

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH ‘SMC’

BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT

आयकर अपील सं./ ITA No. 49/Ahd/2018

निर्धारण वर्ष/Assessment Year: 2013-14

Shwetal Vinodrai Budhdev Prop: Of SOS Finance 707, Samedh Complex Nr. Associated Petrol Pump C.G. Road, Ahmedabad 380 006 PAN : ABSPB 3796 M	Vs	ITO, Ward-5(2)(4) Ahmedabad.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri M.K. Patel AR
Revenue by :	Shri Dilipkumar Sr.DR

सुनवाई की तारीख/Date of Hearing : 29/01/2020

घोषणा की तारीख /Date of Pronouncement : 4/02/2020

ORDER

Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-5, Ahmedabad dated 15.9.2017 passed for the Asstt.Year 2013-14.

2. Sole grievance of the assessee is that the Id.CIT(A) has erred in confirming addition of Rs.3,22,326/-.

3. Brief facts of the case are that the assessee, at the relevant time, was a proprietorship concern in the name and style of “SOS Finance”. He has filed his return of income on 27.9.2013 declaring total income at Rs.4,38,230/-. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the AO that the

assessee has debited a sum of Rs.16,84,547/- towards employee cost and Rs.15,38,717/- as administrative and general expenses. The Id.AO sought explanation of the assessee as to why 20% of these expenses should not be disallowed. The AO was of the view that there are four partnership firms and proprietorship concern are operating from the same business premises. The assessee is a major stake-holder in the partnership firm also. Other firms have also claimed expenses in their respective books of accounts, therefore, he was of the view that the expenses claimed in the proprietary concern are on the higher side. In response to the query of the Id.AO, the assessee filed a detailed reply. He submitted that the assessee is engaged in the business of providing services for facilitating loans from the bank and financial institutions to the parties for purchasing second hand car. The assessee has earned commission income of Rs.1,23,92,166/- in the proprietorship concern, and employee cost at Rs.16,84,547/- is just 13.59% of the total commission income. He also pointed out as far as other firms are concerned, i.e. M/s.Axiom Finance, Accuity Finance and Accolade Finance, the employee cost was 28.35%, 25.72% and 19.56% to their respective turnover. Hence, the employee cost is less in the proprietorship concern, in comparison to the turnover achieved. Similarly, expenses incurred by the proprietorship firm is concerned, the same is far less than the partnership concerns. The assessee has submitted the data. However, while considering this reply, reproduced at page no.8-9 of the assessment order, the Id.AO did not find any merit and disallowed 20% of such expenditure by observing as under:

"6.2 The reply filed by the assessee has been perused and found to be not acceptable. Eventhough, the expenditures incurred by all the partnership

firms have been debited in the respective; books of accounts, the operational cost-and other expenses for running a business from the same premises would definitely lessen the burden of the assessee. The assessee has submitted comparative figure regarding the employee cost and general expenses vis-a-vis commission income earned by the partnership firms. However, the comparison of such percentage of expenses with the commission earned by the respective firms does not substantiate the reasons for not disallowing the expenses since all the firms are operated from the same premises. Employee cost claimed by the assessee consists of salary expenses, incentive expenses, staff welfare expenses. The assessee has not provided any documentary evidences to prove that the resources of the proprietary concern are not shared by the said partnership firms. The assessee has illustrated the percentage of various expenses, of partnership firms vis-a-vis proprietary concern of the assessee and the same does not refrain the assessee from the pooling of available resources and other factors from the same premises. The assessee even failed to produce any corroborative evidence to prove that the all the entities incurred expenditures separately eventhough they run from the same business premises. Since the assessee failed to establish the same, 20% of employee cost of Rs.16,84,547/- and Administrative General expenses of Rs. 15,38,717/- which comes to Rs. 6,44,653/- is required to be disallowed and the added to the total income of the assessee. The assessee has not furnished any details or supporting documents to prove that the resources of the premises are not pooled and incurred separately by the said firms, therefore 20 % of Employee cost of Rs. 16,84,547/- and Administrative General expenses of Rs.15,38,717/- which comes to Rs. 6,44,653/- is disallowed and added to the total income of the-assessed."

4. On appeal, the Id.CIT(A) reduced this expenditure by 50%. In other words, the Id.CIT(A) confirmed the disallowance at 10% of the expenditure debited by the assessee under these two heads.

5. I have duly considered rival submissions and gone through the record. It is pertinent to observe that in order to claim expenditure under section 37(1) of the Income tax Act, the assessee is required to fulfill certain conditions viz. (a) there must be expenditure, (b) such expenditure must not be of the nature described in sections 30 to 36, (c) the expenditure must not be in the nature of capital expenditure or personal expenditure of the assessee, and (d)

expenditure must be laid out or expended wholly and exclusively for the purpose of business or profession. The expression “wholly” employed in section 37 refers to quantification of expenditure while expression “exclusively” refers to the motive, objective and purpose of the expenditure. A perusal of the finding of the AO would reveal that he has not point out any defect in the details maintained by the assessee. He has not cross-verified any bills or vouchers maintained by the assessee. One of his observations is that the assessee has not brought any documentary evidence to prove that the resources of the proprietorship concern are not shared by the partnership firm. There is an in-built fallacy in such observation. How, the assessee is able to prove that his resource was not used by other concerns ? It is totally impossible. It is for the AO to prove that resources of the assessee have been used for non-business purpose only then he can make out his case. Considering this misplaced reasoning given by the AO, I am of the view that there should not be any disallowance out of this expenditure. The disallowance made without any plausible reasoning is accordingly deleted.

6. In the result, appeal of the assessee allowed.

Pronounced in the Open Court on 4th February, 2020.

**Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT**

Ahmedabad; Dated, 4/02/2020