

## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.189 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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

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

COMMISSIONER OF INCOME TAX - Applicant(s)

Versus

ELSCOPE PVT.LTD. - Respondent(s)

Appearance :

MR MANISH R BHATT for Applicant(s) : 1,

MR RK PATEL for Respondent(s) : 1,

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

and

HONOURABLE MR.JUSTICE Z.K.SAIYED

Date : 23/01/2008

ORAL JUDGMENT

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

(1) The following question, at the instance of the Commissioner Income-tax, has been referred by Income Tax Appellate Tribunal, Ahmedabad Bench 'B' under Section 256(1) of the Income Tax Act, 1961 (the Act):

“Whether, the Appellate Tribunal is right in law and on facts in deleting the additional tax of Rs.3,92,510/- levied under section 104 of the Act ?”

(2) The Assessment Year is 1979-1980. Consequent upon the addition made in the assessment for the Assessment Year in question, the Assessing Officer made an order under Section 104 of the Act levying additional tax of Rs.3,92,510/-. The Commissioner (Appeals) deleted the addition. In revenue's second appeal the Tribunal, following its own order in quantum appeal, confirmed the order made by the Commissioner (Appeals) holding that distributable income would be NIL. The Tribunal has made the reference only because a reference had been made

against the order made in quantum appeal.

(3) Heard the learned advocates appearing for the applicant and the revenue. They accepted the fact that this reference is consequential to the reference at the instance of the Revenue for A.Y. 1979-80 being I.T.R. No.235 of 1995.

(4) Today, by a separate judgment the question referred to at the instance of the Revenue in quantum proceedings has been answered in favour of the assessee and the order made by the Tribunal in quantum appeal has been upheld.

(5) In light of the aforesaid position 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 holding that the Tribunal was right in law in deleting the additional tax of

Rs.3,92,510/- under Section 104 of the Act.

(6) The reference stands disposed of with no order as to costs.

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

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

Bhavesh\*

