

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 1621 of 2008

With

TAX APPEAL No. 1525 of 2008

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COMMISSIONER OF INCOME TAX-III - Appellant(s)

Versus

M/S HIMANSHU ENGINEERING WORKS - Opponent(s)
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Appearance

MR. M.R.BHATT 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 : 23/12/2009

COMMON ORAL ORDER

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

1. The Commissioner of Income Tax-III, Ahmedabad has filed these two Tax Appeals under Section 260A of the Income Tax Act, 1961 for assessment year 1999-2000 and 2002-2003 respectively. The assessment year 1999-2000 is in respect of reopened assessment under Section 143(3) read with Section 147 of the Act whereas assessment year 2002-03 is the regular assessment year. Since the issue is common in both the Tax Appeals and the same question is proposed to be formulated for consideration and determination of this Court, both the Tax Appeals are heard and disposed of together.
2. In both the Tax Appeals, the order passed by the Tribunal has been challenged by the Revenue on the ground that the Tribunal has erroneously set aside the order passed by the Commissioner of Income Tax under Section 263 of the Income Tax Act, 1961.
3. Mr. Manish R. Bhatt, the learned Senior Standing Counsel appearing with Mrs. Mauna M.Bhatt for the appellant in both the Tax Appeals has submitted that there is no discussion worth its name in the entire body of the assessment orders for each of these two assessment years and hence it cannot be said that the Assessing Officer has applied his mind to the issue which is sought to be revised by the Commissioner under Section 263 of the Act. He has therefore submitted that the orders passed by the Assessing Officer are erroneous and prejudicial to the

interest of revenue and hence the Commissioner of Income Tax has rightly exercised his powers under Section 263 of the Act.

4. We have heard Mr. Manish R. Bhatt, the learned Senior Standing Counsel appearing for the appellant and have also perused the order passed by the Tribunal.
5. The Tribunal in terms observed in its order that the Assessing Officer has passed the assessment order after making inquiries and the assessee has responded to the same. The availability of the questionnaire on record issued by the Assessing Officer and the detailed replies made on behalf of the assessee in response thereof have not been disputed by the department. The Tribunal therefore took the view that in the facts of the material available on record there is no reason or basis for it to conclude that the assessment order has not been passed after necessary inquiries etc. Though the Tribunal has observed that ideally the Assessing Officer should have discussed the result of the queries etc. however, not doing so per se does not lead to the conclusion that he has passed an order without due care and caution. The Assessing Officer has also referred to the replies given by the assessee on 17.3.2005 and 21.3.2005, which were duly taken into consideration by the Assessing Officer. After making this observation in the order, the Tribunal has come to the conclusion that the action of the Commissioner of Income Tax fails on the touchstone of the twin principles laid down by the Apex Court namely the order is erroneous and also prejudicial to the interest of the Revenue.
6. From the above discussion made by the Tribunal in its order, we are of the view that the Tribunal has rightly quashed and set aside the order passed by the

Commissioner of Income Tax under Section 263 of the Act and the Tribunal's order does not give any rise to a substantial question of law. We therefore summarily dismiss both these Tax Appeals.

(K.A.Puj,J)

(Rajesh H. Shukla,J)