

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 57 of 2013**

With

TAX APPEAL NO. 121 of 2013

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COMMISSIONER OF INCOME TAX....Appellant(s)

Versus

SHARDABEN K MODI....Opponent(s)

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Appearance:

MR MANAV A MEHTA, ADVOCATE for the Appellant(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI
and
HONOURABLE MS JUSTICE SONIA GOKANI**Date : 30/04/2013****ORAL ORDER****(PER : HONOURABLE MS.JUSTICE SONIA GOKANI)**

1. Both the tax appeals concern identical question of law and therefore, they have been decided together by this common order. The facts emerging in Tax Appeal No. 57 of 2013 shall be reproduced for the purpose of deciding these appeals.
2. The assessee-respondent is a proprietor of Ganesh Hall and Decorators and Gunjan Corporation who filed return of income for A.Y. 1999-2000 which was taken under scrutiny assessment and the total income was assessed at Rs 23.67 lacs (rounded off).
3. Aggrieved by the same, this was carried before the CIT(A)

which dismissed the appeal of the assessee.

4. Challenging such order of the CIT(A), the Tribunal was approached, which, vide its order dated 20.07.2012 allowed the appeal.

5. Aggrieved by approach, revenue has challenged such order, the present tax appeal is preferred proposing following substantial questions of law:

"A. Whether in facts and in law, the Tribunal was justified in quashing the reassessment proceedings for A.Y. 2000-01 under Section 147 of the Act?

B. Whether the ITAT erred in law in not appreciating the facts that the assessments were re-opened on the basis of discrepancies noticed during the course of survey action under section 133 A of the Act?

C. Whether on the facts of the case and in law the Hon'ble ITAT has erred in not considering the addition made by AO amount to Rs. 3,29,410/- made on account of unexplained creditors, on the grounds that the reassessment proceedings were not valid?

D. The Hon'ble ITAT failed to appreciate the law by ignoring the facts and law that above addition was made on the basis of statement recorded during the survey proceedings in question to incriminating documents found during the survey proceedings under section 133 A of the Act?

6. We have heard learned counsel, Mr. Manav Mehta for the revenue. The only question that has to be addressed to by this Court is whether the notice of re-opening issued is valid or not.

7. It is argued by the learned counsel that in survey

proceedings, son of the respondent-assessee, who was looking after business of the assessee, had admitted the huge amount of Rs. 12 lacs on behalf of the assessee-respondent and, therefore, the revenue was justified in seeking to reopen the assessment. He further urged that not only the son had admitted such amount, assessee-respondent also while admitting, confirmed that her son was looking after the business and therefore, the Tribunal has committed an error in allowing the appeal of the assessee and rejecting the say of the revenue. He further made a grievance that other questions were also at large before the Tribunal which had not been gone into by the Tribunal and therefore, learned counsel urged for intervention. He has also produced, for our perusal, original file, where reasons are recorded while issuing the notice under Section 148 of the Income Tax Act to substantiate his version:

8. At the outset, it is necessary to reproduce the reasons recorded by the Income Tax Officer before he chose to issue the notice under Section 148 of the Income Tax Act seeking reassessment:

“In this case, survey u/s. 133A of the Act was carried out at the business premises of Ganesh Hall, Nr. Kasturba Hospital, Valsad on 03.01.2006. Several incriminating documents were found and impounded u/s. 131(3) of the Act.

During the course of survey statement of her son, Shri Tarun K. Modi, who is looking after day to day business being run by her was recorded and it is found that the income chargeable to tax has escaped assessment for the A.Y. 99-2000.

I have therefore, reason to believe that income chargeable to tax has escaped assessment to the extent of investment made by her in various projects with her son. I therefore propose to assess/reassess the income of the assessee for the A.Y.99-2000.”

9. As could be seen from the reasons recorded, the sole basis for issuance of the notice is, the statement made during the course of survey by Mr. Traun K. Modi, who happens to be the son of the assessee-respondent. The reasons do not give any further details as to what is the amount which had been accepted by the son of the assessee-respondent and how the same would bind the assessee. In absence of any independent material, record does not reveal as to how such statement recorded of the son of the assessee-respondent would form a valid basis for reopening the assessment of the assessee-herself.
10. Any notice of the reopening issued under Section 148 would be required to be tested at the touchstone of the reasons recorded by the Assessing Officer, as could be noticed from the record itself, the very basis on which the revenue has sought to reopen the assessment is not found cannot be sustainable.
11. From the findings of the Tribunal, it is apparent that it has in clear terms recorded that considering the evidentiary value of the statement recorded under Section 133(A) use of such statement cannot be permitted without any corroborative evidence and the Tribunal having found that except the version of the assessee's son recorded under Section 133(A) which too was retracted later on, there was nothing to base the entire proceedings of reopening. Moreover, what is

further recorded by the Tribunal is the circular of CBDT dated 10.03.2003 wherein the insistence on the part of the board is not to force any confession as any such confession recorded by the officer is based on no other evidence except the oral version in confessional mode and if later on it is retracted, it leaves the revenue with no basis.

12. Even without delving into the details of findings with regard to evidentiary value of the statement recorded under Section 133(A) and CBDT circular fundamentally relied upon by the Tribunal in denying the say of the revenue, we are convinced from the reasons recorded by the Assessing Officer alone that these proceedings under Section 147 and the notice issued under Section 148 cannot be permitted to be sustained. Tribunal's judgement, therefore, deserves no interference.

13. It is also to be noted that the Tribunal having annulled the proceedings of the reassessment had rightly chosen not to enter into any further questions proposed before it. We are therefore, do not need to address to any of those questions proposed by the revenue in the present proceedings. Tax Appeals accordingly on merits, deserve no further consideration, and hence, are dismissed.

(AKIL KURESHI, J.)

(MS SONIA GOKANI, J.)

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