

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 1980 of 2008

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THE COMMISSIONER OF INCOME TAX - Appellant(s)

Versus

WEST INN LIMITED - 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 K.A.PUJ

and

HONOURABLE MR.JUSTICE RAJESH H.SHUKLA

Date : 25/11/2009

ORAL ORDER

(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

1. The Commissioner of Income-tax, Central-I, Ahmedabad has filed this Appeal under Section-260 of the Income Tax Act, 1961 for the assessment year 2003-04 proposing to formulate following substantial questions of law for consideration and determination of this Court;

(A) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in law in deleting the penalty u/s.271(1)(c) of the Act holding that it is impossible for a person of common prudence to remember each and every amendment in

Income-tax Law even if, such person was a limited company managed by the qualified personnel ?

(B) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in law in following the decision of Hon'ble Supreme Court in the case of Dilip N. Shroff which has been recommended for reconsideration by larger bench in the case of Union of India Vs. Dharmendra Textile Processor 212 CTR 432 (SC) ?

(C) Whether on the facts and in the circumstances of the case, the Appellate tribunal is justified in law in deleting the penalty, ignoring the fact that the acts of the assessee's employees / representatives are the acts of the assessee itself for all consequences including imposition of penalty u/s.271(1)(c) of the Act as held by the Hon'ble Karnataka High Court in the case of CIT Vs. Sree Valliappa Textile 294 ITR 322 (Kar.) ?

2. Heard Mrs. Mauna Bhatt, learned Standing Counsel appearing for the revenue. She has submitted that the assessee has filed return of income on 5.11.2003 declaring total income of Rs.85,66,560/-. The assessment was completed under Section 143(3) of the Act on 20.3.2006 determining total income at Rs.1,21,29,906/-. During the course of assessment proceedings it was noticed that the assessee had claimed depreciation @ 20% on Hotel building as against admissible rate of 10%. The excess claim of depreciation of Rs.32,01,122/- was disallowed. The penalty proceedings under Section 271(1)(c) of the Act were initiated for furnishing

inaccurate particulars of income. The penalty under Section 271(1)(c) of the Act of Rs.12,47,171/- was levied vide order dated 29.9.2006.

3. Being aggrieved by the said order the assessee filed an Appeal before the CIT(A) who confirmed the said penalty vide order dated 14.3.2007. Being aggrieved by the order of CIT(A) the assessee filed Second Appeal before the Tribunal. The Tribunal has deleted the said penalty.
4. Mrs.Bhatt has submitted that the tribunal has committed an error in as much as the assessee has made an incorrect claim of depreciation and it is not a bonafide mistake. The assessee being a limited Company is managed by the qualified professionals and advised by the experts on different legal and technical matters. She has further submitted that the assessee cannot take shelter to escape from levy of penalty on the ground that the wrong claim of depreciation was made on the basis of Tax Audit Report of the Chartered Accountant. She has further submitted that the assessee is bound by the Act of his servants / agents etc. and accordingly the Tax Advisor being engaged by the assessee, it be held as liable if any wrong advice is given by the tax Advisor. She relied on the decision of **Karnataka High Court in the case of CIT Vs. Sree Valliappa Textiles 294 ITR 322 (Kar.)**.
5. We have considered the submissions made by Mrs.Bhatt and also perused the order passed by the tribunal. The Tribunal in its order observed that the rate of depreciation has been lowered down

during the assessment year under consideration, although the same rate of depreciation was being allowed for the last 12 assessment years. The assessee's books of accounts were duly audited and tax report was filed alongwith return of income. The Chartered Accountant has certified the claim of depreciation in accordance with the provisions contained in the Income-tax Act. The Tribunal was, therefore, of the view that the assessee was bound to rely on Technical Expert especially when the provisions contained in the Income-tax are complex and complicated. A number of amendments are being taken place every year. It is not possible for an individual or a Company to have knowledge about the Act. Based on these observations the Tribunal has come to the conclusion that if the assessee has acted on the advise given by the Chartered Accountant it cannot be said that the assessee has made a false claim. The Tribunal has also relied on the decision of this Court in the case of **BTX Chemical Pvt. Ltd., Vs. CIT 288 ITR 196 (Guj.)** wherein it is held that the assessee is bound to rely on the report of Chartered Accountant.

6. Considering all the above aspects of the matter, the Tribunal has deleted the penalty imposed by the Assessing Officer under Section 271(1)(c) of the Act. We are in complete agreement with the finding recorded by the Tribunal and one of the view that the penalty levied by the Assessing Officer in no way is hold to be justified. Since there being a finding of fact by the Tribunal on the

basis of evidence, no substantial question of law arises out of the order of the Tribunal.

7. We, therefore, dismiss this Appeal.

(K. A. PUJ, J.) (R. H. SHUKLA, J.)

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