IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 1343 of 2007
With
TAX APPEAL NO. 1344 of 2007

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE KS JHAVERI Sd/-

and

HONOURABLE MR.JUSTICE G.R.UDHWANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
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 or any order made thereunder ?	No

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THE INCOME TAX OFFICER, WARD 4(3)....Appellant(s)
Versus
SILK CITY PETROFILES COMPANY LIMITED....Opponent(s)

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Appearance:
MR SUDHIR M MEHTA, ADVOCATE for the Appellant(s) No. 1
MR HARSHAD J SHAH, ADVOCATE for the Opponent(s) No. 1
MR PRAFUL J BHATT, ADVOCATE for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**
and
HONOURABLE MR.JUSTICE G.R.UDHWANI

Date : 19/07/2016

COMMON ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. By way of these Appeals, the Appellant – Department has challenged the judgment and order dated 23.03.2007 of the Income Tax Appellate Tribunal, Ahmedabad Bench 'D' in ITA No.2467/Ahd./2004 and ITA No.117/Ahd./2006.

2. While admitting the matters on 14.12.2007, the following substantial questions of law were framed by the Court for consideration :-

> “Whether, on the facts and circumstances of the case, and in law the Tribunal is right in deleting penalty imposed by the Assessing Officer under Section 271(1)(c) of the Income-tax Act?”

3. Learned Counsel for the appellant -– Department has submitted that the issue raised in these Appeals is governed by the decision of this Court

rendered in the case of **LMP Precision Engg. Co. Ltd. v. Deputy Commissioner of Income-tax (Asstt.) Spl. Range-2** reported in **[2011] 330 ITR 93** (Gujarat), where it has been held that whether merely because a return is revised, that fact, by itself, cannot lead to any presumption as to concealment in original return of income, because Legislature itself has provided for furnishing a revised return in case of any omission in original return, albeit such omission has to be inadvertent and bonafide. It was further held that in the facts of the case that after original assessments of assessee for relevant assessment years had been completed, a survey was conducted upon it and on verification certain purchases made by it did not appear to be genuine. Before said proceedings could be finally concluded, the assessee filed revised return for all three assessment years disclosing additional income in relation to purchases made from certain parties.

The Assessing Officer by issuing notice under Section 148, regularized the said returns and completed reassessment for said years and also imposed penalty under section 271(1)(c) upon the assessee. It is further contended that the view taken by the CIT (Appeals) is required to be reversed and the view taken by the Assessing Officer is required to be confirmed.

4. Learned Counsel for the respondent – assessee has relied upon the following decisions :-

(a) Decision of the Hon'ble Supreme Court in the case of **Commissioner of Income Tax, Ahmedabad v. Reliance Petroproducts Private Limited** reported in **(2010) 11 SCC 762** and Paragraph 20 reads as under :-

> “20. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its return, which details, in themselves were not found to be inaccurate nor could be viewed as the concealment

of income on its part. It was upto the authorities to accept its claim in the return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under Section 271(1)(c). If we accept the contention of the Revenue then in case of every return where the claim made is not accepted by the assessing officer for any reason, the assessee will invite penalty under Section 271(1)(c). That is clearly not the intendment of the legislature.”

(b) The decision of this Court in the case of **Nayan C Shah v. Income Tax Officer** rendered in Tax Appeal No.543/2012 dated 29.03.2016 wherein Paragraph 12 reads as under :-

“12. In light of the aforesaid discussion, the Court is of the view that the view expressed by the Commissioner (Appeals) to the effect that the breach in question was technical and venial in nature, requires to be upheld and the impugned order passed by the Tribunal upholding the levy of penalty on the ground of suppression of particulars, deserves to be set aside.”

5. We have heard learned Counsel for the respective parties and perused the records of the case. In the facts of the case, it emerges that the declaration was made by the assessee under the advice of the Chartered Accountant and subsequently, the same was rectified. Therefore, there was no intention on the part of the assessee to commit any willful concealment. Considering the ratio laid down in the above decision of **Commissioner of Income Tax, Ahmedabad v. Reliance Petroproducts Private Limited** (supra) and in the facts of the present case, we are of the view that the issue raised in the above Appeals is governed by the above decision referred hereinabove. Consequently, we answer the issue in favour of the assessee and against the Department. The Appeals stand disposed of accordingly.

Sd/-
(K.S. JHAVERI, J.)

Sd/-
(G.R.UDHWANI, J.)

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