

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'बी' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ B ” 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.2106/Ahd/2014
(निर्धारण वर्ष / Assessment Year : 2005-06)

Handee Foods C/o. Rita H. Desai Shri Hira Nivas Ghantiada Ghadiali Pole Baroda - 390001	बनाम/ Vs.	ACIT Circle – 3 Aaykar Bhavan, Race Course, Baroda
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABFH 4786 R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Mehul K. Patel, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Mudit Nagpal, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	09/10/2017
घोषणा की तारीख /Date of Pronouncement	30/10/2017

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)-II, Baroda, dated 21/03/2014 for the Assessment Year (AY) 2005-06, on the following Grounds:

- i. *The Learned CIT (Appeals) erred in ignoring the additional evidences filed in respect of unsecured loans during the course of appellate proceedings against penalty levied u/s.271(1)(c).*

- 2 -

- ii. *The Learned CIT (Appeals) erred in holding that the appellant firm could not prove that it had not furnished inaccurate particulars of income.*
- iii. *The Learned CIT (Appeals) erred in confirming the penalty levied u/s.271 (l)(c) amounting to Rs.6,56,820/-.*

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

In this case, the assessee firm is engaged in the business of restaurant. During the year the assessee has net loss of Rs.8,26,213/-.

2.2 Learned AO stated that despite of the fact that notice was issued to the assessee but he did not co-operate, therefore, on the basis of material available on record, as per provision of section 68 of the Act Rs.16,66,800/- was added to the total income of the assessee.

2.3 The comparative gross profit for the year under consideration and preceding year under consideration is enumerated as under:

A.Y.	Sales	Gross Profit	GP ratio
2004-05	1497274	286096	19.10
2005-06	1378582	78715	05.70

AO was of the opinion that GP rate declared is not correct and accordingly, the most appropriate GP of 19% was adopted for the year under consideration. The difference of the GP adopted and declared by

- 3 -

the assessee i.e. Rs.1,83,215/- was added back to the total income of the assessee.

2.4 During the assessment year, assessee has made addition of assets by way of purchase of utensils to the tune of Rs.61,542/-. However, the assessee has not produced anything on record to justify the claim of depreciation on said addition in asset. Accordingly, the depreciation claimed on said addition in asset to the tune of Rs.6,154/- is disallowed and added back to the total income of the assessee.

2.5 As compared to the preceding year, the assessee has shown increase in indirect expenses to the tune of Rs. 1.22 lacs. As the assessee has not brought anything on record except the confirmation of unsecured loans, the expenses are not verifiable. The assessee has not furnished any contra account from the depositors confirming the amount of interest paid nor the depreciation chart has been furnished along with return of income or with the submissions. Accordingly, as the expenses debited as indirect expense are not verifiable, the increase shown to the extent of Rs.1.22 lacs as compared to preceding year is disallowed.

2.6 Finally disallowance of Rs.19,78,169/- were made against the assessee.

- 4 -

2.7 Penalty proceedings u/s.271(1)(c) of Act were initiated and same was confirmed by the learned CIT(A).

3. We have gone through the relevant record and impugned order. Learned AR cited an ITAT, Ahmedabad order copy in ITA No.1582/Ahd/2011 for asst. year 2005-06 vide order dtd.06/01/2016, in this case, in quantum proceedings co-ordinate bench has set aside the matter to the file of the assessing officer for fresh adjudication and appeal of the assessee was allowed.

4. In view of the ITAT order, in quantum proceedings, we delete the penalty against the assessee and allowed the assessee's appeal.

5. In the result, appeal filed by the assessee is allowed.

This Order pronounced in Open Court on	30/10/2017
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Sd/-
(प्रदीप कुमार केडिया)
लेखा सदस्य
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER
Ahmedabad; Dated 30/10/2017

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

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)-II, Baroda.
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