

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**"SMC" BENCH, AHMEDABAD**  
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER**  
**And**  
**SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 1736/AHD/2017  
निर्धारण वर्ष/Asstt. Year:2010-2011

M/s Ashok Travels, Prop. Of Ashok J. Patel, Behind Jubeli Baug, Raopura Road, Vadodara-390001.  <b>PAN: AEMPP9161P</b>	Vs.	I.T.O, Ward-5(2), Baroda.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	Smt. Kinjal Shah, A.R
Revenue by :	Shri Vijay Kumar Singh, Sr.D.R

सुनवाई की तारीख / **Date of Hearing** : **31/01/2022**  
घोषणा की तारीख / **Date of Pronouncement**: **28/02/2022**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals), Vadodara, dated 04/04/2017 arising in the matter of assessment order passed under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2010-2011.

2. The assessee has raised the following grounds of appeal:

1. *The Ld. CIT - (A), has erred both in law and in facts in holding that the amount shown as difference between amount shown in 26AS and as shown in profit & loss account. Your appellant has issued bills as per terms and condition of the contract and has received the amount in next year that is why your appellant has shown the receipt in next year. It is double taxation to the appellant.*

2. *The Ld. CIT- (A) has also erred in disallowances of interest to the extent interest free loans and advances given for different years.*

3. *The Id. CIT-(A) has also erred in not considering the submission made before AO and learned CIT by your appellant.*

*It is therefore submitted that relief claimed above be allowed and the order of the Assessing Officer be modified accordingly.*

*Your appellant reserves right to add, alter, amend to withdraw and or all Grounds of Appeal.*

3. The 1<sup>st</sup> issue raised by the assessee is that the learned CIT(A) erred in confirming the order of the AO by sustaining the addition made on account of difference of income reported in the return of income viz a viz in form 26AS issued by the Income Tax Department.

4. The AO during the assessment proceedings observed certain differences between the income declared by the assessee in the return of income viz a viz the income reported in form 26 AS. The details of the difference of the income stand as under:

<i>Name of the person from whom income received.</i>	<i>Income as reported in 26AS</i>	<i>Income as per details of income/ IDS claimed details furnished by the assesses.</i>	<i>Difference i.e. Income not shown by the assessee during the year under</i>
<i>Bayer Crops Science Ltd.</i>	<i>60,219</i>	<i>54.851</i>	<i>5,368</i>
<i>Gatula V. Patel</i>	<i>10,40,500</i>	<i>9,75,500</i>	<i>65,000</i>
<i>Indian Oil Corporation Ltd.</i>	<i>62,36,336</i>	<i>61,96,830</i>	<i>39,506</i>
<i>Vidya Vihar Education Society</i>	<i>28,46,887</i>	<i>28,36,403</i>	<i>10,484</i>

<i>IVRCL Infrastructure &amp; Products Ltd.</i>	<i>8,09,765</i>	<i>7,64,235</i>	<i>45,530</i>
<i>Indian Bank</i>	<i>3,45,984</i>	<i>1,96,068</i>	<i>1,49,916</i>
<i>Total</i>			<i>3,15,804</i>

4.1 As per the AO, the assessee has reported short income by ₹ 3,15,804/- and therefore the same was added to the total income of the assessee.

Aggrieved assessee preferred an appeal to the learned CIT-A, who partly deleted the addition made by the AO by observing as under:

*The appellant has furnished two types of explanations. First is that the excess amount has not been received at all. In some other cases, it has been claimed that the relevant amount has been raised as bill and has been included in his income of later year. So far as payments received from Bayer Crops Science Ltd is concerned, the company has shown payment to the appellant at Rs.60,219/- on which, TDS has been deducted. The appellant has claimed that the payment in Form No.26AS is excessive. But the appellant has nowhere stated that the TDS made by Bayer Crops Science Ltd. on this amount has not been claimed by him in his return of income. Thus, when the TDS has been claimed as credit in the return of income, then the entire amount shown in Form 26AS has to be treated as income of the appellant. Similar is the case in relation to amount received from IVRCL Infrastructure & Products Ltd. of Rs.45,530/-. Hence, the additions of these amounts are upheld.*

*4.3.1. So far as the discrepancies on account of receipts from Gatulal V.Patel and Vidhya Vihar Education Society are concerned, again the appellant has claimed IDS on such receipts in the current year itself and hence the amount on which TDS has been made has to be taxed as income in the current year only. Accordingly, additions of these amounts are also upheld.*

*4.3.2. So far as discrepancy regarding Indian Oil Corporation of Rs.39,5067- is concerned, the AO is directed to verify the appellant's claim that he has shown income which is more than that reflected in Form 26AS. If it is found to be correct, then the addition of Rs.39,506/- will stand deleted.*

*4.3.3. So far interest received from Indian Bank is concerned, the appellant has accepted that the bank had issued wrong certificate to him which, pertained to year AY.2010-11 in place of correct year of 2009-10. Accordingly, mistake has been committed in the appellant's return of income. But the fact remains that the interest received by the appellant during the year is Rs.3,75,573/- as against Rs.1,96,069/- shown by the appellant in his return of income. Hence, the addition made by the AO on this account is upheld.*

5. Being aggrieved by the order of the learned CIT-A, the assessee is in appeal before us.

6. The learned AR before us contended that the difference in the income reported by the assessee is mainly arising due to the fact that the income pertaining to the month of March 2010 has been accounted in the subsequent month. According to the learned AR, the assessee has been following this practice since many years which was also accepted by the revenue.

7. On the contrary, the learned DR vehemently supported the order of the authorities below.

8. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the assessee is following mercantile system of accounting which requires to recognize and record the transactions as and when they take place. Under the Mercantile system of accounting method, the Revenue is recorded when it is actually earned, and the expenses are reported when they are actually incurred. In the present case, the services have been rendered by the assessee then the same should be accounted for in the books of accounts. However, we note that the assessee has contended before the authorities below that he has been recording the income after rendering the services in the subsequent month. For example, the services rendered in the month of April has been accounted for in the month of May. This contention of the assessee has nowhere been challenged by the authorities below. Accordingly, we assume that contention of the assessee is correct. Thus, it is implied that the income which has been accounted by the assessee in the month of April 2008 i.e. the year under consideration actually pertains to the month of March 2008. But no benefit has been extended by the authorities below.

8.1 Likewise, if the assessee has offered the income pertaining to the month of March 2009, in the subsequent month i.e. April 2009, thus if any addition is made in the current year, the same would lead to double addition which is unwanted.

Thus, we are of the view that the justice would be served to the Revenue as well as assessee if the assessee is able to prove that the difference of income pointed out by the AO has been offered to tax in the subsequent year. If that be so, no addition is warranted.

8.2 Before parting, it is important to note that the learned AR for the assessee has not challenged the addition made by the authorities below with respect to the interest from bank amounting to ₹ 1,49,916/- only. Accordingly we confirm the same. Hence the ground of appeal of the assessee is partly allowed for the statistical purposes.

9. The next issue raised by the assessee is that the learned CIT(A) erred in confirming the disallowance made by the AO for Rs. 10,77,000.00 on account of interest on the loan bearing funds diverted for non-commercial purposes.

10. The AO during the assessment proceedings found that the assessee on one hand is incurring interest expenses on the borrowed fund and on the other hand the assessee has advanced money without charging any interest. Thus, the AO worked out the proportionate amount of interest of ₹ 10,77,000/- on such interest free loans and advances and added to the total income of the assessee.

11. Aggrieved assessee preferred an appeal to the learned CIT (A) who allowed the ground of appeal of the assessee in part by observing as under:

*5.3. I have considered the facts of the case, the submission of the appellant and the AO's observations. The appellant in its grounds of appeal has himself stated that his books of accounts not only represent business figures, but also merged personal transaction which has absolutely no relevance with the business. Under such circumstances, onus is on the appellant to show that the interest free loans and advances given to others for non-business purposes have been paid out of interest free fund available with him and not out of interest bearing fund. In this respect, no efforts have been made by the appellant. As a matter of fact, even the copy of audit report has not been furnished during the course of the appellate proceedings to show that such interest free advances given to others on personal account are out of interest free funds, despite the fact that the AO had issued a specific show cause notice as to why interest @ 12% on such interest free loans and advances given by the*

*appellant to his wife and relatives, should not be disallowed. Hence, the disallowance of interest out of interest paid by the appellant by computing interest on borrowed capital utilized for giving such interest free loans/advances @ 12% is upheld.*

*5.3.1. But, at the same time, it is seen that the payment made to Pritamnagar Co-operative Housing Society is for the purposes of purchase of flat, for housing the staff and hence disallowance in respect of amount of Rs.5.5 lakhs cannot be made in computation of business income of the appellant. All other interest free loans/advances have been given for personal use and hence interest paid on borrowed capital utilized for making such advances is not for the business purpose of the appellant and accordingly the same is not be allowable as deduction in computation of its income, his business. Similarly, in regard to Rekhaben A. patel, it has been claimed that same has been made out of non-interest bearing fund, but no evidence in this regard has been submitted. Hence, considering all the facts, the disallowance of interest paid by the appellant is required to be made on the amount of Rs.86,75,000/-=Rs.81,25,000/-. Accordingly, the appellant gets part relief.*

*5.3.2. So far as payments made to J.S.Patel and Rekhaben A. Patel is concerned, the payment to J.S. Patel is for purchase of land. Nowhere the appellant has established that the land has been purchased for utilization in*

12. Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us.

13. The learned AR before us submitted that amount of loans and advances were extended without charging any interest in the earlier years except a sum of ₹ 6.25 lakhs. As per the learned AR there was no disallowance made by the authorities below in the earlier years in the assessment framed under section 143(3) of the Act. It implies that it has already been accepted by the revenue that such loans and advances were given in the course of the business and therefore no disallowance can be made. The learned AR in support of his contention before us has filed the copy of the assessment order pertaining to the assessment year 2008-09 and 2009-10 which is available on record.

13.1 Likewise the learned AR, contended that amount of interest free loan and advances made in the year under consideration is of ₹6.25 lakhs which was extended out of interest free amount. As per the learned AR the interest-free fund available with the assessee is of ₹ 81,76,946/- only. The learned AR to this effect has filed the chart demonstrating the availability of interest free funds with the assessee which is available on record.

14. On the contrary the learned DR vehemently supported the order of the authorities below.

15. We have heard the rival contentions and perused the materials available on record. Admittedly, the majority of the amount was advanced as loans to the parties in the earlier years except a sum of ₹ 6.25 lakhs. Undeniably, there was no disallowance was made by the revenue in the earlier year for the amount of interest attributable with respect to such loans and advances extended by the assessee. Accordingly we are of the view that, there cannot be any disallowance on account of interest expenses on the amount of loans advances which were extended in the earlier years. In holding so draw support and guidance from the judgment of Hon'ble Karnataka High Court in the case of CIT Vs. Sridev Enterprises reported in 192 ITR 165 wherein it was held as under:

*In the instant case the status of the amount standing as outstanding due from N on the first day of the accounting year was the amount that stood outstanding on the last day of the previous accounting year; therefore, its nature and status could not be different on the first day of the current accounting year, from its nature and status as on the last day of the previous accounting year. Regarding the past years, the assessee's claims for deductions were allowed in respect of the sums advanced during those years; this could be only on the assumption that those advances were not out of borrowed funds of the assessee. This finding during the previous years was the very basis of the deductions permitted during the past years, whether a specific finding was recorded or not. A departure from the finding in respect of the said amounts advanced during the previous year, would result in a contradictory finding; it would not be equitable to permit the revenue to take a different stand now, in respect of the amounts which were the subject-matter of previous years' assessments consistency and definiteness of approach by the revenue 'was necessary in the matter of recognising the nature of an account maintained by the assessee so that the basis of a concluded assessment would not be ignored without actually reopening the assessment. The principle is similar to the cases where it has been held that a debt which had been treated by the revenue as a good debt in a particular year cannot subsequently be held by it to have become bad prior to that year.*

*The Tribunal was, therefore, justified in holding that since no additions had been made in earlier years, the opening debit balance could not be considered during the current year and the enquiry had to be limited to the increase in the current year only.*

15.1 Moving ahead, we note that there was sufficient amount of fund available with the assessee to justify the interest-free loans and advances of ₹ 6.25 lakhs. As such we assume that, impugned amount of loans and advances ₹ 6.25 lakhs has

been extended by the assessee out of interest free loans and advances. Therefore, no disallowance of interest qua to such loan advances is warranted. In holding so we draw support and guidance from the judgment of Hon'ble Gujarat High Court in case of CIT vs. Torrent Power Ltd reported in 363 ITR 474 where it was held as under:

*It was noted from records that the assessee was having shareholding funds to the extent of 2607.18 crores and the investment made by it was to the extent of `Rs.195.10 crores. In other words, the assessee had sufficient funds for making the investments and it had not used the borrowed funds for such purpose. This aspect of huge surplus funds is not disputed by the revenue which earned it the interest on bonds and dividend income. [Para 7]*

15.2 In view of the above and after considering the facts of the case on hand, we hold that there cannot be any disallowance of interest expenses as alleged by the authorities below. Accordingly we set aside the finding of the learned CIT(A) and direct to the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

16. In the result the appeal filed by the assessee is partly allowed for the statistical purposes.

**Order pronounced in the Court on 28/02/2022 at Ahmedabad.**

**Sd/-  
(SIDDHARTHA NAUTIYAL)  
JUDICIAL MEMBER**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated 28/02/2022  
*Manish*

**(True Copy)**

28/02/2022