

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
INCOME TAX REFERENCE No. 18 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
PANKAJ DHIRAJLAL DHRUVE - Respondent(s)

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Appearance :

MR BB NAIK for Applicant(s) : 1,

MR MANISH J.SHAH FOR MR JP SHAH for Respondent(s) : 1,

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

Date : 19/02/2008

ORAL JUDGMENT

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

1 The Income Tax Appellate Tribunal, Ahmedabad Bench 'C' has referred the following question under section 256(2) of the Income Tax Act, 1961 (the Act) at the instance of the Commissioner of Income Tax.

“Whether in the facts and circumstances of the case the interpretation of two circulars of the CBDT dt. 22-9-1965 and 6-1-1984 about the limit of expenses to be allowed as deduction in respect of commission earned by an Agent of Life Insurance Corporation who does not keep books of account is justified in law ?”

2 The Assessment Year is 1991-92. The relevant accounting period is Financial Year ended on 31.03.1991. While finalising assessment u/s.143(3) of the Act on 09.10.1991 the Assessing Officer computed the total income of the assessee, an LIC Agent, at a sum of Rs.2,51,332/-. In the process the Assessing Officer allowed deduction of Rs.65,718/- @ 40% on the commission for the first year and Rs.22,793/- @ 15% on renewal commission from gross commission received by the assessee from LIC.

3 The Commissioner of Income Tax, Rajkot (the CIT) initiated action u/s. 263 of the Act by issuing show cause

notice. After considering the reply tendered by the assessee the assessment order was set aside and the Assessing Officer was directed to grant deduction to the assessee pegged at a sum of Rs.10,000/- on the basis of circular issued by Central Board of Direct Taxes (CBDT) as the assessee was not maintaining the books of accounts though the total receipts were more than Rs.60,000/-.

4 The assessee carried the matter in appeal before the Tribunal who has vide order dated 30.10.1995 allowed the Appeal for the reasons stated in the impugned order.

5 Mr. B.B.Naik, learned Standing Counsel for the applicant-Revenue has invited attention to two circulars issued by CBDT : first dated 22.09.1965, and second dated 1.9.1984. It was submitted that on reading of the subsequent circular dated 1.1.1984 issued by CBDT, it was clear that only a partial modification of the earlier circular dated 22.09.1965 was made whereunder the figure of gross insurance commission in the earlier circular mentioned at Rs.20,000/- had been raised to Rs.60,000/- and the figure of 40% had been increased to 50% in the second circular, but in so far as the ceiling prescribed in earlier circular dated 22.09.1965 vide paragraph No. 2 of the

said circular, having not been enhanced by the modifying circular the Tribunal was in error in interpreting the second circular to mean that the said ceiling should not apply.

6 On behalf of the respondent-assessee the learned Advocate has invited attention to decision in case of *CIT V/s. Tukaram Ramchandra Shinde reported in (1994) 121 Taxation Report 251 (Bom.)* to submit that in fact Bombay High Court did not find the issue as one which was involving a question of law and hence application u/s. 256(2) of the Act came to be rejected. It was therefore urged that this being the solitary decision in relation to case of an Agent same view should be adopted and the decision of the Tribunal was not required to be interfered with.

7 As can be seen from impugned order of the Tribunal, after reading the two circulars and interpreting the same as recorded in paragraph No. 6 of the order, in paragraph No. 7 the Tribunal has also referred to a case of one Smt. Ramaben C. Patel whereunder by order dated 11.02.1987 made u/s. 263 of the Act, CIT, Rajkot has held that in view of the two circulars, the said assessee having received gross commission of Rs.61,115/-, is entitled to deduction towards expenses @

40% of the gross commission. Thereafter in paragraph No.8 the Tribunal has recorded that in compliance with show cause notice dated 07.01.1994 issued u/s. 263 of the Act, the assessee tendered a detailed reply dated 15.02.1994 whereunder number of objections had been raised but the CIT has, after stating that he has gone through the written submissions made by the assessee, not dealt with the objections contained in the reply to the show cause notice, and therefore, according to the Tribunal without considering the merits of the objection raised by the assessee, the CIT has erred in passing the order u/s. 263 of the Act. Ultimately, the Tribunal has recorded that : *“assessment order is neither erroneous nor prejudicial to the interests of revenue”*.

8 In the aforesaid set of facts and circumstances of the case, the impugned order of Tribunal deserves to be upheld only on this limited count, viz. wherein two different CITs having jurisdiction over the same range, viz. Rajkot, have recorded two different opinions in relation to two circulars, and therefore the Tribunal was justified in coming to the conclusion that the assessment order cannot be treated to be erroneous and prejudicial to the interests of revenue as the Assessing Officer had adopted one view of the matter.

9 Accordingly the question referred for the opinion of this Court is left unanswered without disturbing the final conclusion recorded by the Tribunal on different set of reasoning.

10. The Reference stands disposed of accordingly with no order as to costs.

Sd/-
(D.A. Mehta, J.)

Sd/-
(Z.K. Saiyed, J.)

M.M.BHATT

