

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 1291/Ahd/2017
(निर्धारण वर्ष / Assessment Year : 2012-13)

Jagdish Thakkar Prop.: Komal Roadways 8/B, Gurukrupa Shopping Centre, Ramakaka Road, Vadodara - 391740	बनाम/ Vs.	DCIT Circle- 1(2), Vadodara- 390007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAV PT9 901 A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri M. K. Patel, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Sumit Kumar Varma, Sr. DR

सुनवाई की तारीख / Date of Hearing	24/06/2019
घोषणा की तारीख /Date of Pronouncement	28/06/2019

आदेश/ORDER

PER SUDHANSHU SRIVASTAVA - JM:

This appeal of the assessee is preferred against the order dated 30.01.2017 passed by the Ld. Commissioner of Income Tax (Appeals)-5, Vadodara (hereinafter called 'CIT(A)') for Assessment Year 2012-13.

2.0 The brief facts of the case are that the assessee is engaged in the business of transport and also earns income from house property. During the year under consideration, the assessee had disclosed a turnover of Rs. 1,05,91,055/- and net profit of Rs. 10,16,219/- was declared. The return of income was filed declaring a total income of Rs. 16,17,065/-. The assessee's case was selected for scrutiny assessment through CASS and during the course of assessment proceedings the AO observed that the assessee had claimed deduction of Rs. 6,83,951/- under sec. 57(ii) of the Income Tax Act, 1961 (hereinafter called 'the Act') towards interest paid to five parties. The assessee was required to substantiate the claim of interest by showing that interest bearing funds have been given as loan and earn interest. The AO observed that the assessee was earning income from business and profession but was claiming interest expenses under sec. 57(ii) of the Act which was not permissible. The AO proceeded to add this amount to the income of the assessee.

2.1 The assessee's appeal before the Ld. First Appellate Authority was also dismissed and aggrieved with the adjudication of the Ld. CIT (A) the assessee is now before this Tribunal (ITAT) and has raised the following grounds of appeal:-

"1.0 The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in confirming the disallowance of Rs. 6,83,951/-

being the interest paid and claimed as deduction under section 57 of the I T Act.

2.0 The Ld. Commissioner of Income Tax (Appeals) ought to have appreciated that said interest was paid to earn the income duly offered by the appellant for tax.

3.0 The Ld. Commissioner of Income Tax (Appeals) erred in law and on facts has dismissed the ground relating to initiation of penalty proceedings under section 271 (1)(c) of the Income Tax Act, 1961 for the alleged concealment and/or furnishing of inaccurate particulars of income.

4.0 The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in confirming the charging of interest under section 234B and 234C of the Income Tax Act, 1961.

5.0 The appellant craves leave to add to, alter, delete or modify the above ground of appeal either before or at the time of hearing of this appeal.”

3.0 The Ld. Authorised Representative (AR) submitted that the assessee had claimed this interest payment as deduction under sec. 57(ii) by an inadvertent mistake. It was submitted that it was not in dispute that the said expenditure was incurred. The Ld. AR also placed on record a copy of the computation of the income and demonstrated that the assessee had been earning income from business and profession and submitted that, therefore, the said interest was allowable under sec. 36 of the Act as business expenditure. It was prayed that the disallowance may be deleted.

4.0 In response, the Ld. Senior Departmental Representative (Sr. DR) submitted that deduction under sec. 57(ii) of the Act was permissible only from income under the head other source and since there was no clear nexus between the expenditure incurred and the

income earned, the assessee's claim was not allowable. The Sr. DR vehemently supported the order of the Ld. CIT (A).

5.0 We have heard the rival submissions and have also perused the material on record. The facts of the case are not in dispute. Undisputedly, the assessee has income from business which is duly reflected in his computation of income. Admittedly, the assessee has not shown any income under the head income from other sources but has claimed payment of interest under sec. 57(ii) of the Act. It is the contention of the assessee that this deduction of interest under sec. 57(ii) was because of inadvertent error. It is the plea of the assessee that the impugned interest was paid to earn the income which had been duly offered to tax by the assessee. Although the Ld. CIT (A) has discussed the issue at length and has also given a categorical finding as to why the impugned amount was not allowable as a deduction under sec. 57(ii) of the Act, it is out considered opinion that the assessee's plea for allowing the deduction of interest u/s 36 of the Act needs to be considered in the interest of justice. Accordingly, we restore the issue to the file of the Ld. CIT (A) to adjudicate the issue afresh by examining the assessee's claim for allowability under sec. 36 of the Act after duly examining and recording a finding that the said interest payment related to earning of income under the head business or profession. Needless to say, the Ld. CIT (A) shall allow proper opportunity to the assessee to present his case.

5.1 Ground Nos. 3 and 4 are consequently in nature and need no separate adjudication.

5.2 Ground No. 5 is general in nature and also needs no separate adjudication.

6. In the final result, the appeal of the assessee is stands allowed for statistical purposes.

This Order pronounced in Open Court on 28/06/2019

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Ahmedabad: Dated 28/06/2019

TANMAY

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आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।