IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 452 of 2004

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR.JUSTICE KS JHAVERI
and
HONOURABLE MR.JUSTICE K.J.THAKER

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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 ?

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RUDRAKSH BUILDERS....Appellant(s)
Versus
A.C.I.T.....Opponent(s)

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Appearance:
MR JP SHAH, ADVOCATE for the Appellant(s) No. 1
MR SUDHIR M MEHTA, ADVOCATE for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**
and
HONOURABLE MR.JUSTICE K.J.THAKER

Date : 09/12/2014

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, Ahmedabad Bench ‘B’ (for short,

'the Tribunal'), Dated : 30.06.2003, rendered in ITA No. 1031/Ahd/2001 for the A.Y. 1996-97, whereby, the Tribunal dismissed the appeal of the assessee.

2. The brief facts of the case are that the assessee filed its return of income for the year under consideration with certain annexures. One of the annexures contained the amount of bill of construction of Rs.13,70,000/- and the other was a T.D.S. Certificate given to the assessee by one Ravi Organizers. The aforesaid Ravi Organizers paid Rs.16,30,000/- to the assessee and due that the concerned A.O. took the same as *prima facie* adjustment and issued an order, under Section 143(1)(a) of the Income Tax Act, 1961 (for short, 'the Act'), to the assessee in respect of an amount of Rs.2,60,000/-. The assessee, hence, made an application before the concerned AO, pointing out that the aforesaid was an apparent mistake, but, the AO rejected the same. Therefore, the assessee approached the learned CIT(A), which dismissed the appeal of the assessee. When the matter was carried before the Tribunal by the assessee, the Tribunal also dismissed the appeal of the assessee. Hence, the present appeal.

3. At the time of admitting the present

appeal, this Court framed the following question of law;

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the Assessing Officer was right under Section 143(1)(a) in adopting the income of Rs.16,30,000/- on the basis of T.D.S. Certificate in place of Rs.13,70,000/- which the assessee had shown as work in progress and billed Ravi Organizers?"

4. Mr. Shah, learned Advocate for the appellant, submitted that, since, the assessee had mentioned the amount in question in the account of Ravi Organizers in its Books of Accounts, the AO wrongly considered the same as *prima facie* adjustment and that the CIT(A) and the Tribunal also erred in confirming the same. He, then, submitted that the Tribunal failed to appreciate the fact that the tax was deductible under Section 194C of the Act even on the advance payment, whereas, the advance payment never become the income of the payee. He, further, submitted that the Tribunal ought to have held that the *prima facie* adjustment made in the facts of the case was an error.

5. In support of his submissions, Mr. Shah has placed reliance on the following decisions;

(1) “***KHATAU JUNKAR LTD. VS. PATHANIA (K.S.)***”, 196 ITR 0055 (Bombay High Court);

(2) “***GEORGE WILLIMSON (A) LTD. VS. CIT & ANR.***”, [2006] 286 ITR 533 (Gauhati);

6. On the other hand, Mr. Mehta, learned Advocate for the Revenue supported the order of the CIT(A) as well as the Tribunal and submitted that in view of the concurrent finding recorded by the authorities below, present appeal be dismissed as being without merit.

7. We have heard learned Counsels for the parties and perused the material on record as well as the orders of the CIT(A) and the Tribunal.

8. In the case of “***KHATAU JUNKAR LTD. VS. PATHANIA (K.S.)***” (Supra), the Bombay High Court has observed and held an AO can disallow a claim for deduction only if he is satisfied, on the basis of the material which is before him, that the assessee is not entitled to such a deduction. The Bombay High Court has, further, observed that no substantial adjustments, which would require examination of any evidence or which would

require a hearing to be given to the assessee are contemplated whenever such a power of making adjustment without hearing the assessee is conferred and in fact, the wording of the provision as it stands at present makes this clear. As laid down by the Bombay High Court, under Section 143(1)(a), if, on the basis of the return which was filed by the assessee, any tax or interest is found due after adjustments, as set out in the section, an intimation shall be sent to the assessee specifying the sum+ so payable and in the same manner, if any refund is due to the assessee on the basis of such return, it shall be granted to the assessee. Thus, from the above, it can be said that the AO shall not make an adjustment of the nature, which would require an examination of the evidence or a hearing to be given to the assessee.

9. The decision of the Gauhati High Court in "***GEORGE WILLIMSON (A) LTD. VS. CIT & ANR.***" (Supra) is also on the similar lines.

10. Now, coming back to the facts of the present case, from the record, it appears that the assessee had carried out certain work on behalf of M/s. Ravi Organizers as sub-contractor and towards the same, it had received various amounts from time-to-time during the year under

consideration. From the record, it further appears that the assessee had received Rs.16,30,000/- from the M/s. Ravi Organizers, who had deducted 2 per cent T.D.S. from the aforesaid amount. According to the assessee, it carried out the work and received the payment towards the same throughout the year. However, it appears that the assessee had raised bill at the end of the year and on account of that the payment amount was more than the bill amount. Therefore, the assessee carried forward the excess amount, which fact can be ascertained from a perusal of the Balance Sheet supplied by the assessee along with the return filed by it. In other words, the assessee had rightly shown the income to the extent of Rs.13,70,000/-, whereas, T.D.S. was deducted on Rs.16,30,000/-. Since, the actual work carried out by the assessee during the relevant year was to the extent of Rs.13,70,000/- and as the bill was also raised for the same amount, the assessee was justified in not showing his income to be Rs.16,30,000/-. Even otherwise, it is not the case of the Revenue that the amount, which was carried forward by the assessee, does not reflect in the Balance Sheet. We are, therefore, of the opinion that the CIT(A) was erred arriving at a conclusion, which was confirmed by the Tribunal, that the claim of the assessee is not supported by any evidence.

Therefore, in view of the relevant provisions of the Act and the view taken by the Bombay High Court and Gauhati High Court, as above, the AO was not justified in taking the amount in question to be *prima facie* adjustment. We hold that in light of the decision of the Gauhati High Court in "***GEORGE WILLIMSON (A) LTD. VS. CIT & ANR.***" (Supra) and the factual scenario as it emerges, we are unable to accept the submission of Mr. Mehta that the case would not be covered by the decision of the Bombay High Court in "***KHATAU JUNKAR LTD. VS. PATHANIA (K.S.)***" (Supra) and the factual scenario will permit us to place reliance and apply the law enunciated in the decisions of the Bombay and Gauhati High Court, which are cited by Mr. Shah. Under the circumstances, this appeal deserves to be allowed.

11. In the result, present appeal is ***ALLOWED***. We hold that on the facts and in the circumstances of the case, the Tribunal was not right in law in holding that the Assessing Officer was right under Section 143(1)(a) in adopting the income of Rs.16,30,000/- on the basis of T.D.S. Certificate in place of Rs.13,70,000/- which the assessee had shown as work in progress and billed Ravi Organizers. The question framed in this appeal is answered in ***FAVOUR*** of the assessee and ***AGAINST*** the Revenue, accordingly.

(K.S.JHAVERI, J.)

(K.J.THAKER, J)

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