

## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 1292 of 2010

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THE COMMISSIONER OF INCOME TAX-IV - Appellant(s)

Versus

M/S VENUS ENGINEERS, - Opponent(s)

## =====

## Appearance :

MRS MAUNA M BHATT for Appellant(s) : 1,

None for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MS JUSTICE SONIA GOKANI

Date : 29/08/2011

## ORAL ORDER

(Per : HONOURABLE MS JUSTICE SONIA GOKANI)

1. This Tax Appeal is preferred against the order of Income Tax Appellate Tribunal ("ITAT" for short) dated 22.01.2010, proposing following question of law for consideration of this Court.

"Whether Appellate Tribunal is right in law and on facts in canceling the penalty of Rs.7,42,707/- levied under Section 271(1)(c) of the I.T.Act?"

2. To state briefly the facts for the Assessment Year 2006-07, when the Assessing Officer found that the tax at source was not deducted by the assessee-respondent from certain payments made to labour and transporters as required under Section 194C of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). He made disallowance of Rs.22,06,498/- under Section 40(a) (ia).He simultaneously initiated penalty proceedings under Section 271(1)(c) of the Act. This was challenged before the CIT(A) by the assessee. Being dissatisfied with the order of Assessing Officer, CIT(A) deleted the penalty.
3. When Revenue challenged the same before the ITAT, it concurred with the findings of the CIT(A) and

dismissed the appeal of Revenue by its impugned order, therefore, present Tax Appeal under Section 260(A) of the Act.

4. On hearing learned Counsel Mrs. Mauna M. Bhatt and on examining the orders of adjudicating authorities, it can be seen that Tribunal was of the opinion that due to ignorance of the provision containing in Section 40(a)(ia) of the Act, the assessee did not deduct TDS from the payment made to labour, transport and carting expenses. The Tribunal was also actuated by the fact that the C.A. who audited the accounts of the assessee under Section 44 AB did not point out any infirmity on account of non-deduction of TDS., otherwise, all the relevant accounts were adduced before the Assessing Officer. Thus, when the Tax audit report also did not point out the TDS default to the assessee, the Tribunal concluded that the mistake made by assessee was bonafide and the explanation was found genuine.
5. The Tribunal drew support from the order of CIT(A) that there was no concealment nor was this is a case of furnishing of inaccurate particulars.
6. The reasonings given by both the adjudicating authorities concurrently cannot be held as perverse nor are there any grounds made out by the Revenue to dislodge the findings. Resultantly, when there is no concealment nor any

occasion of furnishing inaccurate particulars to bonafide mistake, Tribunal rightly uphold the order of CIT(A), deleting the penalty, therefore, this Tax Appeal merits no consideration as question of law is to be determined. Hence, same is dismissed.

**(AKIL KURESHI, J.)**

**(MS.SONIA GOKANI, J.)**

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