आयकर अपील य अ धकरण, अहमदाबाद यायपीठ

IN THE INCOME TAX APPELLATE TRIBUNAL,
''A'' BENCH, AHMEDABAD

BEFORE, SHRI A.D. JAIN, VICE PRESIDENT
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.411/AHD/2016**

नधारण वष/Asstt. Year: 2012-2013

Smt. Pragnaben N. Shah, A-101, Royal Chimay, Opp. Bodakdev, Ahmedabad-380007. PAN: APCPS3130C	Vs.	DCIT, Circle-1(2), Ahmedabad.

(Applicant)		**(Respondent)**

Assessee by	:	Shri Tushar P. Hemani, A.R
Revenue by	:	Smt. Somogyan Pal, Sr.DR

सुनवाई क तारख/**Date of Hearing : 20/06/2019**
घोषणा क तारख **/Date of Pronouncement: 18/07/2019**

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-10, Ahmedabad [Ld.CIT(A) in short], dated 01/01/2016 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 09/02/2015 relevant to Assessment Year (A.Y) 2012-13.

The assessee has raised the following grounds of appeal:

1. *The Id. CIT(A) has erred in law and on facts in confirming the action of Id. AOin disallowing/interest expenses^ Rs.5,36,265/- U/s. 57(iii) of the Act.*

2. *Alternatively and without prejudice, the said interest expenditure may kindly be allowed u/s 36(l)(iii) or 28 of the Act.*

3. *Ld. CIT(A) erred in law and on facts in not adjudicating upon ground Nos. 2 & 3 raised before him which read:*

"2. Alternatively and without prejudice to the above the interest expenses may kindly be allowed U/s. 36(1) (Hi) or S. 28 of the Act. "

"3. Without prejudice to the above the interest expenses may kindly be allowed u/s 37(1) of the Act"

4. *Both the power authorities have passed the orders without properly appreciating the facts and that they further erred in grossly ignoring various submission, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. The action of the lower authorities is clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*

5. *The Ld. C1T(A) has erred in law and in facts of the case in confirming action of Ld. AO in levying interest u/s 234A/B/C/D of the Act.*

6. *The Ld. CIT(A) has erred in law and on the facts in confirming the action of Ld.AO in initiating penalty u/s.271(1)(c) of the Act.*

2. The issue raised by the assessee in ground No. 5 is consequential and the issue raised in ground No. 6 is premature to decide, therefore we dismiss both the grounds of appeal raised by the assessee.

The effective issue raised by the assessee in ground No. 1 to 4 is that the learned CIT (A) erred in confirming the disallowance of the interest expenses amounting to ₹5,36,265.00 only.

3. Briefly stated facts are that the assessee in the present case is an individual and deriving her income under the head house property, interest

and remuneration from the partnership firm, capital gain and the income from other sources. The assessee in the year under consideration has shown gross income under the head other sources comprising of post office interest, interest on loan, interest from the bank and the management maintenance service income amounting to ₹4,01,506.00 only.

3.1 The assessee against such income has claimed interest expenses amounting to ₹5,36,265.00 only. As such the assessee has declared loss of ₹1,34,759.00 under the head from other sources.

3.2 However, the AO found that the interest expenses claimed by the assessee has not been incurred against the income from the other sources as discussed above. Therefore he was of the view that such interest expenses cannot be allowed as deduction under the provisions of section 57 of the Act. On question by the AO for the deduction of such interest expenses, the assessee agreed for the disallowance of the same. Accordingly the AO disallowed the expenses amounting to ₹5,36,265.00 and added to the total income of the assessee.

Aggrieved assessee preferred an appeal to the learned CIT (A).

3.3 The assessee before the learned CIT (A) submitted that she has agreed for the disallowance of interest expenses for the wrong understanding of the facts and the law. Therefore the assessee claimed that there cannot be any disallowance of interest expenses merely on the inadvertent acceptance of such disallowance.

3.4 The assessee also claimed that she has claimed the deduction for the impugned interest in the immediate preceding assessment 2011- 12 in respect of the same loan which was allowed by the Revenue under the provisions of section 57 of the Act.

3.5 The assessee alternatively claimed the deduction of such interest expenses under the provisions of section 28/37 of the Act.

However, the learned CIT (A) disregarded the contention of the assessee by observing that

i. The interest expenses has not been incurred in connection with the income from other sources as discussed above.
ii. The assessee in the assessment proceedings agreed for such disallowance.

In view of the above the learned CIT-A confirmed the addition made by the AO by upholding the assessment order.

Being aggrieved by the order of the learned CIT-A. The assessee is in appeal before us.

4. The learned AR before us filed a paper book containing pages 1 to 23 and submitted as under:

> *AO made disallowance of Rs.5,36,265/- u/s 57(iii) in respect of interest expenses paid to "SNP Infrastructure" and the same came to be confirmed by CIT(A) as well. AO and CIT(A) failed to appreciate facts of the case in its entirety. Assessee has paid interest expenses of Rs.5,36,265/- to SNP Infrastructure and furnished following details / evidences in support of the same:*
>
> > *Details of sundry creditors - Pg.3 of P/B;*
> > *Details of SNP Infrastructure - Pg.4 of P/B;*
> > *Confirmation of SNP Infrastructure - **Pgs.5-6** of P/B;*

> *Ledger of "Interest sarafi exps." - Pg.7 of P/B;*

As is evident from the confirmation of SNP Infrastructure ***(Pgs.5-6 of*** *P/B), assessee has paid interest @ 15% on opening balance i.e. on funds borrowed in the earlier years.*

In the immediately preceding year i.e. AY 2011-12 also, assessee had paid interest on such funds. However, no disallowance was made u/s 57(iii) in respect of interest on such funds paid in AY 2011-12.

It is a settled law that if funds have been borrowed in earlier years and no disallowance has been made in respect of interest paid on such borrowed funds in,earlier years, then in subsequent years, wherein interest has been paid on opening balances of such loans, interest expenses cannot be disallowed. Reliance is placed on:

> ***CIT vs. Sridev Enterprise - 192 ITR 165 (Kar)***
> ***Virendra R. Gandhi vs. ACIT (Guj HC) (Annexure*** *"A");*

In the light of the above, underlying interest expenses paid on opening balances deserve to be allowed.
As regards concession by the AR for such addition during the assessment proceedings, it is a settled law that any inadvertent concession made by AR of an assessee is not binding on assessee. Also, if a concession has been made inadvertently, then the appellant must be permitted to contest appeal on merits or else, it shall result in gross injustice. Reliance is placed on followings:

> ***DCIT*** *vs.* ***K.S. Suresh - 319 ITR 1 (Mad);***
> ***Krishna B. Agarwal - ITA 2176/Ahd/2012 (Annexure "B");***

Thus, the issue on hand issue deserves to be decided on merits rather than on sheer technicalities.

Alternatively, if it is presumed that such funds have not been utilized wholly and exclusively for the purpose of earning interest income, then such interest expenses may be allowed under S.28 or S.36(l)(iii) or S.37(l) of the Act.''

5. On the other hand the learned DR vehemently supported the order of the authorities below.

6. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the instant case relates whether the assessee has incurred the interest expenses against the income from the other sources. At the outset we note that the assessee has claimed deduction of the

interest expenses on the impugned loan in the immediate preceding assessment years 2011-12 which was not disturb by the Revenue. The fact that the assessee has incurred the interest expenses on such loan can be verified from the confirmation filed by the party which is placed on page 5 of the paper book.

6.1 The learned DR has not brought anything on record to controvert the argument advanced by the learned AR for the assessee. In such circumstances the Hon'ble Gujarat High Court has allowed the appeal of the assessee in ITA No. 230 of 2003 wherein it was held as under:

> *7. In view of the aforesaid, we are of the considered opinion that the issue involved in this appeal is already concluded by the above decision. In the above decision, it has been categorically held that it would not be equitable to permit the revenue to take a different stand subsequently in respect of the amounts which were the subject matter of previous years' assessment. In our view, once the interest is allowed in the previous year and if there is no change in the condition then it can be disallowed in the current years' assessment. Accordingly, the question which is posed in this appeal requires to be answered in favour of the assessee and against the department. Therefore, the present appeal deserves to be allowed.*

In view of the above, we are of the view that the assessee is entitled for the deduction on account of the trust expenses against the income from other sources.

6.2 Regarding the contention of the authorities below that the assessee agreed for the disallowance, we note that it was claimed that the disallowance was agreed on account of misunderstanding the provisions of law and inadvertently. Therefore, we are of the view that the assessee can raise the ground of appeal before us despite the fact that the disallowance was agreed by the assessee before the authorities below. In this regard we find support

and guidance from the judgement of Hon'ble Gujarat High Court in the case of PV Doshi Vs. CIT reported in 113 ITR 22 wherein it was held as under:

The question framed before the Hon'ble Court reads as under:

> *(3) Whether, on the facts, the assessee was justified at this late stage in re-agitating the matter whether the case was rightly reopened (which is purely a legal matter going to the very root of the jurisdiction), after having raised and not pressed the point before the Appellate Assistant Commissioner when the matter was taken up before the Appellate Assistant Commissioner for the first time ?"*

The finding of the Hon'ble Court reads as under:

> ñ*Even on the third question the Tribunal's view was erroneous that even though this point went to the root of the jurisdiction and was a. pure question of law, merely because the point was initially raised and not pressed when the matter was taken up before the Appellate Assistant Commissioner, it could be waived and it could not be reagitated. Therefore, in view of the settled legal position our answers on questions Nos. 1 and 2 are in the negative, while our answer on question No. 3 is in the affirmative, that is to say, all the questions are answered against the revenue and in favour of the assessee. The reference is accordingly disposed of and the Commissioner shall pay the costs of the assessee."*

6.3 In view of the above we are inclined to allow the deduction of interest expenses claimed by the assessee against the interest income declared under the head from other sources. Accordingly we reverse the order of the learned CIT (A) and direct the AO to delete the addition made by him. Hence the ground of Appeal of the assessee is allowed.

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

Order pronounced in the Court on 18/07/2019 at Ahmedabad.

-Sd-	**-Sd-**
(A.D. JAIN)	**(WASEEM AHMED)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad; Dated 18/07/2019

Manish