

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

[Coram: Pramod Kumar AM]

ITA No.3270/Ahd/2015
Assessment Year: 2012-13

Manilal Jethalal Soni,
210, Super Mall,
C.G. Road, Navrangpura,
Ahmedabd – 380 009.
[PAN : ACIPS 7509 L].

..... **Appellant**

Vs.

Income Tax Officer,
Ward – 5(2)(3), Ahmedabad.

.....**Respondent**

Appearances by

A.C. Shah *for the appellant*
Prasoon Kabra *for the respondent*

Date of concluding the hearing: 05.12.2017

Date of pronouncing the order: 14.02.2018

O R D E R

1. This appeal, filed by the assessee, challenges correctness of the order dated 28th October 2015, passed by the learned CIT(A), in the matter of assessment under section 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter), for the assessment year 2012-13.

2. In the first ground of appeal, the assessee has raised the following grievance:

"1. The learned CIT(A) has erred in confirming the disallowance of salary of Rs.8,66,000/- to employees on the ground that they are relatives inasmuch as the employees have actually worked in the show room of the assessee and therefore the salary so paid is for the purpose of business."

3. The relevant material facts are like this. The assessee before me is a very senior citizen, in his late 70s, and is engaged in the business of gold, bullion and silver bars and jewellery. The assessee is carrying out business with the help of employees engaged by him, including some relatives. During the course of scrutiny assessment proceedings, the Assessing Officer disallowed a large portion of salaries so paid to the close relatives. He had noted that as against salary payment of Rs.7,54,526/- in the immediately preceding year, the salary payment in the current year was Rs.15,94,526/- even though the increase in turnover was only marginal

– Rs.83,69,20,633/- in the current year as against Rs.77,44,53,764/- in the immediately preceding year. The huge increase in salaries, as per the Assessing Officer, could not be justified. He also noted that most of the salaries is paid only towards the fag end of the year. He disallowed entire salary of Rs.2,40,000/- to Smt. Harshaben G Soni on the ground that she did not have any qualifications or experience to do accounts work. He further disallowed Rs.2,00,000/-, out of Rs.4,16,000/- paid to Shri Nileshbhai Soni, on the ground that salary of Rs.18,000/- p.m. is reasonable. He further disallowed Rs.84,000/-, out of Rs.1,68,000/- paid to Shri Girish Soni, on the ground that Rs.7,000/- p.m. was sufficient salary as he was new to business. Out of salaries of Rs.2,40,000/-, Rs.2,10,000/- and Rs.2,10,000/- paid to Vinit Soni, Simit Soni and Romit Soni, he allowed only Rs.1,20,000/-, Rs.99,000/- and Rs.99,000/-. The balance amount of Rs.3,42,000/- was disallowed mainly on the ground that these persons were youngsters and that they did not have any qualifications or experience to justify the salaries paid to them. Accordingly, a sum of Rs.8,66,000/- was disallowed under section 40A(2)(b). Aggrieved, assessee carried the matter in appeal before the learned CIT(A) but without any success. The assessee is not satisfied and is in further appeal before me.

4. I have heard the rival submissions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

5. As far as salary of Rs.2,40,000/- paid to Smt. Harshaben Soni is concerned, I find that she is wife of the assessee, herself an aged lady and does not possess any qualifications so as to justify the salary payment for doing accounting work. I, therefore, uphold the disallowance to that extent. However, as regards the remaining persons, I have noted that the disallowance is only a partial disallowance and no reasonable justification is given for quantification of the disallowance. Having perused the details filed by the learned counsel and bearing in mind the submissions made by him, I do agree that the basis for partial disallowance is merely surmises and conjectures – something which cannot meet a judicial scrutiny. Once it is accepted that these persons have rendered the services, as is implicitly accepted in this case, disallowance cannot be made unless it is clearly established that the payment is excessive or unreasonable. In my considered view, there is no cogent material to justify such a conclusion. In view of these discussions and bearing in mind entirety of the case, I uphold the disallowance only to the extent of Rs.2,40,000/- and the balance amount of disallowance of Rs.6,26,000/- is thus deleted.

6. Ground no.1 is thus partly allowed.

7. In ground no.2, the assessee has raised the following grievance:

“2. The learned CIT(A) has erred in confirming the disallowance of interest of Rs.1,44,862/- to relatives under section 40A(2)(b) on the ground that it is excessive inasmuch as the interest paid is at the prevailing market rate and not excessive.”

8. The disallowance has been made as the assessee had paid interest @18% to the relatives, whereas according to the Assessing Officer, interest @ 12% was fair market price of the borrowings. The basis of the market price was short term borrowings by the assessee from outsiders. It was in this backdrop that interest payment of Rs.1,44,862/- was disallowed. Aggrieved, assessee carried the matter in appeal before the learned CIT(A) but without any success. Not satisfied, the assessee is in further appeal before me.

9. Having heard the rival contentions and having perused the material on record, I find that borrowings @18% p.a. cannot be said to be at excessive or unreasonable interest. The fact that the assessee has been able to borrow @12% for some short period cannot be put against him, because unless the interest @18% is held to be excessive or unreasonable, even if assessee is able to borrow at a lower interest rate from unrelated parties, disallowance under section 40A(2)(b) cannot be made. That, however, is precisely the case here. In view of the discussions, I uphold the plea of the assessee and delete the impugned interest disallowance of Rs.1,44,862/-.

10. Ground no.2 is thus allowed.

11. In the result, the appeal is partly allowed in the terms indicate above. Pronounced in the open Court on this 14th day of February, 2018.

Sd/-

Pramod Kumar
(Accountant Member)

Dated: Ahmedabad, the 14th day of February, 2018.

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Copies to: (1) The appellant (2) The respondent
(3) CIT (4) CIT(A)
(5) DR (6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad