

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 338 of 2017**

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PR.COMMISSIONER OF INCOME TAX,CENTRAL....Appellant(s)

Versus

M/S.VEER GEMS....Opponent(s)

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Appearance:

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

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

Date : 20/06/2017

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. The Revenue is in appeal against the judgement of the Income Tax Appellate Tribunal dated 03.01.2017 raising following questions for our consideration:

“(A) Whether the Appellate Tribunal has erred in holding that the assessee and M/s Blue Gems BVBA are not Associated Enterprise within the meaning of section 92A of the Income Tax Act, 1961?

(B) Whether the Appellate Tribunal has substantially erred in deleting the Arm's Length Price Adjustment made of Rs.5,22,64,779/- under section 92CA(3)?

(C) Whether the Appellate Tribunal has substantially

erred in deleting addition on account of unexplained Cash Credit u/s 68 and consequential disallowance of interest paid thereon?

(D) Whether the Appellate Tribunal has substantially erred in deleting the disallowance of provision of forward contract payable of Rs.34,35,000/-?"

2. Questions (A) and (B) concern transfer pricing in terms of Chapter 10 of the Income Tax Act, 1961 ('the Act' for short). The Revenue intended to invoke the provisions contained in the said chapter on the premise of following undisputed facts:

"The firm has made substantial purchases from M/s. Blue Gems BVBA. The partners of the firm are three brothers viz. Shri Piyush M. Shah, Mukesh M. Shah, Dilip M. Shah and their wives/son, together holding the entire partnership stake. The fourth brother Nareshkumar Shah, along with his wife Surekhaben Shah and his son Mitesh Shah control the entire share holding of M/s Blue Gems BVBA, the fourth brother and his son being directors of the firm. It is clear that both the entities are being controlled by the same family of four brothers and their close relatives. It is also clear that M/s. Blue Gems BVBA is closely related with M/s. Veer Gems and falls within the parameters of sec. 92A(2) j,k and m."

3. The Tribunal examined the provisions of Clauses j, k and l of sub-section 2 of Section 92A of the Act to come to the conclusion that none of these provisions would apply in the present case and therefore the assessee M/s. Veer Gems and its supplier of rough diamonds M/s. Blue Gems are not associated enterprises. We have perused the detailed

discussion by the Tribunal in this regard. Clause (i) would apply in a case where goods or articles are manufactured or transferred by one enterprise. In the present case, admittedly M/s. Blue Gems does not either manufacture or process any articles. It merely purchases rough diamonds from the international markets and supplies to the assessee. Clause (j) would apply when an enterprise is controlled by an individual. In the present case, both the enterprises are partnership firms. There is nothing to suggest that they are controlled by any individuals. Clause (l) would of course apply in a case where the enterprise is a partnership firm. However, for applicability of the said clause, there has to be an enterprise in the nature of a firm and another enterprise who holds not less than 10% interest in such firms. Such facts are also not applicable in the present case. The Tribunal in our opinion therefore committed no error in holding that the assessee and M/s. Blue Gems not being associate enterprises, the question of applying transfer pricing formula would not arise.

4. With respect to questions (C) and (D), we notice that the same are passed purely on appreciation of materials on record. They are entirely in the nature of questions of facts. The CIT(A) and the Tribunal concurrently held against the Revenue. No question of law therefore arises.

5. In the result, tax appeal is dismissed.

(AKIL KURESHI, J.)

(BIREN VAISHNAV, J.)

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