

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

BEFORE SHRI PAWAN SINGH, Hon'ble JUDICIAL MEMBER
AND Dr. ARJUN LAL SAINI, Hon'ble ACCOUNTANT MEMBER

(Virtual Hearing)

आ.अ.सं./I.T.A No.2325/AHD/2016

निर्धारण वर्ष/Assessment Year: 2012-13

Shri Ajay Shyambihari Maru, C-13, New Textile Tower Market, Ring Road, Surat – 395002. [PAN: AEHPM 7327 K]	Vs.	The Commissioner of Income Tax(Appeals)-II, Surat.
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओर से /Assessee by	Shri Manish Shah – Advocate
राजस्वकीओर से /Revenue by	Smt. Anupama Singla – Sr.DR

सुनवाई की तारीख/ Date of hearing:	20.01.2021
उद्घोषणा की तारीख/Pronouncement on:	20 .01.2021

आदेश / O R D E R

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal filed by the Assessee is directed against the order of Learned Commissioner of Income Tax (Appeals)-II, Surat dated 05.05.2016 for the A.Y. 2012-13. The Assessee raised the following grounds of appeal:

- “1. The C.I.T.(Appeals) erred in upholding the addition of Rs.3,16,811/- u/s.57 of the I.T. Act, 1961 by treating the interest on unsecured loans paid as not allowable, completely overlooking the facts & circumstances of the case.*
- 2. The C.I.T.(Appeals) ought to have taken into consideration the overall facts and circumstances of the case and in the process should have deleted the addition in toto.*
- 3. The appellant craves leave to change, amend, alter, modify, add and delete any of the grounds of appeal.”*

2. Brief facts of the case are that the assessee is running a proprietary concern in the name of Shree Ram Synthetics, engaged in the business of dealing of art silk cloths. The assessee filed his

Return of Income for the A.Y.2012-13 on 30.09.2012. The case was selected for scrutiny. During the assessment, the Assessing Officer noted that assessee has debited interest expenses in Profit and Loss Account of Rs.3,16,811/- on account of payment of interest on unsecured loans. The assessee debited the said interest expenses from the head income from 'other sources'. The assessee shown corresponding income of Rs.343/- being interest from savings bank account and interest on Fixed deposits of Rs.5732/-. The Assessing Officer was of the view that interest expenses of Rs.3,16,811/- did not correspond to the income disclosed under the head income from other sources and did not qualify under section 57 of the Act, thus disallowed the entire interest expenses.

3. On appeal before the Id.CIT(A), the action of Assessing Officer was affirmed. Before the Id.CIT(A), the assessee also made alternative claim for allowance of interest expenses under section 37 of the Act by changing head of income from 'other sources' to income 'from business and profession'. The alternative claim of the assessee was also not accepted by the Id.CIT(A) by taking view that in absence of filing revised return of income as provided under section 139(5) of the Act, the Assessing Officer is bound to pass the assessment order on original return. It was also held that there is no provision under the Income Tax Act to enable the assessee to revise the Return of Income by filing a computation of income/letter and making a claim of allowing interest expenses under section 37 of the Act instead of section 57 of the Act.

Further aggrieved, the assessee has filed present appeal before this Tribunal.

4. At the outset of hearing the Authorised Representative (AR) of the assessee submits that he has a limited submission before the Tribunal that additional claim/revised claim of assessee was not accepted by First Appellate Authority. The Authorised Representative of the assessee submits that Hon'ble Bombay High Court in case of CIT Vs. Pruthvi Brokers and Shareholders [2012] 349 ITR 336 (Bom) held that assessee is entitled to raise not merely additional submissions before the appellate authority, but also entitled to raise additional claim before appellate authorities. The appellate authorities have discretion to permit such additional claim to be raised. The Authorised Representative for the assessee submits that additional claim raised by assessee is based on the facts available on record. The additional claim by way of legal submission may be admitted and the matter may be remitted to Assessing Officer for adjudication of issue afresh. In support of his submissions the Ld. AR for the assessee also relied on the decision of Delhi High Court in CIT Vs SAM Global Securities Ltd (2014) 360 ITR 682 (Delhi).
5. On the other hand, the Departmental Representative (Sr.DR) for the Revenue supported the order of the Id.CIT(A). The Sr.DR further submits that assessee is seeking altogether a different relief. The assessee has not filed revised Return of Income within the stipulated period prescribed under the Income Tax Act.

6. We have considered the submission of both the parties and gone through the orders of authorities below carefully. We have noted that there is no dispute on the fact that initially the interest expenses was claimed under the head income from 'other sources'. During the first appellate stage, the assessee raised alternative claim to allow interest expenses under section 37 of the Act by changing head of income from income from 'other sources' to 'income from business and profession'. The Id.CIT(a) not allowed the alternative claim by taking view that when a statute required to a certain things in a certain way, the things must be that in that way and not otherwise.
7. The Hon'ble Bombay High Court in CIT Vs Pruthvi Brokers and Shareholders Pvt Ltd., held that the assessee is entitled to raise not merely additional legal submissions before the appellate authorities but is also entitled to raise additional claims before them. The appellate authorities have the discretion to permit such additional claims to be raised. The appellate authorities have jurisdiction to deal not merely with additional grounds, which became available on account of change of circumstances or law, but with additional grounds which were available when the return was filed. It was also held that the words "could not have been raised" must be construed liberally and not strictly. There may be several factors justifying the raising of a new plea in an appeal and each case must be considered on its own facts. Hon'ble Delhi High Court in Delhi High Court in CIT Vs SAM Global Securities Ltd

(supra) also held that deductions not claimed in return of income but in revised computation of income id allowable.

8. Considering the consistent view of Hon'ble Bombay High Court in CIT vs. Pruthvi Brokers and Shareholders Pvt. Ltd., CIT vs. Sam Global Securities Ltd., (supra), we admit the additional claim raised by assessee by way of legal submission is admitted and the matter is remitted to Assessing Officer for adjudication of issue afresh and decide the issue in accordance with law. Needless to order that before passing the order afresh, the Assessing Officer shall grant fair and proper opportunity of hearing to the assessee.
9. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced on 20-01-2021 by placing result on notice board.

Sd/-

(Dr.ARJUN LAL SAINI)

(लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(PAWAN SINGH)

(न्यायिक सदस्य/JUDICIAL MEMBER)

सुरत/ **Surat**, दिनांक **Dated:** 20th Jan, 2021 /#SGR

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

By order

/ / **TRUE COPY** / /

Assistant Registrar, Surat