IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 2 of 2000

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 ?

==

ASSTT.C.I.T.....Appellant(s)

Versus

EMTICI ENGINEERING LTD....Opponent(s)

==

Appearance:

MR KM PARIKH, 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 K.J.THAKER

Date : 18/11/2014

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

1. Both these Tax Appeals involve common questions on law and therefore, they are decided by this common judgment. In these Tax Appeals u/s.260A of the Income-tax Act, 1961 challenge is made to the common judgment and order passed by the Income Tax Appellate Tribunal, Ahmedabad Bench in ITA No.4692/AHD/1989 & 4914/AHD/1989 whereby, the appeal filed by the assessee was partly allowed and that of the Revenue was dismissed.

2. Briefly stated, the facts are that the assessee-company is having three divisions, one is the trading division where the assessee is acting as a selling agent of Elecon Engineering Company Ltd. and Power Build Ltd. It is acting as Distributors for Eimco Elecon (I) Ltd. The assessee-company is having written agreements with all the three companies. It is also having a division known as Kanisha Steel, which is in the field of manufacturing steel castings used by Elecon Engineering Co. Ltd. and other allied concerns. So far as the third division is concerned, it is known as Trupti Castings, which is engaged in the manufacturing activity. The manufacturing activity of said Trupti Castings has been suspended and the premises as well as machineries have been let-out to allied concerns. The assessee-company holds substantial investment in the forms of shares of Elecon Engineering Company Ltd. and other

companies of the group, viz. Power Build Ltd., Eimco Elecon (I) Ltd., etc.

3. The assessee-company filed its return of income on 08.07.1986 declaring total income of Rs.61,23,838/-. After assessment scrutiny, the A.O passed the order dated 21.03.1989 u/s.143(3) of the Act. Against the aforesaid order, appeal was preferred before the CIT(A). The CIT(A) vide order dated 07.07.1989 partly allowed the appeal. Being aggrieved by the same, appeals were preferred before the Income Tax Appellate Tribunal, Ahmedabad Bench. Vide judgment and order dated 20.08.1999, the appeal filed by the assessee was partly allowed whereas, the one filed by the Revenue was dismissed. Against the said order, the present appeals have been preferred.

4. While admitting the appeal on 06.12.2000, the following substantial question of law was formulated for our consideration;

> "Whether the Appellate Tribunal was right in law and on facts in confirming the order passed by the Commissioner of Income Tax (Appeal) deleting the interest of Rs.3,06,207/- attributable to investment in shares?"

5. We have heard learned counsel for both the sides. The issue involved in these appeals is already concluded by the decision rendered by this Court in Tax Appeal No.255/2000 decided on 17.11.2014. For ready reference, the judgment and order passed in the aforesaid appeal is reproduced hereunder;

"1. This Tax Appeal u/s.260A of the Income-tax Act, 1961 is filed against the judgment and order dated 17.11.1999 passed by the Income Tax Appellate Tribunal in ITA No.1129/Ahd/1994 whereby, the appeal was dismissed.

2. Briefly stated, the facts are that the assessee-firm filed its return of income on 31.12.1990 declaring income at Rs.50,26,263/-. The return of income was processed by the Assessing Officer and an order u/s.143(3) of the Act dated 29.03.1993 came to be passed against the assessee. Against the said order, appeal was filed before the CIT(A). The said appeal was partly allowed vide order dated 12.01.1994. Being aggrieved by the same, appeals were preferred before the Income Tax Appellate Tribunal. The Appellate Tribunal, vide judgment and order dated 17.11.1999, dismissed both the appeals. Hence, this Tax Appeal at the instance of the Revenue.

3. We have heard learned counsel for both the sides and have perused the record of the case.

4. In para-15 of the judgment, the Appellate Tribunal observed as under;

> "15. ITA No.1129/Ahd/94 : The first ground of appeal is regarding notional interest attributable to investment in shares. The A.O decided the issue against the assessee following earlier years' or in similar circumstances. The first appellate authority, following earlier years' orders, allowed relief to the assessee."

5. It is evident from the order of the Appellate Tribunal that the CIT(A) decided the issue in favour of the assessee by relying upon the orders passed in the earlier years, which was concurred by the Appellate Tribunal.

6. It is required to be noted that for the A.Y. 1984-85, the Revenue in the case of the same assessee had filed Reference Application u/s.256(2) before the Appellate Tribunal seeking reference on the following question of law;

> "Whether, the Appellate Tribunal is right in law and on facts in holding that the amount of Rs.4.50 Lacs contributed by the assessee to the Gujarat Cricket Association cannot be treated as of capital nature and directing the Assessing Officer to allow the same as revenue expenditure?"

> 7. However, the Appellate Tribunal rejected the aforesaid Reference Application, vide order dated 11.09.1998. It is pertinent to note that the issue, which is subject matter of present appeal, was never carried in appeal before this Court. The Appellate Tribunal followed the same decision in this matter also.

> 8. Considering the aforesaid factual aspects, the Appellate Tribunal was justified in granting benefit of the earlier years' orders to the assessee, which are final. In view of the same, we find no illegality with the judgment rendered by the Appellate Tribunal and accordingly, concur with the view taken by the Appellant Tribunal. The appeal, therefore, stands dismissed.

6. It is pertinent to note that the issue involved was never carried in appeal before this Court and therefore, the earlier years' orders, on which the Appellate Tribunal placed reliance, had become final. In view of the above, the issue is answered in favour of the assessee and against the Revenue.

7. We are not giving elaborate reasons since the issue is already concluded, as aforesaid. Accordingly, both the appeals stand rejected.

(K.S.JHAVERI, J.)

(K.J.THAKER, J)

Pravin/*