IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

TAX APPEAL NO. 1 OF 2018

The Commissioner of Income Tax - I .. **Appellant**
Versus
Karjatkar Leasing and Finance Pvt. Ltd. .. **Respondent**

WITH
TAX APPEAL NO. 2 OF 2018

The Commissioner of Income Tax - I .. **Appellant**
Versus
Karjatkar Leasing and Finance Pvt. Ltd. .. **Respondent**

WITH
TAX APPEAL NO. 3 OF 2018

The Commissioner of Income Tax - I .. **Appellant**
Versus
Karjatkar Leasing and Finance Pvt. Ltd. .. **Respondent**

WITH
TAX APPEAL NO. 4 OF 2018

The Commissioner of Income Tax - I .. **Appellant**
Versus
Karjatkar Leasing and Finance Pvt. Ltd. .. **Respondent**

WITH
TAX APPEAL NO. 5 OF 2018

The Commissioner of Income Tax - I .. **Appellant**
Versus
Karjatkar Leasing and Finance Pvt. Ltd. .. **Respondent**

Shri Alok M. Sharma, Advocate for the Appellant.
Mrs. C. S. Deshmukh, Advocate for the Respondent / Sole.

CORAM : S. V. GANGAPURWALA & A. M. DHAVALE, JJ.

DATE : 1st February, 2018

PER COURT :

1. All these appeals assail the order of the Tribunal allowing the appeals of the assessee. All these matters pertains to assessment years 1999-2000, 2000-2001, 2001-2002, 2002-2003 and 2003-2004. In all these appeals the tax liability is less than Rs. 20 Lacs. The Department has taken a decision pursuant to Central Board Direct Taxes Circular dated 10th December, 2015, not to prosecute the appeals wherein tax liability is less than Rs. 20 Lacs subject to certain exception. Even the Apex Court in a case of ***Director of Income Tax, New Delhi Vs. S. R. M. B. Diary Farming (P)*, dated 23rd November, 2017,** has observed that the said Circular applies to pending matters also and the said appeals are required to be withdrawn, except where the matter has a cascading effect and it involves an issue covering large number of matters.

2. On that count also, the present appeals deserves to be disposed of.

3. However, Mr. Sharma, learned advocate for the appellant submits that the respondent has deliberately claimed the loss of sale though the same was not an actual state of affairs. The reason given by the assessee that the assessee was advised by the Chartered Accountant in claiming the said relief is un-acceptable. The Chartered Accountant is an expert, who is presumed to be aware of the provisions of law. In such a case, the respondent cannot take the shelter of the advise of the Chartered Accountant. The learned advocate relies on the Judgment of the Apex Court in a case of ***Union of India (UOI) and others Vs. Dharamendra Textile Processors and others*** reported in ***(2008) 13 SCC 369*** and another Judgment of the learned Single Judge of the Madhya Pradesh High Court in a case of ***Commissioner of Income Tax Vs. Mediwala and Company*** reported in ***(1988) 170 ITR 48***.

4. Mrs. Deshmukh, learned advocate for the respondent

supports the order and further submits that the present case would be covered by Central Board Direct Taxes Circular dated 10th December, 2015.

5. We have considered the submissions.

6. The Tribunal in its order relied on the Judgment of the Apex Court in a case of ***Dilip N. Shroff Vs. JCIT and another*** reported in ***(2007) 291 ITR 519***, and observed that there has to be a conscious concealment on the part of the assessee and that a mistake in not returning any income by itself would not constitute reason enough for imposition of penalty.

7. The Tribunal has accepted the contention of the assessee on the basis of the affidavit filed by the Chartered Accountant / advisor that he gave wrong advise and the situation were explained about the bonafide error being committed with regard to the applicability of the provision of law. The benefit was claimed on the basis of the deleted provision wherein the assessee had debited the amount to the profit and loss account on account of loss of sale of vehicles. The assessee was not entitled

for it as it was not engaged in driving of vehicles. It would also be clear that the survey was made only on 10th February, 2004 and on the basis of the same the matters were taken up for assessment years 1999-2000, 2000-2001, 2001-2002, 2002-2003 and 2003-2004. The Tribunal on merits has taken a plausible view.

8. In view of that, no substantial question of law arises. The Tax Appeals are dismissed. No costs.

[A. M. DHAVALE, J.] **[S. V. GANGAPURWALA, J.]**

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