

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD
(CONDUCTING THROUGH VIRTUAL COURT)**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No.705/Ahd/2017
(Assessment Years: 2012-13)

Shri Ajaykumar Jahvantlal Shah A/2, Vasu Apartment, Paliyadnagar, Naranpura, Ahmedabad-380013	Vs.	ITO Ward-2(2)(1) Ahmedabad
[PAN No. ABJPS1271K]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Mahesh Chhaged, AR
Respondent by:	Shri R. R. Makwana, Sr. DR

Date of Hearing:	27/09/2021
Date of Pronouncement:	28/09/2021

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 26.12.2016 passed by the Ld. CIT(A)-10, Ahmedabad arising out of the order dated 25.03.2015 passed by the ITO, Ward-2(2)(1), Ahmedabad under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to “the Act”) for A.Y. 2012-13 with the following grounds:-

- “1. The Ld. CIT(A) has erred in law and on facts in upholding the addition of opening cash balance of Rs. 16,00,952/-.
2. The Ld. CIT(A) has erred in law and on facts in upholding the disallowance of interest expense of Rs. 24,75,921/-.
3. Appellant craves liberty to add, amend, alter or modify all or any grounds of appeal before final appeal.”

2. There is 19 days delay in filing the instant appeal before us by the assessee. The reason for such delay has been duly explained by the assessee by filing an affidavit affirmed on 30.06.2021 which was brought to our notice by the Ld. AR. The reason thereof seems to be genuine and hence the delay is condoned.

Ground No. 1:-

3. The Ld. AO treated the opening balance for the A.Y. 2012-13 of Rs. 16,00,952/- as unexplained and added the same to the total income of the assessee which was, in turn, confirmed by the Ld. CIT(A). Hence, the instant appeal before us.

4. The assessee is a salaried person and also having income from other sources mainly interest income. It is also the case of the assessee that it does not maintain the balance sheet or Profit and Loss Account but the cash statement has been placed on record before us. At the time of hearing of the instant appeal the Ld. Advocate appearing for the assessee submitted before us that the opening balance cannot be added in the current year assessment since the same arose out of the transaction of the previous year which is the subject matter of the assessment. Further that the genuineness of source of such opening balance has not been verified by the Revenue as also the argument advanced by the Ld. AR. In this regard, he has drawn our attention to the documents annexed to the Paper Book clarifying that the transaction out of which those opening cash balance arose was rooted through banking channel. The Ld. DR relied upon the order passed by the authorities below.

5. We have heard the respective parties and also perused the relevant materials available on record including the cash flow statement annexed to the Paper Book. It appears from those relevant documents that the transactions were routed through banking channel which has not seen to have been verified by the Revenue. Thus, upon considering the entire aspect of the matter we find it fit and proper to remit the issue to the file of the Ld. AO to verify the genuineness of the transaction i.e. the source of the opening balance of the assessment year in consideration and to pass orders in accordance with law upon granting an opportunity of being heard to the assessee and upon taking into consideration the evidence which the assessee may rely

upon at the time hearing of the matter. This ground of appeal is, thus, allowed for statistical purpose.

Ground No. 2:-

6. It relates to disallowance of interest expense amounting to Rs. 24,75,921/-.

7. The fact relating to the issue is this that the Ld. AO disallowed interest expenditure paid to one Shiv Corporation to the tune of Rs. 16,21,114/- and Rs. 8,54,807/- paid to one Laxmi Corporation. The assessee has not produced the balance sheet or the statement of accounts or evidence with regard to the activities carried out by him, the interest charged on loan given by the assessee, purpose of loan taken, business activities carried out. In the absence of such details in support to interest payment to these entities the interest payment shown to the tune of Rs. 24,75,921/- was disallowed and added to the total income of the assessee which was, in turn, confirmed by the First Appellate Authority.

8. At the time of hearing of the instant appeal the Ld. Counsel appearing for the assessee drew out attention to the ledger account of the concerned parties which shows that the payment was made through banking channel which was further not been placed before the authorities below.

9. The case of the assessee is this that the assessee paid interest on borrowed amount and earned interest on the loan given but only the interest earned has been taken into consideration by the Revenue and the interest paid has not been deducted. Since the verification on this aspect has not been done by the Revenue under this facts and circumstances of the case we find it fit and proper to remit the issue to the file of the Ld. AO to verify such details and the genuineness of the interest paid and to pass orders in accordance with law upon granting an opportunity of being heard to the assessee and upon taking into consideration the documents to be filed by the assessee

at the time of hearing of the issue. Assessee's appeal is, therefore, disposed of by statistical purposes.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

This Order pronounced in Open Court on

28/09/2021

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER
Ahmedabad; Dated 28/09/2021
Tanmay

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The PCIT- Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,

सत्यापित प्रति //True Copy

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad