

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH, AHMEDABAD**

**BEFORESHRI RAJPAL YADAV, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No. 1436/Ahd/2016

निर्धारणवर्ष/Assessment Year: 2011-12

Shri Neelesh H. Agrawal, B-609, Fairdeal House, Nr. Swastik Char Rasta, Ahmedabad-380009 PAN : AGOPA 4893 R	Vs.	The ACIT, Circle-12, Ahmedabad
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :		S.N. Divetia, AR
Revenue by :		S.K. Dev, Sr. DR

सुनवाई की तारीख/Date of Hearing : 09/10/2017

घोषणा की तारीख /Date of Pronouncement: 04/12/2017

**आदेश/ORDER**

The assessee is in appeal before the Tribunal against the order of learned CIT(A)-6, Ahmedabad dated 23.03.2016 passed for Assessment Year 2011-12.

2. In the first ground of appeal, the grievance of the assessee is that the ld. CIT(A) has erred in confirming the addition of Rs.3,40,746/-, which was made by the Assessing Officer u/s 40(a)(ia) of the Act.

3. It emerges out from the record that the assessee has paid interest to ABN Amro, Bajaj Capital and Reliance Capital, totaling to Rs.3,40,746/-. He failed to deduct TDS and therefore, with the help of Section 40(a)(ia), the ld. Assessing Officer has disallowed the expenditure. On appeal, ld. CIT(A) has confirmed the disallowance.

4. Before me, learned Counsel for the assessee, on the strength of the Hon'ble Gujarat High Court's decision in Tax Appeal No.626 of 2017 in the case of Principal Commissioner of Income-tax Vs. ASE Capital Markets Ltd,

has contended that if the recipients have accounted the interest receipts in their taxable income, then no disallowance can be made in the hands of the assessee. Hon'ble Gujarat High Court has relied upon the judgment of Hon'ble Delhi Court in the case of CIT vs. Ansal Land Mark Township (P) Ltd, reported in [2015] 377 ITR 635 (Delhi).

5. On due consideration of the above, I am of the view that now it has been settled that if the recipients have accounted the receipts, which have been disallowed in the hands of the payer on account of non-deduction of tax, and the same has been included in their taxable income, then no disallowance is to be made in the hands of the payer. Considering this aspect, I set aside this issue to the file of the Assessing Officer for verification. The assessee shall provide the complete details of recipients and the ld. Assessing Officer shall call for information from the recipients, i.e. ABN Amro, Bajaj Capital and Reliance Capital as to whether they have included this amount in their taxable income or not. If the receipts are accounted in their taxable income, then no disallowance is to be made in the hands of the assessee. This ground of appeal is allowed for statistical purposes.

6. In the next ground of appeal, the grievance of the assessee is that the ld. CIT(A) has erred in confirming the addition of Rs.1,23,300/- out of travelling expenses.

7. The brief facts of the case are that the assessee has debited a sum of Rs.1,23,300/- to the P&L account towards travelling expenses. The ld. Assessing Officer made an inquiry and recorded a finding that this expenditure was incurred by the assessee for his honeymoon; therefore, ld.

Assessing Officer treated this expenditure as “non-business purposes” and disallowed the same.

8. Appeal to the CIT(A) did not bring any relief to the assessee.

9. With the assistance of the learned representatives, I have gone through the record carefully. The assessee has submitted that he took a honeymoon package from PCFL Travel House. According to the assessee, it was only for the namesake “Honeymoon Package”, but he did not go for honeymoon, because his marriage was taken place long back. However, after considering the record, I find that the assessee failed to bring any evidence on record demonstrating that the expenditure was incurred wholly and exclusively for the purpose of business. Learned CIT(A) has rightly confirmed the disallowance. I do not find any error in the order of the Id. CIT(A) and accordingly, this ground of appeal is rejected.

10. In the next ground of appeal, the grievance of the assessee is that the Id. CIT(A) has erred in confirming the addition of Rs.1,80,000/- which was added by the Assessing Officer on account of low household withdrawal shown by the assessee.

11. The brief facts of the case are that the assessee has shown household withdrawal of Rs.5,000/- per month only. His father has shown Rs.15,000/ per month. The Id. Assessing Officer has estimated the household withdrawal at Rs.20,000/- per month and made an addition of Rs.1,80,000/-.

12. Appeal to the CIT(A) did not bring any relief to the assessee.

13. On due consideration of the facts and circumstances, I do not find any error in the order of the Id. CIT(A). A person who can afford a foreign trip for honeymoon, it is highly improbable that his household expenditure

should be only Rs.5,000/- per month in AY 2011-12. Considering the status and nature of business carried out by the assessee, the estimation of the household expenses at the end of the assessee is quite on the lower side. Therefore, this ground of appeal of the assessee is rejected.

14. Ground Nos. 4 and 5 are interconnected with each other; therefore, I take both the grounds together. In ground no.4, the assessee has pleaded that Id. CIT(A) has erred in confirming the addition of Rs.3,12,049/-, which was made by the Assessing Officer u/s 37 of the Act; and, in ground no.5, the assessee is challenging the disallowance of Rs.6,00,000/-, which was made by the Assessing Officer on account of discrepancy in the books of accounts.

15. The brief facts of the case are that the assessee has made payments towards credit card purchases. He has paid a sum of Rs.1,91,800/- to Citi Bank and Rs.1,20,249/- to Standard Chartered Bank. According to the assessee, these expenditures were incurred for the purpose of business. He contended that he has to employ a salesman for day-to-day business, and, in order to reimburse the petrol expenses to his staff, these two credit cards were used. The Id. Assessing Officer has observed that the assessee failed to submit any vouchers, bills, statement of the credit card for showing the nature of expenditure and how they have nexus with the business of the assessee. Thus he disallowed the claim of the assessee. Similarly, the Id. Assessing Officer has disallowed half percentage of the total turnover towards different expenditures and leakage.

16. With the assistance of the learned representatives, I have gone through the record carefully. The assessee is a distributor of Videocon and Hutch. The Assessing Officer has called for the purchase/sales register, bills and vouchers for verification. He found that complete details were not

maintained by the assessee. Therefore, he disallowed half percentage of the total turnover and made an addition of Rs.6,00,000/-. Similarly, the assessee could not submit complete details relating to the expenditures incurred through credit cards. Therefore, the Assessing Officer disallowed a sum of Rs.3,12,049/-. When these expenditures are considered in the light of other disallowances made by the Assessing Officer, i.e., estimated household expenditure and foreign travel expenditure etc., then it would reveal that instead of making addition under each item, the Id. Assessing Officer ought to have adopted a uniform policy for making an ad-hoc disallowance. He should not have identified each item, i.e. credit card expenditure, household expenditure, etc., because all these expenditures will be taken care of by ad-hoc disallowance of Rs.6,00,000/- as this disallowance has been worked out at half percentage of the total turnover. Therefore, I am of the view that once estimated ad-hoc addition on account of low household withdrawal has been made and estimated, ad-hoc disallowances out of business expenditure have been made, then this credit card expenditure ought not to be made. I, therefore, allow the ground no.4 and delete the disallowance of Rs.3,12,049/-. Addition of Rs.6,00,000/- is confirmed, because the assessee could not submit supporting details showing that the expenditures were exclusively incurred for the purpose of business.

17. In the result, appeal of the assessee is partly allowed.

Order pronounced in the Court on 4<sup>th</sup> December 2017 at Ahmedabad.

Sd/-

(RAJPAL YADAV)  
JUDICIAL MEMBER

Ahmedabad; Dated 04/12/2017

*By T. S. P.S.*

**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 फाइल / Guard file.

आदेशानुसार/BY ORDER,

TRUE COPY

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