(2014) 11 GUJ CK 0051

In the Gujarat High Court

Case No : Tax Appeal No. 258 of 2006

Abhay Associates APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:
Income Tax Act, 1961 — Section 142(1), 143(1), 143(2)

Citation : (2014) 11 GUJ CK 0051

Hon'ble Judges : Kaushal Jayendra Thaker, J;K.S. Jhaveri, J

Bench : Division Bench

Advocate : S.N. Divatia, Advocate for the Appellant; Varun K. Patel, Advocate for the Respondent

Judgement

K.S. Jhaveri, J.—By way of this appeal, the appellant-assessee has challenged the judgment and order dated 15.6.2005 passed by the Income-Tax Appellate Tribunal in ITA No. 7/Ahd/2004 for AY 2000-01.

2. While admitting the present Tax Appeal on 21.3.2006, this Court has framed the following substantial question of law:

"A. Whether on the facts and in the circumstances of the case, Income-tax Appellate Tribunal, was right in law in confirming the disallowance made by the Assessing Officer of commission expense of Rs. 6,25,472/- paid to M/s. Industro Trading Co., Mumbai and M/s. Devang Corporation Ahmedabad?

B. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in upholding the disallowance of commission expenses of Rs. 6,25,472/- merely for failure of the sub-agent to appear before the Assessing Officer, though the evidence on record proved that the said commission was genuine?"

3. The facts of the case are that the return of income was filed on 19.12.2001, declaring total income at Rs. 5,21,800/-. The return has been processed u/s. 143(1) of the IT Act on 27.3.2002. Therefore, notice u/s. 143(2) of the Act was

issued on 26.12.2001. Thereafter, notice u/s. 142(1) along with detailed questionnaire was issued on 3.1.2002. Thereafter, considering the material on record, the assessment order came to be passed. Against the said assessment order, the assessee has preferred an appeal before the CIT(A) which came to be partly allowed. Against the said order of CIT(A), the assessee has preferred an appeal before the Income-tax Appellate Tribunal, Ahmedabad Bench ''C'', which was dismissed. Therefore, present Tax Appeal by the assessee.

4. Heard the learned advocates appearing for the parties and considered the submissions. Mr. SN Divetia learned advocate appearing for the appellant-assessee has contended that the Assessing Officer has disallowed the claim only on the ground that the commission which was paid to the Commission Agent has not appeared before both the authorities, however, subsequently, the same Commission Agent had appeared before the authority for subsequent year and the commission paid to the said Agent was allowed. He further contended that for the relevant year, which is in question, since the relation between the assessee and Commission Agent were strained, he could not remain present before the authorities, however, the same Commission Agent for subsequent year, has remained present before the authority on behalf of the present assessee. In that view of the matter, the matter is required to be remitted back to the Assessing Officer.

5. Mr. Varun K. Patel learned advocate appearing for Revenue has contended that though opportunity was given, the assessee has not kept present the Commission Agent before the authorities and in view of concurrent findings of both the authorities, it will not be proper to interfere with the order passed by the ITAT.

6. In view of peculiar facts of the present case, more particularly, the fact that the same Commission Agent has remained present before the authorities for subsequent year for the same assessee, and therefore, we are of the opinion that ends of justice will be met if the matter is remitted back to the Assessing Officer. In that view of the matter, the order passed by both the authorities are quashed and set aside. The matter is remitted back to the Assessing Officer. It is clarified that while considering the case afresh, the Assessing Officer will take into consideration only deduction qua those persons who appear before the Assessing Officer and will give only benefit which were given to the assessee in the subsequent year. The present Tax Appeal is disposed of accordingly.