IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 491 of 2012

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

Versus

GUJARAT INDUSTRIAL DEVELOPMENTCORPORATION & 1....Opponent(s)

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Appearance:
MR SUDHIR M MEHTA, ADVOCATE for the Appellant(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI
and
HONOURABLE Ms JUSTICE SONIA GOKANI
18th December 2012

ORAL ORDER *(PER : HONOURABLE MS JUSTICE SONIA GOKANI)*

Following is the substantial question of law proposed for our consideration in the present Tax Appeal preferred by the Revenue under Section 260A of the Income Tax Act ["**Act**" for short] against the order of the Income Tax Appellate Tribunal ("**ITAT**" for short) for A.Y 20004-2005 :-

[A] Whether on the facts and circumstances of the case, the Hon'ble Tribunal was right in law in accepting the revised of income u/s 139[5] of the Income Tax Act ?

Heard learned advocate Shri Sudhir Mehta appearing for the Revenue and

with his assistance, examined the papers minutely. It appears that the assessee is State Government owned company, acting as a development financial institution for assisting the cause of medium and large scale industries in the State of Gujarat. The assessee filed revised return u/s. 139(5) of the Act. However, the Assessing Officer ignored such revised return and completed the assessment, proceedings on the basis of original return.

Challenging such order of the Assessing Officer before the CIT (A), when the appeal was preferred by the assessee, the CIT (A) confirmed the same.

Aggrieved by the said order, assessee preferred appeal before the Tribunal which directed the Assessing Officer to accept the revised return filed by the assessee. As the return was already filed by the assessee u/s. 139 (1) of the Act, it was held by the Tribunal that if any omission is made by the assessee, it was entitled to filed a revised return. This aggrieved the Revenue, and therefore, the proposed question of law.

The issue arose in the following factual background :

Assessee is a limited company. The Government of Gujarat floated Sale Tax Deferment Scheme. For facilitating the industrial units to avail such benefit of the Sale Tax Incentive Scheme in the State, *pari passu* charge was to be created in favour of the Sales Tax Department, as decided by the Government of Gujarat and as such deferred amount of sales tax was considered as a "deemed loan" and the present respondent acted as a nodal agency for the scheme. During the year under consideration provision was made for receipt of service charges for the above referred fee-based activities and

additional income was accounted for and offered to tax while filing original return of income. On 17th September 2005, the Government of Gujarat cancelled the Sales Tax Deferment Scheme and due to this withdrawal of earlier Government Resolution, no income was receivable by the respondent and therefore, in the assessment year 2005-06, GIIC reversed the income in the books of account. Tribunal noted that Section 139(5) of the Act stipulates fulfillment of certain conditions to enable the assessee to avail such a right for filing revised return of income. All the three conditions, *viz.*, filing of the original return u/s. 139(1) of the Act; to file revised return before one year from the end of the year in which original return is filed; whichever is earlier; and discovery of any omission or wrong statement in the original return were found fulfilled in case of the present assessee. The Tribunal noted these compliances in the following words :

> " We have heard the rival contentions and perused the facts of the case. There is no dispute to the fact that the books of account of the assessee are audited and the assessee is a 'Limited Company'. And after closing the books of account, no entry can be passed in the books of accounts. These arguments of the Ld. Dr. Johri cannot help the Revenue because it is a case of revising of return u/s. 139(5) of the Act. According to which, if the assessee discovers any omission or any wrong statement therein, i.e. the return of income he may furnish revised return as prescribed u/s. u/s. 139(5) of the Act provided the original return having been furnished by the assessee u/s. 139(1) of the Act, was entitled to furnish the return of income u/s. 139(5) of

> the Act. Though , there was a loss declared in the return furnished u/s. 139(1) of the Act and by revising the return further loss is also increased, there can not be any bar in revising the return, if there is an omission or wrong statement found by the assessee in the return of income originally filed u/s. 139(1) of the Act. In the present case before the expiry of the limitation to file the revised return, the assessee had discovered that no income had accrued to the assessee and accordingly the return had been revised for the reasons of withdrawal of the scheme by the Government. The action of the assessee in revising the return on principle of real income cannot be said to be false or against the provisions contained in Section 139(5) of the Act, in view of the facts and circumstances and the devisions of various courts of law relied upon by the assessee hereinabove. We accordingly reverse the order of Ld. CIT(A) and direct the Assessing Officer to accept the revised return filed u/s. 139(5) of the Act. Thus, the ground No.1 of the assessee is allowed."

We are of the opinion that the Tribunal has committed no error in interpreting the law or applying the law to the facts of the case of the respondent herein. The Government of Gujarat had withdrawn scheme by Resolution dated 17th September 2005 and therefore, on discovering that income had accrued, the respondent had chosen to revise its return. Assessee was within its right and nothing contrary could be pointed out by the Revenue before us from the record to interfere with the findings of the Tribunal that either on the facts, or on law any error is committed warranting interference.

Tax Appeal resultantly is dismissed.

(AKIL KURESHI, J.)

(Ms. SONIA GOKANI, J.)

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