

आयकर अपीलिय अधिकरण, राजकोट न्यायपीठ, राजकोट ।
**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT**
[Conducted through E-Court at Ahmedabad]

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER &
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.271/Rjt/2019
(निर्धारण वर्ष/Assessment Year : 2015-16)

Paras Vinodrai shah Flat No.B-6, Vision Towers Palace Road, Jamnagar 361 008	बनाम/ Vs.	The Income Tax Officer Ward-3(2) Jamnagar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AOWPS 0295R		
(अपीलार्थी/ Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Vimal Desai, AR
प्रत्यर्थी की ओर से/ Respondent by :	Shri B.D. Gupta, Sr.DR

सुनवाई की तारीख/ Date of Hearing	23/08/2022
घोषणा की तारीख / Date of Pronouncement	02/09/2022

आदेश / O R D E R

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

This appeal is filed by the assessee against the order dated 24/09/2019 passed by the Commissioner of Income Tax (Appeals)-Jamnagar [CIT(A)] for Assessment Year (AY) 2015-16.

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

- 1. The assessment order u/s.143(3) is bad in law.*
- 2. The learned A.O. has erred in law as well as on facts in making disallowance of Rs.10,28,563/- out of interest expenses u/s.40(a)(ia) of the Act and the CIT(A) has erred in confirming it without giving reasonable opportunity of being heard.*

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3. The assessee is an individual who carries on the business of trading of brass-items in his proprietorship-concern; namely, M/s.Gravity Metal Inc. The assessee filed return of income on 13/10/2015 declaring total income of Rs.4,56,400/-. The Assessing Officer finalised the assessment u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") on 26/12/2017 determining total income of the assessee at Rs.14,84,960/- after making disallowance of Rs.10,28,563/- out of interest expenses u/s.40(a)(ia) of the Act.

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. The Ld.AR submitted that during the assessment proceedings, the Assessing Officer noticed that the books of account of the assessee proprietorship-concern, viz. M/s.Gravity Metal Inc. are audited u/s.44AB of the Act and compliance relating to TDS provisions has been made by it. However, on verification of personal books of account of the assessee, the Assessing Officer observed that the assessee has not made TDS out of interest paid on unsecured loan taken in his individual and personal capacity. Accordingly, he asked the assessee to show cause as to why disallowance out of interest expenses of Rs.34,28,542/- incurred and claimed in assessee's personal set of accounts should not be made and added to the total income of the assessee u/s.40(a)(ia) of the Act. The Ld.AR submitted that the provisions relating to TDS are applicable to the books of account which are auditable u/s.44AB of the Act. It is undisputed fact that the personal books of account are not subjected to audit u/s.44AB of the Act. The assessee was not required to deduct tax at source in respect of interest payment on unsecured loans which were accepted by him in his personal capacity and duly reflected in his personal books of account. The assessee follows the accounting practice since last many years and the same was accepted by the

Department in the scrutiny assessments made u/s.143(3) of the Act in the earlier years. The depositors to whom interest is paid have filed their individual return of income after disclosing therein the interest amounts as their income and paid tax thereon and, therefore, the issue is squarely covered by the second proviso to Section 40(a)(ia) and first proviso to Section 201(1) of the Act. The Ld.AR submitted that the Assessing Officer has not taken cognizance of the copies of certificates in Form 26A furnished by the assessee in respect of depositors for which the impugned disallowance out of interest expenses is made u/s.40(a)(ia) of the Act.

6. The Ld.DR, on the other hand, relied upon the assessment order and order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the CIT(A) as well as the Assessing Officer has not taken cognizance of the copies of certificates in Form 26A furnished by the assessee in respect of depositors for which the impugned disallowance out of interest expenses was made. In fact, the assessee has submitted the details of ledger account related to interest expenses of assessee which was also not taken into account by both the revenue authorities. Therefore, it will be appropriate to remand back this issue to the file of the Assessing Officer to verify the interest expenses and the same should be taken into account while deciding the issue related to section 40(a)(ia) of the Act. Needless to say, the assessee be given opportunity of being heard by following principle of natural justice.

8. In the result, the appeal of the assessee is partly allowed for statistical purposes.

This Order pronounced in Open Court on 02/09/2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 02/09/2022

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/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 CIT(A)-Jamnagar
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