

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'ए' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ A ” BENCH, AHMEDABAD

सर्वश्री एन.के. बिल्लैया, लेखा सदस्य एवं महावीर प्रसाद, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER And
SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 351/Ahd/2014
(निर्धारण वर्ष / Assessment Year : 2009-10)

Shri Purshottam B. Pitroda, Prop. of J.P. Fabricators, Opp: Ambalal Estate, N.H.No.8, Ghodasar, Ahmedabad - 380050	बनाम/ Vs.	The ACIT Range – 12 Ahmedabad.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABWPM 6274 B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Tushar P. Hemani, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Mudit Nagpal, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	14/06/2017
घोषणा की तारीख/Date of Pronouncement	22/08/2017

आदेश / ORDER

PER SHRI MAHAVIR PRASAD, JUDICIAL MEMBER :

This is an appeal by the assessee against the order of the Commissioner of Income Tax(Appeals)-I, Ahmedabad dated 26/11/2013, in the matter of assessment under section 143(3) of the Income tax Act, 1961 ('the Act hereinafter'), for the Assessment Year (AY) 2009-10, on the following Grounds:

- i. *The learned CIT(A) has erred in law and on the facts of the case in party confirming the action of learned AO in disallowing interest expenditure u/s.36(1)(iii) of the Act out of total*

disallowance of Rs.14,21,569/- made u/s.36(1)(iii) of the Act by the learned AO.

- ii. *The ld. CIT(A) has erred in law and on the facts of the case in confirming the action of ld. AO in making addition of Rs.3,06,008/- as income from house property chargeable to tax u/s.22 of the Act.*
- iii. *The ld. CIT(A) has erred in law and on the facts of the case in confirming the action of ld. AO in disallowing Rs.86,808/- being 1/10th of the total motor car expenditure after holding that such entire expenditure has not been incurred for the purpose of business of the Appellant.*
- iv. *The ld. CIT(A) has erred in law and on the facts of the case in confirming the action of ld. AO in making addition of Rs.13,57,776/- u/s.14A of the Act by applying Rule 8D of the IT Rules.*
- v. *The Ld. CIT(A) has further erred in law and on the facts of the case in not appreciating that to the extent of interest which is held to be finally disallowed u/s. 36(1)(iii) of the Act cannot once again be taken into computation while quantifying the disallowance u/s.14A of the Act.*
- vi. *Both the lower authorities have passed the orders without properly appreciating the fact and that they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order.*
- vii. *The learned CIT(A) has erred in law and on facts in confirming the action of the learned AO in charging interest u/s.234B/C/D of the Act.*
- viii. *The learned CIT(A) has erred in law and on facts in confirming the action of learned AO in initiating penalty proceedings u/s.271(1)(c) of the Act.*

2. The relevant facts as culled out from the materials on record are as under:-

The return of income for Asst. Year 2009-10 was filed by the assessee declaring total loss at Rs.2,33,64,882/-. The return was processed u/s.143(1) of the Income Tax Act, 1961. The case was selected for scrutiny by issuing notice u/s.143(2) of the Act and same was complied with. Therefore, notice u/s.142(1) of the Act was issued on 30/08/2010. The books of accounts were maintained on mercantile system and audited u/s.44AB of the I.T. Act. Auditor report is obtained and kept on record.

2.2 It is observed that the assessee has paid the interest for the purpose of obtaining business funds for the business and utilized in business as well as for other purposes and for personal purposes. The investment in property land, and other loan and advances given to various persons for personal relations and no business interest or any commercial expediency is involved or derived, therefore, interest chargeable thereon cannot be considered as interest for the business purpose u/s.36(1)(iii) of the I.T. Act. Hence, the interest to the extent Rs.14,21,569/- was not considered for the business purpose and same was disallowed by the Ld. AO. Subsequently, confirmation by the lower authorities held that the assessee was not entitled to get deduction of interest payable on the above given as Loan/Advances of the persons as discussed above and therefore, the interest to the extent of Rs.14,21,569/- and same was disallowed and added to the total income of the assessee.

2.3 During the year under consideration, it was observed that the assessee have four house property for which no property income was disclosed. Therefore, the assessee was asked to details of property and income derived from them. In response to this letter assessee stated that there are three residential properties and other property is out house at Shilaj for labour. One residential property is used by proprietor. Other property are used by his daughter and son. So there is no addition as notional income. The value of the all the said properties is Rs.48,57,897/- as per balance sheet. The contention of the assessee is seen and it was observed that the property income was taxed at Rs.3,06,008/- in the Asst.Year 2007-08. Keeping in same view, the property income is taxed at Rs.3,06,008/- as per Asst.Year 2007-08. Therefore addition of Rs.3,06,008/- was made to the total income of the assessee.

2.4 During the year under consideration, the assessee has claimed depreciation of Rs.8,86,075/- respect of 12(tweleve) motor car. These motor cars were used for business purpose as well as for personal purpose. Therefore, the assessee was asked to explain why depreciation on motor car utilized for personal purpose should not be disallowed. They have stated out of 12 motor cars, 9 motor cars are utilized for employees and at site work only three cars were utilized for personal use. The assessee has claimed Rs.8,68,075/- such type of disallowance @ of 20% was made in Asst. Year 2008-09 in appeal before the CIT(A), confirm the addition of disallow @ 10% only as against 20% disallowed.

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Considering the view of the learned CIT(A), Ahmedabad 10% of the total depreciation of Rs.8,86,075/- consider for personal use and balance was allowed for business purpose. Therefore, depreciation of Rs.86,808/- was disallowed and added to the total income.

2.5 During the year under consideration, it is observed that the assessee has earned/derived the income from dividend of Rs.4,60,736/- and agriculture income Rs.5,82,903/-. Therefore, the assessee was asked to furnish details of expenditure and also proposed for disallowance of expenditure incurred for earning exempted income u/s.14A of the I.T. Act. So far agriculture income is concerned no expenses is debited in P&L account and all the expenditure are incurred on personal withdrawal and out of agriculture income.

As regard the expenditure for dividend income and agriculture income, the assessee has furnished working of expenditure and proponents disallowance as under:

A.

Section 14-A with Rule 8D working in respect of shares		
1.	Nil	Exp.
2.a.	Interest	6,58,35,083
b.	A.W. Value of interest 31/03/08	Rs.54,74,273
		<u>Rs.54,74,273</u>
	Rs.1,09,48,546/2	54,74,273
c.	Average Total Assets	
	31/03/2008	Rs. 83,08,29,375
	31/03/2009	Rs.1,49,18,62,519
	Averag Total	Rs.2,32,26,91,894/2
		1,16,13,45,947

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	$\frac{A \times b}{C} = \frac{6,58,35,083 \times 54,74,273}{1,16,13,45,947} = 3,10,329$	3,10,329
3.	Rs. 54,74,273 ea.50 Add.	27,371/-
	Total Rs.	3,37,720

B.

Disallowance u/s.14-A in respect of Agriculture land		
1.	Nil	Exp.
2.a	Interest	6,58,35,083.00
b.	A.W. Value of interest 31/03/08 Rs.1,65,35,557 <u>Rs.1,65,35,557</u> Rs.3,30,71,114/2	1,65,35,557.00
c.	Average Total Assets	
	31/03/2008 Rs. 83,08,29,375	
	31/03/2009 Rs.1,49,18,62,519	
	Average Total Rs.2,32,26,91,894/2	1,16,13,45,947
	$\frac{A \times b}{C} = \frac{6,58,35,083 \times 1,65,35,557/-}{1,16,13,45,947} = 9,37,378.00$	9,37,378.00
3.	Rs. 1,65,35,557 ea.50 Add.	82,678.00
	Total Rs.	10,20,056.00

In view of the provision of Section 14A, the expenditure claimed at Rs.3,37,720/- and Rs.10,20,056/- cannot be considered for the business purpose and allowable. Therefore, the amount of Rs.13,57,720/- (Rs.3,37,720/- and Rs.10,20,056/-) is considered as expenditure for earning exempted income and same is therefore disallowed u/s.14A of the I.T. Act. Addition of Rs.13,57,776/- was made.

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3. Against the said order assessee preferred first statutory appeal before the learned CIT(A) who partly allowed the appeal of the assessee.

4. Now appellant's appeal is before us.

5. We have gone through the relevant record and impugned order. A Paper Book was filed by the assessee. Partly confirming the action of learned AO in disallowing interest expenditure u/s.36(1)(iii) of the Act out of total disallowance of Rs.14,21,569/-. AO made disallowance of Rs.14,21,569/- u/s.36(1)(iii) on the count that assessee had diverted interest bearing funds for non-business purposes. Learned CIT(A), after referring to CIT(A)'s order for A.Y.07-08 (Para 12, Pgs.9-23 @18 of CIT(A)'s order), held that disallowance u/s 36(1)(iii) is to be made in respect of only four parties (appearing on Pg.23 of CIT(A)'s order) after considering findings of CIT(A) and ITAT (Pgs.22-23 of CIT(A)'s order). Coordinating Bench of ITAT, in assessee's own case for A.Y. 2007-08, has been kind enough to set-aside the issue with regard to disallowance u/s.36(1)(iii) to AO with a direction to decide the same in accordance with law. Para 5 to 5.2, Pgs.12-16 of ITAT's order in ITA No.3513/Ahd/2010 & 428/Ahd/2011 (A.Y. 2007-08) same is reproduced as under:

“5. Next issue is with regard to the partial confirmation of action of Assessing Officer in disallowing interest expenditure u/s.36(1)(iii) out of total disallowance of Rs.74,36,118/-. The Assessing Officer has made this addition by observing as under:-

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"The assessee has claimed the interest expenditure of Rs.3,51,12,087/- paid to bank and Rs.43,58,684/- paid to others and Rs.21,37,580/- paid to bank (GEC). On an analysis of the balance sheet it is seen that the assessee had made huge personal investment in lands and other personal assets. The Investment total Rs.3,81,23,670/-. Further the assessee has made loans and advances totaling Rs.8,10,47,890/-. On going through the list of advances made it is seen that no interest was charged on advances totaling Rs.3,62,37,518/-. The fixed assets worth Rs.38,95,50,105/-, closing stock of Rs.46,00,000/- and cash and bank balances and sundry debtors of Rs.8,44,54,566/- entirely gobbled up to the unsecured loans and capital of the assessee that is the interest free funds available with the assessee. Thus it is apparent that the interest-bearing borrowings taken by the assessee have been used up for making personal and not business investment and interest free advances by the assessee. Thus the borrowings have been put to not business purposes produced. Thus Rs.7,43,61,188/- of the interest bearing borrowings have been put to not business purposes. The above amount also includes the interest free advances made to M/s. Ketan Construction Company. The interest free advances made to M/s.Ketan Construction Company cannot effectively guided by commercial expediency as M/s.Ketan Construction Co. is one of the members of the JVC i.e. a part of the assessee himself and hence it can conclusively be held that no commercial expediency is involved. The assessee has not filed any evidence on record to prove that the interest free advances were made by him for the business purposes and as a matter of commercial expediency. Thus it can be inferred from the fact of the case that the borrowings have not been used for the purposes of business of the assessee and hence the claim of interest on these borrowings have to be regulated in terms of section 36(1)(iii) of the Act. Since the interest paid on this amount is not for the purposes of business, the same is disallowed under section 36(1)(iii) of the Act as the capital borrowed to this extent is not capital borrowed for the purposes of business of the assessee. The assessee has paid interest at the rate of 8 to 12%. Thus the average rate of interest at which interest has been paid by the assessee is 10%. Thus the interest disallowance under section 36(1) (iii) of the IT Act is made at the rate of 10%. Hence interest at the rate of 10%

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on the advances given by the assessee work out to Rs.74,36,118/- . Therefore, disallowance under section 36(1)(iii) of Rs.74,36,118/- is made and included in the total income computation. Support for picking this disallowance under section 36(1)(iii) is derived from the decision of the honourable Supreme Court given in the case of SA Builders Ltd. reported in 288 ITR 1(SC). Further reliance is also placed on the decisions reported in 254 ITR 248 (Ker) and 318 ITR 210 (Ker.) and on 25 TTJ (Coch.) 131. The assessee has not raised any material to fulfil the criteria of commercial expediency.”

5.1 Matter was carried before the First Appellate Authority, wherein various contentions were raised on behalf of the assessee and having considered the same, the CIT(A) granted partial relief, which has been opposed before us by the assessee by raising various legal and factual arguments. On the other hand, ld. Departmental Representative supported the order of the authorities below.

5.2 We have heard both the parties and perused the material placed before us. We find that the Assessing Officer observed that assessee has made "Loans and Advances" of Rs.8,10,47,890/-, whereas the assessee has incurred substantial interest expenditure @ 8% to 12% during the year under consideration. The Assessing Officer has concluded that Rs.7,43,61,188/- out of interest bearing funds have been put to non-business purposes; hence, by applying average interest of 10%, the Assessing Officer disallowed interest of Rs.74,36,118/- u/s.36(1)(iii) of the Act. According the ld. Authorized Representative, the Assessing Officer ought to have appreciated the fact that the total “loans and advances” of Rs.8,10,47,890/- could be divided into three categories; i.e. (i) loan on which interest has been charged amounting to Rs.4,39,34,142/-, (ii) advance income-tax/TDS/others amounting to Rs.1,14,21,350/- and (iii) business advances amounting to Rs.2,56,92,398/-. With regard to advances of Rs.4,39,34,142/-, the assessee submitted that on this amount the interest was charged; therefore, question of disallowing interest would not arise. To substantiate this claim of the assessee, ledgers of the parties were placed at page no.209 to 212 of the Paper Book. The CIT(A) in his order stated that the details called for in respect of interest charged from such parties have not been furnished which is factually incorrect, which the details of the same was provided in page no.125 of the paper-book.

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With regard to the advance income-tax/TDS/others aggregating to Rs.1,14,21,350/-, the Authorized Representative of the assessee submitted that the same do not fall within the ambit of advances for non-business purposes. Regarding business advances of Rs.2,56,92,398/-, the business purposes for which the same have been advanced were clarified as per the details given in page no.248 to 266 of the paper-book. No interest can be disallowed in respect of funds advanced for business purposes out of commercial expediency. Out of the total business advances of Rs.2,56,92,398/-. the CIT(A) has directed the Assessing Officer to disallow interest on the advances of Rs.1,72,98,112/- on the ground that such advances are for non-business purposes. In this regard, the stand of the assessee has been that the details of interest free funds had already been furnished before the lower authorities vide letter dated 11.12.2009, which was placed at page No.129 & 130 of the Paper Book. In view of aforesaid facts and circumstances of the case, we set aside the order of the CIT(A) and restore the issue back to the file of the Assessing Officer with the direction to decide the same as per facts and law, after providing due opportunity of hearing to the assessee.”

It is clarified that the only four parties, in respect of which disallowance has been confirmed by CIT(A) for the year under consideration, had been advanced funds by the assessee in A.Y. 2007-08 as well. The said fact is evident from reproduced portion of CIT(A)'s order of A.Y. 2007-08 in the order of CIT(A) for the year under consideration.

“Thus, in all fairness, this issue also deserves to be set-aside to AO in the larger interest of justice.”

5.2 Confirming addition of Rs.3,06,008/- as income from house property u/s.22. Similar addition has confirmed by ITAT in assessee's own case for A.Y. 07-08. Para 7 to 7.2, Pgs.16-17 of ITAT's order in ITA No.3513/Ahd/2010 & 428/Ahd/2010, same is reproduced as under:

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“7. Next issue is with regard to the addition of Rs.5,05,432/- as income from house property chargeable to tax u/s.22 of the Act. The Assessing Officer made the addition of Rs.5,05,432/- u/s.22 of the Act, by observing as under:-

"13. On verification of the balance sheet it is seen that the assessee is in possession of residential properties/commercial properties which are as under:-

Building A/c	Dev Kutir	2877345
Building A/c	Hariom	2002523
Building A/c	Luwara	288115
Building A/c	Samrpan	2252751
Building A/c	Shilaj	602000
New	Vaishali Society (land)	650908
New	Vaishali Society (Building)	5110232

The assessee is occupying the Vaishali Society Bunglow and using the same as his residential premises. Thus the Vaishali Society Bunglow is his self occupied property. All other properties are being used by other persons. No property income has been declared by the assessee from these properties.

Both Section 23(2)(a) and Section 23(2)(b) are not applicable to the facts of the case of the assessee. The annual value of the property is therefore to be determined as per the provisions of section 23(1)(a) of the IT Act. The investment made in the property is Rs.80,22,734/- and applying the interest percentage of 9% the yield of the property works out to Rs.7,22,046/-. The annual value of the property is therefore adopted at Rs.7,22,046/-. The assessee is entitled to deduction/s 24 of Rs.2,16,613/-. The taxable annual value therefore works out to Rs.5,05,432/-. Accordingly property income of the assessee in respect of the above properties is computed at Rs.5,05,432/-.

7.1 Matter was carried before the First Appellate Authority, wherein various contentions were raised on behalf of the assessee and having considered the same, the CIT(A) confirmed the order of the Assessing Officer.

7.2 We have heard both the parties and perused the material placed on record. We find that the Assessing Officer has made out a clear case, as indicated above, as to why the income of the unoccupied house properties of the assessee are chargeable to tax and the CIT(A) has also rightly upheld the order of the Assessing Officer, which needs no interference from our side. We uphold the same.”

With the above observations, we dismiss this Ground of appeal.

5.3 Confirming disallowance of Rs.86,808/- is concerned. Ld. AR has not pressed this Ground. Therefore, this Ground is dismissed.

5.4 Confirming the addition of Rs.13,57,776/- u/s.14A. AO made disallowance of Rs.13,57,776/- u/s.14A which came to be confirmed by CIT(A) as well. AO and CIT(A) failed to appreciate that as against investments of Rs.2,20,09,830/- (i.e. Shares Rs.54,74,273 + Agricultural Land Rs.1,65,35,557/- (Pg.13 of Asst. Order), interest-free funds in the form of proprietor's capital and Reserves & surplus aggregate to Rs.20,21,55,550/- (Pgs.5 of P/B) Which is almost 9.18 times of investments. Hence, in light of substantial interest free-funds, disallowance w.r.t. interest component deserves to be deleted in view of earlier year's order of the ITAT same is reproduced as under:

“8. Next issue is with regard to the disallowance of Rs.1,48,866/- being 1/5th of depreciation claimed on cars and Rs.1,48,866/- being ad-hoc disallowance in respect of other vehicle expenditure. The Assessing Officer found that assessee owned 12 cars and concluded that five cars must be used by family members of the assessee for personal use. The

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Assessing Officer disallowed Rs.1,48,866/- being 1/5th of depreciation on such five vehicle. The Assessing Officer further disallowed an equivalent amount of Rs.1,48,866/- on ad-hoc basis on account of fuel and repairing expenses since no material was available for determining the same. These additions were confirmed by CIT(A) in appeal.

*8.1 Having considered the rival contentions and material on record, we find that these additions have been made merely on the basis of assumption of involvement of personal element in motor car; whereas the assessee's claim was that such expenditure had been incurred wholly and exclusively for the business of the assessee. Under these facts and circumstances, in our considered view, it would meet the ends of justice if the disallowance is restricted to 1/8th on both the counts. We order **accordingly.**”*

Reliance is also further placed on followings:

- CIT vs. Torrent Power Ltd. – 363 ITR 474 (Guj.)
- CIT vs. Suzlon Energy Ltd. – 354 ITR 630 (Guj.)
- CIT vs. Gujarat Power Corporation Ltd. – 352 ITR 583 (Guj)
- CIT vs. Hitachi Home & Life solutions (I). Ltd. (2014) 41 taxmann.com 540 (Guj)
- CIT vs. Reliance Utilities & Power Ltd. – 313 ITR 340 (Bom)
- Munjal Sales Corporation vs. CIT – 298 ITR 298 (SC)

Respectfully, following the ITAT order and above judgments no part of the interest deserves to be disallowed u/s.14A.

5.5 Rest of the Grounds are general in nature.

6. In the result, appeal filed by the assessee is partly allowed.

This Order pronounced in Open Court on 22/08/2017

Sd/-
एन.के. बिल्लैया
(लेखा सदस्य)
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
महावीर प्रसाद
(न्यायिक सदस्य)
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad; Dated 22/08/2017

Priti Yadav, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-I, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad