

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 846 of 2017

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PRINCIPAL COMMISSIONER OF INCOME TAX-4,....Appellant(s)

Versus

VAISHNODEVI REFOILS AND SOLVEX,....Opponent(s)

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Appearance:

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

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CORAM: **HONOURABLE MS.JUSTICE HARSHA DEVANI**
and
HONOURABLE MR.JUSTICE A.S. SUPEHIA

Date : 28/11/2017

ORAL ORDER

(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. By this appeal under section 260A of the Income Tax Act, 1961 (hereinafter referred to as the "Act"), the appellant-revenue has called in question the order dated 13.2.2017 made by the Income Tax Appellate Tribunal, Ahmedabad "A" Bench, (hereinafter referred to as the "Tribunal") in ITA No.2778/Ahd/2013 by proposing the following question, stated to be a substantial question of law:

"Whether the Tribunal erred in law and on facts in deleting the addition of 1,05,46,160/- on account of capital introduction by one of the partner of the firm was made under section 68 of the Income Tax Act?"

2. The assessment year is 2010-11 and the relevant

accounting period is the previous year 2009-10. The assessee filed its return of income for assessment year 2010-11 on 23.9.2010 declaring total income of Rs.10,48,630/-. Vide order dated 27.2.2013, the Assessing Officer framed the assessment under section 143(3) of the Act making an addition of Rs.1,05,46,160/- on account of capital introduction by one partner of the firm under section 68 of the Act.

3. The assessee carried the matter in appeal before the Commissioner (Appeals) and succeeded. The revenue carried the matter in appeal before the Tribunal, which dismissed the appeal.

4. Mrs. Mauna Bhatt, learned senior standing counsel for the appellant, reiterated the grounds set out in the memorandum of appeal.

5. From the facts as emerging from the record, it appears that during the financial year 2009-10, Mr. Kantilal Jayramdas Thakkar, one of the partners of the assessee firm had introduced net capital of Rs.1,05,46,160/- in the firm. The Assessing Officer called upon the assessee to prove the source of capital introduced by Mr. Kantilal Jayramdas Thakkar and show cause as to why such sum should not be treated as cash credit under section 68 of the Act. Before the Assessing Officer, the assessee furnished the contra confirmation of the said partner who was assessed to tax at Ward-2 of Palanpur B.K. Range and was filing the return of income regularly. Copy of acknowledgement receipt of ITR filed by Mr. Kantilal Jayramdas Thakkar was also furnished along with the audit report of the said financial year to prove that the assessee firm had

received the fund from its partner Shri Kantilal Jayramdas Thakkar, who had also shown in his books of accounts that such amount had been invested by him. The Assessing Officer, however, was of the view that the credit worthiness of the partner who introduced the capital had not been proved by the assessee and made the addition by invoking the provisions of section 68 of the Act.

6. The assessee carried the matter in appeal before the Commissioner (Appeals), who noted that from the audited balance-sheet of the partner in his books of accounts, the investments in the partnership firm were duly reflected. Insofar as the source of capital contribution is concerned, the partner had his own capital, secured and unsecured loans besides liability. The Assessing Officer had not given any adverse finding about the said sources and their genuineness. According to the Commissioner (Appeals), in case the Assessing Officer had any doubts about the credit worthiness of the partner, he could have referred the matter to the Assessing Officer of the partner for making necessary verifications at his end. But no adverse inference could be drawn in the case of the assessee being the partnership firm, for the capital introduced by the partner when the partner had confirmed the capital contribution.

7. In revenue's appeal, the Tribunal placed reliance upon the decision of this High Court in Pankaj Dyestuff Industries rendered in Income Tax Reference No.241 of 1993 for the proposition that no addition can be made with regard to the partner's capital introduction in the hands of the partnership firm and dismissed the appeal.

8. In the facts of the present case, when the assessee has furnished the details with regard to the source of the capital introduced in the firm and the concerned partner had confirmed such contribution, the assessee had duly discharged the onus cast upon it. Thereafter, if the Assessing Officer was not convinced about the creditworthiness of the partner who had made the capital contribution, the inquiry had to be made at the end of the partner and not against the firm. The controversy involved in the present case, therefore, stands squarely covered by the decision of this court in the case of **Commissioner of Income-tax v. Pankaj Dyestuff Industries**, rendered on 6.7.2005 in Income Tax Reference No.241 of 1993.

9. In the above view of the matter, when the Tribunal has merely applied the decision of the jurisdictional High Court to the facts of the case, it cannot be said that the impugned order suffers from any legal infirmity so as to give rise to any question of law, much less, a substantial question of law warranting interference. The appeal, therefore, fails and is, accordingly, summarily dismissed.

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(HARSHA DEVANI, J.)

(A. S. SUPEHIA, J.)

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