

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 1996 of 2008

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COMMISSIONER OF INCOME TAX-IV - Appellant(s)

Versus

SHREE BALA FINVEST 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)

1.0 The Commissioner of Income tax - IV, Ahmedabad has filed this Tax Appeal under Sec. 260A of the Income tax Act, 1961 for the Assessment Year 1997-98 proposing to formulate following substantial question of law for consideration and determination of this Court:

Whether the Appellate Tribunal is right in law and on facts in confirming the order passed by the CIT(A) and thereby

deleting the penalty of Rs.7,66,660/- levied u/s. 271(1)(c) of the Act?

2.0 Heard, Mr. MR Bhatt, learned Senior Counsel appearing for the appellant and perused the orders passed by the authorities below.

3.0 The brief facts of the case are that the assessee filed its Return of Income showing loss of Rs.8,68,490/-. The assessment was finalized u/s. 143(3) of the Act on a total income of Rs.14,25,200/- after making the following additions:

i) Dividend of Rs.9,60,908/-

ii) Interest of Rs.2,671/-

iii) Interest expenses disallowed of Rs.12,53,349/-

iv) Misc. expenses of Rs.75,274/-

Penalty proceedings u/s. 271(1)(c) of the Act were also initiated for concealment and furnishing inaccurate particulars of income by the assessee.

3.1 Being aggrieved by the said penalty order, the assessee preferred appeal before the CIT (Appeals), who deleted the penalty and held that penalty is not leviable on disallowance of expenses, where the appellant has actually incurred the expenses and all the information was duly provided to the Assessing Officer. He further observed that the dividend income was shown on receipt basis in the Assessment Year 1998-99 and there was no question of any concealment or filing inaccurate particulars of income, as

the dividend income was shown on receipt basis and not actual basis. He further observed that merely getting the additions confirmed would not automatically result into concealment, unless the Assessing Officer establishes the same with convincing evidence.

3.2 Being aggrieved by the said order, Revenue preferred Second Appeal before the Tribunal and the Tribunal has confirmed the order of CIT (Appeals), deleting the penalty leviable under Sec. 271(1)(c) of the Act.

3.3 The Tribunal, while disposing of the appeal has observed that the Revenue having not claimed or brought any material before the Tribunal to contradict the factual findings of the CIT (Appeals) that the appellant had actually incurred the expenses and had provided all the information relating to the assessment of the same, there is no question of concealment of income or furnishing inaccurate particulars of income. The Tribunal did not find any infirmity in the order of the CIT (Appeals).

3.4 With regard to the dividend income, the Tribunal has observed that the Revenue has not disputed the assessee's claim that it was showing the dividend income on actual receipt basis and, therefore, taxing of the same by the Revenue on accrual basis cannot amount to concealment of income or furnishing of wrong particulars of income by the assessee and hence, no penalty under Sec. 271(1)(c) of the Act can be levied.

4.0 Since, both the authorities below have arrived at the concurrent findings of facts and no substantial question of law arises out of the order passed by the learned Tribunal, this Tax Appeal is summarily dismissed.

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

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