REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4278 OF 2010
[Arising out of SLP(C) No.5241 of 2007]

Joint Commissioner of Income Tax,
Surat ....Appellant

Versus

Saheli Leasing & Industries Ltd. ....Respondent

WITH

CIVIL APPEAL NO.4279 OF 2010
[Arising out of SLP(C)No.5242 of 2007]

J U D G M E N T

Deepak Verma, J.

1. **Leave granted.**

2. **The facts of both the appeals being identical, the facts of civil appeal arising out of S.L.P.(C) No.5241 of 2007 are being referred to in this judgment.**

3. **On a first flush, after bare perusal of the impugned order passed in Revenue Tax Appeal No. 1904 of 2005, decided on 8.8.2006 by Division Bench of the High Court of Gujarat at Ahmedabad, we thought of remanding the matter for a fresh decision on merits,**

in accordance with law but, on a deeper and studied scrutiny, we thought it apt instead of directing to remit, it would be just and proper to consider the matter on merits ourselves and to set at rest the legal controversy involved in the appeal. It is further so that Division Bench in the impugned order has decided the question of law as projected before it in the appeal preferred under Section 260 (A) of the Income Tax Act, 1961, (hereinafter referred to as 'the Act') in a most casual manner. The order is not only cryptic but does not even remotely deal with the arguments which were sought to be projected by the Revenue before it.

4. This Court, time and again, reminded the courts performing judicial functions, the manner in which judgments/orders are to be written but, it is, indeed, unfortunate that those guidelines issued from time to time are not being adhered to.

5. No doubt, it is true that brevity is an art but brevity without clarity likely to enter into the realm of absurdity, which is impermissible. This is what has been reflected in the impugned order which we would reproduce hereinafter.

6. We, therefore, before proceeding to decide the

matter on merits, once again would like to reiterate few guidelines for the Courts, while writing orders and judgments to follow the same.

7. These guidelines are only illustrative in nature, not exhaustive and can further be elaborated looking to the need and requirement of a given case:-

a) It should always be kept in mind that nothing should be written in the judgment/order, which may not be germane to the facts of the case; It should have a co-relation with the applicable law and facts. The ratio decidendi should be clearly spelt out from the judgment / order.

b) After preparing the draft, it is necessary to go through the same to find out, if anything, essential to be mentioned, has escaped discussion.

c) The ultimate finished judgment/order should have sustained chronology, regard being had to the concept that it has readable, continued interest and one does not feel like parting or leaving it in the midway. To elaborate, it should have flow and perfect sequence of events, which would continue to generate interest in the reader.

d) Appropriate care should be taken not to load it with all legal knowledge on the subject as citation of too many judgments creates more confusion rather than clarity. The foremost requirement is that leading judgments should be mentioned and the evolution that has taken place ever since the same were pronounced and thereafter, latest judgment, in which all previous judgments have been considered, should be mentioned. While writing judgment, psychology of the reader has also to be borne in mind, for the perception on that score is imperative.

e) Language should not be rhetoric and should

not reflect a contrived effort on the part of the author.

f) After arguments are concluded, an endeavour should be made to pronounce the judgment at the earliest and in any case not beyond a period of three months. Keeping it pending for long time, sends a wrong signal to the litigants and the society.

g) It should be avoided to give instances,which are likely to cause public agitation or to a particular society. Nothing should be reflected in the same which may hurt the feelings or emotions of any individual or society.

8. Aforesaid are some of the guidelines which are required to be kept in mind while writing judgments. In fact, we are only reiterating what has already been said in several judgments of this Court.

9. Aforesaid background has been given after going through the impugned judgment of Division Bench of the High Court. Following substantial question of law, as contemplated under Section 260 A of the Act, was formulated to be answered by it :

"Whether, on the facts and in the circumstances of the case, and in law, the Income Tax Appellate Tribunal is right in coming to the conclusion that where assessed income is loss, penalty cannot be levied under section 271 (1) (c) of the Income Tax Act in spite of the fact that Explanation 4 (a) was added in the Income Tax Act with effect from 1.4.1976 and subsequently, further clause (a) was replaced by another clause (a) which is in clarificatory nature, with effect from 1.4.2003?"

10. However, the Division Bench in its wisdom thought it fit to dispose of the appeal as under:-

> **"Admitted facts are that the appellant has filed return showing loss and the income is also assessed as "NIL income". When the return was shown as loss as well as assessment of income is also NIL, no penalty under Section 271 (1) (c) of the Income Tax Act is attracted. No case is made out for admission of the appeal. The appeal stands dismissed at admission stage.**
>
> **Sd/- Judge**
> **Sd/- Judge"**

11. Considering the important question of law and its wide repercussions, it was least expected from the Division Bench of the High Court to have dealt with the issue more seriously, keeping in mind the question of law that was being answered by it.

12. Feeling aggrieved, this appeal has been preferred by Revenue before us.

Factual matrix is as under:-

13. On return being filed by the Respondent/Assessee, an order under Section 143 (3) of the Act was passed on 27.2.1998, showing total income of Rs. NIL for assessment year 1995-1996.

14. During the course of assessment proceedings, it was noticed that Assessee had claimed depreciation, which was viewed to be incorrect. Thus, an amount of Rs. 24,22,531/-

was disallowed out of depreciation. Penalty proceedings under Section 271 (1) (c) of the Act were initiated. In response to the show cause notice issued by the Revenue, Assessee filed its reply denying the allegations and contending that no penalty can be imposed on it, when returned income was NIL.

15. Penalty was sought to be imposed in respect of an item having an effect in reducing the loss. No appeal was filed against the item, added to the income on account of which the loss was reduced. Admittedly, Assessee, a leasing company had claimed depreciation on plant and machinery @ 100% on various items. The statement of depreciation filed along with the computation of income showed the claim at Rs.1,05,08,824/-. On enquiries being made it was revealed that 100% depreciation was claimed along with Lease Agreements entered into with different parties. Even though, terms and conditions of the Lease Agreements entered into with different parties were the same, except the names of the parties had been changed. Even after dis-allowance of the said depreciation, the taxable income of the Assessee was NIL and hence, there was no tax liability. According to Assessee, in such a case no penalty under Section 271 (1) (c) could have been levied.

16. Deputy Commissioner of Income tax, Special Range-2,

Surat, on the basis of the discussion in the order held that Assessee was liable to pay penalty, with reference to such additions to income to be treated as its total income, with reference to explanation 4 (a) to Section 271 (1) (c) of the Act. Accordingly, the penalty was levied on concealed income of Rs. 24,22,531/- at minimum rate of 100% of tax sought to be evaded. Thus, a penalty of Rs. 11,14,364/- was imposed on the Assessee.

17. Feeling aggrieved thereof, Assessee preferred an appeal before the Commissioner of Income Tax (Appeals-II). Considering various judgments of the Tribunal and the High Courts, the appeal of the Assessee came to be dismissed and penalty levied on it stood confirmed.

18. Assessee preferred further appeal before the Income-Tax Appellate Tribunal, Ahmedabad. Tribunal, on the strength of an earlier order passed by Special Bench of Ahmedabad Tribunal in the case of *Apsara Processors (P) Ltd. and Ors.* in ITA No. 284/Ahd./2004 dated 17.12.2004 came to the conclusion that no penalty can be levied, if the returned income and the assessed income is loss. Accordingly, the orders passed by the Assessing Officer as well as Commissioner (Appeals) were set aside and quashed and the penalty imposed on the Assessee was deleted. It was this order of the Tribunal which was carried further by filing

Appeal under Section 260A of the Act in the High Court, which met the fate of dismissal by the Division Bench.

19. Shri V. Shekhar, learned senior counsel appearing for the appellant at the outset contended that the point projected in this appeal stands answered in favour of the Revenue by a judgment of Bench of three learned Judges of this Court reported in (2008) 304 ITR 308 (SC) titled *CIT Vs. Gold Coin Health (P) Ltd*.

20. In Gold Coin (supra) an earlier judgment of this Court, reported in (2007) 289 ITR 83 SC titled *Virtual Soft Systems Ltd. Vs. CIT*, pronounced by two learned Judges has been over-ruled.

21. It is pertinent to point out here that in Gold Coin (supra), what was being challenged by the Revenue, was the order passed by same Bench of the High Court of Gujarat at Ahmedabad, which finds place at page 309, wherein before proceeding to decide the matter, the three learned judges of this Court thought it fit to reproduce the same. The question of law as projected in Gold Coin (supra) before the High Court and the question of law as projected in this appeal is identical but what is being deciphered by us is the manner in which the impugned judgment has been written and pronounced. After all, at the High Court level, when a matter is considered on merits by a Division Bench, not only

factual but even legal aspect of the matters is required to be considered at some length.

22. The matter of Gold Coin (supra) was placed before three learned judges of this Court, as correctness and propriety of the order passed by two learned judges of this Court in Virtual Soft Systems (supra) was doubted. Thus, to clear the doubts, on the correct exposition of law, a three Judge Bench was constituted which decided the matter in Gold Coin (supra).

23. It is to be seen that purpose behind Section 271 (1)(c) of the Act is to penalise the Assessee for -

a) concealing particulars of income and / or
b) furnishing inadequate particulars of such income.

24. Whether income returned was a profit or loss, was really of no consequence. Therefore, even if no tax was payable, the penalty was still leviable. It is in that context, to be noted that even prior to the amendment it could not be read to mean that if no tax was payable by the Assessee, due to filing of return, disclosing loss, the Assessee was not liable to pay penalty even if the Assessee had concealed and/or furnished inadequate particulars.

25. Some of the High Courts had taken a contrary view, thus, Parliament in its wisdom thought it fit to clarify the position by changing the expression *"any"* by *"if any"*.

Thus, this was not a substantive amendment which created imposition of penalty for the first time. The amendment by the Finance Act of the relevant year as specifically noted in the notes on clauses shows that proposed amendment was clarificatory in nature and would apply to all assessments even prior to the assessment year 2003-2004.

26. Thus, in Gold Coin (supra), after combined reading of the recommendations of Wanchoo Committee, and Circular No. 204 dated 24.7.1976, it was clarified that points had been made clear with regard to Explanation 4 (a) to Section 271 (1) (c) (iii) to intend to levy penalty not only in a case where after addition of concealed income, a loss returned, after assessment becomes positive income, but also in a case where addition of concealed income reduces the returned loss and finally the assessed income is also a loss or minus figure. Therefore, even during the period between 1.4.1976 and 1.4.2003, the position was that penalty was still leviable in a case where addition of concealed income reduces the returned loss.

27. In the aforesaid case, the expression "income" in the statute appearing in Section 2 (24) of the Act has been clarified to mean that it is an inclusive definition and includes losses, that is, negative profit. This has been held so on the strength of earlier judgments of this Court

in *CIT Vs. Harprasad and Co. P. Ltd* (1975) 99 ITR 118 and followed in *Reliance Jute and Industries Ltd. Vs. CIT* (1979) 120 ITR 921. After elaborate and detailed discussion, this Court held with reference to the charging provisions of statute that the expression "income" should be understood to include losses. The expression "profits and gains" refers to positive income whereas "losses" represent negative profit or in other words minus income.

28. Considering this aspect of the matter in greater details, Gold Coin (supra) over-ruled the view expressed by two learned judges in Virtual Soft Systems (supra).

29. Relevant paras 11 and 12 of Gold Coin (supra) dealing with income and losses are reproduced herein below:-

> **"11. When the word "income" is read to include losses as held in Harprasad's case it becomes crystal clear that even in a case where on account of addition of concealed income the returned loss stands reduced and even if th final assessed income is a loss, still penalty was leviable thereon even during the period April 1, 1976 to April1, 2003. Even in the Circular dated July 24, 1976, referred to above, the position was clarified by the Central Board of direct Taxes (in short "the CBDT"). It is stated that in a case where on setting off the concealed income against any loss incurred by the Assessee under any other head of income or brought forward from earlier years, the total income is reduced to a figure lower than the concealed income or even to a minus figure the penalty would be imposable because in such a case 'the tax sought to be evaded" will be tax chargeable on concealed income as if it is "total income".**

> **12. Law is well-settled that the applicable provision would be the law as it existed on the date of the filing of the return. It is of relevance to note that when any loss is returned in any return it need not necessarily be the loss of the concerned previous year. It may also include carried forward loss which is required to be set up against future income under Section 72 of the Act. Therefore, the applicable law on the date of filing of the return cannot be confined only to the losses of the previous accounting years."**

30. The necessary consequence thereof would be that even if Assessee has disclosed NIL income and on verification of the record, it is found that certain income has been concealed or has wrongly been shown, in that case, penalty can still be levied. The aforesaid position is no more *res integra* and according to us, it stands answered in favour of the Revenue and against the Assessee.

31. The learned senior counsel appearing for the respondent Assessee, Mr. D.N Sawhney, contended that the observations made in Gold Coin (supra) can at best be treated as obiter but not as binding precedent. According to him, the earlier judgment of the Coordinate Bench in *CIT Vs. Elphinstone Spinning and Weaving Mills Co. Ltd. XL ITR 142,* would still hold the field and applies fully to the facts of the said case.

32. Much emphasis has been laid on the following observations in Elphinstone (supra) reproduced hereinbelow :

"There is no doubt that if the words of a taxing statute fail, then so much the tax. The courts cannot, except rarely and in clear cases, help the draftsmen by a favourable construction. Here, the difficulty is not one of inaccurate language only. It is really this that a very large number of taxpayers are within the words but some of them are not. Whether the enactment might fail in the former case on some other ground (as has happened in another case decided today) is not a matter we are dealing with at the moment. It is sufficient to say there that the words do not take in the modifications which the learned counsel for the appellant suggests. The word "additional" in the expression "additional income-tax" must refer to a state of affairs in which there has been a tax before. The words "charge on the total income" are not appropriate to describe a case in which there is no income or there is loss. The same is the case with the expression "profits liable to tax" The last expression "dividends payable out of such profits" can only apply when there are profits and not when there are no profits.

It is clear that the Legislature had in mind the case of persons paying dividends beyond a reasonable portion of their income. A rebate was intended to be given to those who kept within the limit and an enhanced rate was to be imposed on those who exceeded it. The law was calculated to reach those persons who did the latter even if they resorted to the device of keeping profits back in one year to earn rebate to pay out the same profits in the next. For this purpose, the profits of the earlier years were deemed to be profits of the succeeding years. So far so good. But the Legislature failed to fit in the law in the scheme of the Indian Income-tax Act under which and to effectuate which the Finance Act is passed. The Legislature used language appropriate to income, and applied the rate to the "total income". Obviously, therefore, the law must fail in those cases where there is no

total income at all, and the courts cannot be invited to supply the omission made by the Legislature."

33. In a first glance, after considering arguments of both sides, we thought that matter required to be referred to a larger Bench for considering the issue involved in this appeal but on deeper scanning of the judgments in Gold Coin (supra) and Elphinstone (supra), we came to the conclusion that the ratio decidendi of Gold Coin (supra) fully covers the issue and the case of Elphinstone (supra) has no application to the facts of the said case.

34. Both cases are distinguishable on the following broad grounds, namely:

(i) Gold Coin Health (supra) arose under the Income Tax Act, 1961, whereas Elphinstone(supra) arose under the repealed Income Tax Act of 1922. (Though this is only a distinguishing feature noticed in 2 decisions which is not of much significance).

(ii) The question that fell for consideration in Gold Coin (supra) was what would be the true interpretation of Section 271 (1) (c) in the context of amendments made therein whereas, the question in Elphinstone (supra) was in relation to chargeability

of "additional tax" on "dividend income" earned by Assessee under paragraph – B of First Schedule to the Income Tax Act, 1922.

(iii) Elphinstone (supra) interpreted five words occurring in para-B of First Schedule namely; "additional", "additional Income Tax", "charge on the total income", "profits liable to tax" and lastly, "dividends payable out of such profits", whereas, in Gold Coin's case, the question arose whether word "income" includes loss for the purpose of imposition of penalty u/s 271 (1) (c) and if Assessee incurs loss in any particular year then whether penalty u/s 271 (1) (c) can still be imposed on him. This has been categorically answered in Gold Coin (supra) in favour of Revenue and against the Assessee.

(iv) The object of imposing penalty is different than that of determining Assessee's liability to pay tax or additional tax under any charging section. The interpretation applied to penalty provision thus, cannot be applied while interpreting any charging section for payment of income tax or additional tax. In other words, both provisions i.e. penalty and

charging have different objects and consequences. They operate in different fields qua Assessee.

(v) The liability to pay additional tax under First Schedule on the income earned out of dividend implies that Assessee is first required to pay "tax" and then additional tax on the specified income. It was basically this issue which was examined in Elphinstone (supra) wherein Their Lordships considered the object for enacting first para of schedule. This object has nothing to do with penalty provisions.

(vi) A particular word occurring in one Section of the Act, having a particular object cannot carry the same meaning when used in different Section of the same Act, which is enacted for different object. In other words, one word occurring in different Sections of the Act can have different meaning, if the object of the two Sections are different and when both operate in different fields.

(vii) Question of law involved in this appeal is directly covered by the decision of Gold Coin (supra) and is to be answered accordingly.

(viii) Elphinstone (supra), therefore, has no bearing over the view taken in Gold Coin (supra) case and

even if it had been taken note of, the decision taken therein would have been the same due to aforementioned distinguishing feature.

(ix) The issue involved in Gold Coin (supra) being entirely different than the one involved in Elphinstone (supra), the view taken by this Court in both the decisions are correct operating in the respective fields, requiring no reconsideration of the matter.

(x) In order to enable the Court to refer any case to a larger Bench for reconsideration, it is necessary to point out that particular provision of law having a bearing over the issue involved was not taken note of or there is an error apparent on its face or that a particular earlier decision was not noticed, which has a direct bearing or has taken a contrary view. Such does not appear to be a case herein. Thus, it does not need to be referred to a larger Bench as in our considered opinion; it is squarely covered by the judgment of this Court in Gold Coin (supra).

35. In the light of the aforesaid discussion, we have no doubt in our mind that the ratio of Elphinstone (supra) has

no application to the facts of the case and the question of law projected stands squarely answered in favour of the Revenue and against the Assessee in Gold Coin (supra) as a result thereof, appeal by Revenue stands hereby allowed. Impugned order passed by Income Tax Appellate Tribunal and confirmed by Division Bench are hereby set aside and quashed. The Revenue, therefore, would be at liberty to proceed further against the Assessee on merits in accordance with law.

36. Appeals stand allowed as mentioned hereinabove but with no order as to costs.

.....CJI
[K.G. Balakrishnan]

.....
...J.
[Deepak Verma]

.....J.
[B.S. Chauhan]

New Delhi.
May 07, 2010