

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

(Conducted through Virtual Court)

**ITA No.652/Ahd/2019
Assessment Year: 2007-08**

M/s. Vikshara Trading & Investment vs. Income Tax Officer,
Pvt. Ltd., Ward-4(1)(4),
C/o. Ketan H. Shah, Advocate, Ahmedabad.
512, Times Square – 1,
Opp. Ram Baug Bungalow,
Thaltej Shilaj Road,
Thaltej, Ahmedabad - 380 059.
[PAN – AAACV 5043 P]
(Appellant) (Respondent)

Appellant by : Submission
Respondent by : Shri Shaurya S. Shukla, D.R.

Date of hearing : 24.03.2022
Date of pronouncement : 13.04.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the assessee against the order dated 05.09.2017 passed by the CIT(A)-8, Ahmedabad for the Assessment Year 2007-08.

2. The grounds of appeal are as under:

- “1. The Ld. CIT(A) has erred in not appreciating the facts that, in view of the facts and circumstances of the case, as well as based on the submission made before him, he ought not to have made disallowances of Rs.2,99,799/-.
2. Without prejudice, the Ld. CIT ought to have restricted the disallowance at Rs.10,860/- only as against Rs.2,99,799/-.
3. The Ld. CIT(A) has also erred in not deciding aground relating to addition of Rs.41,076/- u/s.41(1), since the facts are on record, this addition is required to be deleted.”

3. The assessee Company is a Private Limited Company engaged in the business of trading of various Cosmetic items. The assessee Company filed original return of income on 08.11.2007 declaring total loss of Rs.7,86,226/-. The Assessing Officer made addition of Rs.2,99,799/- in respect of disallowance of interest under Section 36(1)(iii) of the Income Tax Act, 1961 as well as addition confirmed by the Tribunal being addition under Section 41(1) of the Act amounting to Rs.41,076/- and Sales Tax penalty of Rs.400/-.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. During the hearing, despite giving notice, none appeared on behalf of the assessee but we have received written submission along with facts from the Director of the assessee Company. The same are reproduced as under :-

- "1. That, regarding so called short appeal fees of Rs.3,450/-, we hereby say that there is no such short payment of appeal fees since the assessed income is loss Rs.4,44,951/-, and therefore, we have rightly paid Rs.1,000/-.*
- 2. The first ground is regarding challenging addition of Rs.2,99,799/-. This ground is covered by ground no. 2.*
- 3. The ground No. 2 is regarding contention that the addition should not exceed Rs.10,860/-. In this connection, the attention is drawn to the AO's order in dispute dated 13-07-2015 wherein, he has made addition of Rs.2,99,799/-. It was stated before AO that the addition should not exceed Rs.10,580/- based on the direction given by the ITAT in ITA No.2361/Ahd/2010, now enclosed at paper book page 12 to 16, relevant para 4, page 3 of the ITAT order. There is specific direction given that to the extent of reserve and surplus, no addition can be made. The finding was in reference to reserve and surplus + amount of interest free advance given by the assessee.*
 - 3.1 The AO in order in dispute dated 13-07-2015 has not taken into consideration the factual aspect brought to his notice which is as per submission dated 12-09-2014, enclosed at page 30-32 and more particularly Annexure - 'A' at page 32 regarding disallowance should not exceeds Rs.10,860/-*
 - 3.2 Based on chart 'A' enclosed at PB page 32, it is found that, the actual loans and advances is Rs.4,47,04,075/- and reserve and surplus Rs.4,45,06,605/- and therefore, the difference is*

Rs.1,97,470/-. The rate of interest is 5.5% and therefore, the disallowance comes to Rs.10,860/-.

- 3.3 *Rate of interest not disputed by AO in first round order u/s 143(3) dated 10-12-2009, relevant para 3, now PB page 2 wherein, the rate of interest stated to be 5.5% which is not disputed.*
- 3.4 *That, the CIT(A) in the order dated 05-09-2017 has again not considered the factual aspect and finding given by him in his appeal order para 4 to 4.4 page 4 is contrary to the facts of record which were never challenged before ITAT or even by the Assessing Officer in first round of litigation as well as second round of litigation.*
4. *It is settled law that the direction given by ITAT should be strictly followed. The following case laws are relevant.*
- *Surat Electricity Co., Gujarat High Court regarding power of scope of remand, 337 ITR 271, enclosed at page No. 54 & 55.*
 - *Saheli Synthetics, Gujarat High Court regarding power of scope of remand, 302 ITR 126, enclosed at page no. 56 to 59.*
5. *Attention is also drawn to Gujarat High Court in Torrent Leasing and Finance, enclosed at page 22 to 29, relevant para 6, page 7 of the judgment and page 28 of paper book.*
6. *The loans and advances given at Rs.4,83,96,470/-, grouping at page 34 and sub grouping is at page 35 to 37.*
7. *Even as per letter dated 23-05-2015, enclosed at page 41 to 42 before the AO, it was contended that even there is no such question of any disallowance of Rs.10,580/-.*
8. *Copy of balance sheet, profit and loss account and groupings of reserves are at page 44 to 47.*
9. *The details of interest expenditure claimed with bank charges and other interest expenditure is as per page 48.*
10. *The next ground is regarding the challenge of addition u/s 41(1) of Rs.41,076/- made by the Assessing Officer in the order dated 10-12-2019, PB page 1 to 5. THIS GROUND IS NOT PRESSED AND THEREFORE, KINDLY ALLOW US TO WITHDRAW THE SAME.*

Therefore, we respectfully pray that this appeal may please be decided based on the above submissions and paper book enclosed herewith."

6. The Ld. D.R. submitted that ground no.3 is not pressed by the assessee through the written submission. The Ld. D.R. relied upon the assessment order and the order of the CIT(A).

7. We have heard the Ld. D.R. and perused all the relevant materials available on record. From the perusal of the written submission dated 04.01.2022 filed by the assessee Company, it emerges that as regards ground no.2, the Tribunal has directed that the addition should not exceed Rs.10,580/- but the Assessing Officer has ignored the said directions of the Tribunal. From the perusal of the order the Tribunal directed the Assessing Officer that to the extent of reserve and surplus no interest on account of interest-free advances made by the assessee, but if the amount of reserve and surplus available with the assessee is more than the interest-free advances during the relevant period, no case of disallowance out of interest could be sustained, even if, the interest free advances were continued from earlier years. The assessee through submissions stated that the actual loans and advances is Rs.4,47,04,075/- and reserve and surplus was Rs.4,45,06,605/- for which difference is Rs.1,97,470/-. Thus, the rate of interest is 5.5% and, therefore, the disallowance comes to Rs.10,816/-. This seems to be the correct position. Therefore, we direct the Assessing Officer to make the disallowance to the extent of Rs.10,860/- accordingly.

8. As regards ground no.3 is concerned, the same is not pressed, hence ground no.3 is dismissed. Appeal of the assessee is, therefore, partly allowed.

9. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on this 13th day of April, 2022.

Sd/-
(ANNAPURNA GUPTA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 13th day of April, 2022

PBN/*

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*