

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 414 of 2007

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE KS JHAVERI

Sd/-

and

HONOURABLE MR.JUSTICE G.R.UDHWANI

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
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 or any order made thereunder ?	No

M/S. PRITHVI ASSOCIATES....Appellant(s)

Versus

ASSTT. COMMISSIONER OF INCOME TAX.....Opponent(s)

Appearance:

MR BD KARIA with MR DARSHAN PATEL for MR RK PATEL, ADVOCATE for the Appellant(s) No. 1

MR BHATT for MRS MAUNA M BHATT, ADVOCATE for the Opponent No. 1

CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**

and

HONOURABLE MR.JUSTICE G.R.UDHWANI

Date : 14/06/2016

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. By way of this appeal, the appellant-assessee has challenged the judgment and order dated 8.9.2006 passed by the Income Tax Appellate Tribunal, Ahmedabad Bench 'C', Ahmedabad (for short, "the Tribunal") in Income Tax Appeal No.1662/AHD/2006 for the assessment year 2003-04. By the impugned order, the Tribunal reversed the decision of Commissioner of Income Tax (Appeals)-XVI, Ahmedabad [for short, "CIT (A)"] and restored the disallowance of Rs.12,28,560/- made by the Assessing Officer towards stamp duty expenses incurred by the assessee in relation to the contract executed with Maharashtra State Road Transport Corporation in the course of its business.

2. This Court while admitting the appeal has framed the following question of law:-

"Whether on facts the Tribunal is right in law in confirming the disallowance of Rs.12,28,560/- towards stamp duty expenses actually incurred by the appellant for executing contract with Maharashtra State Road Transport Corporation?"

3. Mr.Karia, learned advocate appearing with Mr.Darshan Patel for the appellant has submitted that the Tribunal has committed an error while setting aside the order of CIT (A). He has taken us through the order of CIT (A), wherein it is observed that the appellant is duty bound to pay stamp duty as per the provisions of Section 34 of the Bombay Stamp Act, 1958. It is observed that the payment of stamp duty is not for

business expediency but it is in the nature of a compulsory levy under the Bombay Stamp Act. It is legally settled that accounting practice cannot override the provisions of the Income Tax Act, 1961. It is further observed that the stamp duty paid by the appellant during the year under consideration is a compulsory statutory levy and would not restrict the profits of the future years and ordinarily revenue expenditure incurred wholly and exclusively for the purpose of business must be allowed in its entirety in the year in which it is incurred and it cannot be spread over a number of years.

4. He has also taken us through the material on record and submitted that the view taken by the Tribunal is contrary to the decision of the Supreme Court in the case of **India Cements Ltd. v. Commissioner of Income Tax** reported in **(1966) 60 ITR 52**, wherein it is observed as under:-

"To summarize this part of the case, we are of the opinion that: (a) the loan obtained is not an asset or advantage of an enduring nature; (b) that the expenditure was made for securing the use of money for a certain period; and (c) that it is irrelevant to consider the object with which the loan was obtained. Consequently, in the circumstances of the case, the expenditure was revenue expenditure within section 10 (2) (xv)."

5. He has also relied upon the decision of the Apex Court in the case of **Taparia Tools Ltd. v. Joint Commissioner of**

Income-Tax reported in **[2015] 372 ITR 605**, wherein it is observed that as per the ordinary rule revenue expenditure incurred in a particular year is to be allowed in that year. Thus, if the assessee claims that expenditure in that year, the Department cannot deny it. However, in a case where the assessee himself wants to spread the expenditure over a period of ensuing years, it can be allowed only if the principle of “matching concept” is satisfied, which upto now has been restricted to cases of debentures.

6. Mr.Bhatt, learned counsel for the respondent has supported the impugned order and contended that the Tribunal has not committed any error. He has relied upon the observations of the Assessing Officer and the Tribunal made in the impugned order and contended that the Tribunal has rightly relied upon the decision of the Apex Court in the case of **Madras Industrial Investment Corporation v. Commissioner of Income Tax** reported in **225 ITR 802**. He has also relied upon a decision of this Court rendered in Tax Appeal No.1471 of 2005, wherein it is held as under:-

“5.1 In this regard it shall be relevant to peruse the Notification No. S.O. 69(E) dated 25.01.1996 wherein the Central Government has notified Accounting Standard-1, more particularly, the expression accrual which has been defined as under:

(b) “Actual” refers to the assumption that revenues and costs are accrued, that is, recognized and they are earned or incurred (and not as money is received or paid) and recorded in the financial statements of the periods to which they relate;

5.2 The assessee has accordingly recorded the revenue as well as expenditure in the financial statement of period to which they relate. We find that the Tribunal

has rightly observed as under in para 8 as under:

... When the assessee issued facility cards for number of years, the assessee has received entrance fee as well as membership fee. Entrance fee is recorded in the year of receipt while the membership fee is spread over to the period to which the membership relates. Similarly, the assessee pays insurance premium for the number of years for which the card is issued because the assessee has to provide the accidental insurance for the entire period of the card. Such expenditure is also spread over to the period for which the card is issued. The Revenue has claimed that the receipt of membership fee as well as the expenditure on the commission and the insurance premium is to be recorded in the year in which they are received and paid. The stand of the Revenue is contrary to the definition of accrual as provided in the Accounting Standard specified by the Central Government which is mandatory to be followed by the income tax assessee.

5.3 We find that the Tribunal has rightly relied upon the decision of Hyderabad Bench in the case of Treasure Island (supra) and concluded as under:

The above finding of the ITAT would be squarely applicable to the case under consideration before us as the facts in both the cases are identical. In the case under appeal before us also, the assessee is under an obligation to provide the services on continuous basis for the period for which the card is issued. The assessee has spread over the receipt as well as expenditure as per Accounting Standard 9 and the same is disclosed by the assessee by way of Note in the audited accounts. If the contention of the Revenue is accepted and the entire membership fee collected is taxed in the year of receipt then in the subsequent year when the assessee will incur the expenditure there will be loss. That would give distorted picture of the working result of the assessee. In view of the above, we respectfully following the above decision of ITAT, Hyderabad Bench in the case of Treasure Island (P) Ltd (supra) hold that the method of

accounting followed by the assessee was proper and correct method and the Assessing Officer has wrongly rejected the same.

6. In this regard we are supported by the decisions of the Apex Court as well as this Court, Bombay and Delhi High Courts. The Bombay High Court in the case of **Taparia Tools Ltd. vs. Jt. CIT, [2003] 260 ITR 102** has observed that in order to determine the net income of an accounting year, the revenue and other incomes are matched with the cost of resources consumed. Under the Mercantile System of Accounting, this Matching is required to be done on accrual basis. Under this Matching concept, revenue and income earned during an Accounting Period, irrespective of actual cash in-flow, is required to be compared with expenses incurred during the same period, irrespective of actual out-flow of cash. It has been further held that the Income Tax Act makes no provision with regard to valuation. It charges for payment of tax, the income which is to be computed in the manner provided by the Act and that it is the duty of the Assessing Officer to deduce a proper taxable income. It is held that the Assessing Officer is required to compute the income in accordance with the method of accounting regularly employed by the assessee and if the system adopted by the assessee does not result in ascertainment of proper profits then, it is the duty of the assessing officer to make appropriate adjustments and deduce true profits.

6.1 The Apex Court in the case of **Rakesh Shantilal Mardia vs. Deputy Commissioner of Income-tax reported in [2012] 210 Taxman 565 (SC)** considering the decision of the Bombay High Court in the case of Taparia Tools Ltd. (supra) has held that matching principle is required to be followed in order to arrive at the real income of the assessee.

6.2 Similarly, in the case of **Commissioner of Income-Tax vs. Dinesh Kumar Goel reported in [2011] 331 ITR 10 (Delhi)**, the Delhi High Court has held as under:

... even when the income accrues or arises or is deemed to accrue or arise to the assessee in India during previous year, that is to be taxed in that

year. It is important, therefore, that receipt of a particular amount in the relevant year should be an income under the aforesaid provision. What is the relevant yardstick is the time of accrual or arisal for the purpose of its taxation, viz., in order to be chargeable, the income should accrue or arise to the assessee during the previous year. If income has accrued or arisen, even if actual receipt of the amount is not there, it would be chargeable to tax in the said year. Though the amount may be received later in the succeeding year, the income would be said to accrue or arise if there is a debt owed to the assessee by somebody at that moment. From this, it follows that there must be the right to receive the income on a particular date, so as to bring about a creditor and debtor relationship on the relevant date. The Court further explained that a right to receive a particular sum under the agreement would not be sufficient unless the right accrued by rendering of services and not by promising for services and where the right to receive is interior to rendering of service, the income, therefore, would accrue on rendering of services.

6.3 This Court has also taken the same view in a recent decision in the case of **Snesh Resort Pvt. Ltd vs. Dy. CIT rendered in Tax Appeal No. 113 of 2004 on 18.11.2014**. This Court has observed as under:

6.2 Similarly in the case of **Bilahari Investment P. Ltd (supra)** the Apex Court has held that since from the various statements produced, the entire exercise arising out of the change of method from the completed contract method to deferred revenue expenditure was revenue neutral, the completed contract method was not required to be substituted by the percentage of completion method.

7. Considering the aforesaid observations of the Tribunal as well as the decisions relied upon by learned advocate for the assessee, we are of the opinion that the Tribunal has committed an error in passing the impugned order so far as considering the membership fees as income when the assessee

had not resumed giving the services of the water park to its members. Under such circumstances, the amount received by way of membership fees was required to be considered as an advance and thereafter as and when the business commenced the amount of liability was required to be taxed over a period of time proportionately. The amount of membership fees would be considered as income from the year the business of the assessee commenced. We therefore answer the questions raised in the negative i.e. against the revenue and in favour of the assessee.

7. In view of the aforesaid discussion, we do not find any infirmity in the order passed by the Tribunal. The Tribunal has rightly considered that the method of accounting should be such from which the correct profit of each year can be deducted and that as per the method adopted by the Revenue, the profit in the year in which the card is issued would be more resulting in loss/less profit in the year in which the services will be rendered by the assessee. We are of the opinion that when the services are rendered partially, revenue is to be shown proportionate to the degree of completion of the service and therefore the assessee was justified in spreading over the amount of membership fee and expenses.

8. Therefore, the Tribunal is justified in setting aside the order of the CIT passed under Section 263 of the Act. We, accordingly, answer the question of law raised in the present appeals in the affirmative i.e in favour of the assessee and against the revenue. The impugned order passed by the Tribunal is hereby confirmed. Appeals are dismissed accordingly.”

7. In view of above, he prayed that this appeal may be dismissed.

8. We have heard both the learned counsel. We have considered the observations made by CIT (A) and in our opinion also the payment of stamp duty is not for business

expediency but it is in the nature of a compulsory levy under the Bombay Stamp Act. It is legally settled that accounting practice cannot over rider the provisions of the Income Tax Act, 1961. Stamp duty paid by the appellant during the year under consideration is a compulsory statutory levy and would not restrict the profits of the future years and ordinarily revenue expenditure incurred wholly and exclusively for the purpose of business must be allowed in its entirety in the year in which it is incurred and it cannot be spread over a number of years. If any statutory expense is required to be paid, in view of decision of the Apex Court in **India Cements Ltd. v. Commissioner of Income Tax** (supra), such expense is required to be allowed in the same year. The Apex Court in the case of **Taparia Tools Ltd. v. Joint Commissioner of Income-Tax** (supra) also observed that as per the ordinary rule revenue expenditure incurred in a particular year is to be allowed in that year. Thus, if the assessee claims that expenditure in that year, the Department cannot deny it. However, in a case where the assessee himself wants to spread the expenditure over a period of ensuing years, it can be allowed only if the principle of “matching concept” is satisfied, which upto now has been restricted to cases of debentures. Therefore, it is rightly observed by the CIT (A) that the expense is required to be allowed in the same year.

9. The decision on which learned advocate for the respondent has placed reliance in the case of **Madras Industrial Investment Corporation v. Commissioner of Income Tax** (supra) is not applicable in the facts of the present case, as it was a case of further payment as per contract between two parties. So far as decision of this Court in Tax Appeal No.1471 of 2005 is concerned, it was a case of

capital fee collected from the members. Therefore, we do not agree with the submissions made by the learned advocate for the respondent.

10. In view of above, we answer the question posed for our consideration in favour of the assessee and against the revenue. We find that the Tribunal has committed an error in law in confirming the disallowance of Rs.12,28,560/- towards stamp duty expenses actually incurred by the appellant for executing contract with Maharashtra State Road Transport Corporation. Accordingly, this appeal is allowed.

Sd/-
(K.S.JHAVERI, J.)

Sd/-
(G.R.UDHWANI, J.)

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