

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD %SMC+BENCH

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

**ITA Nos. 2048 & 2049 /Ahd/2016
Assessment Year 2002-03**

Shri Rushang Rajnikant Maniar, %Rashant+ Nr. Jain Merchant Society, Mahalaxmi Char Rasta, Paldi, Ahmedabad PAN: AEHPM7537H (Appellant)	Vs	The ITO, Ward-11(2), Ahmedabad (Respondent)
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**Revenue by: Shri Rajesh Meena, Sr. D.R.
Assessee by: None**

Date of hearing : 01-11-2018
Date of pronouncement : 29-11-2018

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

These two appeals filed assessee for A.Y. 2002-03, arise from order of the CIT(A)-5, Ahmedabad dated 31-05-2016, in proceedings under section 143(3) & 271(1)(c) of the Income Tax Act, 1961; in short %the Act+.

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

ITA No. 2048/Ahd/2016

“(1)Ld. CIT(A) -5 has erred in facts and in law in accepting remand report of Ld. Assessing officer without appreciating additional evidence and mechanically accepting version of Ld. Assessing officer in remand report.

(2)Ld. CIT(A)-5 has erred in facts and in law in accepting version of assessing officer in remand report even though said remand report is silent about mode of verification of interest amount and other expenses with bank statements;

(3)Ld. CIT(A)-5 has erred in facts and in law disregarding additional grounds preferred by appellant against remand report by Ld. A.O.

(4)Ld. CIT(A)-5 has erred in facts and in law in stating grievance of non attendance however Ld. CIT(A)-5 has failed to appreciate that A.R. repeatedly requested to seek comments of Ld. A.O. as to discrepancy into amount of interest debited to bank account and in filing of evidence of photocopy of cheques handed over to lenders by appellant.”

3. All the grounds of appeal are interconnected to the common issue of disallowance of expenditure of Rs. 8,51,226/-

4. The brief fact of the case is that the assessee has filed return of income declaring income of 165070/- on 30th October, 2002. Subsequently, the return of income was selected under scrutiny by issuing of notice 143(2) of the act on 23rd October, 2003. During the course of assessment proceedings, the assessing officer has submitted details of expenditure incurred as under:-

1.	Telephone Expenses	Rs.24608/-
2.	Depreciation	Rs. 18496/-
3.	Petrol Expense	Rs.15800/-
4.	Interest Expense	Rs.24800/-
	Total	Rs.83704/-

The assessing officer has stated that assessee has debited total expenses of Rs. 9,34,930/- but he has not submitted the detail of remaining expenditure due to failure of hard disc of computer. The assessing officer has not accepted the explanation of the assessee and added the 100% expenses of Rs. 8,55,226/ after deducting expenses of Rs.83,704/ out of total expenses of Rs.9,34,930- to the total income of the assessee.

5. Aggrieved assessee has filed appeal before the Id. CIT(A) who has dismissed the appeal of the assessee holding that assessee was unable to furnish the other details before the assessing officer. Thereafter the assessee has filed appeal before the ITAT, Ahmedabad. The Co-ordinate Bench of the ITAT Ahmedabad vide ITA No. 3555/Ahd/2007 dated 8th October, 2010 has held that the order of the Id. CIT(A) was an ex-parte order, therefore, the appeal was remitted back to the file of Id. CIT(A) for re-hearing after providing reasonable

opportunity of hearing to the assessee. Thereafter, the Id. CIT(A) vide his order dated 31st May, 2016 has deleted the an addition of Rs. 47,025 only on the basis of remand report received from the assessing officer and confirmed the balance addition.

6. We have heard the Ld. DR and perused the material on record. The coordinate bench of the ITAT Ahmedabad vide ITA 3555/Ahd/ 2007 dated 8 October 2010 has held that the learned CIT (A) has decided the appeal in the case of the assessee on ex parte order therefore the matter was set aside to the file of the Commissioner of income tax appeal for deciding the appeal a fresh after providing adequate opportunities of heating to the assessee. The learner Commissioner of income tax appeal has re adjudicated the appeal of the assessee vide order dated 31st 2016 holding that during the course of appellant proceedings the assessee had submitted additional evidences which were forwarded to the assessing officer and assessing officer was of the opinion that on the basis of evidences produced by the assessee genuineness and creditworthiness of the creditors cannot be proved. The learner Commissioner of income tax appeal has accepted the finding of the assessing officer by deleting the addition to the extent of Rs.4,7,025 and confirmed the remaining additions.

After perusal of the above facts and material on record we observe that learned Commissioner of income tax appeal is not justified in disallowing the expenses as suggested by the assessing officer without giving any specific findings and without disproving the correctness of the documents and materials furnished by the assessee during appellant proceedings before him.

It is undisputed fact that assessee could not produce books of account because of corruption in hard disk of computer, however, the assessee has produced vouchers, bank statements etc. It is also demonstrated by the assessee that most of expenditures have been paid by way of account payee cheques. It is also stated that assessee has produced all invoices and vouchers paid by cash for verification. In respect of interest payable to the depositors

during the year the assessee has furnished name, address and PAN of the depositor, copy of the account of the depositor and detail of interest payable to the depositors along with details of account payee cheques by which the deposit was accepted and corresponding bank statement of the depositors etc. In view of the above we observe that assessing officer is not justified to disallow hundred percent of expenditure for want of non production of books without verification of the basic of primary evidences like bank statement, vouchers, invoices and confirmation of interest payable to the depositors etc and without disproving the fact of failure of hard disc of the computer of the assessee.

We considered that it is undisputed fact that assessee has not furnished the detail of expenses because the hard disk on which the detail maintained was corrupted. However the assessee has collected the related documents and material pertaining to the disallowed expenses during the course of set aside appellant proceedings i.e. profit and loss account, copies of cheques paid for the payment of loan, copy of confirmations from the creditors, etc as stated in the order of the Ld.CIT(A). In this connection it is noticed from the remand report submitted by the assessing officer that against most of the document submitted by the assessee the assessing officer has given no comments and not accepted the documents without a carrying out any verification/investigation to disprove the genuineness of information/ document submitted by the assessee. In the light of the above facts, we observe that learned Commissioner of income tax appeal has failed to justify his finding with relevant reasoning. However, for want of proper verification we consider that it will be appropriate to disallow 40% such expenses as against the hundred percent disallowance made by the assessing officer for want of proper verification. Therefore, the disallowance is restricted to 40% of such expenses of Rs.8,51,226 which comes to Rs.3,40,490. Therefore the appeal of the assessee is partly allowed.

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

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

ITA No. 2049/Ahd/2016

“(1)Ld. CIT(A)-5 has erred in facts and in law in treating additions income in assessment order as concealment by accepting remand report of Ld. Assessing officer without appreciating additional evidence and mechanically accepting version of Ld. Assessing officer in remand report.

(2)Ld. CIT(A)-5 has erred in facts and in law in accepting version of assessing officer in remand report even though said remand report is silent about mode of verification of interest amount and other expenses and said remand report at no stage record finding of concealment.

(3)Ld. CIT(A)-5 has erred in facts and in law disregarding additional grounds preferred by appellant against remand report by Ld. A.O in appeal against assessment order u/s. 143(3) of the I.T. act,1961; adjudication of said grounds on merits ought to have no finding of concealment.

(4)Ld. C.I.T. (A)-5 has erred in facts and in law that though there is no satisfaction by Ld. A.O. in remand report or fresh show-cause notice by C.I.T.(A) hence prima-facie there is complete absence of satisfaction as to concealment by assessee and still penalty has been confirmed.”

9. All the grounds of appeal are inter-connected to the common issue of confirming the penalty levied by the assessing officer u/s. 271(1)(c) of the act to the amount of Rs. 8,51,226/-.

10. The assessing officer has disallowed the claim of expenses of Rs. . 8,51,226/- as the assessee failed to furnish the detail due to failure of hard disk of computer as elaborated supra in the order pertaining to the quantum addition in the case of the assessee . On appeal, the Id. CIT(A) has sustained the said addition. During the course of penalty proceedings, the assessee has explained that he has not concealed any particulars of income and nor furnished inaccurate particulars of income. The assessing officer has not agreed with the explanation of the assessee and levied penalty u/s. 271(1)(c) of the act to the amount of Rs. 2,60,480/-. Thereafter, the Id. CIT(A) vide his order dated 14th May, 2017 has deleted the penalty levied by the assessing officer. However, the revenue has filed appeal before the ITAT Ahmedabad against the order of Id. CIT(A) deleting the penalty levied by assessing officer. The Co-ordinate Bench of ITAT vide ITA 2537/Ahd/2009 dated 7th June, 2011 has restored the penalty matter to the file of Id. CIT(A) with a direction to decide the issue u/s. 271(1)(c) after he disposed

quantum addition covering the penalty. Thereafter, the Id. CIT(A) vide his order dated 31st May, 2016 has sustained the penalty levied by the assessing officer in respect of addition of Rs. 8,04,201/-

11. We have heard the rival conditions and perused the material on record. It is undisputed fact that the assessee could not produce the relevant accounts because of corruption in the hard disk of the computer. However the assessee has produced all the relevant bills, vouchers, copies of account payee cheques, confirmation letters, copies of bank statement etc. We have considered that quantum addition on the basis of which the impugned penalty levied has been restricted to 40% of the total expenditures for want of proper verification on estimation basis as adjudicated vide ITA 2048 supra in this order. The assessing officer has not done any verification /investigation to disprove these basic and primary material furnished by the assessee because of failure of hard disk of the compute in which the required books of accounts were maintained. In the light of the above facts and circumstances we don't find any justification for levying the penalty in the case of the assessee, therefore, the appeal of the assessee is allowed.

12. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 29-11-2018

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad : Dated 29/11/2018

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश का प्रतिलिपि भेजा गया / 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 आधिकरण,
अहमदाबाद