

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 485 of 2008

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

THE INCOME TAX OFFICER, WARD 2(3)....Appellant(s)

Versus

SHANTI ENTERPRISE....Opponent(s)

Appearance:

MR SUDHIR M MEHTA, ADVOCATE for the Appellant(s) No. 1

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

CORAM: HONOURABLE MR.JUSTICE KS JHAVERI

and

HONOURABLE MR.JUSTICE G.R.UDHWANI

Date : 10/06/2016

ORAL JUDGMENT**(PER : HONOURABLE MR.JUSTICE KS JHAVERI)**

1. By filing this appeal, the revenue has challenged the order dated 15.6.2007 passed by the Income Tax Appellate Tribunal, Ahmedabad, in ITA No.3573/Ahd/2004, whereby the Tribunal allowed the appeal filed by the assessee and dismissed the appeal filed by the revenue.

2. The assessee is a partnership firm engaged in construction of textile market known as "Millenium Market". The assessee filed return of income on 19.10.2000 for the Assessment Year 2000-01 declaring 'nil' income. Said return was processed under Section 143 (1) of the Income Tax Act, 1961 (for short, "the Act"). Thereafter, the Assessing Officer, issued notice under Section 148 of the Act for reopening assessment. After the return was filed, notice under Section 143 (2) of the Act was issued and, thereafter notice under Section 142 (1) of the Act was also issued. In response to the said notice, the representative of the assessee attended the hearing before the Assessing Officer from time to time and submitted details, which were called for by the Assessing Officer. The Assessing Officer, after considering the details submitted on behalf of the assessee and determined total income of the assessee at Rs.1,45,00,000/- vide order dated 29.4.2004. The Assessing Officer also directed initiation of penalty proceedings to levy penalty under Section 271 (1) (c) of the Act.

3. Being aggrieved by the said order dated 29.4.2004, the assessee preferred an appeal before the CIT (A), which was partly allowed vide order dated 29.04.2004 in favour of the assessee.

4. Feeling aggrieved by order of CIT (A) deleting the addition of Rs.1,45,00,000/- made by Assessing Officer, the assessee preferred an appeal before the Income Tax Appellate Tribunal being ITA No.3573/Ahd/2004.

5. By order dated 15.6.2007, Tribunal dismissed the appeal filed by the revenue. Therefore, present appeal is preferred by the department.

6. At the time of admitting present appeal, this Court has framed following question of law:-

“Whether, on the facts and in the circumstances of the case and in law, the Income Tax Appellate Tribunal is right in deleting the addition made by the Assessing Officer on account of unexplained credits of Rs.1,45,00,000/- in the names of 19 creditors?”

7. From the record, it emerges that during the course of assessment proceedings for the Assessment Year 2000-2001, it was noticed that the assessee had shown receipts from booking deposit, out of which Rs.1,55,50,000/- had been received from the following persons:-

Sr. No.	Name of the person	Amount in Rs.	Date of deposit
1	Ashoka Diamond	5,75,000	20.07.1999
2	Bhartibhai Vaghjibhai Vora	6,00,000	20.07.1999
3	Bhanwarlal K. Nama	5,55,000	20.07.1999
4	Bharat Gems	5,30,000	20.07.1999
5	Chinubhai R. Shah	6,00,000	20.07.1999

6	Chunilal B. Savalia	5,00,000	20.07.1999
7	Chandrakant C. Soni	5,50,000	20.07.1999
8	Dhara Gems	5,00,000	20.07.1999
9	Ganesh N. Prajapati	5,60,000	20.07.1999
10	Heena Diamond	5,00,000	20.07.1999
11	Hirabhai Dalichand Patel	5,60,000	20.07.1999
12	Jaysukh S. Mehta	5,50,000	20.07.1999
13	Jayantilal T. Mehta	5,90,000	20.07.1999
14	Jayantibhai Kalubhai Patel	55,000	20.07.1999
15	Jignesh M. Doshi	5,50,000	20.07.1999
16	K.P.Diamond	5,70,000	20.07.1999
17	Kailshbhai Tulsibhai Patel	5,30,000	20.07.1999
18	Manisha Synthetics	35,00,000	20.07.1999
19	Mahendra Chandulal Doshi	5,00,000	20.07.1999
20	Pravinbhai Dhanjibhai Kubadia	5,50,000	20.07.1999
21	Rameshbhai B. Patel	5,50,000	20.07.1999
22	Rahul Gems	5,50,000	20.07.1999
23	S.P.Enterprise	5,50,000	20.07.1999
	Total	1,55,50,000	

8. Aforesaid entries were not found to be genuine and, therefore, the Assessing Officer directed to issue demand notice and challan and to charge interest under Section 234B of the Act. He also directed to issue penalty notice under Section 271 (1) (c) of the Act.

9. Mr.Sudhir Mehta, learned counsel for the appellant contended that amount which has been referred to in the table given above is the source of income of the assessee and, therefore, the Assessing Officer, after giving elaborate reasons, directed to initiate the proceedings as above. He also

submitted that the Assessing Officer has discussed the evidence with regard to all these 23 entries, therefore, the Tribunal could not have passed the impugned order in favour of the assessee.

10. Mr.R.K.Patel, learned advocate for the respondent-assessee supported the impugned order and submitted that the Tribunal has not committed any error while passing the impugned order.

11. We have heard both the learned counsel and perused the record. We have also gone through the impugned order. The Tribunal has observed that all the aforesaid 23 persons, except Shri Kailashbhai Tulsibhai Patel, from whom deposits were received are the income tax assessees. They are having PAN numbers. The amounts have been received through the banking channels. Copies of accounts of each depositor were duly filed. The assessee has duly explained in respect of each of the depositors and the circumstances under which deposits were received by the assessee. The deposited money represents the amounts towards booking received initially through M/s.Siddharth Corporation along with which the assessee has engaged in joint venture of developing the project on the land which was allotted from Surat Municipal Corporation. This is an admitted fact that the assessee has not carried out any business during the year under consideration. No evidence on record has been brought that the assessee had earned income during the year. It is rightly found by the tribunal that the assessee has duly discharged its burden of proof. In the case of **Deputy Commissioner of Income Tax**

v. Rohini Builders reported in **256 ITR 360**, amounts were received by the assessee by account payee cheques and initial burden of proving the credits was discharged. It is held that the assessee need not prove the source of the credits and the fact that the explanation was not satisfactory would not automatically result in deeming amounts as income of the assessee. Therefore, in our view, the view taken by the Tribunal is just and proper and it is not required to be interfered with. In that view of the matter, question posed for our consideration is answered in favour of the assessee and against the department. Accordingly, this Tax Appeal is dismissed.

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

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

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