

आयकरअपीलीयअधिकरण,सुरतन्यायपीठ,सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

BEFORE SHRI SANDEEP GOSAIN, Hon'ble JUDICIAL MEMBER
AND SHRI O.P.MEENA, Hon'ble ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No.1395/AHD/2017

निर्धारण वर्ष / Assessment Year: 2006-07

Shri Vishal Ashwinbhai Shah, C/o.Surendra Shah & Associates (Chartered Accountants) 7006, World Trade Centre, 7 th Floor, Ring Road, Near Udhna Darwaja, Surat-395 002. [PAN: AMMPS 4291 D]	V s .	The Income Tax Officer, Ward-3(1), Surat.
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri Rajesh Shah – CA
राजस्वकीओरसे /Revenue by	Mrs. Anupam Singla – Sr.DR

सुनवाईकीतारीख/ Date of hearing:	03.02.2020
उद्घोषणाकीतारीख/Pronouncement on:	03.02.2020

आदेश / O R D E R

PER SANDEEP GOSAIN, JM:

1. This appeal by the Assessee is directed against the order of Ld.Commissioner of Income Tax(Appeals)-II, Surat dated 04.08.2015 for the assessment year 2006-07.

2. Grounds raised by the assessee read as under:

"1. The Hon'ble CIT (Appeals)-II, was not justified in confirming the reopening of the assessment u/s 147/ 148 by issuing notice u/s 147/ 148 of the IT Act, 1961.

2. The Hon'ble CIT (Appeals)-II, was not justified in confirming in making assessment u/s 143(3) r.w.s 147/ 148 of the Act, without passing speaking

order on the objection raised by the assessee on reopening of the case particularly no new material brought on record.

3. The Hon'ble CIT (Appeals)-II, was not justified in confirming in making disallowance of Interest expenses of Rs. 2,47,171/-.

4. The appellant reserves the right to add, alter, amend or withdraw any ground of appeal."

3. The brief facts of the case are that the assessee filed Return of Income declaring total income of Rs.3,23,210/-. The return was furnished initially u/s. 143(1) of the Income Tax Act. Thereafter, the case was selected for scrutiny assessment u/s. 143(3) of the Act which was finalized by accepting the Return of Income. Subsequently, it was noticed by the Ld.Assessing Officer(AO) that assessee had debited interest expenses of Rs.2,47,171/- paid to M/s.Ansh Securities and it was held that assessee had diverted interest bearing loan for interest free loan given to his HUF, hence the claim of interest was not found allowable expenditure.

4. Aggrieved by the order of the Id.AO the assessee preferred appeal before the Id.CIT(A) and the Id.CIT(A) after considering the case of both the parties dismissed the appeal filed by the assessee.

5. Aggrieved by the order of the Id.CIT(A) the assessee preferred appeal before the Id.CIT(A) on the grounds mentioned hereinabove.

6. Ground No.1 & 2 raised by the assessee has not been pressed before us, therefore these grounds of appeal stands dismissed as not pressed.

7. Ground No.3 this ground raised by the assessee relates to challenging the order of Id.CIT(A) in confirming the disallowance of interest expenses of Rs. 2,47,171/-. The Id.Authorised Representative(AR) of the assessee appearing on behalf of the assessee reiterated the same arguments as was raised by him before the Id.CIT(A) and the same are reproduced at Para 5 of the order of the Id.CIT(A). It was submitted that the assessee had unsecured loan of Rs. 11,83,481/- on which no interest was paid by the assessee. It was also submitted that although assessee had given loan, advances and deposits of Rs.4,84,881/- but on this account also assessee has not received any interest. Therefore, disallowances made by the Id.AO is not sustainable in the eyes of Law. As the loans and advances were given by the assessee from interest free loan.

8. On the other hand, the Ld.Departmental Representative(DR) relied on the order of Revenue Authorities.

9. We have heard Counsels for both the parties and we have also perused the records and noticed that the Ld.Assessing Officer had made disallowance of sum of Rs.2,47,171/- by holding that the assessee had diverted interest bearing loan for interest free loan given to his HUF. Therefore, the claim of interest of Rs.2,47,171/- was not found allowable expenditure, whereas as per the facts mentioned by the assessee before us, the assessee has unsecured loan of

Rs.11,83,481/- on which no interest was paid by him and the assessee had given loan, advances in deposits of Rs.4,84,181/- on which no interest was received and thus it is clear that the interest free loan was given by the assessee out of interest free funds (unsecured loan). Therefore, in such circumstances, the interest paid by the assessee on excess withdrawals from partnership firm (Ansh Securities) cannot be disallowed. More particularly, when the amount received by way of excess withdrawal from the firm, according to the assessee was used for the purpose of his business. Thus, considering the above factual position, we are of the view that the interest paid to firm is allowable expenditure. Therefore, keeping in view of our above discussions, we quash the order passed by the Ld.AO and upheld the ld.CIT(A) and direct the ld.AO to allow the expenditure of Rs.2,47,171/- claimed by the assessee.

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

11. Order pronounced in the open court on 03-02-2020.

Sd/-
(O.P.MEENA)

(लेखा सदस्यतथा/ACCOUNTANT MEMBER)

Sd/-
(SANDEEP GOSAIN)

(न्यायिक सदस्यकेसमक्ष/JUDICIAL MEMBER)

सुरत/ Surat, दिनांक Dated: 3rd February, 2020/S.Gangadhara Rao, Sr.PS

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

By order

/ / TRUE COPY / /

Assistant Registrar, Surat

