

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
"SMC" BENCH, AHMEDABAD

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

आयकर अपील सं./ITA No.2011/AHD/2018  
निर्धारण वर्ष/Asstt. Year:2012-2013

Shri Mayank Ratibhai Patel, B/10, Rajhans Society, Nr. New Commercial Society, Nr. Reliance Fresh Shop, Navrangpura, Ahmedabad-360009.  <b>PAN: ALWPP5126H</b>	Vs.	I.T.O, Ward-5(2)(3), Ahmedabad.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	Shri S.N. Divitia, A.R
Revenue by :	Shri Atul Pandey, Sr.D.R

सुनवाई की तारीख / **Date of Hearing** : **10/06/2022**  
घोषणा की तारीख / **Date of Pronouncement**: **20/07/2022**

**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), Ahmedabad, dated 21/08/2018 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2012-2013.

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

1.1 The order passed u/s.250 on 21.08.2016 for A.Y.2012-13 by CIT(A)-5,Abad, confirming disallowances made by AO towards interest expenses Rs,9,59,093, addition towards stamp duty & registration expense of Rs.7,22,272 and motor car expense of Rs.1,23,960 is wholly illegal, unlawful and against the principles of natural justice.

1.2 The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced. The Ld. CIT(A) has erred in passing a non-speaking order and merely confirming the findings given by AO.

2.1 The Ld. CIT(A) has grievously erred in law and or on facts in making following disallowances :

- a) Disallowance of interest Rs.9,59,093/-
- b) Undisclosed cash expenses Rs.7,22,272/-
- c) Disallowance of car expenses Rs.1,23,960/-

2.2 That in the facts and circumstances of the case as well as in law, the Id. CIT(A) has grievously erred in confirming impugned disallowances as above.

It is therefore prayed that the disallowances of Rs.18,05,325/-made by the AO should be deleted.

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 disallowance of interest expenses amounting to ₹ 9,59,093/- on account of diversion of interest-bearing loan.

4. The AO during the assessment proceedings found that the assessee has incurred interest expenses amounting to Rs. 10,67,198/- which was claimed as deduction in the profit and loss account. However, the impugned amount of loan was utilized for making the investments in the lands, contribution in the partnership firms and interest free/interest-bearing loans and advances. As such, the assessee has also earned interest income against the interest expenses on the borrowed fund. Such interest income stands at Rs. 1,08,105/- which was allowed by the AO to be adjusted against the interest expenses. The AO for the balance amount of interest expenses was of the view that the interest expense has not been incurred for the purpose of generating any business income. Therefore the same cannot be allowed as deduction while computing the taxable income of the assessee. Thus, the AO disallowed the sum of Rs. 9,59,093/- (Rs. 10,67,198/- minus Rs. 1,08,105/-) and added to the total income of the assessee.

5. Aggrieved assessee preferred an appeal before the learned CIT-A, who partly confirmed the order of the AO by observing as under:

*4.3.1. During the course of appellate proceedings, the appellant has contended that most of the funds were received in earlier years and there was no finding in the relevant year that the borrowings were utilized for non-business purposes. Therefore, no disallowance could be made in the current year towards interest on opening balance.-. In this regard, the appellant has relied upon decision of Sridev Enterprises 189 ITR 192 Karnataka HC wherein it was held that unless there was a finding in the year of borrowing about the non-business purposes no disallowance could be made in the subsequent years. The appellant has also contended that the AO has failed to appreciate that the investment in land and interest free advances should be presumed to have been made out of interest free funds available with the appellant by way of closing balance as on 31.3.2012. It is also contended that the AO has failed to establish the nexus between the borrowings from the family members and the said investment. It is also contended that appellant had not used the interest bearing funds towards the purchase of aforesaid lands.*

*4.3.2. Facts of the case and the submissions are considered. The AO has discussed the issue in detail in his order and established that the interest payment is not allowable u/s.36(1)(ii) of the Act. However, the AO has failed to appreciate that no disallowance could be made with regard to the opening balances unless there was a finding in the year of borrowing about the non-business purposes. Therefore, the AO is directed to verify the same from the records and restrict the disallowance with regard to interest payment on funds received during the year only. Thus the ground of appeal is partly allowed for statistical purposes.*

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

7. The learned AR before us filed a paper book running from pages 1 to 43 of the paper book and contended that the interest expenses were incurred for the purpose of the business and therefore the same is eligible for deduction.

8. On the other hand the learned DR vehemently supported the order of the authorities below.

9. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the impugned amount borrowed by the assessee has been diverted for making the contribution in the partner's capital account, investment in the lands and interest free/interest bearing advances. As far as the contribution in partner's capital account is concerned, we note that the assessee has shown interest income from the

partners which is chargeable to tax. Therefore, we are of the view that the assessee, against such interest income from the partners ship account, is eligible for deduction for the interest expenses. It is for the reason that there is direct nexus between the interest income and the interest expenses.

9.1 Likewise, we also note that the interest expense on loan diverted to interest-bearing loans and advances is also eligible for interest expenses. It is for the reason that there is direct nexus between the interest income and the interest expenses.

9.2 However, the amount of loan diverted for the investments in land and interest free loans and advances, the corresponding interest cannot be allowed as deduction against the interest income. It is for the reason that there is no direct nexus between the interest income and the interest expenses. Thus such interest expenses cannot be allowed as deduction either under the provisions of section 36(1)(iii) or 57 of the Act. In view of the above, we set aside the order of the learned CIT (A) with the direction to the AO to calculate the amount of interest attributable to the investment made in the lands and interest-free loans and advances and make the disallowance proportionately. Hence the ground of appeal of the assessee to this extent is partly allowed.

10. The 2<sup>nd</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 unexplained cash expenses.

11. The AO during the assessment proceedings found that the assessee has incurred certain expenses amounting to Rs. 7,22,272/- on purchase of property such as stamp duty charges and registration charges but failed to explain the source of such expenses. Therefore the AO treated the same as unexplained cash expenses and added to the total income of the assessee.

12. Aggrieved assessee preferred an appeal before the learned CIT-A, who confirmed the order of the AO by observing as under:

*4.4. With regard to undisclosed cash expenses, the AO has disallowed expenses towards stamp duty and registration charges, amounting to Rs.7,22,272/- for purchase of land on the ground that these were not reflected in the bank account or capital account. The appellant has contended that the AO has failed to appreciate that the aforesaid expenses were duly accounted for in the books of the appellant in as much as the said expenses were debited to the respective land account as evident from the copy of ledger account.*

*4.4.1. Facts of the case and [he submissions are considered. These payments were made in cash and the assessee has failed to substantiate the source of such cash available with him. The AO has rightly disallowed the same. Thus the ground of appeal is dismissed to this extent.*

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

14. The learned AR before us filed a paper book running from pages 1 to 43 and contended that the impugned expenses were duly recorded in the books of accounts. The learned AR in support of his contention has drawn our attention to the cash book showing the source of expenses as discussed above.

15. On the other hand the learned DR vehemently supported the order of the authorities below.

16. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the assessee has incurred certain expenses as discussed above, the source of which were not explained. Therefore, the AO treated the same as unexplained cash expenses which was subsequently upheld by the learned CIT-A. However, we note that all the cash expenses incurred by the assessee have been duly incorporated in the cash book which is placed on pages 42 to 43 of the paper book. There was no doubt raised by the authorities below with respect to the cash book filed by the assessee. Since, the expenses incurred in cash have been duly recorded in the books of accounts, the source of cash for such expenses cannot be doubted. The cash

book is a summary of the transactions which are carried out in cash demonstrating the source of receipt of cash and payment of cash. Thus, it cannot be said that such expenses were incurred by the assessee outside the books of accounts. The issue on hand relates to the cash payment which was recorded in the cash book but corresponding receipt of cash was nowhere doubted by the authorities below, accordingly, we set aside the finding of the learned CIT (A) and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

17. The next issue raised by the assessee is that the learned CIT(A) erred in confirming the addition made by the AO on account of interest expenses on the car loan and the depreciation on the car amounting to Rs. 1,23,960/-.

18. The AO during the assessment proceedings found that the assessee is not carrying out any business activity and therefore the interest expense on the car loan and the depreciation on the car cannot be allowed as deduction as business expenses under the provisions of income tax Act. Thus the AO disallowed the same and added to the total income of the assessee.

19. Aggrieved assessee preferred an appeal before the learned CIT (A) who confirmed the order of the AO by observing as under:

*4.5. With regard to the disallowance of car expenses, the AO has disallowed interest paid on car loan and depreciation amounting to Rs.1,23,960/- on the ground that these expenses are purely personal in nature. The AO has observed that assessee is not carrying out any business activity on his own. The appellant has contended that the disallowance is not justified because the business of the firm is the business carried on by its partners and when the personal asset is used for the purpose of business of the firm its expenses would be admissible against the share income from the firm.*

*4.5.1. Facts of the case and the submissions are considered. There is no force in the argument of the appellant and the disallowance made by the AO is justified and the same is confirmed.*

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

21. The learned AR before us filed a paper book running from pages 1 to 43 and contended that the assessee is a partner in many partnership firm and drawing income therefrom which is chargeable to tax under the head business and profession except share of profit. Thus, it cannot be said that the assessee does not have any business income.

22. On the other hand the learned DR vehemently supported the order of the authorities below.

23. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the authorities below have not doubted on the genuineness of the expenses claimed by the assessee. But what was doubted is that the assessee is not carrying out any business activity and therefore the impugned expense/ disallowance cannot be allowed as deduction. Admittedly, the assessee is a partner in 5 partnership firm and drawing handsome amount of share of profit, remuneration and the interest. Indeed, the amount of share of profit is not chargeable to tax in the hands of the assessee but the remaining items of interest income and the remuneration are chargeable to tax under the head business and profession which have been duly disclosed in the income tax return. Thus, in such a situation, the interest on the car loan and the depreciation thereon cannot be denied for the purpose of the deduction. At this juncture, it is equally important to note that the revenue was of the view that the expenses in the nature of interest on the car loan and the depreciation would have been claimed as deduction by the partnership firm as the assessee being the partner of the firm is using the car for the purpose of the firm only. Admittedly, there is a flat rate of tax in the case of partnership firm whereas the rate of tax in the case of a partner is qualified for slab rate of tax besides the maximum exemption limit provided under the statute. As such, had the deduction been allowed to the partnership firm, there would have been less revenue in the

hands of the partnership firm. Thus keeping in view the above principles, we are not convinced with the finding of the learned CIT-A and accordingly direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

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

**Order pronounced in the Court on 20/07/2022 at Ahmedabad.**

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

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

**(True Copy)**

Ahmedabad; Dated 20/07/2022  
*Manish*