

आयकर अपील अा अधकरण, अहमदाबाद ँयापीठ 'B' अहमदाबाद

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

**BEFORE HON'BLE MR. JUSTICE P.P. BHATT, PRESIDENT
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 252/Ahd/2017

(अाधाकरण वष / Assessment Year: 2011-12)

M/s. N. Satish & Company Near S.T. Bus Station, Balasinor, Dist. Kheda-388225	बनाम/ Vs.	The ITO, Ward-3, Nadiad
अाथीलेखासं./जीआइआरसं./PAN/GIR No.: AABFN5960B		
(अपीलाथ /Appellant)	..	(अाथ / Respondent)

अपीलाथ ओर से/ Appellant by :	Shri Sunil Talati, A.R
अाथ ओर से / Respondent by:	Shri Mudit Nagpal, Sr.DR

सुनवाईकासाराख /Date of Hearing	07/10/2019
घोषणाकासाराख /Date of Pronouncement	24/10/2019

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2011-12, arises from order of the CIT(A)-2, Vadodara dated 28-04-2016, in proceedings under section 144 of the Income Tax Act, 1961; in short %be Act+.

2. The assessee has filed following grounds of appeal:-

"1. The learned CIT(A) has erred in confirming addition of unsecured loan amounting to Rs.45,74,129/ u/s 68 of the IT Act-. The CIT(A) has erred in not appreciating that appellant had fulfilled all the three pre requisites as per section 68 of the Act i.e. Identity, Genuineness and creditworthiness.

2. Without prejudice to the above the Ld. CIT(A) has erred in confirming the addition of unsecured loan of Rs.45,74,129/- on the ground that on the dates of hearing neither the assessee nor Authorized Representative appeared or any adjournment letter was filed. It is stated that merely due to reasons beyond control of the appellant, it was prevented to appear before Hon'ble CIT(A) as well as A.O. to present the facts of its case. In view of this, it is prayed that the appeal dismissed by the Ld. CIT(A) be restored and lower authorities i.e. either CIT(A) or A.O. be directed to decide the issue after fresh varication on merit as per principal of natural justice.

3. The Ld. CIT(A) has erred in confirming disallowance in part of Rs. 1,51,744/- being 10% of the various expenses incurred of Rs. 15,17,445/- out of the total disallowance made by A.O. of Rs.3,03,489/-. It is submitted that all these expenses incurred are wholly and exclusively for the purpose of business only and the same are duly supported with evidences. The CIT(A) has confirmed an addition purely on ad-hoc basis. In view of this it is submitted that the ad-hoc addition of Rs.1,51,744/- confirmed by CIT(A) u/s. 37 of the Act is completely baseless, incorrect and unlawful and the same be deleted.

4. The Ld. CIT(A) has erred in confirming disallowance partly of Rs.4,44,370/-being unpaid VAT pertain, to F.Y.2009-10 of Rs.4,44,370/- out of total disallowance made by A.O. of Rs.4,77,370/-. It is submitted that Ld. CIT(A) has erred in confirming addition of unpaid VAT pertaining to F.Y.2009-10 in the assessment of F.Y.2010-11 i.e. A.Y. 2011-12 which is incorrect, illegal as per law . The same be directed to be deleted.

5. The Ld. CIT(A) has erred in confirming disallowance of Rs.4,91,966/- being unpaid VAT pertain to F.Y.2010-11. It is prayed that appellant was prevented to produce/furnish supporting evidence of payment challans of unpaid VAT pertaining to F.Y.2010-11 due to reasons beyond control. In view of this, it is prayed that the appeal dismissed by the Ld. CIT(A) be restored and lower authorities i.e. either CIT(A) or A.O. be directed to decide the issue after fresh varication of payments made in time on merit as per principal of natural justice.

6. The order passed by the learned C.I.T. (Appeals) is bad in law and contrary to the provisions of law and facts. It is submitted that the same be held so now.”

3. The instant appeal of the assessee was time barred by 201 days and this defect was brought to the notice of the assessee vide defect notice dated 31st Jan, 2017. The assessee has filed affidavit for condonation of delay. In the affidavit, it is stated that Shri Keyurbhai A Bhatt partner of the assessee firm was under treatment from 01-04-2016 to 31st December, 2016 as he was suffering from various ailments, therefore, he could not collect all the required documents in time to file the appeal before ITAT Ahmedabad on 31st Jan, 2017.

4. We have heard rival contentions on this issue and perused the affidavit and the medical certificate enclosed by the assessee with the affidavit. After perusal of the medical certificate, it is evident that the partner of the assessee firm was under treatment of various ailments from 31-01-2016 to 31st March, 2016, therefore, we consider that there appeared to be bonafide cause for not filing this appeal within the due date. Considering the above, we condone the delay in filing this appeal.

5. The fact in brief is that the assessee company is engaged in the business of trading of product namely petrol, diesel, and oil etc.. The assessee has filed return of income on 30th Sep, 2011 declaring total income at Rs. 31,780/-. The case of the assessee was subject to scrutiny assessment and notice u/s. 143(2) of the act was issued on 26th Sep, 2012. During the course of assessment proceedings, the assessing officer has issued a number of notices but the assessee has not made any compliance. Consequently, the assessing officer has completed the assessment proceedings u/s. 144 of the act on 28-03-2014. The assessing officer has treated the unsecured loans shown by the assessee at Rs. 54,74,129/- as unexplained within the meaning of section 68 of the Act because the assessee has failed to make due compliance by defaulting in furnishing the relevant details. The assessing officer has disallowed 20% of the various expenses debited to the profit and loss account amounting to Rs. 15,17,445/- resulting into an addition of Rs. 3,03,489/- on account of not producing original bills/vouchers for verification. The assessing officer has also made addition of Rs. 9,69,336/- being the unpaid liability of VAT.

6. The assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has sustained the addition of unsecured loan u/s. 68 of the act to the

amount of Rs. 45,47,129/- because of not making compliance during the course of appellate proceedings. The Id. CIT(A) has restricted the disallowance out of various expenses to 10% against 20% disallowance made by the assessing officer. In respect of disallowance of Rs. 9,69,336/- being unpaid liability of VAT, the Id. CIT(A) has granted relief to the extent of Rs. 33,000/- on the basis of documentary evidences furnished for payment of outstanding liability before the due date of filing of return i.e. 30.09.2011.

7. During the course of appellate proceedings before us, the Id. counsel has furnished paper book comprising detail and copies of documents furnished before the Id. CIT(A). The Id. counsel has contended that assessee has furnished copies of audited accounts along with the tax audit report for assessment year 2010-11 and 2011-12, copies of ledger account, confirmation along with other evidences of three parties from whom unsecured loan taken during the year and copies of ledger account of unpaid VAT for financial year 2009-10 and 2010-11 and the same were not duly considered by the lower authorities. On the other hand, Id. departmental representative has supported the order of lower authorities.

8. We have heard the rival contentions and perused the material on record. During the course of assessment, the authorized representative of the assessee has attended on 28th October, 2013 and furnished certain detail called before the assessing officer. Subsequently, the assessee has failed to make further compliance, therefore, the assessing officer has finalized assessment u/s. 144 of the act. Consequently, the assessing officer has made various additions contested in the grounds of appeal of the assessee because the assessee has failed to comply with the terms of

the notices issued during the course of assessment proceedings. During the course of appellate proceedings, the assessee has furnished additional evidences before the Id. CIT(A) and the Id. CIT(A) has forwarded the same to the assessing officer for examination and submission of remand report. The Id. CIT(A) has provided copy of remand report furnished by the assessing officer to the assessee. The Id. CIT(A) has stated that the assessee has not made further compliance, therefore, the Id. CIT(A) has adjudicated the issue on the basis of material on record after reiterating the facts reported by the assessing officer. On perusal of material on record, it is observed that the Id. CIT(A) has reported at para 3.2 of his order that the assessee has failed to make further compliance on the date of hearing fixed on 26-04-2016, therefore, the Id. CIT(A) has adjudicated the appeal on the basis of material available on record on 28.04.2016 without extending any further opportunity to the assessee. We observe that the assessee could not make full compliance before the Id. CIT(A) during the course of appellate proceedings on account of ill health of the partner of the assessee who was suffering from various ailments and remained under medical treatment from 1st April 2016 to 31st December, 2016 as demonstrated from the Medical Certificate/Affidavit furnished by the assessee. We are not inclined with the contentions of the Id. departmental representative for sending this case back to the Id. CIT(A) as it would be multiplying the litigation because the Id. CIT(A) would call for a remand report from the assessing officer and proceedings would commence on two stages in order to avoid that situation, we are of the view that it would be apposite to restore the case to the file of the assessing officer for deciding de-novo after affording adequate opportunities to the assessee. It is needless to say that observation made by us will not injure or impair the case of the assessing officer and will not cause any prejudice to the

defence explanation of the assessee. Therefore, the appeal of the assessee is allowed for statistical purpose

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 24-10-2019

Sd/-
JUSTICE P.P. BHATT
(PRESIDENT)

Sd/-
AMARJIT SINGH
(ACCOUNTANT MEMBER)

Ahmedabad : Dated 24/10/2019

आदेश कलालम अणत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलार्थ आधिकरण,
अहमदाबाद