessee. That

merely because the deed was registered the transaction in question would not assume a different character. The lease rent was very nominal. By obtaining the land on lease the capital structure of the assessee did not undergo any change. The assessee only acquired a facility to carry on business profitably by paying nominal lease rent.

8. In light of the aforesaid findings of fact and the ratio of the Apex Court decisions, the Court does not find this to be a case which warrants interference. Even the Assessing Officer has recorded that the payment was for use of land. There is no legal infirmity committed by the Tribunal.
9. Before parting it is necessary to note that the appellant-revenue was not even aggrieved by the aforesaid findings recorded by the Tribunal and had not even proposed a question on this issue when the tax appeal was filed as the Memorandum of Tax Appeal reveals.
10. In the aforesaid facts and circumstances of the case, the Tribunal was justified in holding that the lease rent paid by the assessee to GIDC was allowable as revenue expenditure. The appeal is dismissed accordingly with no order as to costs.

Sd/-

[D. A. MEHTA, J]

Sd/-

[S.R.BRAHMBHATT, J]

