

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI D.T. GARASIA (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 7234/MUM/2014  
Assessment Year: 2009-10**

Shri Sanjay Savla Shop No. 7, 1 <sup>st</sup> Floor, Shantinath Shopping Centre, S.V. Road, Malad (W) Mumbai-400064	Vs. ITO-24(2)(2) Room No. 604, C-13, Pratyaksh kar Bhavan, B.K.C., Bandra (E) Mumbai-400051.
---	---

**PAN No. ABAPS9229C**  
**Appellant**

**Respondent**

Assessee by	: Mr. S.C. Agarwal, AR
Revenue by	: Mr. T.A. Khan, DR

Date of Hearing	: 11/10/2017
Date of pronouncement	: 29/12/2017

**ORDER**

**PER N.K. PRADHAN, A.M.**

This is an appeal filed by the assessee. The relevant assessment year is 2009-10. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-34, Mumbai and arises out of the assessment order u/s 143(3) of the Income Tax Act 1961, (the 'Act').

There has been a delay of 27 days on the part of the assessee to file the appeal. The assessee has filed an affidavit for condoning the above delay stating that he had to go to his native place for a month during the relevant time. We are satisfied with the contents of the affidavit and condone the delay of 27 days in filing the appeal.

2. The 1<sup>st</sup> ground raised by the assessee is against the order of the Ld. CIT(A) confirming the agricultural income of Rs.1,60,866/- as income from other sources.

3. Briefly stated, the facts of the case are that the assessee had offered gross income of Rs.6,60,866/- as agricultural income from which he had shown to have incurred expenditure of Rs.3,46,426/- resulting into a net agricultural income of Rs.3,14,440/-. The Assessing Officer (AO) observed that the agricultural land was not reflected in the balance sheet submitted by the assessee. The assessee had submitted three bills showing sale of agricultural crops to three parties in cash. As the assessee could not file documents proving ownership of the agricultural land and also failed to submit any documentary evidence for incurring expenses of Rs.3,46,246/-, the AO treated the gross income of Rs.6,60,866/- as income from other sources and brought it to tax.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) held that (i) Smt. Manjulaben Hirji Savla & Others were the owners of various pockets of agricultural land in Kachha, Gujarat, (ii) Smt. Manjulaben Hirji Savla, the mother of the assessee had permitted the assessee to cultivate the agricultural land on her behalf under an agreement dated 25.03.1995, for which she was entitled to a compensation of Rs.10,000/- per annum, (iii) extracts of 7/12 issued by Talati, Faradi Gram Panchayat, Kachha, Gujarat shows that the assessee was cultivating groundnuts, jawar, guvar mug and tal on these pieces of agricultural land.

As the assessee failed to submit any documentary evidence and the income was earned in cash, the Ld. CIT(A) restricted the disallowance to Rs.1,60,866/- thereby giving a relief of Rs.5,00,000/- to the assessee.

5. Before us, the Ld. counsel of the assessee files a copy of (i) 7/12 Extract of land at Madvi Kutch (Gujarat), (ii) Ownership rights letter of land and (iii) Sale Bills, Mahavir Traders and Shakti Traders.

It is submitted by him that the assessee had not shown any excess agricultural income than what was actually earned. It is also stated that relevant details of land holding and expenditure incurred were filed before the AO.

6. On the other hand, the Ld. DR supports the order passed by the Ld. CIT(A).

7. We have heard the rival submission and perused the relevant materials on record. We find that the Ld. CIT(A) having gone through the 7/12 of the extract of land at Madvi Kutch, Gujarat and sale bills has restricted the disallowance to a reasonable amount of Rs.1,60,866/- thereby giving relief of Rs.5,00,000/- to the assessee. As the order of the Ld. CIT(A) restricting the disallowance to Rs.1,60,866/- is reasonable, we uphold the same.

Thus the 1<sup>st</sup> ground of appeal is dismissed.

8. The 2<sup>nd</sup> ground raised in this appeal is against the order of the Ld. CIT(A) confirming the disallowance of expenses.

9. The AO made an addition of Rs.4,86,134/- by disallowing the following expenditure incurred by the assessee as against vehicle higher charges of Rs.3,36,000/- earned by him:

Sr. No.	Item	Amount (Rs.)
1.	Depreciation on Cars	2,48,741
2.	Interest on Car Loans	1,21,827
3.	Motor Car Expenses	80,034
4.	Motor Car Insurance	35,532
	<b>Total</b>	<b>4,86,134</b>

Moreover, the AO treated the income from vehicle hiring charges of Rs.3,36,000/- earned by the assessee as income from other sources as against the business income shown by the assessee.

The AO also made a disallowance of Rs.2,12,201/- comprising of the following expenses:

Sr. No.	Expenses	Amount (Rs.)
1.	Air Condition Maintenance	2,550
2.	Bank Charges	5,304
3.	Brokerage	31,775
4.	Credit Card Expenses	1,24,630
5.	Depreciation	10,672
6.	Digital Signature	1,750
7.	Diwali Expenses	5,200
8.	Membership & Subscription	562
9.	Profession Charges	15,000
10.	Telephone Expenses	14,688
	<b>Total</b>	<b>2,12,201</b>

10. In appeal, the Ld. CIT(A) agreed with the contention of the assessee that his income from vehicle running charges earned by him should be considered as his profits and gains from business. However, she restricted the claim of motor car expenses to Rs.50,000/- as against Rs.80,034/- claimed by the assessee, thus confirming the addition of Rs.30,034/-.

Out of the disallowance of Rs.2,12,201/- made by the AO, the Ld. CIT(A) restricted it to Rs.50,000/- on the reason that the element of personal use could not ruled out.

11. Before us, the Ld. counsel of the assessee files a copy of the submission made by the assessee before the Ld. CIT(A).

On the other hand, the Ld. DR supports the order passed by the Ld. CIT(A).

12. We have heard the rival submission and perused the relevant material on record. We find that the Ld. CIT(A) has agreed with the contentions of assessee and treated income of Rs.3,36,000/- as profits and gains from business. She has only sustained a disallowance of Rs.30,034/-.

Again out of disallowance of Rs.2,12,201/- made by the AO, the Ld. CIT(A) has sustained only Rs.50,000/- on the reason that the personal use could not be ruled out.

As the order of the Ld. CIT(A) is based on reasons and the disallowance of expenses by her is a modest amount, we confirm the same.

The 2<sup>nd</sup> ground of appeal is thus dismissed.

13. The 3<sup>rd</sup> ground raised in this appeal is against the order of Ld. CIT(A) confirming the disallowance of interest made by the AO. The additional ground filed by the assessee reiterate the same thing.

14. The AO observed that the assessee had earned the following interest of Rs.7,37,130/- during the year:

Sr. No.	Item	Amount (Rs.)
1.	Interest on FD with Rameshwar Co-op Bank	4,18,423
2.	Interest on Other Loans given	3,18,707
	<b>Total</b>	<b>7,37,130</b>

As against these, the assessee had claimed expenses of Rs.8,96,123/-. The break-up of the said claim of expenses is as under:

Sr. No.	Expenses	Amount (Rs.)
1.	Interest on Overdraft with Rameshwar Co-op Bank	3,91,555
2.	Interest on Other Loans taken	3,61,719
3.	Interest on Premises Loan	1,42,849
	<b>Total</b>	<b>8,96,123</b>

The AO disallowed interest of Rs.5,04,568/- (Rs.3,61,719/- plus Rs.1,42,849/-) on the reason that the assessee failed to file a copy of cash flow statement evidencing interest earned and interest paid.

15. In appeal, the Ld. CIT(A) restricted the disallowance to Rs.1,85,861/- (Rs.5,04,568/- minus Rs.3,18,707/-)

16. Before us, the Ld. counsel of the assessee submits that the interest was paid for the purpose of business and profession and therefore, the same should be allowed u/s 36(1)(iii) of the Act.

On the other hand, the Ld. DR supports the order passed by the Ld. CIT(A).

17. We have heard the rival submissions and perused the relevant materials on record. The assessee has claimed interest expenditure of Rs.8,96,123/- against the business income. The AO has wrongly considered it as a claim against interest income earned by the assessee. The assessee has borrowed loans from various parties. The same was done for the purpose of business of the assessee as his evident from its audited accounts.

In view of the above, we delete the disallowance of Rs.1,85,861/- arrived at by the Ld. CIT(A).

Thus the 3<sup>rd</sup> ground of appeal is allowed.

18. In the result, the appeal is partly allowed.

**Order pronounced in the open Court on 29/12/2017.**

Sd/-  
(D.T. GARASIA)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 29/12/2017

*Rahul Sharma, Sr. P.S.*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**