

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/TAX APPEAL NO. 612 of 2018**

=====

PRINCIPAL COMMISSIONER OF INCOME TAX 4

Versus

TEXRAJ REALTY P LTD

=====

Appearance:

MRS MAUNA M BHATT(174) for the PETITIONER(s) No. 1

for the RESPONDENT(s) No. 1

=====

CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MR.JUSTICE B.N. KARIA

Date : 12/06/2018

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. Revenue has filed this appeal challenging the judgment of the Income Tax Appellate Tribunal dated 16.11.2017 raising following question for our consideration:

"Whether the Appellate Tribunal has erred in law and on facts in deleting the addition made u/s 68 of the the Income Tax Act, 1961?"

2. Issue pertains to the assessment year 2011-12. Respondent-assessee is a private limited company. The business premises of the company was subjected to survey operation under section 133 of the Income Tax Act, 1961 ('the Act' for short). During the survey operation, the Revenue claimed to have seized and

impounded a diary which allegedly reveal certain cash transactions with respect to sell of Vatva land. Statement of the directors of the company were also recorded. Based on such materials, the Assessing Officer carried out the assessments making additions of undisclosed income under section 68 of the Act. Commissioner of Income Tax (Appeals) confirmed the additions, upon which, the assessee approached the Tribunal.

3. The Tribunal in its detailed order noted that the directors during the course of survey, had retracted the statements by filing affidavits. They also claimed that the diaries were created under the pressure of the survey party. The Tribunal noted decision of the Supreme Court in case of **Paul Mathews & Sons v Commissioner Of Income Tax** reported in [2003] 263 ITR 101 (Ker) and of Supreme Court in case of **The Commissioner Of Income Tax vs M/S.S.Khader Khan Son** reported in (2012) 25 taxmann.com 413 (Supreme Court), in which, it was highlighted that the statement under section 133A of the Act was not on oath and would have at best a corroborative value. The Tribunal also noticed that

on the date of survey, the property itself was under several litigations. Though the assessee had purchased the land from one S.M.L. Maneklal Industries, the said seller was facing litigation with the Bombay High Court in Company Petitions. There were several disputes before the City Civil Court, Ahmedabad, concerning the same subject matter land. The Tribunal was therefore of the opinion that on the date of the survey i.e. 23.11.2010, the title to the property of the assessee was itself under serious doubt. Notably, the Bombay High Court's decision in Company Petition was rendered on 21.10.2011. It was also noticed that the City Civil Court, Ahmedabad, had granted status quo with respect to the same land on an application filed by GIDC. The Tribunal therefore noticed that the assessee itself do not have absolute right to alienate the property. It was noticed that in the diary, the name of the purchaser was not mentioned. There was no agreement to sell executed. The Tribunal found it unlikely that an unknown person would give sizable cash to the extent of Rs.14.85 crores even before the agreement to sell is executed. *Inter alia*, on such

grounds, the Tribunal deleted the additions.

4. From the above discussion, it can be clear that the entire issue is based on appreciation of evidence. The Tribunal having considered relevant aspects and having come to the conclusion that the Revenue has failed to bring on record sufficient evidence of cash amounts have been received by the assessee, no question of law arises. Tax Appeal is dismissed.

(AKIL KURESHI, J)

ANKIT SHAH

(B.N. KARIA, J)

