

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 1991 of 2008

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COMMISSIONER OF INCOME TAX-II - Appellant(s)

Versus

KASTURBHAI MAYABHAI PVT. LTD. - Opponent(s)

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Appearance :

MR MR BHATT, SENIOR COUNSEL with 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 : 03/12/2009

ORAL ORDER

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

1. The Commissioner of Income tax - II, Ahmedabad has filed this Tax Appeal under Sec. 260A of the Income tax Act, 1961 for Assessment Year 2003-04 proposing to formulate the following substantial questions of law for consideration and determination of this Court:

[A] Whether the Appellate Tribunal is right in law and on facts in confirming order passed by the CIT(A) deleting the addition of Rs.7,14,000/- out of total addition of Rs.7,94,000/- made on account of unexplained deposit u/s. 68 of the Act?

[B] Whether the Appellate Tribunal is right in law and on facts in confirming order passed by the CIT(A) deleting the disallowance of interest of Rs.4,72,185/- and restricting the disallowance u/s. 14A of the Act on account of management expenses of Rs.1,94,587/- to Rs.25,000/-?

2. Heard, Mr. MR Bhatt, learned Senior Counsel appearing for the appellant and perused the order passed by the Tribunal. The findings recorded by the Tribunal pertaining to these two questions in Para 7 as well as in Para 12 are the findings of facts. The Tribunal has observed in Para 7 of the order that the Assessing Officer has made the addition of Rs.7,14,000/- received by the assessee as deposits on the grounds that the assessee could not prove the identity and creditworthiness of the creditors and genuineness of the transaction. The Tribunal found that loans were received by the assessee through banking channel by Account Payee Cheque. The assessee has also filed loan confirmations giving the Permanent Account Number of the loan creditors. Thus, the identity of the loan creditors has been proved by their Permanent Account Number and creditworthiness of the loan creditors has been proved by the cheques issued by the loan creditors. The Tribunal further observed that the assessee could have been asked to prove source of credit in the books but could not have been asked to prove the source of the sources. The Revenue could not bring any relevant material on record to controvert the findings of the learned CIT (Appeal) and no mistake could be pointed in the order of the learned CIT (Appeal). The Tribunal, therefore, confirmed the order of the CIT (Appeal). Since there is concurrent finding of facts, no substantial question of law arises in the order of the Tribunal.

3. So far as the 2nd question is concerned, the Tribunal has observed that there was no nexus between the investment made in the partnership firms and secured loans taken by the assessee. The Revenue could not bring any positive and relevant material on record to controvert the said finding of the

learned CIT (Appeal). The Revenue also could not show that the secured loans were utilized by the assessee other than for the business purpose of the assessee.

4. These all are the findings of facts by two authorities. It cannot be said that any substantial question of law arises out of the order of the Tribunal. This Tax Appeal is, therefore, dismissed.

[K. A. Puj, J.] [Rajesh H. Shukla, J.