

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Rajpal Yadav, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 2834/Ahd/2014
Assessment Year 2006-07**

Smt. Sonal Nitin Shah, 1, Venkatgiri, Near Anandvan Complex, Opp. Indra Complex, Manjalpur, Baroda-390011 PAN:AJEPS3002P (Appellant)	Vs	The ITO, Ward-2(5), Baroda (Respondent)
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**Revenue by: Shri Mudit Nagpal, Sr. D.R.
Assessee by: Shri Manish Shah, A.R.**

Date of hearing : 24-11-2017
Date of pronouncement : 19-12-2017

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2006-07, arises from order of the CIT(A)-V, Baroda dated 18-02-2014, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. The assessee has raised following grounds of appeal:-

"1. The C.I.T.(Appeals) erred in upholding an addition of Rs.3,78,994/- u/s.68 of the I.T. Act, 1961.

2. The C.I.T.(Appeals) further erred in confirming an addition of Rs.1,77,201/- u/s.68 of the I.T. Act, 1961.

3. *The C.I.T.(Appeals) erred in upholding the disallowance of Rs. 1,03,800/- being 20% of the total indirect expenses of Rs.5,18,998/-.*

4. *The C.I.T.(Appeals) ought not to have upheld the addition of Rs.63,081/- being deemed interest disallowance made by the Assessing Officer.”*

3. In this case, return of income declaring income of Rs. 1,38,470/- was filed on 30th December, 2006. Subsequently, the case was selected under scrutiny by issuing of notice u/s. 143(2) of the act on 28th June, 2007. During the course of assessment proceedings, the assessing officer has made following disallowances.

Disallowance of Rs. 3,78,994/- as unsecured loan

4. The assessing officer has made this disallowance on the ground that assessee has not furnished any confirmation and evidences to prove the identity and creditworthiness of the person from whom the loans were received.

Disallowance of creditors of Rs. 1,77,201/-

5. The assessing officer has made this disallowance on the ground that assessee has not furnished any confirmation and evidences to prove the identity and genuineness of the transaction.

Disallowance of indirect expenses of Rs. 1,03,800/-

6. The assessing officer has disallowed this expenditure by stating that assessee has not produced the supporting bill and voucher, therefore, he had disallowed 20% of the indirect expenses of Rs. 815998/- which comes to Rs. 1,03,800/-

Disallowance of interest free loan and advances of Rs. 63,081/-

7. The assessing officer has made this disallowance on the ground that assessee has made interest free loan to his relatives without charging any interest, therefore, the assessing officer has worked out interest @ 12% on the loan and advances of Rs. 5,25,677/- to the amount of Rs. 63,081/-.

8. Aggrieved assessee filed appeal before he Id. CIT(A).The Ld.CIT(A) has dismissed the appeal of the assessee. There was delay in filing this appeal before the ITAT by 147 day. During the course of appellate proceedings before us, Id. counsel has contended that during the course of assessment proceedings mother in law of the assessee was suffering from cancer and assessee was busy in medical treatment of her mother in law.. In this respect, the Id. counsel has filed affidavit of the assessee along with copy of death certificate of her mother in law. It was stated in the affidavit that mother in law of the assessee was suffering from cancer and was expired on 18th Feb, 2014. It was further stated that copy of order of Id. CIT(A) was received by his father in law on 28th March, 2014 after some days of the death of her mother in law because of being remained busy in post death rituals of her mother in law, his father in law forget to submit the appeal paper to her authorized representative for filing the appeal which resulted delay in filing this appeal. After considering the submission of the assessee along with supporting evidences , we condone the delay in filing this appeal. The Id. counsel has further submitted that the case of the assessee could not be presented before the Id. CIT(A) properly because of ill health of the mother in law of the assessee as the assessee was remained busy in taking care of the sick mother in law as a result proper information could not be made available during the appellate proceedings. Looking to these circumstances, Id. counsel has submitted that case of the assessee be decided on merit after considering the additional evidences filed before the Id. CIT(A). On the other hand, Id. departmental representative supported the order of the Id. CIT(A).

9. We have heard both the sides and perused the material on record carefully. We observed that mother in law of the assessee was suffering from cancer and was expired on 18th Feb, 2014. The Id. CIT(A) has not admitted the additional evidences filed by the assessee on the ground that information was not submitted before the assessing officer in spite of granting several opportunities. We have considered the submission of the assessee that the necessary compliance could not be made during the appellate proceedings because the assessee was remained busy in taking care of her mother in law who was suffering from cancer and expired on 18th December 2014 as per the copy of the death certificate submitted in the appellate proceeding before us. We have perused the order of the Ld. CIT(A) and find no body on behalf of assessee has attended the appellate proceeding. In view of the above reasons we observed that the assessee could not make proper compliance during the appellate proceedings. After considering the above facts we observed that it will be appropriate to restore this case to the file of the assessing officer for deciding a fresh instead of restoring to Id. CIT(A) to avoid multiple of litigation first at the level of Id. CIT(A) and then for remand report at the level of assessing officer. Therefore, we restore this file to the assessing officer to decide it on merit after considering the evidences filed by the assessee and after providing adequate opportunity to the assessee.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 19 -12-2017

Sd/-
(RAJPAL YADAV)
JUDICIALMEMBER
Ahmedabad : Dated 19/12/2017

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश क० तालिम अ० षत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलालय अधिकरण,
अहमदाबाद