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आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत  
IN THE INCOME TAX APPELLATE TRIBUNAL  
SURAT BENCH, SURAT

श्री सी.एम.गर्ग, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्य के समक्ष  
BEFORE SHRI C.M.GARG, JUDICIAL MEMBER  
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No.3440/AHD/2014

निर्धारण वर्ष/Assessment Year : 2006-07

Shri Saddruddin N. Shaikh, Prop-Green Park, Kosamba Road, Valsad. PAN: AIEPS5665D	Vs.	The Deputy Commissioner of Income Tax, Valsad Circle, Palak Arcade, Tithal Road, Valsad.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

आ.अ.सं./I.T.A No.41/Ahd/2015

निर्धारण वर्ष/Assessment Year : 2006-07

The Deputy Commissioner of Income Tax, Valsad Circle, Palak Arcade, Tithal Road, Valsad.	Vs.	Shri Saddruddin N. Shaikh, Prop-Green Park, Kosamba Road, Valsad. PAN: AIEPS5665D
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से /Assessee by:	Shri S. D. Chheda, CA.
राजस्व की ओर से /Revenue by:	Shri B. P. K. Panda, Sr. DR.

सुनवाई की तारीख/ Date of hearing:	08.01.2018
उद्घोषणा की तारीख/Pronouncement on:	11-01-2018

आदेश / ORDER

PER O. P. MEENA, ACCOUTANT MEMBER:

These are cross appeals by assessee and Revenue is directed against the orders of CIT(A), Valsad, dated 17.11.2014.

**I.T.A. No.3440/Ahd/2014 for A.Y.2006-07:(by assessee)**

2. The assessee has taken ground no 1 and 2, which relates to confirmation of notional interest of Rs.1,12,560/- on amount of advanced.
3. We have heard both sides. This case was set-aside by ITAT vide order dated 28.06. 2013 in ITA No.1679/Ahd/2010 to the file of the CIT (A) with a direction to obtain a remand report from the AO and decide the matter afresh. Accordingly, in second round of appeal, the CIT(A) noted that the Assessing Officer had not made any comments on ground no.7 concerning disallowance of notional interest of Rs.1,12,560/-. However, the appellant, in his counter comments, stated that the appellant has more non-interest bearing funds than the advances given. Therefore, CIT(A) held that the AO has rightly made disallowances, as the appellant has failed to adduced any evidence that these advances were for business purpose. The learned representative contended that such disallowances were deleted by CIT(A) in first round of appeal, hence, CIT (A) has exceeded his jurisdiction to confirm such disallowance in second round of appeal. Per contra, Id. Departmental Representative relied on the order of CIT(A). We find that the entire first appellate order was set-aside to CIT (A) to be decided afresh, hence, CIT(A) has rightly adjudicated the same in second round of appeal. So far merit of the disallowance is concerned, it is discernible from the ledger account of Shri Ashish D. Modi, as appearing at page no.17 of paper book, that these advances were related to payment of income tax/ advance tax by the

assessee on behalf of Shri Ashish D. Modi, hence, these, are apparently for non-business purposes, hence, notional disallowance, of interest is rightly made by the Assessing Officer. However, as rightly pointed out by the Ld. Authorised Representative that advances are to be spread over during F.Y.2005-06, and majority of advances were given during the month of March, 2006, hence, disallowance, of interest ought to have calculated on the basis of period of amount of advances given to Shri Ashish Modi. But the Id. AR has failed to give any such working before us. In such circumstances, the disallowance of notional interest is confirmed with a direction to the AO to re-calculate the disallowance of interest on the basis of period for which amount of advances given to Shri Ashish Modi by the assessee. Thus, ground No.1 and 2 of appeal is therefore, partly allowed.

**ITA No: 41/AHD/2015 for A.Y.2006-07:(by Revenue)**

4. By ground No.1 to 5, the AO has challenged the deletion of unexplained advances amounting to Rs.15,76,400/- against plot of lands, Rs.11,00,000/- on account of cash credit and disallowance of interest thereon of Rs.1,32,000/- by stating that the CIT(A) has erred by giving the decision of inherently contradictory remand report submitted by the AO and in violation of Rule 46A.
5. Brief facts are that the assessee has shown payment against the booking of plots in Green Park -4, Zinnat Nagar and Modi Nagar from 27 persons amounting to Rs.21,89,400/- as against which the assessee has furnished confirmation from six persons for the amount of Rs.6,13,000/-, therefore, the AO made addition of Rs.15,76,400/- (21,89,400 – 6,13,000) on this account.

The assessee filed an appeal before CIT(A) wherein the assessee has filed the confirmation from the remaining persons. After considering the same, the CIT(A), vide his order dated 22.01.2010 has deleted the said addition. However, the Revenue has challenged the said deletion before the ITAT. The Tribunal vide order dated 28.06.2013 in I.T.A. No. 1679/AHD/2010 has remitted back the issue to the file the CIT(A) to decide the issue afresh after obtaining remand report from the AO. Consequently, in second round of appeal, the CIT(A) has obtained a remand report from the AO. The AO vide his remand report dated 21.04.2014 has accepted the explanation as given by the AR of the appellant. Accordingly, the CIT(A) has allowed this grounds of appeal. Similarly, with respect to Ground No.2 relating to deletion of addition of unexplained cash credit of Rs.11,00,000/- and interest on such cash credit of Rs.1,32,000/- (Ground No.3) is concerned, we find that the AO has accepted the explanation of the assessee in his remand report dated 21.04.2014. Therefore, these additions were also deleted by the CIT(A).

6. Being, aggrieved the Revenue filed this appeal before the Tribunal. The Id. DR vehemently supported the order of the AO and contended that the CIT(A) should not have accepted the additional evidence filed under Rule 46A of I.T. Rules,1963. Therefore, it was urged that the order of the AO be restored.


7. We have considered the facts and perused the material on record. We find that the Tribunal vide its order dated 28.06.2013 has set-aside whole case to the file of the CIT(A) with the direction to obtain a remand report from the AO and the decide the matter afresh. In compliance thereof, the CIT(A)

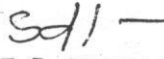


has called for a remand report from the AO and after going through the same find that the AO has accepted the explanation in respect of aforesaid additions. Accordingly, the CIT (A) has deleted the above additions. In such scenario, we find that the CIT(A) was correct in deleting the additions made by the AO. The contention of the Revenue that the CIT(A) has passed his order in violation of Rule 46A does not hold water as the CIT(A) has scrupulously followed the directions of the Tribunal. Further, after examination of facts and evidence as produced before the AO during remand report proceedings has find the explanation of the assessee as correct. In the light of the facts and circumstances, we do not find any infirmity in the order of the CIT(A). Accordingly, the above grounds of appeal of Revenue are dismissed.

8. In the result, the appeal of the Assessee is partly allowed and appeal of Revenue is dismissed.

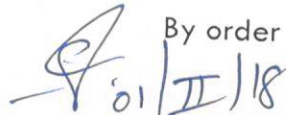
The order pronounced in the open Court on 11 January 2018

  
(C.M. GARG)  
JUDICIAL MEMBER

  
(O.P. MEENA)  
ACCOUNTANT MEMBER

सुरत/ Surat, दिनांक Dated: 11.01.2018

Copy of order forwarded to- Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file of ITAT.

By order  
  
Assistant Registrar, Surat  
सहायक पंजीकार  
आयकर अपील अधिकरण  
सुरत न्यायपीठ, सुरत.