

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 12670/2018

(Arising out of impugned final judgment and order dated 18-09-2017 in TA No. 691/2017 passed by the High Court Of Gujarat At Ahmedabad)

PR. COMMISSIONER OF INCOME TAX SURAT 1 SURAT Petitioner(s)

VERSUS

TEJUA ROHITKUMAR KAPADIA Respondent(s)

(FOR ADMISSION and I.R. and IA No.60967/2018-CONDONATION OF DELAY IN FILING)

Date : 04-05-2018 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE NAVIN SINHAFor Petitioner(s) Mr. Vikramjit Banerjee, ASG,
Ms. Swarupma Chaturvedi, Adv.
Mr. Rajesh K.Singh, Adv.
Mr. Anshul Gupta, Adv.
Mrs. Anil Katiyar, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Heard.

Delay condoned.

The special leave petition is dismissed.

Pending applications, if any, shall stand disposed of.

(SHASHI SAREEN)
AR CUM PS(SAROJ KUMARI GAUR)
BRANCH OFFICER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 691 of 2017**

PR. COMMISSIONER OF INCOME TAX, SURAT-I,....Appellant(s)

Versus

TEJUA ROHITKUMAR KAPADIA....Opponent(s)

Appearance:

MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1

CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE BIREN VAISHNAV

Date : 18/09/2017

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. The Revenue is in appeal against the judgment of Income Tax Appellate Tribunal dated 16.1.2017 raising the following question for our consideration :

“Whether on the facts and circumstances of case and in laws the Appellate Tribunal was justified in treating the bogus purchase of Rs.5,19,86,285/- legitimate only on the basis that purchases are duly supported by bills and all the payments were made by account payee cheques by overlooking findings of the Investigation Wing in the case of Shri Kulwant Singh Yadav, who was running shroff business and he in his statement on oath stated that he issue acknowledgment to the beneficiary on receipt of cheque and delivered cash and the assessee was one of the beneficiaries?”

2. The Assessing Officer had disallowed purchase expenditure of Rs. 5.19 crores making the additions treating the purchases as bogus. The assessee carried the matter in appeal. CIT(Appeals) allowed the appeal inter-alia on the ground that all payments were made by the assessee by Account Payee cheque. The assessee was in fact, a trader. All purchases made from M/s. Raj Impex were found to have been sold and sales were also accepted by the Assessing Officer. The Revenue carried the matter in appeal before the Tribunal. The Tribunal dismissed the earlier making following observations:

“31. We have given a thoughtful consideration to the orders of the authorities below. There is no dispute that the purchases made from M/s. Raj Impex were duly supported by bills and all the payments have been made by account payee cheques. There is also no dispute that M/s Raj Impex have confirmed all the transactions. There is no evidence to draw the conclusion that the entire purchase consideration which the assessee had paid to M/s. Raj Impex had come back to the assessee in cash.

32. It is also true that no adverse inference has been drawn so far as the sales made by the assessee is concerned. We also find that the entire purchases made by the assessee from M/s. Raj Impex have been accounted by Raj Impex and have paid the taxes accordingly. Considering the facts in totality well appreciated by the First Appellate Authority, we do not find any error or infirmity in the findings of the First Appellate Authority. Ground No.1 is accordingly dismissed.”

3. It can thus be seen that the appellate authority as well as the Tribunal came to concurrent conclusion that the purchases already made by the assessee from Raj Impex

were duly supported by bills and payments were made by Account Payee cheque. Raj Impacts also confirmed the transactions. There was no evidence to show that the amount was recycled back to the assessee. Particularly, when it was found that the assessee the trader had also shown sales out of purchases made from Raj Impex which were also accepted by the Revenue, no question of law arises.

4. Tax Appeal is dismissed.

(AKIL KURESHI, J.)

(BIREN VAISHNAV, J.)

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