# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**TAX APPEAL NO. 7 of 2007**

**FOR APPROVAL AND SIGNATURE :**

**HONOURABLE MR.JUSTICE M.R. SHAH** **Sd/-**
**and**
**HONOURABLE MR.JUSTICE B.N. KARIA** **Sd/-**

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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 or any order made thereunder ? | |

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COMMISSIONER OF INCOME TAX....Appellant(s)
Versus
M/S. AMOL DECALITE LTD.....Opponent(s)

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Appearance:
MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1
MR MANISH J SHAH, ADVOCATE for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE M.R. SHAH**
and
**HONOURABLE MR.JUSTICE B.N. KARIA**

**Date : 11/11/2016**

# ORAL JUDGMENT
## (PER : HONOURABLE MR.JUSTICE M.R. SHAH)

1.00. Feeling aggrieved and dissatisfied with the impugned judgement and order passed by the learned Income Tax Appellate Tribunal, Ahmedabad Bench "B", Ahmedabad (hereinafter referred to as "the learned tribunal" for short) in ITA No.508/Ahd/2006 for A.Y. 1998-99, by which the learned tribunal has dismissed the said appeal preferred by the revenue confirming the order passed by the learned CIT(A) deleting interest under section 234(B) and under section 234(D) of the Income Tax Act, 1961 (hereinafter referred to as "the Act" for convenience) levied by the A.O. under section 154 of the Act, revenue has preferred the present Tax Appeal to consider the following substantial questions of law :-

> **"Whether the Appellate Tribunal is right in law and on facts in confirming the order passed by the CIT deleting the interest u/s 234(B) and 234(D) levied by the Assessing Officer u/s.154 of the Act?"**



2.00. Facts leading to the present appeal in nutshell are as under :-

2.01. A.O. passed order under section 143(3) of the Act on 28/2/2001. That thereafter A.O. issued Demand Notice raising demand including demand of interest under section 234(B) of the Act amounting to Rs.4,01,899.

2.02. It appears that feeling aggrieved and dissatisfied with the addition / disallowance made in the assessment order as well as interest charged under section 234(B) directly in the Demand Notice, assessee preferred appeal before the learned CIT(A) and the learned CIT(A) vide order dated 28/11/2002 granted certain relief against quantum addition and also directed to delete interest under section 234(B).

2.03. It appears that thereafter A.O. passed order on 6/1/2003 giving effect to the order of the learned CIT(A) deleting interest charged under section 234(B) which was charged for the first time while issuing Demand Notice.

2.04. That thereafter a Notice under section 154 of the Act was issued by the A.O. on 21/3/2004 proposing to rectify the original order to disallow unpaid provident fund contribution amounting to Rs.4,37,264/- under section 43B of the Act to recover short levy of Tax of Rs.2,44,102 and interest under section 234(B) of the Act of Rs.91,060/- on account of such disallowance. An order under section 154 was passed by the Assessing Officer on 3/1/2005 wherein Rs.4,37,264 was disallowed under section 43B of the Act and demand of Rs.7,43,009 was raised including interest under section 234(B) of Rs.4,99,958/- and under section 234(D) of Rs.97,009/-.

2.05. That against the order dated 3/1/2005 passed by the A.O. under section 154 of the Act, assessee preferred appeal before the learned CIT(A) and the learned CIT(A) allowed the said appeal by deleting disallowance made under section 43B of the Act.

2.06. That thereafter the assessee filed rectification application dated 31/1/2005 against order dated 3/1/2005 passed by the A.O. under section 154 of the Act, contending inter-alia that there was apparent and glaring mistake in the order passed under section 154 dated 3/1/2005 in so far as interest charged under section 234B, and the same was incorrectly charged in view of earlier decision of the CIT(A) dated 28/11/2002 wherein interest originally charged under section 234(B) was directed to be deleted and also on the ground that interest charged under section 234(D) was wrongly charged, as the same was introduced w.e.f. 1/6/2003 and the same applies to the assessment orders falling thereafter.

2.07. The A.O. dismissed the said rectification application vide order dated 3/2/2005 and refused to rectify the earlier order passed under section 154 dated 3/1/2005.

2.08. Feeling aggrieved and dissatisfied with the rejection order under section 154 dated 3/2/2005, assessee preferred appeal before the learned CIT(A). The learned CIT(A) vide order dated 22/12/2005 allowed the said appeal quashing and setting aside order passed under section 154 of the Act dated 3/1/2005 levying interest under section 234(B) and under section 234(D) of the Act on the ground that once levy of interest under section 234(B) was already set aside by the learned CIT(A) earlier vide order dated 28/11/2002 and the said order was not challenged by the revenue by way of appeal, thereafter it was not open for the A.O. to levy and/or charge interest under section 234(B). The learned CIT(A) also set aside levy of interest under section 234(D) of the Act accepting contention on behalf of the assessee that interest under section 234(D) could not have been charged as the same was introduced w.e.f. 1/6/2003 and the same applies to the assessment orders falling thereafter. Consequently, learned CIT(A) deleted interest charged both, under section 234(B) and under section 234(D).

2.09. Feeling aggrieved and dissatisfied with the order passed by the learned CIT(A) dated 22/12/2005, revenue preferred appeal before the learned tribunal and by the impugned judgement and order the learned tribunal has dismissed the said appeal preferred by the revenue and has confirmed the order passed by the learned CIT(A) deleting interest charged under section 234(B) and under section 234(D) of the Act.

2.10. While confirming the deletion of interest charged under section 234(D) of the Act, the learned tribunal has also observed that when proceedings under section 154 of the Act was initiated, there was no reference to levy of interest under section 234(D) of the Act and therefore, without giving any opportunity to the assessee, interest could not have been charged under section 234(D).

2.11. Feeling aggrieved and dissatisfied with the impugned order passed by the learned tribunal, revenue has preferred present Tax Appeal to consider the aforesaid substantial questions of law.

3.00. We have heard Ms.Mauna Bhatt, learned counsel appearing on behalf of the revenue and Mr.Manish J. Shah, learned counsel appearing on behalf of the respondent assessee.

3.01. Having heard the learned counsel appearing on behalf of the respective parties, it is not in dispute that earlier by Demand Notice and after assessment order interest was charged under section 234(B) of the Act. However, the said demand of interest under section 234(B) of the Act was set aside by the learned CIT(A) vide order dated 28/11/2002. It is an admitted position that thereafter the matter was not carried to appeal by the revenue against the order passed by the learned CIT(A) dated 28/11/2002 setting aside demand of interest under section 234(B) of the Act. If that be so, thereafter it was not open for the A.O. to again levy / charge interest under section 234(B) of the Act in exercise of powers under section 154 of the Act. Under the circumstances, as such, no error has been committed by the learned tribunal in confirming the order passed by the learned CIT(A) deleting levy of interest under section 234(B) of the Act, which was passed by the A.O. in exercise of powers under section 154 of the Act, which was passed after the learned CIT(A), in exercise of appellate jurisdiction setting aside the levy of interest under section 234(B) of the Act vide order dated 28/11/2002.

3.02. Now, so far as deletion of interest, charged under section 234(D) of the Act by the learned CIT(A), by the learned tribunal is concerned, Mrs.Bhatt, learned counsel appearing on behalf of the department has stated at the bar that as the amount involved is Rs.97,009/- only, on the smallness of the amount only she does not press the present appeal qua deletion of interest charged under section 234(D) of the Act is concerned. However, she has requested to make suitable observation that the question of law i.e. whether section

234(D) of the Act would be applicable with respect to assessment orders falling after 1/6/2003 be kept open.

3.03. In view of the above and for the reasons stated above, we see no reason to interfere with the impugned judgement and order passed by the learned tribunal. The question of law framed is held in favour of the assessee and against the revenue with respect to deletion of interest charged under section 234(B) of the Act. So far as deletion of levy of interest under section 234(D) of the Act is concerned, we are not passing any order as the same is not pressed by the learned counsel for the revenue.

Present appeal stands disposed of accordingly.

Sd/-
**(M.R. SHAH, J.)**
Sd/-
(B.N. KARIA, J.)

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