IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.61 of 1997

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MR.JUSTICE Z.K.SAIYED Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**No**
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, 1950 or any order made thereunder ?	**No**
5	Whether it is to be circulated to the civil judge ?	**No**

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COMMISSIONER OF INCOME-TAX - Applicant(s)
Versus
SHRI KANUBHAI MULJIBHAI PATEL - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MR.JUSTICE Z.K.SAIYED

Date : 04/03/2008

ORAL JUDGMENT

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

(1) The Income-tax Appellate Tribunal, Ahmedabad Bench “A” has referred the following question

under Section 256(2) of the Income-tax Act, 1961, at the instance of the Commissioner of Income-tax, Baroda:

> "Whether on the facts the finding of the Appellate Tribunal that the penalty u/s.271(1)(a) of the Income-tax Act, 1961 was not imposable after July, 1980 is correct in law on facts?"

(2) The Assessment Year is 1979-80 and the relevant accounting period is S.Y. 2034. The due date of filing of Return of Income was 31.07.1979. The assessee, a Hindu Undivided Family, filed return of income on 23.03.1982 declaring NIL income. In the statement, accompanying to Return of Income, the assessee had shown the amount received on sale of agricultural land as exempt in view of the decision of Bombay High Court in the case of Manubhai A. Sheth & Ors. Vs. N.D. Nirgudkar, 2nd Income-tax Officer, A-II, Ward, Bombay & Ors.,[1981] 128 ITR 87.

(3) As the Return of Income had been filed

belatedly, the Assessing Officer initiated penalty proceedings under Section 271(1)(a) of the Act and ultimately levied penalty of Rs.32,130/- for a delay of 32 months in filing the Return of Income. The assessee did not succeed in appeal before the Commissioner (Appeals). However, in second appeal before the Tribunal, the explanation tendered by the assessee was accepted and the Tribunal held that the assessee was not prevented by reasonable cause for the period up to August 1980 and thus reduced the period of default to 12 months.

(4) Though served there is no appearance on behalf of the respondent-assessee. Mr.M.R.Bhatt, learned Senior Standing Counsel for the applicant-revenue, contended that in the present case the Tribunal had committed an error in law in accepting the explanation of the assessee for the period after August, 1980. Elaborating on the submission it was contended that if the assessee really

entertained a bona fide belief that capital gains on sale of agricultural land was not exigible to tax there was no occasion for the assessee to even file a belated return. It was also contended that prior to the Bombay High Court decision in case of Manubhai A. Sheth (supra) there was a decision of jurisdictional High Court in the case of Ambalal Maganlal Vs. Union of India & Anr., [1975] 98 ITR 237 wherein this very issue had been concluded against the assessee and hence, the assessee could not have entertained a bona fide belief.

(5) As can be seen from the impugned order of the Tribunal, the Tribunal has come to the conclusion that provisions of Section 271(1)(a) of the Act have been rightly invoked in this case. That as the Bombay High Court judgment had been delivered only in July, 1980 the assessee could not have entertained any reasonable belief as to the taxability or otherwise of capital gains arising out of sale of agricultural land till that point of time,

but a bona fide belief could be entertained by the assessee after the judgment of the Bombay High Court, especially when there was no judgment of the Apex Court on the subject. The Tribunal has thus come to the conclusion that the assessee was having a reasonable cause since August, 1980. The Tribunal has also taken into consideration the fact that the assessee had paid interest under Section 139(8) of the Act for delay in filing the Return of Income.

(6) In the aforesaid facts and circumstances of the case, it is apparent that the Tribunal has accepted existence of reasonable cause for a part of the period of delay while rejecting the explanation for another part. In the circumstances, there is no issue of law which would require this Court to interfere. Existence or otherwise of a reasonable cause would always be dependant upon facts. The contention on behalf of the applicant-revenue

that if there was a reasonable cause, as pleaded by the assessee, the assessee ought not to have filed the Return of Income does not merit acceptance. Firstly, the same was never put to the assessee at any stage. Secondly, penalty is not levied for filing return despite having a reasonable cause. The reasonable cause is pleaded and considered as a extenuating factor while deciding to levy penalty after the default of an assessee stands established, namely, default in filing Return of Income on or before the due date. In other words, through penalty may be imposable, in a given set of circumstances and facts, whether penalty should be actually levied, and if yes, for what period, will have to be determined on the basis of reasonable cause.

(7) In the circumstances, the question referred for the opinion of this Court is answered in the affirmative i.e. in favour of the assessee and against the revenue. The reference stands disposed of accordingly. There shall be no

order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[Z.K. SAIYED, J]

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