IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 99 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA
HONOURABLE MR.JUSTICE Z.K.SAIYED

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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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COMMISSIONER OF INCOME-TAX - Applicant(s)
Versus
ARVINDBHAI NAROTTAMBHAI(HUF) - Respondent(s)

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Appearance :
MR BB NAIK for Applicant(s) : 1,
MR MANISH J SHAH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

and

HONOURABLE MR.JUSTICE Z.K.SAIYED

Date : 09/04/2008

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

The Income-Tax Appellate Tribunal, Ahmedabad Bench "A", has referred the following question under Section 256(1) of the Income-Tax Act, 1961 ("the Act"), at the instance of the Commissioner of Income-Tax :

> ***"Whether on the facts and in the circumstances of the case, the Tribunal was right in allowing interest on borrowed funds at the rate of 4 % and not at the rate of 7.5 % for acquisition of preference shares ?"***

The Assessment Year is 1986-87. The relevant accounting period is Samvat Year 2041. The assessee claimed deduction of interest paid on borrowing of Rs. 17 lacs and the rate of interest was 7.5 per cent. The Assessing Officer disallowed the same. The assessee succeeded before the Commissioner (Appeals). In Revenue's Appeal the Tribunal vide order dated 31.1.1997 held that deduction of the amount worked out by applying 4 per cent rate of interest would be allowable while disallowing the balance 3.5 %. For adopting this view the Tribunal has placed reliance on its own order in the case of **SHRENIK KASTURBHAI HUF.**

At the time of hearing, on behalf of the respondent – assessee, it was pointed out that though the Revenue had preferred reference against the order of Tribunal in the case of Shrenik Kasturbhai HUF the finding relating to allowability of deduction at the rate of 4 per cent had not been challenged by the Revenue. In support of the said statement The Statement of Case and Judgment of this Court in Income-Tax Reference No.38 of 1998 have been placed on record.

Thus, it becomes apparent that the finding of the Tribunal in case of Shrenik Kasturbhai HUF is that interest payment worked out by applying rate of 4 per cent was reasonable and the said finding has been accepted by both the sides. In the circumstances it is not necessary to set out the other contentions and facts. The impugned order of Tribunal does not merit interference in the aforesaid fact situation.

Accordingly, it is held that the Tribunal was right in allowing interest on borrowed fund at the rate of 4 per cent and not at the rate of 7.5 per cent for acquisition of preference shares carrying coupon rate of 4 per cent dividend. The question is accordingly answered in affirmative and the Reference stands disposed of with no order as to costs.

(D.A.MEHTA, J.)

(Z.K.SAIYED,J.)

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