

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 772 of 2007

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE M.R. SHAH

and

HONOURABLE MR.JUSTICE S.H.VORA

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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

Versus

M.B. STOCKHOLDING PVT. LTD.....Opponent(s)

Appearance:

MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1

RULE SERVED for the Opponent(s) No. 1

CORAM: HONOURABLE MR.JUSTICE M.R. SHAH
and
HONOURABLE MR.JUSTICE S.H.VORA

Date : 23/04/2015

ORAL JUDGMENT**(PER : HONOURABLE MR.JUSTICE M.R. SHAH)**

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Income Tax Appellate Tribunal, 'B' Bench, Ahmedabad dated 20.10.2006 passed in ITA No.3229/Ahd/2003 for A.Y.1990-1991, the Revenue has preferred the present tax appeal to consider the following substantial questions of law:-

“(A) Whether the Appellate Tribunal is right in law and on facts in setting aside the order of the CIT(A) and directing the Assessing Officer not to include the current profit to be part of accumulated profit while determining the amount of deemed dividend u/s.2(22) (e) of the Act?

(B) Whether the Appellate Tribunal has not substantially erred in not appreciating that the main issue in the appeal before it was not how to compute the accumulated profit for the purpose of 2(22)(e) but the issue was whether the Assessing Officer was right in rejecting the assessee's rectification application u/s.154 on the ground that there was no mistake apparent from the record?

(C) Whether the Appellate Tribunal has not erred in law and on facts in not adjudicating the issue in appeal relating to order u/s.154 and thereby transgressing from the main issue?”

2. Mrs.Bhatt, learned advocate appearing on behalf of the appellant-Revenue has vehemently submitted that as such, the Tribunal had materially erred in entering into the merits of the case without deciding the issue whether the Assessing Officer was justified in rejecting the rectification application submitted by the assessee which was submitted under Section 154 of the Income Tax Act (hereinafter referred to as the 'Act'). Mrs.Bhatt,

learned advocate appearing on behalf of the Revenue has even made the submissions on merits and submitted that the learned Tribunal has materially erred in not properly interpreting and/or considering the Explanation 2 to Section 2(22)(e) of the Act. It is submitted that as per Explanation 2 to Section 2(22)(e) of the Act, for the purposes of 'accumulated profit', the current year profit upto the date of distribution has to be taken into account. It is submitted that, therefore, the learned Tribunal has materially erred in deciding the issue on merits, in favour of the assessee and against the Revenue and in allowing the appeal.

3. Though served, nobody appears on behalf of the respondent.

4. It is to be noted that as such, the respondent-company has gone into liquidation and the Official Liquidator has been appointed. However, nobody has appeared on behalf of the Official Liquidator. The same would be the fate even if the matter is remitted either to the learned Tribunal or to the Assessing Officer to consider the issue on merits afresh. Therefore, we ourselves have considered the issue with respect to the main issue on merits whether the Assessing Officer was justified in including the current profit to be part of accumulated profit while determining the amount of deemed dividend under Section 2(22)(e) of the Act.

4.1. Having heard Mrs.Bhatt, learned advocate appearing on behalf of the Revenue and considering the provisions of Section 2(22)(e) of the Act, more particularly, Explanation 2 to Section 2(22)(e) of the Act, it cannot be said that the learned

Tribunal has committed any error in directing the Assessing Officer not to include the current profit to be part of accumulated profit while determining the amount of deemed dividend under Section 2(22)(e) of the Act. While determining the amount of deemed dividend under Explanation 2 to Section 2(22)(e) of the Act, the current profit was not required to be included to be part of accumulated profit. As such, as observed by the learned Tribunal, the issue is already settled by the Hon'ble Supreme Court against the Revenue in the case of Associated Banking Corporation of Ind. Ltd. V/s. Commissioner of Income-Tax, Bombay reported in (1965) Vol.56 ITR 1(SC) by which, the view taken that the profit accrues when the books of account are closed.

5. Under the circumstances and considering the Explanation 2 to Section 2(22)(e) of the Act, we confirm the view taken by the learned Tribunal and held the question No.1 raised in the present appeal in favour of the assessee and against the Revenue. Consequently, the present appeal deserves to be dismissed and is accordingly dismissed. No order as to costs.

(M.R.SHAH, J.)

(S.H.VORA, J.)

Hitesh