

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 204 of 2012

For Approval and Signature:

HONOURABLE MR.JUSTICE V. M. SAHAI

HONOURABLE MR.JUSTICE N.V. ANJARIA

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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-I - Appellant(s)

Versus

ARIHANT AVENUE & CREDIT LTD - Opponent(s)

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Appearance :

MRS MAUNA M BHATT for Appellant(s) : 1,

None for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE V. M. SAHAI

and

HONOURABLE MR.JUSTICE N.V. ANJARIA

Date : 16/08/2012

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE N.V. ANJARIA)

This appeal under section 260A of the Income Tax Act, 1961, preferred by the Revenue is directed against order dated 30.09.2012 of the Income Tax Appellate Tribunal, Ahmedabad Bench `A', in Income Tax Appeal

No.3075 of 2010.

1.1 The appellant has proposed the following question as a substantial question of law:

“Whether the Appellate Tribunal has substantially erred in deleting the addition of Rs.39,86,000/- on account of interest income on advance made by the assessee to its sister concern?”

2. We heard learned senior counsel Mr. M.R. Bhatt assisted by Mrs. Mauna M. Bhatt, learned counsel for the appellant.

3. The issue relates to the addition of Rs.39,86,000/- made by the Assessing Officer on account of interest towards advance made by the assessee to its sister concern. According to the Assessing Officer, the assessee had understated the interest income in the accounting year 2004-05. Therefore, while assessing the income for the corresponding assessment year 2005-06, by assessment order dated 21.12.2009, the Assessing Officer made the addition.

3.1 The said addition was made on the basis of auditor's comments in the audit report that no interest was charged by the assessee on the total advances of Rs.329.64 lakhs. As per the opinion of the Assessing Officer, the assessee should have accounted for the income and expenditure on accrual basis, and therefore, he added the amount as notional interest. The explanation of the assessee was that the advances of Rs.329.64 lakhs were interest free loans and that no interest was charged on those advances right from the inception. The assessee produced the copies of audit reports for the earlier three years and the copies of accounts of the parties to whom the advances were made, in order to substantiate its explanation.

3.2 In the appeal, the CIT(A) held in favour of the assessee, by recording his findings in the order dated 19.08.2010 as under:

“5. ... the appellant, on it's own volition, has not charged any interest on the total deposits made to the five sister concerns, amounting to Rs.3,29,64,266/-. It is not the A.O.'s case that appellant has borrowed the funds and interest bearing funds have been advanced to the five sister concerns, without charging interest. The appellant has not claimed any interest in its profit and loss account. In such situations, the notional interest income of Rs.39,86,000/- could not be brought to tax. The addition of Rs.39,86,000/- is deleted.”

3.3 The order of the CIT(A) was carried in appeal by the Department before the Income Tax Appellate Tribunal, which came to be dismissed as per the impugned order. The Tribunal confirmed the order of the CIT(A) and held,

“6. ... We find that the learned CIT(A) has followed the decision of the Hon'ble Supreme Court in the case of CIT vs. Shoorji Vallabhdas & Co. [46 ITR 144], as well as the decision of the Hon'ble Gauhati High Court in the case of B & a Plantations Industries Ltd. vs. CIT [242 ITR 22], wherein it has been held that where no interest is charged on interest free loans to sister concerns, there is no income to be charged as notional income on accrual basis. In addition to these precedents, further it has been observed that it was not the case of the Revenue that interest bearing borrowed money was given as interest-free advance to those parties. In view of this, we do not find any infirmity or illegality in the order of the learned CIT(A). We uphold the order of the learned CIT(A).”

4. Both the CIT(A) as well as the Tribunal relied on the decision of Gauhati High Court in **B & A Plantations Industries Ltd. vs. CIT (242 ITR 22)** for the principle that where no interest was charged on the interest free loans to sister concerns, there is no income to be charged as notional income on accrual basis. The Apex Court in **CIT vs. Surji Vallabhdas & Co. (46 ITR 144)** explained the point as under,

“Income-tax is levy on income. No doubt, the Income-tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a “hypothetical income”, which does not materialize. Where income has, in fact, been received and is subsequently given up in such circumstances that it remains the income of the recipient, even though given up, the tax may be payable. Where, however, the income can be said not to have resulted at all, there is obviously neither accrual nor receipt of income, even though an entry to that effect might, in certain circumstances, have been made in the books of account”

4.1 In view of the above, the Tribunal did not commit any error in dismissing the appeal of the Revenue and upholding the deletion of the addition in question. The present appeal is devoid of merits. No substantial question of law arises for consideration of this court.

5. Accordingly, the appeal is dismissed.

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THE HIGH COURT
OF GUJARAT
WEB COPY

(V.M. SAHAI, J.)
(N.V. ANJARIA, J.)

(SN DEVU PPS)