

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD öSMCö BENCH

**Before: Shri Rajpal Yadav, Vice President
And Shri Amarjit Singh, Accountant Member**

**ITA No. 2060/Ahd/2015
Assessment Year 2010-11**

Shree Rajeshbhai Gunvantlal Shah, 401, Subh House, 77, Swastik Centre, B/H, City Centre, Off: C.G. Road, Ahmedabad PAN: ACWPS4000N (Appellant)	Vs	The ITO, Ward-10(4), Ahmedabad (Respondent)
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**ITA No. 2061/Ahd/2015
Assessment Year 2010-11**

Shree Snehal Gunvantlal Shah, 401, Subh House, 77, Swastik Centre, B/H, City Centre, Off: C.G. Road, Ahmedabad PAN: AHZPS0623F (Appellant)	Vs	The ITO, Ward-10(4), Ahmedabad (Respondent)
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**Revenue by: Shri Dilip Kumar, Sr. D.R.
Assessee by: Shri P. S. Parmar, A.R.**

Date of hearing : 27-01-2020
Date of pronouncement : 20-02-2020

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

These two appeals filed by two different assessees for A.Y. 2010-11, arise from order of the CIT(A), Ahmedabad-5, dated 19-05-2015, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. The solitary issue in the grounds of appeal filed by assessee against the decision of Id. CIT(A) are against confirming the disallowance on various revenue expenses to the amount of Rs. 13,44,624/- in the case of Sh. Rajeshbhai G. Shah and Rs. 5,22,373/- in the case of other assessee, Sh. Snehal G. Shah and both the assessees are brothers. Since identical issues on similar facts are involved in both the cases therefore these cases are adjudicated together by taking the case of Sh. Rajeshbhai G. Shah vide ITA No. 2060/Ahd/2015 as lead case and its findings will be applicable to the other case.

3. The fact in brief is that assessee has filed return of income on 31st July, 2010 declaring total income at Rs. 2,06,118/-. The case was subject to scrutiny and notice u/s. 143(2) of the act was issued on 29th August, 2011. During the course of assessment, the assessing officer noticed that assessee has shown losses from the business of trading of shares and securities in the proprietary concern namely M/s, Adishwar Enterprise and M/s. Idea Concern. In the case of Adishwar Enterprises and M/s. Idea Concern the assessee has shown loss of Rs. 11,58,847/- and Rs. 10,386/- respectively.

On verification in the case of M/s. Adishwar Enterprise, the assessing officer noticed that assessee has shown opening stock as on 01-04-2009 at Rs. nil and total purchase were shown at Rs. 82,500/- against which total sale was worked out at Rs. 1,01,593/-. Against these transactions the assessee claimed substantial amount of expenses which resulted in net loss of Rs. 1,17,915/-. On verification of the detail of various expenses, the assessing officer noticed that assessee has claimed various personal expenses and capital expenses having not any nexus with the business of trading in shares during the year. The assessing officer noticed that the expenses claimed included Home expenses of Rs. 2,53,187/- club expenses of Rs. 9,081, electricity expenses of Rs. 41,211/-, entertainment expenses of Rs. 18,107/-, petrol expenses of Rs. 1,90,745/- etc. The complete detail of such expenses are reported by the assessing officer at page no. 6 & 7 of the assessment order. Similarly in the case of Idea Concern, the assessee has shown opening stock of Rs. 29,921/- without any sales/purchases and reported the same opening stock as closing stock during the year under consideration. However, the assessee has debited major expenses totaling to the amount of Rs. 1,80,713/- including claim of loss from sale of car Nikki Ford at Rs. 17,327/-. The assessing officer observed that various expenses were of the nature of personal and capital expenditure which were not allowable u/s. 37(1) of the act. The assessing officer has also stated that in respect of certain expenditure the assessee has failed to furnish the relevant supporting bill and voucher to substantiate the genuineness of expenses and has also debited the household expenditure in the P & L account of the M/s. Adishwar Enterprise. In respect of substantial amount of expenses pertaining to loss on sale of Nikki Ford Car, the assessee has not furnished

any relevant supporting bill and evidences. The assessee has also adopted same nature of modus operandi which was adopted in the case of assessee's brother, Shree Snehal G. Shah for creating bogus losses to set off against income shown by the assessee from Sarojben Shah (AOP). After considering the deficiency found in the bill/voucher furnished by the assessee, the assessing officer has rejected the books of account u/s. 145 of the act and disallowed the total expenses to the amount of Rs. 13,44,624/- (11,63,911+ Rs. 1,80,713/-) and added back to the assessee's total income.

4. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee holding that claim of loss made by the assessee was not in the nature of business losses and also justified the rejection of books of account after invoking the provision of section 145 of the act considering the various defects pointed out by the assessing officer.

5. We have heard the rival contentions and perused the material on record. The assessee is engaged in the business of trading of shares. During the course of assessment on verification of the bill and voucher the assessing officer has noticed that assessee has claimed following expenses in the case of proprietary concerns:-

- (i) Adishwar Enterprises Rs. 11,63,911/-
- (ii) M/s. Idea Concern Rs. 1,80,713/-

and claimed losses without showing major transactions in the business of trading in shares.

The assessing officer has disallowed 100% of these expenses on the ground that some of these expenses were of the nature of personal expenditure and capital expenditure and in respect of certain expenses supporting bill and voucher were not furnished. After considering the various defects in the bill and voucher i.e. debiting of household expense to the P & L Account, claim of major expenses like i.e. debit of loss of sale of Nikki Car without any relevant supporting evidences, the assessing officer has invoked the provision of 145 of the act and rejected the books of account of the assessee. After considering the above facts that assessee has not maintained correct and complete books of account, we do not find any reason to interfere in the finding of Id. CIT(A) in sustaining the rejection of books of account u/s. 145 of the act.

6. However, in respect of disallowance of 100% of various expenses claimed by the assessee, it is observed that without any reason the assessee has debited specific expenses like household expenses, capital expenses, and loss from sale of Nikki Ford Car for want of nexus with the business of the assessee. Therefore, we justify the action of the assessing officer in disallowing 100% of such specific unrelated expenses to the business of the assessee. However, the assessing officer has not disproved the fact with any further investigation that assessee has not carried out any business or trading in shares, therefore, we of the view that it will be appropriate to restrict the disallowances upto the expenditure 50% of such expenses in the case of Adishwar Enterprise and M/s. Idea Concern. Accordingly, in the case of Adishwar Enterprise, the disallowance of following expenses at 100% are sustained (i) home expenses Rs. 2,53,187/- (ii) Club expenses

Rs. 9081/-, (iii) Travelling expenses Rs. 2,09,207/-, (iv) Petrol expenses Rs. 1,90,745. In respect of remaining expenses, the assessing officer is directed to restrict the disallowance up to 50% of such expenses. Similarly in the case of Idea Concern the claim of expenses on account of loss from sale of Nikki Car to the amount for Rs. 170327/- is fully disallowed as assessee has failed to furnish any relevant supporting evidences to substantiate that these expenses and losses was incurred for the purpose of business of the assessee. In respect of remaining expenses, the assessing officer is directed to restrict the disallowance upto 50% of such expenses. In the case of other assessee who is brother of the assessee Shri Snehal G. Shah on similar fact the assessee has claimed various expenses in the business of trading in shares. On similar basis assessing officer has also disallowed total expenses to the amount of Rs. 5,22,573/- treating the same as of the nature of personal expenses and capital expenses and the detail of such expenses has been reported by the assessing officer at page no. 7 & 8 of the assessment order. We have gone through the detail of such expenses and observed that similar to other cases as adjudicated above vide ITA No. 2060/Ahd/2015, the disallowances of the following expenses are fully sustained as the assessee has failed to substantiate with relevant evidences of their nexus to the business of the assessee i.e. Nikki Ford Car Rs. 1,14,273/-, travelling expenses of Rs. 18,629/- insurance for Corrala Altis 27364/-, Electricity expenses of Residence Rs.71,445/-, corporation tax Rs. 27361/- and legal fees Rs. 5000/- In respect of the remaining expenses, the assessing officer is directed to restrict the disallowance to the extent of Rs. 50% for the reasons discussed in the case of Sh. Rajeshbhai C. Shah as above in this

order. Accordingly, this appeal of the assessee is partly allowed.

7. In the result, both the appeals of the assesseees are partly allowed.

Order pronounced in the open court on 20-02-2020

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Ahmedabad : Dated 20/02/2020

आदेश क०० त्तलम अ० षत / Copy of Order Forwarded to:-

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

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलअ अधकरण,
अहमदाबाद