

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 505 of 2009

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE KS JHAVERI

and

HONOURABLE MR.JUSTICE K.J.THAKER

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
- =====

RAMA NATHA GADHAVI.....Appellant(s)

Versus

INCOME TAX OFFICER....Opponent(s)

Appearance:

MR RK PATEL, ADVOCATE for the Appellant(s) No. 1

MR PRANAV G DESAI, ADVOCATE for the Opponent(s) No. 1

CORAM:

HONOURABLE MR.JUSTICE KS JHAVERI

and

HONOURABLE MR.JUSTICE K.J.THAKER

Date : 04/12/2014

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. This is an appeal by the appellant-

assessee, seeking to challenge the order of the learned ITAT, Rajkot Bench (for short, 'the Tribunal'), Dated : 21.11.2008, rendered in ITA No. 75/Rjt/2007 for the A.Y. 1994-95, whereby, the Tribunal dismissed the appeal filed by the assessee.

2. The brief facts leading to the filing of the present tax appeal are that the Ice Factory premises of the assessee, herein, came to be raided by the Revenue on 19.06.1993 conjointly with the police. Since, at the premises of the assessee certain imported items, such as computer parts, air conditioners etc., were found, the personnels from Custom Authorities were called and they seized the aforesaid goods, amounting to total Rs.31,70,000/-. Pursuant thereto, the residence of the brother of the assessee, namely Khimanand Nathabhai Gadhvi, also came to be raided, from where electrical items, i.e. wrist-watches and other electrical goods worth Rs.39,385/- in all were seized. Hence, the concerned AO assessed the total income of the assessee at Rs.1,39,69,385/-. Being aggrieved with the same, the assessee approached the learned CIT(A), who, vide its reasoned order dated 09.11.2006. dismissed the appeal of the assessee. The assessee, hence, approached the learned Tribunal, which passed the impugned order

dated 21.11.2008. Hence, the assessee preferred the present appeal.

3. At the time of admitting this appeal, this Court framed the following question for the consideration;

"1. Whether on the facts the Tribunal is right in confirming levy of penalty at Rs.62,34,760/- under section 271(1) (c) of the Income-tax Act, 1961, as a consequence to addition of Rs.1,39,69,385/- being confirmed in quantum proceedings before the Tribunal?"

4. Mr. Patel, learned Advocate for the appellant-assessee, submitted that the CIT(A) as well as the Tribunal committed grave errors in dismissing the appeals of the assessee, inasmuch as they failed to appreciate the material on record in its proper perspective. He, further, submitted that the CIT(A) as well as the Tribunal ought to have appreciated that addition of certain amount is not a ground to impose penalty on the assessee. He, then, invited our attention to a decision of this Court in Tax Appeal No.1062 of 2005, Dated : 05.11.2014, wherein, under more or less similar circumstances, the assessee's appeal was allowed for the A.Y. 1994-95. He, more particularly, placed reliance on Paras-3 to 5 of the aforesaid order, wherein, this Court observed

as under;

"3. The business premises of the appellant was raided by the police on 19.06.1993 and on finding foreign made computer parts and air conditioner the police informed the Customs Department. The Assessing Officer assessed the total income of the assessee after the raid to be around Rs. 1,39,69,385/-. The appellant preferred appeal before the first appellate authority who confirmed the order of the Assessing Officer. Being aggrieved by the order of learned CIT(A), the appellant preferred appeal before the Tribunal. The Tribunal dismissed the appeal by disregarding the contention of the appellants on facts as well as in law.

4. This appeal was ordered to be heard with Tax Appeal No. 107 of 2004 which has already been decided by this Court vide judgment dated 16.10.2014 wherein this Court has passed the following order:

"1. By way of this Tax Appeal, the appellant has challenged the judgment and order dated 29.01.2004 passed by the Income Tax Appellate Tribunal, Rajkot Bench, Rajkot whereby the Tribunal has dismissed the Appeal.

2. While admitting the matter on 21.12.2004, this Court had framed the following issue :- Whether, on the facts and in the circumstances of the case, the Tribunal has substantially erred in disregarding the fact that business is being carried on by the appellant and

hence, the loss incidental to business is allowable u/s 28 and the provision of Section 37(1) of the Income Tax Act, 1961 cannot override the provision of Section 28?

3.The facts giving rise to the Appeal are that :- The appellant an individual deals in bullion and gold jewelery. On 12.01.1999, a search was carried out on the residential as well as the business premises of the appellant and substantial quantities of bullion was found and seized by the Income Tax Department. On 18.01.1999, notice under Section 158BC was issued and in response, the return for the block period was furnished on 04.03.1999 by the appellant disclosing the total undisclosed income at Rs.1,39,75,834/=. It is the case of the appellant that the Assessing Officer did not accept the figure of undisclosed income as stated in the computation of income furnished by the appellant for the block assessment period and additions/disallowances were made alongwith charging of interest u/s.158BFA(1) of the Income Tax Act, 1961.

One of the disallowance was pertaining to the claim of deduction of Rs.40,34,898/- on account of gold seized by the Custom Authorities. The appellant preferred first appeal before the learned CIT (Appeals) who confirm the allowances by rejecting the contentions of the appellant. The appellant preferred second appeal before the Tribunal and raised the contentions and

explanations supported by documentary evidence on record to impress upon the Hon'ble Tribunal that claim for deduction of Rs.40,34,898/- on account of gold seized by the Custom Authorities was an allowable business expenditure under the Income Tax, 1961. However, the Tribunal dismissed the appeal of the appellant.

4.Learned Counsel for the appellant contended that in view of the decision of the Hon'ble Apex Court in the case of Dr. T.A. Quereshi v. Commissioner of Income-tax, Bhopal reported in 287 Income Tax Reports 547, the loss which was incurred during the course of business even if the same is illegal is required to be compensated and for the loss suffered by the appellant, the Court is required to answer this Tax Appeal in favour of the assessee.

5.Having heard learned Advocates appearing for the parties, this Appeal is answered in favour of the assessee and against the revenue.

6.The Appeal is allowed to the aforesaid extent."

5. In view of the aforesaid decision, since the present appeal is also governed by the same set of facts, this appeal also deserves to be answered in favour of the assessee and against the revenue. Present appeal is therefore allowed to the aforesaid extent."

5. In above view of the matter, the facts of present appeal being similar in nature, will

be governed by the decision of this Court in Tax Appeal No. 1062 of 2005.

6. In the result, this appeal is **ALLOWED** and the question of law raised in this appeal is answered in favour of the appellant-assessee and against the revenue. No order as to costs.

(K.S.JHAVERI, J.)

(K.J.THAKER, J)

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