

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD BENCHES, AHMEDABAD**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No.2658/Ahd/2015  
Assessment Year: 2012-13**

Smt. Pinalben Manankumar Patel Opp. Umiya Shopping Centre, Highway, Mehsana-384002 (Appellant)	<b>बनाम/</b> Vs.	ITO Ward-4 Mehsana (Revenue )
P.A. No.AHLPP1387P		

Appellant by	Shri Anil Kshatriya, A.R.
Respondent by	Shri Satish Solanki, Sr. D.R.
<b>Date of Hearing:</b>	<b>17.09.2019</b>
<b>Date of Pronouncement:</b>	<b>18.09.2019</b>

**आदेश / O R D E R**

**PER KUL BHARAT, J.M:**

This appeal by the assessee is directed against order of the Ld. CIT(A), Gandhinagar dated 13.7.2015 pertaining to the assessment year 2012-13. The assessee has raised following grounds of appeal:”

1. *On facts and in the circumstances of the case of the appellant, the Ld. CIT(A) has grossly erred in confirming disallowance of Rs.37,892/- out of addition of Rs. 61,497/- made by the A.O. u/s 14A of the Act, when he ought to have deleted it in entirety.*
2. *On facts as well as in the circumstances of the case of the appellant, Ld. CIT(A) has grossly erred in confirming addition of Rs.24,62,976/- made u/s 57 of the Act, by the A.O., when he ought to have deleted it in entirety.*

2. At the outset, Ld. Counsel for the assessee submitted that he does not wish to press ground No.1. Ground No.1 is dismissed as not pressed.

3. The only ground left is with regard to confirming addition of Rs.24,62,976/- made u/s 57 of the Income Tax Act, 1961 (hereinafter called as 'the Act'). The facts giving rise to the present appeal are that case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Act was framed vide order dated 30.1.2015. The A.O. while framing the assessment noticed that the assessee claimed interest income of Rs.6,091/- and claimed interest expenses u/s 57 of the Act amounting to Rs.25,00,068/-, thus claiming total loss at Rs.23,39,083/-.

The A.O. was not satisfied and explanation offered by the assessee and therefore he made addition by disallowing the claim of expenditure of interest amounting to Rs.25,00,068/-.

4. Aggrieved against this, assessee preferred an appeal before Ld. CIT(A), who after considering the submissions partly allowed the appeal, thereby the Ld. CIT(A) allowed expenditure of Rs.37,892/- and sustained the remaining addition of Rs.24,62,976/-. Against this, the assessee is in the present appeal. Ld. Counsel for the assessee Shri Anil Kshatriya vehemently argued that the authorities below were not justified in making the addition. Ld. Counsel submitted that it was contended before Ld. CIT(A) that the assessee borrowed money from Navnirman Co-operative Bank Ltd. from Shri Manibhai V. Patel in earlier years. It was contended that the loan liability on 31.3.2012 stood at Rs.2,24,94,722/-. The money borrowed was invested in the

properties, wherefrom the assessee earned rental income and further invested in fixed deposits, wherefrom the interest income was received. Ld. Counsel submitted that the issue is squarely covered in favour of the assessee by the decision of the coordinate benches of this Tribunal as well as the Hon'ble jurisdictional High Court. Ld. Counsel has placed reliance on the decision of the Tribunal rendered in ITA No.993/Ahd/2012 and also by the decision of the coordinate bench rendered in the case of Narendra A. Patel (HUF) Vs. ITO in ITA No.2657/Ahd/2015. It is further contended that the amount was borrowed in earlier years and the liability relate to earlier years. In past such expenditure was allowed by the revenue. Therefore, revenue cannot take a different stand contrary to the judicial pronouncements.

5. Per contra, Ld. D.R. strongly opposed the submission of the Ld. Counsel for the assessee and submitted that the

authorities below have rightly arrived on finding on fact. He submitted that the provision is clear. The assessee is required to demonstrate the nexus between the borrowed capital and the capital, wherefrom the interest is earned. In the absence of such link, expenditure cannot be allowed.

6. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. The Ld. D.R. could not controvert the fact that in the past revenue has allowed such expenditure. Further, the coordinate bench in ITA No.993/Ahd/2012 after thoroughly examining the facts, the Tribunal in para-13 of its order decided the issue by observing as under:

*13. The assessee has commission income also which is a positive figure of Rs. 18,33,271/-. This income was also offered as "income from other sources". The assessment order for Assessment Year 2009-10 was passed u/s. 143(3) on 30<sup>th</sup> December, 2011. The assessee has filed his return on 2<sup>nd</sup> November, 2010 declaring a loss of Rs. 23,69,658/-. The Assessing Officer has made an addition of Rs. 3,44,417/-. This addition was made with regard to the sale of land where assessee has received some cash component in his share, except Rs. 3,44,417/- Assessing Officer has accepted the loss at Rs. 20,25,241/-. Apart from these three assessment years and computation of income, assessee has placed on record, the copies of the assessment orders starting*

*form Assessment Year 2001-02 up to 2012-13. We have perused Assessment Year 2004-05 and 2005-06 also. We find that as far as persons namely; Nanibhai V. Patel HUF Mehsana Urban Bank Ltd. Mehsana Urban Bank Ltd Co-op Bank of Mehsana Maniben Manilal Patel Kailashben Manibhai Patel Maulik Manibhai Patel are concerned, they are the persons who have advanced the money to the assessee and to whom interest was paid. To these very persons, interests have also been paid in the present year. Thus, the loan was taken from these persons long back and every year assessee has been paying at the same rate of interest. In spite of the search neither in the earlier year nor in the subsequent years, claim of the assessee was disputed that the money taken from them was not used by the assessee for earning income which is to be assessed as "income from other source". In the present year, Ld. First Appellate Authority has allowed the deduction to the extent, he assumed that assessee must have incurred interest expenditure up to 95% of the interest income earned by him. In other words, Ld. First Appellate Authority has assumed that assessee has shown interest income of Rs. 50,27,815/-. He must have incurred 95% of this income as expenditure on interest and, therefore, only to that extent, interest expenditure is to be allowed. But that is not the requirement in law, the requirement is that expenditure must be laid down by the assessee wholly and exclusively for earning of income. The expression wholly refers to quantum of expenditure and exclusively refers to the object and purpose of expenditure. Though these expressions are not used in section 57 but the overall meaning of section 57 is also to the same effect that, the expenditure ought to be incurred for earning income which is assessable under the head "income from other sources". If the logic of Id. Commissioner of Income Tax (Appeals) is accepted, then, in each and every case, expenditure would be allowed only, when there is resultant income. In other words, there cannot be any loss in any activity which results "income from other sources". All the details were before the Id. Commissioner of Income Tax (Appeals) but instead of pin pointing any concrete diversion of interest bearing funds; Id. Commissioner of Income Tax (Appeals) only assumed that some funds might have been used by the assessee for some other purposes. The department has been consistently accepting the claim in earlier years and in subsequent years. It appears that in the beginning, assessee has more income under the head "income from other sources" as than the interest expenditure, but*

*in Assessment Year 2006-07, 2007-08 and 2009-10, the interest expenditure was more than income, in spite of that loss under the head "income from other source" was allowed by the Id. Assessing Officer in scrutiny assessment. Thus considering the past history and stand of the revenue itself, we are of the view that Id. Assessing Officer has erred in making the disallowance. Ld. Commissioner of Income Tax (Appeals) also failed to appreciate that total expenditure is to be allowed which is incurred wholly and exclusively for earning income. It cannot be restricted in proportion of income. We allow the ground of appeal raised by assessee and consequently reject the ground raised by the revenue. The assessee is entitled to expenditure of Rs. 1,09,29,139/- claimed by him.*

7. The revenue has not brought any contrary decision to our notice. The revenue could not revert the submission that in earlier year such expenditure was allowed. Therefore, we have no reason to take a different view as adopted by the coordinate bench in the case of Shri Manibhai V. Patel Vs. ACIT in ITA No.993/Ahd/2015 and also the decision of the coordinate bench in the case of Narendra A. Patel Vs. ITO in ITA No.2657/Ahd/2015. Hence, we hereby direct the A.O. to delete the disallowance. This ground of appeal is allowed.

8. In the result, the appeal filed by the assessee is partly allowed.

*Order was pronounced in the open court on 18.09.2019.*

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

Sd/-  
(KUL BHARAT)  
JUDICIALMEMBER

Ahmedabad; ढनांक Dated : 18/09/2019  
VG/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard  
file.

By order

**Assistant Registrar, Ahmedabad**