

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD - BENCH 'D'**

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

आयकर अपील सं./ ITA No.1020/Ahd/2016

निर्धारण वर्ष/Asstt. Year: 2010-2011

M/s.Siddhi Corporation A/318, Popular Plaza Someswar Complex-1 132, Ring Road Satellite Ahmedabad 380 015. PAN : AADFS 2667 Q	Vs.	JCIT, Range-7 Ahmedabad.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri M.J. Shah, AR
Revenue by :	Shri Vinod Tanwani, Sr.DR

सुनवाई की तारीख/Date of Hearing : 09/01/2019

घोषणा की तारीख/Date of Pronouncement: 10 /01/2019

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER:

Assessee is in appeal before the Tribunal against order of Id.CIT(A)-3, Ahmedabad dated 21.3.2016 passed for the Asstt.Year 2010-11.

2. In the first ground of appeal, the grievance of the assessee is that the Id.CIT(A) has erred in confirming disallowance of Rs.2,08,200/- which is 20% of various misc. expenses.

3. During the assessment proceedings, it revealed to the AO that certain payments were made to the employees by the assessee. The details have been noticed by the AO in para-5 of the assessment order. He observed that salary expenses were debited and claimed to have been paid in cash to nine employees. With help of Section 40A(3) of the Income Tax Act, the Id.AO has made disallowance. Auditor in Annexure-C of the Form No.3CD report has categorically mentioned that amount was disallowable under section 40A(3) of the Act. Hence, the Id.AO has disallowed it. On appeal, the Id.CIT(A) has confirmed the disallowance.

4. After looking to the record and the breach committed by the assessee, we do not find any merit in this ground of appeal. It is rejected.

5. In ground no.2, grievance of the assessee is that the Id.CIT(A) has erred in confirming the addition of Rs.7,68,000/- with aid of section 14A and 36(1)(iii) of the Act.

6. Brief facts of the case are that on scrutiny of the accounts it revealed to the AO that the assessee had investment in mutual fund for Rs.63.00 lakhs. It has given interest free loans at Rs.6,11,861/-. The AO sought to disallow interest expenditure on the investment in mutual fund as well as advances given by the assessee without charging interest. He worked out such disallowance at Rs.9,01,423/-. On appeal, the Id.CIT(A) has scaled down it to Rs.7,68,000/-.

7. Before us, the Id.counsel for the assessee contended that the assessee has submitted complete details showing interest free funds available with the assessee, and how out of these interest free funds investment have been made. He took us through written submissions filed before the Id.CIT(A), which has been reproduced in para 5.1 of the impugned order. Relevant part of the submissions reads as under:

"The consistent stand of appellant firm at the time of assessment proceedings as well as at time of appellate proceedings is that assessee has ample amount of interest free fund available with it for making investment in mutual fund and for lending the interest free advance to various parties . To give the support to stand of appellant firm/ it has submitted the analysis of Investment in Mutual Fund and interest free advance in various years and quantum of interest free fund available with assessee firm before the predecessor of your honour which is forwarded to assessing officer for remand by your predecessor. The said analysis is again annexed herewith at (Annexure-C). In the remand report (Annexure-D), the assessing officer contended that as the appellant firm has paid interest on the partner's capital, it didn't have any interest free fund available for making investment and lending interest free advances. The appellant firm in his rejoinder (Annexure-E) submitted before your honour again reiterated his stand stating that assessing officer has missed one vital aspect of the case that though it is true that appellant firm has paid on interest on partner's capital but it was credited on the last day of the previous year and partner did not get any interest on profit which is credited to their account on the last day of the previous year. So all the profit arise during the previous year are non interest bearing and available for making investment in to mutual fund. Appellant firm has given detailed analysis of interest free profits available with the appellant firm on the date of investment in mutual fund along with his re - joinder to the remand report of assessing officer."

8. According to the Id.counsel for the assessee these submissions has not been analytically examined by the Id.CIT(A), and no categorical finding has been recorded. On the strength of Hon'ble Gujarat High Court in the case of Virendra R. Gandhi Vs. DCIT, Tax appeal No.1726 of 2009, submitted that all such investments were made in the preceding year, and no disallowance on account of user of interest bearing funds have been made. This year no fresh investment has been made. It means no interest bearing funds were infused for earning tax free income. Similarly, no interest free funds were used for giving loans without charging interest. If that be so, how the interest expenses could be disallowed to the assessee. He pointed out that all these pleas have been specifically raised before the Id.CIT(A) as well as before the

AO, but no categorical finding has been recorded. On the other hand, the Id.DR relied upon the orders of the Id.CIT(A), and submitted that all these aspects have been looked into, only thereafter, the Id.CIT(A) has confirmed the disallowance partially.

9. We have duly considered rival submissions and gone through the record carefully. There is no dispute with regard to the proposition that if an assessee has sufficient interest free funds, out of which investment could be made or interest free funds could be advanced, then no interest expenses *qua* those investments or alleged interest income on interest free loans could be estimated and disallowed. The question is, whether the assessee has interest free funds or not. When a specific plea was raised, then it was incumbent upon the Id.Revenue authorities to record categorical finding on that plea. The Id.CIT(A) failed to analysis these submissions of the assessee. Therefore, we deem it appropriate to set aside the order of the Id.CIT(A). We restore this issue to the file of the Id.CIT(A). The Id.CIT(A) shall verify, whether interest free funds were available with the assessee, when it made investment and gave interest free loans. In case the assessee had interest free funds, then no disallowance could be made. Otherwise, the Id.CIT(A) on the basis of material available before him, would adjudicate the issue in accordance with law.

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

Order pronounced in the Court on 10th January, 2019 at Ahmedabad.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad; Dated 10/01/2019