

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL No. 576 of 2018
With
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With
R/TAX APPEAL No. 578 of 2018
With
R/TAX APPEAL No. 579 of 2018
With
R/TAX APPEAL No. 580 of 2018
With
R/TAX APPEAL No. 581 of 2018
With
R/TAX APPEAL No. 582 of 2018
With
R/TAX APPEAL No. 583 of 2018
With
R/TAX APPEAL No. 584 of 2018
With
R/TAX APPEAL No. 585 of 2018
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R/TAX APPEAL No. 587 of 2018
With
R/TAX APPEAL No. 588 of 2018
With
R/TAX APPEAL No. 589 of 2018
With
R/TAX APPEAL No. 590 of 2018
With
R/TAX APPEAL No. 621 of 2018
With
R/TAX APPEAL No. 622 of 2018
With
R/TAX APPEAL No. 623 of 2018
With
R/TAX APPEAL No. 624 of 2018
With
R/TAX APPEAL No. 625 of 2018

With
R/TAX APPEAL No. 626 of 2018

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PRINCIPAL COMMISSIONER OF INCOME TAX 1
Versus
ASIAN TILES LTD.

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Appearance :

Mr MANISH BHATT, Sr Advocate with Mrs MAUNA M BHATT, Advocate for the
PETITIONER

Mr B S SOPARKAR, Advocate for the RESPONDENTS

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CORAM: HONOURABLE Mr. JUSTICE AKIL KURESHI
and
HONOURABLE Mr. JUSTICE B.N. KARIA
11th June 2018

COMMON ORDER (PER : HONOURABLE Mr. JUSTICE AKIL KURESHI)

This group of appeals is filed by the Revenue and arises out of the common judgment of the Income Tax Appellate Tribunal, Ahmedabad [**“Tribunal”** for short] dated 5th May 2017 and concerns two sets of assesses identically positioned. These assesses were subjected to search and seizure operations by the Income-tax authorities. The Excise preventive team also had carried out inspection and found *prima facie* evidence of clandestine removal of goods to evade excise duty. The Assessing Officer completed the assessment at the stage where the show cause notice issued by the Excise Department was still pending. According to the learned counsel for the Revenue, the Assessing Officer placed reliance on material seized during the search and only incidentally referred to

the material collected by the Excise Department which formed basis of the show cause notice. At the end of the assessment, the Assessing Officer made additions on the basis of estimated gross profit on the clandestinely disposed of goods manufactured by the assessee. He also made additions in the nature of unexplained investments.

The assessee carried the matter in appeal. CIT [A] gave partial relief. Firstly, he held that not the gross profit but the net profit be brought to tax. While doing so, more significantly, he noticed that the assessee was eligible for deduction under Section 80IB of the Income-tax Act, 1961 and held that even the additional income would be eligible for such deduction.

Both the sides carried the issue before the Tribunal. The Tribunal, by *impugned* judgment though confirmed clandestine removal of goods and suppressed profit, reduced the addition to 1% of the disclosed sales. The Tribunal maintained direction to the Assessing Officer for giving deduction under Section 10B of the Act to such additional income.

Revenue has filed two sets of appeals before us which are arising out of the said judgment of the Tribunal.

We have heard learned advocates for the parties at a considerable length. *Prima facie*, we are not in agreement with the

approach adopted by the Tribunal. If for some reason, Tribunal was of the opinion that no additions could have been made in absence of reliable material on record, the Tribunal could have so stated. If on the other hand, the Tribunal believed that there was diversion of income by the assessee, the additions made by CIT [A] *atleast* ought to have been confirmed. The Tribunal, after recording factors for and against the assessee has, as if tried to balance the equities, reduced the additions to 1% of disclosed sales. In our *prima facie* view, this exercise of the Tribunal limiting the additions has no basis. There was no co-relation between the estimated undisclosed sales and the sales disclosed by the assessee.

In the facts of the present case, however, we are not inclined to examine the appeals of the Revenue any further. This is so because the CIT [A] and the Tribunal have directed that even the additions would qualify for deduction under Section 80IB of the Act. If the entire income of the assessee is exempt and there is no other source which the Revenue could trace such income to, the entire exercise would be revenue neutral. Whether one *per cent* as directed by the Tribunal, or the net profit as held by the CIT [A], or even the gross profit; as desired by the Assessing Officer, would yield no tax to the revenue since whatever additions that may be made or sustained would qualify for deduction under Section 80-IB

of the Act.

Rest of the additions primarily are based on facts. CIT [A] has given elaborate reasons to that limited extent. CIT [A] has confirmed the additions and investments, which the Tribunal has subsumed the same in general directions.

In the result, all these Tax Appeals are dismissed only on this ground.

[Akil Kureshi, J.]

[B.N Karia, J.]

Prakash