

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD – BENCH ‘A’

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER  
AND  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No.2740/Ahd/2016

निर्धारण वर्ष/Assessment Year: 2013-14

M/s.Umiya Automobiles State Highway, Nagalpur Mehsana 384 002.	Vs	ACIT, Mehsana Cir. Mehsana.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Mehul S. Thakker, AR
Revenue by :	Ms.Apoorva Bhardwaja, Sr.DR

सुनवाई की तारीख/Date of Hearing : 06/08/2018

घोषणा की तारीख /Date of Pronouncement : 31/08/2018

### ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER : Present appeal is directed at the instance of the assessee against order of Id.CIT(A), Gandhinagar, Ahmedabad dated 22.8.2016 for the assessment year 2013-14.

2. In the first ground of appeal, the assessee has pleaded that the Id.CIT(A) has erred in confirming the disallowance of interest expense amounting to Rs.13,20,000/-.

3. Brief facts of the case are that the assessee firm at the relevant time was an authorised dealer of two wheelers of Hero Motocarp. It has filed

its return of income electronically on 28.9.2013 declaring total income at Rs.29,23,680/-. On scrutiny of the accounts, it revealed to the AO that the assessee has advanced a sum of Rs.1.10 crores to Shri Chandrakant Tulsibhai Patel on which no interest was charged by it. He confronted the assessee as to why a notional interest on the above loan should not be calculated and disallowed out of interest expenses claimed by the assessee. The assessee filed its submissions, which have been reproduced by the AO. The Id.AO, thereafter assigned seven reasons for holding that interest income on such advances ought to be calculated by the assessee. In other words, he held that the assessee has misused interest bearing funds by making interest free advances to Shri Chandrakant Tulsibhai Patel. Accordingly disallowance of Rs.13.20 lakhs was made which has been upheld by the Id.CIT(A).

4. With the assistance of the Id.representatives, we have gone through the record carefully. Apart from other submissions; that loans were given for the purpose of business, in the past interest was charged by the assessee for F.Y.2010-11 and 2011-12, this year it was not charged on account weak financial position of Shri Chandrakant Tulsibhai Patel. It was pointed out that a sum of Rs.2,95,84,048/- was available in the shape of interest free capital. Our attention was drawn to page no.46 of the paper book wherein capital contribution by Shri Jaswantbhai N. Patel, Manubhai N. Patel and Rajendrakumar N. Patel is available. It is also demonstrated that the accounts out of which such advances were given, had never been a negative balance except on the first advances of Rs.35lakhs given on 27.4.2010. It was a cash credit account and interest liability in this account was of Rs.1.00 lakh. Thus, it was demonstrated before us that interest bearing funds were not used by the assessee for

making such advances. On the other hand, the Id.DR relied upon the order of the Revenue authorities.

5. On due consideration of the above facts, we are of the view that the assessee has sufficient interest free funds available, out of which it could be assumed that these advances were given to Shri Chandrakant Tulsibhai Patel. Hon'ble Bombay High Court in the case of CIT Vs. Reliance Utilities P.Ltd. reported in 313 ITR 340 has considered almost similar situation and held that if an assessee demonstrates availability of sufficient interest free funds which can take care of alleged advancement of interest free loans, then it is to be assumed that such advances were given out of interest free funds. Considering the above details, we are of the view that no disallowance out of interest expenditure is to be made in the case of assessee. We allow first ground of appeal and delete disallowance of Rs.13,20,000/-.

6. In ground no.2, grievance of the assessee is that the Id.CIT(A) has erred in confirming the disallowance of Rs.36,212/- on the ground that payment of employees' contribution to PF & ESIC was made after due date as prescribed under the relevant Act.

7. This controversy has been silenced by the Hon'ble Gujarat High Court in the case of CIT Vs. Gujarat State Road Transport Corpn, 265 CTR 64 (Guj) wherein it is held that if Employees' Contribution towards PF and ESICI are not deposited within time limit provided in the respective Acts, i.e. Provident Fund and ESI Act, then deduction will not be admissible to the assessee. Hence, respectfully following the decision

of Hon'ble High Court cited (supra), we do not find any merit in the ground of appeal. It is rejected.

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

**Pronounced in the Open Court on 31<sup>st</sup> August, 2018.**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

**Sd/-  
(RAJPAL YADAV)  
JUDICIAL MEMBER**