

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL No. 393 of 2011**

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COMMISSIONER OF INCOME TAX-III - Appellant(s)**Versus****M/S GOLDEN FINANCE - Opponent(s)**

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Appearance :

MR PRANAV G DESAI for Appellant(s) : 1,

None for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**and****HONOURABLE MS.JUSTICE HARSHA DEVANI****Date : 15/09/2012****ORAL ORDER****(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)**

1. Revenue is in appeal against judgement of the Income Tax Appellate Tribunal ("the Tribunal" for short) dated 27.9.2010 raising following questions for our consideration:

"(i) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in deleting addition of Rs.7,49,181/- being interest on unexplained investment made by the Assessing Officer and confirmed by the Appellate Commissioner?

(ii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in restricting the addition of Rs.31,21,590/- to Rs.3,12,159/- on account of unaccounted investment?

(iii) Whether, on the facts and in the

circumstances of the case, the Income Tax Appellate Tribunal has committed an error in reversing the order of the Commissioner of Income-Tax(Appeals)-IV, Ahmedabad, without assigning any cogent and relevant reasons?

2. Issues are two fold. Firstly, is with respect to unexplained investment of Rs.31,21,590/- added by the Assessing Officer. This was primarily on the basis of a document impounded during survey and statement of partner of the assessee's firm who stated that one zero was omitted from such impounded document. Ultimately, the Tribunal deleted the addition on the ground that such statement recorded during survey could not have been relied upon. Reference was placed on decision of Kerala High Court in case of **Paul Mathews and Sons v. Commissioner of Income-tax** reported in 263 ITR 101. The Tribunal further noted that theory of omission of one zero is not borne out from the impounded document. Tribunal was therefore, of the opinion that the addition made on basis of such theory was thus not justified. The Tribunal further observed that the contents of the documents do not suggest or bring out that notings are of loans and advances. The Tribunal was therefore, of the opinion that such addition was made only on conjectures and surmises. On such basis the Tribunal reduced the additions from Rs.31,21,590/- to 3,12,159/- and deleted the rest. Second issue pertained to charging of interest on such principal amount. The Tribunal as a consequent of its earlier

conclusion deleted the interest also.

3. Having heard learned counsel for the Revenue, we do not find that the Tribunal committed any error. A careful perusal of the orders on record would suggest that except for the impounded document and statement of partner, there was no further evidence with the Revenue to make addition. In fact document itself only suggested entry of Rs.3,12,159/-. It was on the strength of the statement of the partner during the survey that the Revenue inflated such figure 10 times by adding zero. Statement of partner also suggested that it was his personal income and not that of firm. Thus entire statement was also not taken in its entirety. Further other than such statement, there was no further material available on record. In fact, the Tribunal recorded that from the document there was nothing to suggest that the entries pertained to loan and advances.

4. To our view the issues have been considered by the Tribunal on the basis of evidence on record. No question of law arises. Tax Appeal is therefore, dismissed.

(Akil Kureshi, J.)

(Harsha Devani, J.)

(raghu)