

आयकर अपीलिय 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.2445/Ahd/2016

(निर्धारण वर्ष / Assessment Year:2013-14)

Smt. Pritiben Bharatbhai Shah 18, Shree Society, Panchavati 2 nd Lane, Ambawadi, Ahmedabad- 380006	बनाम/ Vs.	ITO Ward-5(2)(3), Ahmedabad
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AIN PS4 004 R		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Smt. Urvashi Shodhan, AR
प्रत्यर्थीकीओरसे / Respondentby:	Shri Sumit Kr. Varma, Sr. DR

सुनवाईकीतारीख/Date ofHearing	27/06/2019
घोषणाकीतारीख /Date of Pronouncement	31/07/2019

आदेश/O R D E R

PER AMARJIT SINGH - AM:

The appeal filed by the assessee for A.Y. 2013-14, arise from order of the CIT(A)-5, Ahmedabad dated 26.08.2016, in proceedings under section 143(3) of the Income Tax Act, 1961; in short "the Act".

2. The brief fact of the case is that return of income declaring income of Rs. 5,30,200/- was filed on 29.07.2013. The case was selected for scrutiny by issuing on notice under Sec. 143(2) of the Act on 01.09.2014. The assessee was deriving income from house property, capital gain and income from other

sources. The remaining fact of the case are discussed while adjudicating the different ground of appeal filed by the assessee as under:-

“1. Ld.CIT(A) erred in law and on facts in confirming disallowance made by AO of Rs. 9,78,102/- claimed from interest as not admissible u/s. 57(1) of the Act. Ld. CIT(A) ought to have deleted disallowance by AO appreciating that expenses claimed against income earned in the course of money lending business (Sharafi Business) is an allowable expense.

2. Ld.CIT(A) further erred in law and on facts in confirming disallowance of Rs. 3,13,446/- claimed for earning income from Sharafi business by AO. Ld. CIT(A) ought to have deleted disallowance appreciating the revised computation of income correctly reflecting interest income under the head business income against which expenses are allowable u/s. 37 of the Act.

3. Ld. CIT(A) erred in law and on facts in confirming disallowance by AO of RS. 6,64,736/- legal expenses incurred towards liability that arose in the construction business carried out by appellant in earlier years. Ld. CIT(A) ought to have directed AO to allow expenses crystallized during the year against income from Shrafi business allowable u/s. 37 of the Act.

4. Alternatively and without prejudice the disallowed amount ought to have been allowed as business loss u/s. 28 of the Act.”

Ground No. 1, 2 & 3:-

Disallowance of Rs. 9,78,102 not admissible u/s. 57(1) of the Act:-

3. During the course of assessment on verification of the expenses claimed by the assessee the AO noticed that assessee has claimed expenses of Rs. 9,78,182/- from the interest income. The AO observed that aforesaid expenses were not admissible for deduction under Sec. 57(1) of the Act while computing the income under the head income from other sources. The assessee has shown income of Rs. 12,49,573/- under the head income from other sources and after claiming the aforesaid expenses of Rs. 9,78,182/- the assessee has offered net income of Rs. 2,71,391/-. The detail of the aforesaid expenses mentioned in the assessment order at Page 2 are reproduce as under:-

<i>Bank Charges</i>	<i>80</i>	<i>Allowable</i>
<i>Depreciation</i>	<i>1,95,835</i>	<i>On Audi, Maruti cars, furniture, AC etc.</i>
<i>Legal Expenses</i>	<i>6,64,736</i>	<i>Case before National Consumer Disputes Redressal Commission, Delhi</i>
<i>Travelling expenses</i>	<i>37,000</i>	<i>Ahmedabad-Delhi related to NCDRC</i>
<i>Maintenance exp.</i>	<i>7,200</i>	<i>Jay JayBhavani Owners Association</i>
<i>Municipal tax</i>	<i>5,052</i>	<i>Related to SOP at Shree Soc. Bungalow</i>
<i>Petrol expenses</i>	<i>16,500</i>	<i>Personal nature</i>
<i>Salary expenses</i>	<i>50,000</i>	<i>Non-allowable</i>
<i>Telephone expenses</i>	<i>1,779</i>	<i>Personal nature</i>
	<i>9,78,182</i>	

In response to the query raised by the AO the assessee has explained that she has claimed total business expenditure of Rs. 9,78,182/- out of which Rs. 3,1,446/- relates to earning Sarafi business and Rs. 6,64,736/- related to legal fees incurred by her in the past for her business activity. The AO has not accepted the explanation of the assessee as the assessee has not received any interest income from any other person other than DilipkumarTulsidas, HUF. The AO observed that assessee has only received gross interest income of Rs. 12,46,355 from the DilipkumarTulsidas, HUF and also assessee has obtained only loan one her husband of Rs. 49,47,170/- and other amount of Rs. 5,54,000/- from her husband's HUF without paying any interest paid on the loan amount.

In the light of the aforesaid material fact the AO concluded that assessee was not having any business income and the interest received from one party was clearly not attributable to the business income in the form of Sarafi business and assessee has also not incurred only interest payment. Further the assessee could not furnish relevant books of account or supporting voucher to

justify that she has been in the Sarafi business. Regarding claim of legal expenses of Rs. 6,64,736/- the AO has stated that these expenses pertain to F.Y. 1989-90 when the assessee was the proprietor of Sreenath Corporation. During the course of assessment the AO noticed that not only business as proprietor of Shreenath Corporation was existed during the year under consideration and such expenses cannot be allowed under Sec. 57(1) of the Act. The AO has stated that u/s. 57(iii) deduction will not be allowed if the expenditure is not incurred for the purpose of earning income falling under the head income from other sources and section 57(iii) require that expenses must be laid out or expended wholly and exclusively for the purpose of making or earning income. Since the assessee has failed to fulfil any of the requirement for claim of deduction either in Sec. 57(iii), therefore, claim of expenditure was disallowed.

4. Aggrieved assessee filed appeal before the Ld. CIT(A). Ld. CIT(A) has dismissed the appeal of the assessee.
5. The relevant part of the CIT(A) is reproduced as under:-

“Decision:

3.3. The AO has noticed that the assessee has shown total interest income of Rs.12,49,573/- from which expenses of Rs.9,78,182/- claimed and net income of Rs.2,71,391/- is disclosed under the head income from other source. Further the AO has noticed that expenses of Rs.9,78,182/- claimed from the interest income are not admissible for deduction u/s.57(1) of the Act. In response to the show cause issued by the AO the assessee has submitted that she has also derived business income from sharafi business which was shown as interest income from other sources in her original computation of total income and that was a technical error in selecting income head. The assessee has further submitted that she had incurred business expenses of Rs.3,13,446/- for earning business income from sharafi business and had incurred legal expenses of Rs.6,64,736/- towards the liability arised to the first appeal against the impugned order passed with reference to cases filed against her in the year 2001-02 for the business income derived during that relevant past year. The AO has considered the submission of the assessee and observed that in the return of income filed the assessee has shown rent income, capital gain on sale of two properties and gross interest income of Rs.12,49,573/- which includes amount of Rs. 12,46,355/- from DilipkumarTulsidas, HUF and Rs.3,208/- as

interest on saving bank and expenses of Rs.9,78,182/- was claimed. The AO has further observed that the assessee has not received any interest income from any other source other than DilipkumarTulsidas HUF neither she has given any interest to the persons from whom she has shown unsecured loans. The AO has also observed that other than the submissions no books of accounts or other details suchas vouchers for the expenses claimed have been produced for verification. Therefore,the AO has held that the assessee is not having any business income and the contentionthat assessee was doing sharafi business is only an afterthought and colourable statements to evade tax. Accordingly, the AO has disallowed expenditure of Rs.9,78,102/-.

3.4. During the course of appellate proceedings, the appellant has made same submissions as made during the assessment proceedings before the A.O. The appellant has contended that by technical mistake this was shown as income from other sources and this was rectified during scrutiny assessment and I have submitted my revised business income return for A.Y. 2013-14 alongwith all annexure.

3.5. The facts of the case and the submissions are considered. The case of the appellant is that she is doing sharafi business and earned sharafi business interest income and claimed expenses thereof. In the return of income filed by the appellant this income has shown under the head income from other sources. The submission of the appellant that it was a technical mistake cannot be accepted as the appellant has not submitted any supporting documents or evidences which shows that the appellant is doing sharafi business and this income is from sharafi business. Further the appellant has also not produced any supporting evidences regarding expenses claimed against this interest income. Considering the above, the disallowance made by the A.O. is justified and the same confirmed. Thus the grounds of appeal are dismissed.

4. Ground No.4 relates to charging of interest u/s.234A, 234B and 234C of the Act. Levy of interest is consequential and mandatory. Hence, this ground is dismissed.”

6. In the light of above facts and detailed findings of the Ld. CIT(A) we observe that the assessee has failed to substantiate with relevant evidence her claim of running many lending business (Sarafi Business) and claim of deduction of Rs. 9,78,182/- incurred towards business expenditure. Regarding the alternative claim that disallowed amount ought to have been allowed as a business loss under Sec. 28 of the Act. We have gone through the assessment record and appellate order of the Ld. CIT(A) and observed that claim of expenses of Rs. 9,78,102/- pertaining to any other business loss under Sec. 28 of

the Act has not been verified and examined at the time of assessment proceedings. However, we have noticed in the Paper Book the assessee has pleaded copies of ITR acknowledgement of A.Y. 1995-96 to 2001-02 pertaining to earning of business income in the earlier years. We find that the AO has not given any specific finding on the issue of any amount of carry forward losses claim by the assessee. In the light of the above facts we are of the considered opinion that it will be appropriate to restore this issue to the file of the AO for decide afresh after examination and verification of document and information to be furnished by the assessee during the course of set aside proceedings. Accordingly, this issue of alternative claim u/s. 28 of the Act is restored to the file of the AO as directed above. Therefore, appeal of the assessee is partly allowed.

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

This Order pronounced in Open Court on 31/07/2019

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Ahmedabad: Dated 31/07/2019

TANMAY

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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.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।