

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “SMC” BENCH

**(BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT
MEMBER & SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 1252/AHD/2017
(Assessment Year: 2014-15)**

M/s. Umiya Automobiles, State Highway, Nagalpur, Mehsana-384002	V/S	Dy.CIT, Mehsana Circle, Mehsana
(Appellant)		(Respondent)

PAN: AAAFU 4428Q

**Appellant by : Shri Mehul Thakkar, AR
Respondent by : Ms. Somogyan Pal, Sr. D.R.**

(आदेश)/ORDER

Date of hearing : 06 -02-2019
Date of Pronouncement : 26-04-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal filed by the Assessee is directed against the order of the Ld. CIT(A), Gandhinagar, Ahmedabad dated 11.04.2017 pertaining to A.Y. 2014-15 and following grounds have been taken:

- 1. On the facts and in circumstances of the case as well as law on the subject, the Ld. Commissioner of Income tax (Appeals) has erred in confirming disallowance of Rs. 13,32,000/- as made by Ld. DCIT from admissible interest expenses.*
 - 2. On the facts and in circumstances of the case as well as law on the subject, the Ld. Commissioner of Income tax (Appeals) has erred in confirming disallowance of Rs. 47,171/- out of total disallowance made of Rs. 3,57,807/- by Ld. DCIT on ground of payment of Employee's Contribution to P.Fs. & ESIC made after due date as prescribed under relevant Act.*
 - 3. It is prayed that above disallowances made by Ld. ACIT and confirmed by Ld. CIT(A) may please be deleted.*
 - 4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the Appeal.*
-
2. Brief facts of the case are that the appellant firm had given short term loan/advances to one non relative person named Chandrakant T. Patel in Financial Year 2011-12 of Rs. 1,10,00,000/- @ 12% p.a. But later on Chandrakant T. Patel to whom appellant firm had given loan could not pay interest along with principal amount.
 3. Apart from above said interest free loan of Rs. 1,00,000/- was given in earlier year to one NGO named Uttar Gujarat Vipassayana Kendra, on which no interest was charged or accrued. Further, no disallowance was made in earlier year completed scrutiny assessment.
 4. But ld. A.O. disallowed the interest expenses of Rs. 13,32,000/- on the ground that appellant had failed to charge interest on the amount of Rs. 1.10 crore and made addition of Rs. 13,32,000/- .

5. On perusal of balance sheet, it is found that assessee has not deposited employees' contribution to PF and ESI before the due date and made disallowance of Rs. 357807/- u/s 36(1)(va).
6. Against the said addition, assessee preferred first statutory appeal before the Id. CIT(A) who confirmed the disallowance of Rs. 13,32,000/- and given partly allowed with regard to second ground u/s 36(1)(va) and confirmed an amount of Rs. 47171 out of total disallowance made of Rs. 357807/- by the Id.A.O.
7. We have gone through the relevant record and impugned order. In this case, revenue has doubted efforts of the appellant for not taking enough steps to recover interest from Shri Chandrakant T. Patel to whom a loan of Rs. 1.10 crore.
8. At the outset, Id. A.R. cited an order of Co-ordinate Bench in assessee's own case for earlier assessment year 2013-14 whereas Co-ordinate Bench has given relief to the appellant with following observation:

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.351akhs 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/-.

9. Thus, in parity with the Co-ordinate Bench decision, we allow this ground of appeal.

10. Now we come to ground no. 2, there is not dispute that contribution of employees to the tune of Rs. 47,171/- was not deposited on time before the due date and in these circumstances, Hon'ble Gujarat High Court is against the appellant wherein in the matter of CIT vs. GSRTC 265 CTR 64 (Guj.) wherein it is held that if Employees' Contribution towards PF and ESIC 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.

11. In the view of the Hon'ble Gujarat High Court judgment, we dismiss this ground of appeal of the assessee.

12. In the result, the appeal filed by the Assessee is partly allowed.

Order pronounced in Open Court on 26 - 04- 2019

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 26/04/2019

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad