

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 360 of 2017**

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COMMISSIONER OF INCOME TAX - VADODARA - 2....Appellant(s)

Versus

ORG INFORMATICS LIMITED....Opponent(s)

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Appearance:

MR KM PARIKH, ADVOCATE for the Appellant(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE BIREN VAISHNAV

Date : 14/06/2017

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1 This appeal is filed by the Revenue challenging the judgement of the Income Tax Appellate Tribunal dated 19.10.2016. Following question is presented for our consideration:

" Whether in the facts and circumstances of the case and in law, the I.T.A.T is justified in not upholding the penalty u/s.271(1)(c) of the Act imposed by the Assessing Officer and upheld by the CIT(A), without appreciating that the assessee had deliberately did not offer the revenue receipt amounting to Rs.2,60,00,000/- to tax and claimed the same as capital receipt which amounted to filing inaccurate particulars of income?"

2 As can be seen from the question, the issue

pertains to penalty imposed by the Assessing Officer and confirmed by CIT(A) and the respondent-the assessee which was deleted by the Tribunal. For the assessment year 2003-04, the assessee had filed return of income in which one of the issues pertain to receipt of Rs.2.60crores by the assessee. For transfer of intellectual property right, assessee claimed that such receipt was exempt from tax and accordingly did not offer it to tax in the return filed for such year. The Assessing Officer was of the view that such receipt was in the nature of capital gain and had to be taxed accordingly. The order of Assessing Officer was confirmed by the CIT(A) and the Tribunal. We are informed that the assessee's appeal against the judgement is admitted and pending before the High Court.

3 The Assessing Officer had instituted penalty proceedings and issued a notice to the assessee in this regard. In response to such notice for penalty, the assessee pointed out that the return was filed along with all the prescribed annexures. The copy of computation of income also contained disclosure

through a separate note that the intellectual property rights receipt of Rs.2.60 crores was excluded from the computation of income. In note 4 of the computation, the assessee had given detailed reasons for claiming such exemption. In the Annual Report attached to the return, the assessee had made further following disclosures:

"[a] Director's report on page 10 of the annual report under the head "subsidiaries" mentions about GIPTPL being a wholly owned subsidiary as well as about the sale of technical know-how to GIPTPL for Rs.2.60 crores.

[b] The schedule 'A' of "other income" reflected in the profit and loss account for the year under reference discloses the aforesaid transfer of intellectual properties and amount thereof of Rs.2.60 crores as a separate line item.

[c] The schedule 'L' of notes to accounts and significant accounting policies lists down the related party transactions at para 10 wherein the transaction in question has been reported as a separate I line item as sale of Intellectual property of Rs.2.60 crores to the subsidiary company."

4 Despite such disclosures, the Assessing Officer proceeded to impose penalty under Section 271 (1)(c) of the Income Tax Act on the ground that the assessee failed to offer explanation for making such a claim. According to the Assessing Officer, once the claim was

rejected the onus was on the assessee to dislodge the revertible presumption of the claim of concealment of income. CIT(A) having confirmed the decision of the Assessing Officer, the Revenue approached the Tribunal. The Tribunal by the impugned judgement held that the assessee had made a legal claim in a transparent manner. Whether such a claim is acceptable or not, is altogether a different matter. Merely because the claim is not accepted would not give rise to penalty proceedings. That, the Tribunal further took a note of the assessee's contention that even against the quantum addition the assessee had preferred appeal, which was admitted by the High Court, which would mean that the very issue of taxing the income was debatable. The Tribunal further noted that in the computation of income, the assessee had made full disclosures and had given reasons for treating the income as exempt which was as under:

" The assessee company has with effect from March 1, 2003 transferred the expertise and know-how in the business relating to eographic Information System (GIS) to it's wholly owned subsidiary viz. Global IP Technology Pvt. Ltd., a company incorporated under the provisions of Companies Act, 1956 and having its registered office in New Delhi at consideration of Rs.2,60,00,000/- pursuant to the Memorandum of Undertaking executed on March 26,2003 between

both the parties. The company claims (that it is not liable to any capital gains tax in view of decision of Supreme Court in the case of CIT v/s. B.C.Srinivasan Setty ((1981) 128 ITR 294 (SC))."

5 It can thus be seen that, as a matter of fact, the Tribunal came to the conclusion that the assessee had made a claim making full disclosures and in a transparent manner. The assessee had not only disclosed the receipt in question, but had also recorded reasons for claiming that such receipt is not taxable. The Tribunal, therefore, correctly came to the conclusion that merely because such a claim was not accepted by Revenue, would not mean automatically that the assessee should be exposed to penalty proceedings. Where there was neither concealment of income nor concealment of particulars of income, the Tribunal rightly did not sustain the penalty orders. Tax appeal is dismissed.

(AKIL KURESHI, J.)

(BIREN VAISHNAV, J.)

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