IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 1114 of 2024

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THE PRINCIPAL COMMISSIONER OF INCOME TAX 1
Versus
MOHIT POKHARANA PROP OF YASH EXPORTS

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Appearance:
KARAN G SANGHANI(7945) for the Appellant(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 27/01/2026
ORAL ORDER
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Learned Senior Standing Counsel Mr. Karan Sanghani, at the outset, has fairly pointed out that the proposed substantial questions of law in the present Tax Appeal will not arise in view of the judgment of this Court dated 23.09.2024 passed in Tax Appeal No. 832 of 2024, reported in [2024] 168 taxmann.com 528 (Gujarat), in case of Principal Commissioner of Income-tax v. Keshri Exports.

2. In the present Tax Appeal, the appellant revenue has assailed the order dated 19.07.2024 passed by the Income Tax Appellate Tribunal, Surat in ITA No. 366/ SRT/2024 for A.Y. 2014-15 (for short 'the Tribunal').

3. The appellant has primarily questioned the impugned judgment and order passed by the Tribunal which had dismissed the appeal of the revenue by upholding the decision of CIT (Appeals) restricting the disallowance @ 6% of the bogus purchases against the addition made by the Assessing Officer at the rate of 100% of bogus purchase amounting to

Rs.1,23,84,050/-.

4. At this stage, we may refer to the decision of the Coordinate Bench in case of Keshri Exports (supra). In an appeal filed by the revenue, proposing the identical substantial question of law, this Court has held thus:

> *"5. Considering the above submissions, the relevant extract from the order of the Tribunal is reproduced herein below:*
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> > *"18. As observed earlier not only there existed new information with the AO from the credible sources, but also he had applied his mind and recorded the conclusion that the purchases claimed were non-genuine/bogus and therefore bogus, (clearly meaning that what was disclosed was false and untruthful). The requirements of section 147 r.w.s. 148 have clearly been met; and the reopening is held justified and legal. Therefore, we dismiss the ground raised by the assessee challenging the validity of reassessment.*
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> > *19. In the result, appeals filed by assessees (ITA Nos. 889 to 893/AHD/2017 and ITA Nos. 761 to 762/SRT/2018) are dismissed, whereas the appeal filed by the Revenue (ITA No.916 to 920/AHD/2017 and ITA Nos. 753 to 754/SRT/2018) are partly allowed."*
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> *6. This Court in case of Pankaj K. Choudhary (Supra) while dismissing the Tax Appeal No.617 of 2022 has held as under:*
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> > *"5. The Assessing Officer noticed the contentions of the assessee that confirmation, purchase bills, bank statement, stock register, copy of ITR were already filed. The Assessing Officer was, however, of the view that transactions were bogus and merely that it routed through the banking channel, was not sufficient to conclude that they were the genuine transactions. The contention of the assessee that he had not dealt with the Bhanvarlal Jain group was also negatived. The appellate Commissioner took the view that disallowance was required to be sustained at 12.5% of the purchase. The Assessing Officer was directed accordingly to workout disallowance.*

In para 10.6, the Commissioner of Income Tax (Appeals), recorded thus, "As held above, it is clear that the appellants have made purchases from elsewhere, but have obtained bills from the impugned suppliers. From the Trading & P & L account and Audit report it can be seen that the GP rate shown by appellant is 1.85% oil sales. In such circumstances the disallowance of 100% of purchases cannot be justified. Also as held above, the appellant would nave indulged in above practice in order to get some benefit. And it is this benefit derived by the appellant that need to be taxed. What would be the magnitude of benefit derived by the appellant is the mute question. In the appellant's case, it is seen that GP rate shown is 0.78%".

5.1 The final view was expressed in para 10.10, "Following the above judicial pronouncements and views taken by Ld. CIT(A) & AOS in a few identical cases. In a couple of identical cases, where the GP shown by the appellants is more than 5%, I have confirmed the disallowance of the impugned purchases to the extent of 5% of the impugned purchases. However in the instant case the appellant is showing measly G.P. of only 0.78% on turnover. In view of this I am of the considered opinion that disallowance of 12.5% of the impugned purchases would be reasonable and would meet the ends of justice. Hence, the disallowance is restricted to 12.5% of the impugned purchases for the assessment year in appeal."

5.2 The disallowance at 100% was made in the assessment order for the year under consideration to the tune of Rs. 4,34,00,343/-, which was reduced to 12.5% at Rs. 54,25,040/-. Thereafter, the issue was dealt with by the appellate Tribunal.
The appellate Tribunal endorsed to the view taken by the appellate Commissioner. It was observed that Assessing Officer failed to consider the evidence furnished by the assessee.

5.3 Considering the facts and relevant aspect, the Income Tax Appellate Tribunal partially allowed the appeal of the assessee to further reduce the disallowance at 6%. In so concluding, the Tribunal observed in paragraph No.21 as under,

".....during the financial year under

consideration the assessee has shown total turnover of Rs. 66,09,62,458/-. The assessee has shown Gross Profit @ 78% and net Profit @ 0.02% (page 11 of paper Book). The assessee while filing the return of income has declared taxable income of Rs. 1,81,840/- only. We are conscious of the facts that dispute before us is only with regard of the disputed purchases of Rs. 4.34 Crore, which was shown tohave purchased from the entity managed by Bhanwarlal Jain Group. During the search action on Bhanwarlal Jain no stock of goods/material was found to the investigation party. Bhanwarlal Jain while filing return of income has offered commission income (entry provider). Before us, the Ld. CIT-DR for the revenue vehemently submitted that the ratio of decision of Hon'ble Gujarat High Court in Mayank Diamond Private Limited (supra) is directly applicable on the facts of the present case. We find that in Mayank Diamonds the Hon'ble High Court restricted the additions to 5% of GP. We have seen that in Mayank Diamonds P Ltd (supra), the assessee had declared GP @ 1.03% on turnover of Rs 1.86 Crore. The disputed transaction in the said case was Rs. 1.68 Crore. However, in the present case the assessee has declared the GP @ 0.78%. It is settled law that under Income-tax, the tax authorities are not entitled to tax the entire transaction, but only the income component of the disputed transaction, to prevent the possibility of revenue leakage. Therefore, considering overall facts and circumstances of the present case, we are of the view that disallowances @ 6% of impugned purchases/ disputed purchases would be sufficient to meet the possibility of revenue leakage. In the result the ground No. 2 of appeal raised by the assessee is partly allowed and the grounds of appeal raised by revenue are dismissed."

6. The view taken and the conclusion arrived at by the appellant Tribunal are based on material before it and after analysing the facts and figure available before it. When the Tribunal has thought it fit to reduce the disallowance at 6% from 12.5%, the Tribunal had before it the facts which were duly analysed by it. No

interference is called for in the said conclusion and findings of the Tribunal in the present appeal by this court.

6.1 The another weighing aspect is that the Tax Appeal No. 674 of 2022 in Principal Commissioner of Income Tax 1, Surat vs. M/s. Surya Impex which came to be decided by the co- ordinate Bench on 16.1.2023 dealt with the very issue of accommodation entries provided byBhanwarlal Jain Group. The group involved in the said case is the same group who is saddled with allegations of providing accommodation entry to the assessee. In M/s. Surya Impex (supra) the court held in favour of the assessee. The questions of law involved in the said case were of the same nature and were in the context of similar facts involving the same group.

7. For all the above reasons, substantial questions of law proposed by the appellant in this appeal stands already answered. No question of law much less any substantial questions of law arise in the facts of the present case. No other substantial question of law arises. The appeal is meritless. It is summarily dismissed."

7. In view of the above, the substantial questions of law proposed by the appellant in this appeal stands already answered and therefore, no question of law much less any substantial questions of law can be said to have arisen in the facts of the present case. The appeal is accordingly dismissed. No orders as to cost."

4. Thus, in light of the decision of the Coordinate Bench, no question of law much less any substantial question of law arise in view of settled legal precedent. Appeal is, accordingly, dismissed.

(A. S. SUPEHIA, J)

(PRANAV TRIVEDI,J)

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