

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 496 of 2012

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COMMISSIONER OF INCOME TAX -1....Appellant(s)

Versus

WHITELENE CHEMICALS....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 : 15/01/2013

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. Revenue is in appeal against the judgement of the Income Tax Appellate Tribunal ("the Tribunal" for short) dated 3.2.2012 raising following question for our consideration :
"Whether on the facts and circumstances of the case, the Hon'ble Tribunal has erred in law in cancelling penalty of Rs.32,67,643/- levied under Section 271(1)(c) of the Act by the Assessing Officer and confirmed by the learned CIT(A) on addition of Rs.36,72,605/- and Rs.8,83,613/- made on account of low gross profit and under section 69 C of the Act being unexplained expenditure?"
2. Issue pertains to penalty imposed by the Assessing Officer and confirmed by CIT(Appeals) under section 271((1)(c) of the Income Tax

Act,1961 for the assessment year 2001-2002. Such penalty in further appeal came to be deleted by the Tribunal. Primarily, penalty was imposed on two counts. Firstly, that additions were made in the income of the assessee after rejection of book results on the basis of fair gross profit rate. Second limb of the penalty was that assessee had retained 3% of the sales tax with it.

3. With respect to first aspect of the penalty, the Tribunal observed that no penalty can be imposed merely because account books of assessee were rejected and that profit was estimated on the basis of fair gross profit ratio. With respect to retention of the portion of the sales tax, the Tribunal stated that no evidence was brought by the Revenue to suggest that assessee had retained a portion of sales tax with it. Assessee filed its explanation which could not be termed as not bona fide. In absence of any corroborative evidence to prove the charge that the portion of sales tax bill was retained by the assessee, penalty could not be imposed. From the above discussion, it can be seen that the opinion of the Tribunal with respect to deletion of penalty is based on appreciation of evidence on record. With respect to additions made after rejection of book result and on the basis of fair gross profit ratio, the Tribunal found no additional material to sustain the penalty. With respect to so-called

retention of the sales tax, the Tribunal found that the Revenue could not establish such charge. Explanation offered by the assessee could not be termed as not bona fide. We do not see any question of law arising. Tax Appeal is therefore, dismissed.

(AKIL KURESHI, J.)

(MS SONIA GOKANI, J.)

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