

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट ।
**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT**
[Conducted through E-Court at Ahmedabad]

सर्वश्री राजपाल यादव, न्यायिक सदस्य एवं प्रदीप कुमार केडिया, लेखा सदस्य के समक्ष।
**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

1&2. आयकर अपील सं./I.T.A. Nos.99 & 100/RJT/2018
(निर्धारण वर्ष / Assessment Year : 2013-14)

Nareshkumar Rameshkumar Sahu C/o.M.N.Manvar & Co. Chartered Accountants 504-Star Plaza Phulchhab Chowk, Rajkot	बनाम/ Vs.	The ITO Ward-1(1)(3) Rajkot
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. CHZPS 3315 J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri M.N. Manvar, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Praveen Verma, Sr.DR

सुनवाई की तारीख / Date of Hearing	10/05/2019
घोषणा की तारीख /Date of Pronouncement	27/05/2019

आदेश / ORDER

PER PRADIP KUMAR KEDIA - AM :

The captioned appeals have been filed at the instance of the Assessee against the separate orders of the Commissioner of Income Tax(Appeals)-1, Rajkot [CIT(A) in short] dated 01/02/2018 in the

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matter of assessment order under s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 11/01/2016 relevant to Assessment Year (AY) 2013-14.

2. First, we take up the Assessee's appeal in ITA No.99/Rjt/2018 for AY 2013-14, wherein the following grounds have been raised:

The ld. CIT(A)-I, Rajkot has erred in law and on facts for dismissing the appeal for ld. Assessing Officer wrongly disallowed interest expenditure Rs.77,907/- to following relatives on the alleged ground of estimatinfg reasonable rate of interest @ 12% in contrast to actual rate of interest paid @ 15% without finding the reasons for unreasonableness of the interest rate at prevailing market rate and thereby, wrongly disallowed 3% higher interest payment.

(i)	<i>Smt. Kaushalyadevi R. Sahu – Mother of the Appellant</i>	-	<i>Rs.68,921</i>
(ii)	<i>Smt.Komal Naresh Sahu - Wife of the Appellant</i>	-	<i>Rs. 8,986</i>

			<i>Rs.77,907</i>

3. With the assistance of the Ld.AR for the assessee and Ld.DR for the Revenue, we find that the Assessing Officer has disallowed interest expenditure of Rs.77,907/- in aggregate paid on loans received from relatives. It is found that the assessee has taken loan from the relatives @15%, whereas similar money has been simultaneously stood invested by way of loans and advances on which interest @ 12% p.a. has been

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charged. We notice from the concurrent orders of the Assessing Officer and CIT(A) that no proper justification has been given by the assessee for borrowals at a higher rate and corresponding lending at a lower rate. Clearly the excess interest paid to the relatives qua the loans and advances do not appear to carry attributes of commercial expediency. Therefore, the Revenue authorities were justified in making disallowance of excess interest expenditure. We thus find no infirmity in the order of the CIT(A) and hence, decline to interfere.

4. In the result, appeal of the assessee in ITA No.99/Rjt/2018 for AY 2013-14 is dismissed.

Assessee's appeal in ITA No.100/Rjt/2018 for AY 2013-14

5. In this appeal, the assessee has raised the following ground of appeal:

The CIT(A)-1, Rajkot, has erred in law and on facts for dismissing the Appeal filed against the order of Ld.Addl.CIT, Range-1(1) & 1(2), Rajkot in imposing penalty u/s.271D of the Act for contravention of provisions of section 269SS of the Act, in the matter of accepting unsecured deposit Rs.50000 in cash from, Smt.Komal N. Sahu, Wife of the Appellant.

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6. With the assistance of Ld.AR for the assessee and Ld.DR for the revenue, we note that the assessee, an individual, was imposed penalty under s.271D of the Act for violation of provisions of section 269SS of the Act for cash deposit of Rs.50,000/- received on 30/04/2012 from his wife Smt.Komal N.Sahu.

7. From a bare reading of the order of the CIT(A), we find that assessee has supported the receipt of cash from wife by way of documentary evidences and bonafides of action. The transaction has been done with spouse and claimed that the assessee was under bonafide belief that transaction with intimate person could not attract mischief of provisions of action under s.269SS of the Act. The aforesaid contention of the assessee pleading bonafide cannot be brushed aside summarily having regard to conventional constructs and postulations which define Indian socio-eco structure. Thus, in the absence of any doubt cast towards bonafides of such small amount of loan, mere breach of section 269SS is to be regarded as technical or venial in nature in the given circumstances. We therefore find adequate justification in the plea of the assessee for setting aside the imposition of penalty under s.279D of the Act in this regard. The Assessing Officer is likely directed to delete the penalty on this score.

8. In the result, Assessee's appeal in ITA No.100/Rjt/2018 for AY 2013-14 is allowed.

9. In the combined result, both the appeals of the assessee are allowed.

Order pronounced in the Court on 27/05/2019 at Ahmedabad.

Sd/-
(राजपाल यादव)
न्यायिक सदस्य
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad ; Dated 27/05/2019

Sd/-
(प्रदीप कुमार केडिया)
लेखा सदस्य
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-1, Rajkot
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,राजकोट/DR,ITAT, Rajkot
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot