

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**TAX APPEAL NO. 777 of 2013**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE M.R. SHAH**  
**and**  
**HONOURABLE MS JUSTICE SONIA GOKANI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 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 ?
- 5 Whether it is to be circulated to the civil judge ?

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GUJARAT ALKALIES AND CHEMICALSLTD....Appellant(s)  
Versus  
ASST. COMMISSIONER OF INCOME TAX....Opponent(s)

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Appearance:

MR MANISH J SHAH, ADVOCATE for the Appellant(s) No. 1  
MR KM PARIKH, ADVOCATE for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE M.R. SHAH**  
**and**  
**HONOURABLE MS JUSTICE SONIA GOKANI**

**Date : 21/10/2013**

**ORAL JUDGMENT**  
**(PER : HONOURABLE MR.JUSTICE M.R. SHAH)**

1. The present Tax Appeal is **ADMITTED** and taken up for final hearing today to consider the following substantial question of law;

*“Whether on the facts and in the circumstances of the case, the tribunal was right in directing that the question of allowability of lease rent of Rs.1,89,17,094/- must be decided in accordance with the tribunal’s decision of IndusInd Bank Ltd. - (2012) 135 ITD 365 and not directly that the question must be decided in accordance with law and case law on the point at the time he decides the matter?”*

2. In the facts and circumstances of the case, the order passed by the tribunal is to be modified to the extent stated hereinafter.

3. A grievance, which is voiced by Shri J.P. Shah, learned Counsel appearing on behalf of the appellant, is that while remanding the matter to the Assessing Officer with respect to disallowance of Rs.1,89,17,094/- towards the lease rent paid, the tribunal has directed the Assessing Officer to take a fresh decision in light of the decision of the Special Bench of the tribunal rendered in the case of IndusInd Bank Ltd. It is submitted that as such the Assessing Officer is required to take a fresh decision in accordance with law and considering the decision on the issue prevailing at the time of deciding the matter. It is submitted that therefore the remand should not be restricted only to take a fresh decision in light of the decision of the Special Bench of the tribunal in the case of

IndusInd Bank Ltd. only and, therefore, it is requested to make a suitable observation/clarification that, on remand, the Assessing Officer to take a fresh decision in accordance with law and the case law at the time when he decides the matter.

4. Shri Ketan Parikh, learned Counsel appearing on behalf of the revenue is not in a position to satisfy the Court why the remand to the Assessing Officer shall be confined to a fresh decision by the Assessing Officer in light of the decision of the Special Bench of the tribunal rendered in the case of IndusInd Bank Ltd. only.

5. Heard Shri J.P. Shah, learned Counsel appearing on behalf of the appellant and Shri Ketan Parikh, learned Counsel appearing on behalf of the opponent.

6. The dispute is with respect to the Assessment Year 2004-05. In an appeal before the Income Tax Appellate Tribunal with respect to the disallowance of Rs.1,89.17.094/- towards the lease rent paid, the tribunal has remanded the matter to the Assessing Officer to take a fresh decision in light of the decision of the Special Bench of the tribunal rendered in the case of IndusInd Bank Ltd.. When the tribunal has remanded the matter to the Assessing Officer for a fresh decision, we fail to appreciate why the tribunal should restrict the decision by the Assessing Officer considering the decision of the Special Bench of the tribunal rendered in the case of IndusInd Bank Ltd only. There may be other decisions either in favor of the assessee or even in favour of the revenue, which may be required to be considered by the Assessing Officer.

7. Under the circumstances, it is clarified that, on remand, the Assessing Officer to take a fresh decision in accordance with law and the case law at the time he decides the matter, inclusive of the decision of the Special Bench of the tribunal rendered in the case of IndusInd Bank Ltd.. In short, the remand is not to take a fresh decision in light of the decision of the Special Bench of the tribunal in the case of IndusInd Bank Ltd. only and the remand is to take a fresh decision by the Assessing Officer in accordance with law and on merits.

8. With this, the present Tax Appeal is disposed of.

**(M.R.SHAH, J.)**

**(MS SONIA GOKANI, J.)**

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