IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 107 of 2004

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE KS JHAVERI Sd/-

and

HONOURABLE MR.JUSTICE K.J.THAKER Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
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, 1950 or any order made thereunder ?	No
5	Whether it is to be circulated to the civil judge ?	No

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BIPINCHANDRA K. BHATIA....Appellant(s)

Versus

DY.C.I.T.....Opponent(s)

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Appearance:

MR RK PATEL, ADVOCATE for the Appellant(s) No. 1

MR PRANAV G DESAI, ADVOCATE for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**

and

HONOURABLE MR.JUSTICE K.J.THAKER

Date : 16/10/2014

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. By way of this Tax Appeal, the appellant has challenged the judgment and order dated 29.01.2004 passed by the Income Tax Appellate Tribunal, Rajkot Bench, Rajkot whereby the Tribunal has dismissed the Appeal.

2. While admitting the matter on 21.12.2004, this Court had framed the following issue :-

> "Whether, on the facts and in the circumstances of the case, the Tribunal has substantially erred in disregarding the fact that business is being carried on by the appellant and hence, the loss incidental to business is allowable u/s 28 and the provision of Section 37(1) of the Income Tax Act, 1961 cannot override the provision of Section 28?"

3. The facts giving rise to the Appeal are that :-

   The appellant – an individual deals in bullion and gold jewellery. On 12.01.1999, a search was carried out on the residential as well as the business premises of the appellant and substantial quantities of bullion was found and seized by the Income Tax Department. On 18.01.1999, notice under

Section 158BC was issued and in response, the return for the block period was furnished on 04.03.1999 by the appellant disclosing the total undisclosed income at Rs.1,39,75,834/=.

It is the case of the appellant that the Assessing Officer did not accept the figure of undisclosed income as stated in the computation of income furnished by the appellant for the block assessment period and additions/disallowances were made alongwith charging of interest u/s.158BFA(1) of the Income Tax Act, 1961.

One of the disallowance was pertaining to the claim of deduction of Rs.40,34,898/- on account of gold seized by the Custom Authorities. The appellant preferred first appeal before the learned CIT (Appeals) who confirm the allowances by rejecting the contentions of the appellant.

The appellant preferred second appeal before the Tribunal and raised the contentions and explanations supported by documentary evidence on record to impress upon the Hon'ble Tribunal that claim for deduction of Rs.40,34,898/- on account of gold seized by the Custom Authorities was an allowable business expenditure under the Income Tax, 1961. However, the Tribunal dismissed the

appeal of the appellant.

4. Learned Counsel for the appellant contended that in view of the decision of the Hon'ble Apex Court in the case of **Dr. T.A. Quereshi v. Commissioner of Income-tax, Bhopal** reported in **287 Income Tax Reports 547,** the loss which was incurred during the course of business even if the same is illegal is required to be compensated and for the loss suffered by the appellant, the Court is required to answer this Tax Appeal in favour of the assessee.

5. Having heard learned Advocates appearing for the parties, this Appeal is answered in favour of the assessee and against the revenue.

6. The Appeal is allowed to the aforesaid extent.

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

Sd/-
(K.J. THAKER, J)

CAROLINE