

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'डी' अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“ D ” BENCH, AHMEDABAD**

सर्वश्री प्रदीप कुमार केडिया, लेखा सदस्य एवं महावीर प्रसाद, न्यायिक सदस्य के समक्ष ।  
**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**  
**And SHRI MAHAVIR PRASAD, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.08/Ahd/2014  
(निर्धारण वर्ष / Assessment Year : 2008-09)

Prashant Manharlal Shah Prop. Prashant Auto Parts 4, India Estate B/h. Relief Hotel Sanand Road, Sarkhej Ahmedabad.	<b>बनाम/</b> Vs.	The Income-tax Officer, Ward-7(1), Ahmedabad.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AEAPS 0277 H</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Shri S.N. Divatia, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Dinesh Singh, Sr.DR

सुनवाई की तारीख / Date of Hearing	27/06/2017
घोषणा की तारीख /Date of Pronouncement	30/06/2017

**आदेश / O R D E R**

**PER SHRI MAHAVIR PRASAD, JUDICIAL MEMBER :**

This is an appeal by the assessee against the order of the Commissioner of Income Tax(Appeals)-XVI, Ahmedabad, dated 30/10/2013 for the Assessment Year (AY) 2008-09.

2. Assessee has taken the following Ground of appeals.

*i.a The order passed u/s.250 on 30-10-2013 for A.Y.2008-09 by CIT(A)-XVI, Abad upholding the disallowance of claim of extra*

- 2 -

*work and other expenses aggregating to Rs.10.65 lakh is wholly illegal, unlawful and against the principles of natural justice.*

*i.b The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned disallowance of Rs.10.65 lacs.*

*ii.a The Ld.CIT(A) has grievously erred in law and on facts in confirming the disallowance of claim of following expenses while computing LTCG on sale of house property.:*

<i>(i) Stamp duty</i>	<i>Rs. 42,145</i>
<i>(ii) Life time maintenance contribution</i>	<i>Rs. 2,02,920</i>
<i>(iii) Extra Civil works</i>	<i>Rs. 5,80,607</i>
<i>(iv) Painting expenses</i>	<i>Rs. 2,09,100</i>
<i>(v) Termite exp.</i>	<i>Rs. 25,000</i>
<i>(vi) GEB Elec. charges</i>	<i>Rs. 40,000</i>

*ii.b That in the facts and circumstances of the case as well as in law, the Ld.CIT(A) ought not to have upheld the disallowance of above said expenses of Rs. 10.65 lacs.*

*iii.a The Ld.CIT(A) has erred in upholding that the appellant had failed to produce the evidence by way of bills and proof of payment of impugned expenses. The appellant submits that the evidence produced before AO during the remand proceedings and before CIT(A) in appellate proceedings has been completely ignored.*

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

The Appellant M/s. Prashant Traders is a proprietary concern and doing trading business of auto parts. In compliance of notice u/s.143(2) assessee appeared before the assessing authority from time to time and

**- 3 -**

submitted necessary statements and supporting as required and also produced necessary books of accounts. Being dissatisfied with the order passed by the Learned Income Tax Officer.

- i. The learned Income Tax Officer against the disallowance of deduction of Rs.10,65,000/- of Section 54 of The Income Tax Act, 1961. Ld. Assessing Officer not granted the deduction of expenses for Stamp Duty Rs.42,145/- Rs.40,000/- GEB Charges Rs.2,02,920/- life time maintenance paid by Cheque No. 283228 Rs.25000/- termite charges and Rs.7,89,000/- the amount of extra work of Plumbing-painting and additional work.
- ii. During the course of assessment proceedings Learned Income Tax Officer asked for proof of all such payments and supporting but due to unavoidable circumstance the said documents were in the possession in the assessee, it was misplaced.

Assessee failed to produce any documentary evidences support of his contention.

3.2 During the course of appellate proceedings, the appellant has filed written submissions which are reproduced as under:-

“Kindly refer to the personal discussion in the above matter and the Remand Report dated 16-08-2013 submitted by the Assessing Officer. The above appeal has now been fixed for appear on 29-10-2013 and we would like to make the following further submissions in the matter. The submissions are given in the same serial order in which the Assessing Officer has discussed the points in respect of the Extra Work of Rs.10,65,000/-in the remand report.

**1. Regarding Stamp Duty of Rs.42,145/- that was paid in cash.**

The 50% of the Stamp Duty and Registration Fees, totaling to Rs.42,145/- was paid on 11-03-2008 out of the Cash Withdrawal of Rs.50,000/- from the Account of Axis Bank Ltd. by cheque No.156887 dtd. 05-03-2008. A copy of the Bank statement has already been before the ITO 7(1) Ahmedabad during the course of assessment proceedings. However, a copy of the same has been placed in the paper book enclosed herewith for your kind perusal. The disallowance of this amount has been made by the A.O. on the ground that there was no sufficient cash balance available with the appellant on the date of payment. The A.O. in the remand report has stated that "on verification of cash flow and bank account statement, no cash on hand was available with the assessee on the date of payment". However, the A.O. has not mentioned the figure of the cash available with the appellant on the date of payment.

**2. Life time maintenance Rs. 2,02,920/- disallowed by the AO.**

According to the A.O. the amounts do not match with each other because according to the appellant the cheque No.243228 for Rs.2,02,920/- was paid to the Society on 23-04-2008 while the cheque amount was found to be only Rs.2,00,000/- according to the A.O. So there was no tally in the figures of the claim and the actual amount of the cheque claimed to have been given to the Society for this purpose. The appellant has explained the difference by

- 5 -

*saying that the balance amount of Rs.2,920/- was paid in cash over and above the cheque for Rs.2,00,000/-. This could be verified from the Cash book of the appellant for this year. The appellant would further like to explain the factual position as follows:*

*"In fact we have paid life time maintenance at the time of possession. Generally, it is the practice of all the developers and contractors charging life time maintenance per square yard or square feet and they are saying that this would be maintenance deposit. The real meaning of the possession letter would be - if the said amount is not found sufficient or utilized during the first five, ten or fifteen years, they shall charge the maintenance in equal proportion every month. It is a fact that due to inflation year after year there has been increase in the Electricity charges and the salaries of the Security Guards and Sweepers had to be increased from time to time. In these circumstances, the Societies had to incur more and more expenditure year after year and the maintenance deposit get fully utilized and therefore, one has to appreciate the real meaning of the clauses in the possession letter. Under the circumstances, it would not be proper to disallow the maintenance deposit expenses claimed in this case."*

**3. Extra Civil Work Rs.5,80,607/- disallowed by the A.O.**

*As per the report of the ITO the Appellant was asked to produce the person(s) for verification of this expenditure as the "abstract bills were found to be without signatures of the persons concerned. The appellant could not produce those persons and hence the ITO has given adverse report in this behalf. However, according to the appellant would like to submit that the persons could not be traced out as already more than 5 years have elapsed. According to the appellant the amount of Rs.3 lakhs was paid by cheque No.243208 of Bank of India; and another*

- 6 -

*cheque No.346654 on Textile Traders Bank A/c of appellant's wife and the balance amount of Rs.2,35,000 and odd was paid in cash to the workers from time to time. Since the Extra Civil Work was carried out some 5 years ago, it is difficult to contact the Persons who had carried out that work in the past. This being genuine extra civil work the expenditure may kindly be allowed.*

**4. Painting work with material Rs. 2,09,100/-**

*The Assessing Officer has given an adverse report because according to him the signatures as well as the names and addresses of the persons who had done this work are not verifiable. The Appellant could not produce those persons before the ITO as the workers for painting and coloring job were brought from the Ambawadi Market and it is not possible to trace out those persons after the lapse of more than 5 years. It is a fact that the Labourers of different skills do gather on the Road, known as the Ambawadi Chowk, every morning and the persons, who are in need of skilled labour for a particular job, select the persons from among those who had gathered there on that day. There is no permanent market there. But it is a fact that the workers do gather there every morning for 2-3 hours and those, who are picked by the needy persons/contractors, do carry on the job and as they do not have permanent establishments, it is rather impossible to locate those persons after the lapse of years. Secondly, those labourers have to be paid remunerations in cash as they do not have Bank Accounts. There is force in the explanation of the appellant and the same may be accepted and the expenditure be allowed.*

**5. Termite Charges Rs. 25,000/-**

*The Assessing Officer has submitted an adverse report on this count also because the appellant could not give him the complete names and addresses of the persons who had*

- 7 -

*carried out this work. The name of one Nayan Panchal had already been mentioned by the appellant in his submission dated 26-07-2013. This person had carried out this job. Since he had discontinued his business, the appellant could not produce the person before the ITO for verification. It is common practice in Ahmedabad to get the work of termite control before occupying the newly built house property. The Appellant had produced before the ITO a copy of the payment voucher submitted with this written submission. The amount of Rs. 25,000/- was paid out of cash on hand.*

**6. Gujarat Electricity Board Charges paid Rs. 40,000/-**

*According to the ITO, the appellant is joint owner of the property and despite this fact he has claimed full amount of GEB charge of Rs.60,000/-. However the appellant could not produce the copy of the Bill for GEB charges nor he could prove the payment of that amount. According to the Appellant, the GEB charges were paid to the Contractor, as the Contractors normally pay to the GEB on behalf of all the Members of the Society. The appellant is, therefore, not in a position to produce the copy of that Bill paid to GEB.*

**7. School Fees paid Rs.12,000/- to D.C.Patel College.**

*The Ld. Assessing Officer has verified that the Fees of Rs.12,000/- were paid by the appellant by cheque on 17-04-2007 and hence he has submitted a favourable report in this behalf.*

3.3 While deciding the matter learned CIT(A) held that ground of appeal No. 1, 2 & 3 are all regarding an addition of Rs.10,65,000/- made by the AO under the head long term capital gains by reducing the claim of deduction u/s.54 of the IT Act. All the grounds are being

- 8 -

interconnected taken together. The issue has been discussed in para-3 of the assessment order. The AO noted that appellant had claimed exemption u/s. 54 of Rs. 33,95,000/- so as to indicate LTCG of Rs.11,617/- The AO noted that the property, which was jointly held was purchased for Rs.14,20,000/- and further work contract was done of Rs.32,40,000/- thus the assessee's share came to Rs. 23,30,000/- ( $32,40,000 + 14,20,000/2$ ). As against this the appellant had claimed deduction of Rs.33,95,000/- leaving a difference of Rs.10,65,000/-. On being queried the appellant explained to the AO that some extra work was carried out for Rs.10,65,000/- for which the impugned bills were not then readily available. In the absence of any evidence from the appellant the AO made the addition.

3.4 During the course of appellate proceedings, the appellant submitted that because of shifting of the house some bills etc could not be produced and hence vide an application dtd. 23-01-2013, the appellant requested for admission of additional evidences comprising bills etc of the impugned expenses of Rs.10,65,000/- as well as in respect of an addition of Rs.12,000/- made by the AO u/s. 80C. The matter was remanded to the AO for comments on admissibility on additional evidences and on the justification of evidences produced. In compliance thereof remand report was received on dt. 16-08-2013.

3.5 Learned CIT(A) further stated that he has carefully considered the facts of the case in the light of submissions made by the appellant and the arguments taken by the Assessing Officer. As far as the issue of admissibility of additional evidences under Rule 46A is concerned, it is seen that the same can be admitted at the appellate stage provided the appellant was prevented by sufficient cause to file the same before the AO during assessment proceedings and before admission of such evidences, the A O is given an opportunity of offering his comments on admissibility thereof. In the remand report mentioned supra, it is noted that the AO has not offered any comments objecting to admission of the impugned additional evidences. Perusal of appellants request indicates that the impugned evidences could not be produced to the AO on account of shifting of a house. The reason given by the appellant appears to be justified. Consequently, in view of the fact that the AO has not objected to the admission of additional evidence under Rule 46A discussed supra and reason of the appellant are apparently justified the impugned additional evidences are hereby directed to be admitted under Rule 46A.

4. Learned CIT(A) held that after considering the submissions made by the appellant and the arguments taken by the assessing officer. It is a settled principle of law that an expenditure is to be allowed if it is supported by both requisite bill and mode of payment. In case in cash it is to be supported by cash withdrawals from bank and in case by cheque, by cheque entries. The same has not been done by the appellant in this case

**- 10 -**

even though opportunity was allowed to produce additional evidences. The argument of appellant that expenses are customary in nature cannot be allowed unless supported by bills and valid proof of payment and dismissed the appeal of the assessee.

5. We have gone through the relevant record and impugned order passed by the authorities below and we have heard the learned AR and DR both. Learned DR supported the order of the CIT(A), whereas it is undisputed fact that assessee has been failed to produce any bills and details with regard to so called expenditure but assessee has paid a sum of Rs.42,145/- on Stamp Duty on 11/03/2008 out of cash withdrawal of Rs.50,000/- from the Account of Axis Bank Ltd. by Cheque No.156887 dt. 05/03/2008. A copy of the Bank Statement has already been before the ITO, Ahmedabad during the course of assessment. However, a copy of the same has been placed in the paper book enclosed herewith for our consideration. After considering the fact, we allow Rs.42,145/- and rest of the expenditure are not allowed as assessee has been failed to produce any documentary support for the so called expenses. As per the Balance Sheet assessee's income is Rs.1 lakh per year. A person who is having such a low income, cannot spend this much of amount. Therefore we partly allow the appeal.

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

**This Order pronounced in Open Court on 30/06/2017**

Sd/-

(प्रदीप कुमार केडिया)

लेखा सदस्य

(PRADIP KUMAR KEDIA)

ACCOUNTANT MEMBER

Ahmedabad; Dated 30/06/2017

Sd/-

(महावीर प्रसाद)

न्यायिक सदस्य

( MAHAVIR PRASAD )

JUDICIAL MEMBER

*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)-
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