

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT – RAJKOT BENCH**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER  
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकरअपीलसं.ITA No. 48/RJT/2018

निर्धारणवर्ष/Asstt. Year: 2013-14

<b>Sh. Vasantaben R Sherashiya</b> Surbhi, Subhas Nagar, Ravapar Road, Morbi	Vs.	<b>ACIT</b> Morbi Circle, Morbi
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AKO PS1 144 B		
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by	:	Shri Sumit Singala, AR
Revenue by	:	Shri P. R. Chauhan, Sr. DR

सुनवाईकीतारीख/Date of Hearing : 31/07/2019

घोषणाकीतारीख/Date of Pronouncement: 06/08/2019

**आदेश/ORDER**

**PER AMARJIT SINGH - AM:**

The appeal filed by the assessee for A.Y. 2013-14, arise from order of the CIT(A)-2, Rajkot dated 15.11.2017, in proceedings under section 143(3) of the Income Tax Act, 1961; in short “the Act”.

2. The solitary ground of appeal of the assessee is against the decision of Ld. CIT(A) in upholding the penalty levied by the ACIT.

3. The fact in brief is that assessment u/s. 143(3) was completed on 25.02.2016 determining total income at Rs. 47,15,990/- as against return income of Rs. 25,59,690/- declared by the assessee in the return of income. In the assessment completed u/s. 143(3) the AO has made addition of Rs. 31,63,932/- treating the expenditure claimed toward repair of machinery as capital expenditure. The AO has also made other addition to the amount of RS. 3,22,000/- on account of unexplained cash credit u/s. 68 of the Act. The AO has also initiated penalty u/s. 271(1)(c) of the Act for furnishing of inaccurate particulars of income.

4. Aggrieved assessee has filed appeal before the Ld. CIT(A). Ld. CIT(A) has dismissed the appeal of the assessee.

5. We have heard the rival contention and perused the material on record.

During the course of assessment the AO has noticed that assessee had debited an amount of Rs. 31,63,932/- as vehicle and machinery repair expenses. On verification of bills and vouchers the AO was of the view that assessee has made purchases of machinery and not incurred expenses towards machinery repairing as claimed. Therefore, AO was of the view that revenue expenditure of Rs. 21,58,000/- claimed under the head of machinery repairing were actually capital expenditure incurred for purchasing of new machineries. Consequently, after providing depreciation @ 15% to the amount of Rs. 3,23,700/- the AO has disallowed the balance amount of Rs. 18,34,300/- and rejected the claim of revenue expenditure of the assessee. The AO has also initiated penalty proceedings u/s. 271(1)(c) of the Act for furnishing inaccurate particulars of income.

During the course of assessment the AO has also noticed that assessee has received deposit of Rs. 3,22,000/- from Krishna Kant Tkahur but the assessee could not establish the identity and creditworthiness of the lender, therefore, the sum was added to the total income of the assessee as unexplained cash credit u/s. 68 of the Act. The AO has also initiated penalty proceedings on this addition for furnishing inaccurate particulars of income. Consequentially, the AO has levied penalty u/s. 271(1)(c) of the Act at a minimum @ 100% of tax sought to be evaded to the amount of Rs. 6,66,297/- for furnishing inaccurate particular of income. The CIT(A) has dismissed the appeal of the assessee retreating the fact stated by the AO.

6. We have heard the rival contentions and perused the material on record. With the assistance of the Ld. Representative we have gone through the Paper Book submitted by the assessee and noticed that assessee has placed copies of bills of purchasing of old machineries in the form of scrap etc. The machineries purchased was treated under the category of repair and maintenance by the assessee after taking into consideration the old spare, parts and scrap item as demonstrated in the copies of

purchase bill submitted by the assessee. Considering the aforesaid submission of the assessee we are of the view that assessee has placed aforesaid expenditure under the head repair and maintenance on the basis of purchasing of old parts and scrap machineries. We found that this explanation which was not prove to be wrong by the AO. Regarding levy of penalty on amount of Rs. 3,22,000/- added u/s. 68 of the Act as unexplained deposit we consider that in spite of giving repeated opportunities the assessee has failed to furnish even the primary information and documents to prove the identity creditworthiness and genuineness of unsecured loan obtained from Shri Krish Kant Thakur. In the light of the above facts and circumstances we consider that assessee has concealed the particular of income in respect of addition of Rs. 3,22,000/- made u/s. 68 of the Act, therefore, we direct the AO to restrict the penalty to the amount of Rs. 3,22,000/- and delete the penalty in respect of the expenditure incurred on machineries for the reasons referred above in this order. Accordingly, appeal of the assessee is partly allowed.

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

[Order pronounced in the Court on 06-08-2019.]

Sd/-  
**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**

Ahmedabad; Dated 06/08/2019  
TANMAY

*TRUE COPY*

Sd/-  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

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

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

आदेशानुसार/ BY ORDER

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