

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

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER&

I.T.A. No.185/Ahd/2019
(Assessment Year: 2015-16)

Shri NiravDilipkumar Desai 42, Swati Society, St. Xavier's School, Ahmedabad-380009	Vs.	ITO Ward-5(2)(4), Ahmedabad
[PAN No.ACEPM6168R]		
(Appellant)	..	(Respondent)

Appellantby :	Shri Bharat Shah, CA
Respondent by:	ShriRavindra, Sr. D.R.

Date of Hearing	19.10.2022
Date of Pronouncement	11.11.2022

ORDER

PER Ms. SUCHITRA KAMBLE - JM:

The appeal filed by the assessee is against the order passed by the Ld. CIT(A)-5, Ahmedabad on 27.11.2018 for A.Y. 2015-16.

2. The grounds of appeal raised by the assessee are as under:

“1. The impugned order is contrary to the evidence and material on record, contrary to the principles of law and binding judgments of the Court, contrary to the relevant provisions of the Act and deserves to be quashed and set aside.

2. The learned CIT(A) has erred in confirming Assessed Income at Rs. 36,96,870/- as against the returned income of Rs.7,68,450/- and addition made are contrary to the facts and the provisions of law. It is submitted that it may be so held now and the additions made be deleted.

3. The learned CIT(A) has erred in confirming disallowance made by Learned AO as expenses of Rs.29,28,423/- u/s 57 (iii) instead of allowing said expenses from the business income of Rs. 84,390/- (Profit on sale of shops) as CIT(A) treated wrongly that the said expenses are claimed by the appellant u/s. 57(iii). Therefore it is submitted that it may be so held now and the expenses be directed to be allowed as business expenses.

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4. *Consequently CIT(A) has erred in not allowing business loss claim after alliance of said business expenses and thus arrived said loss to be allowed to set off against the income from other sources, if any, for an adjustment of loss/income under inter-heads for the year under consideration.*

5. *The learned CIT(A) has erred on facts by not considering the appellant's claim as narrated vide letter dated 10.12.2017 submitted before learned AO who acknowledged personally on 11.12.2017.*

The appellant craves leave to add to, alter, amend, modify and/or vary any or all of the grounds aforesaid at the time of hearing.”

3. The additional grounds of appeal raised by the assessee are read as under:

“1. The learned CIT(A) has erred in not allowing this additional ground by confirming the contention of AO who has not adhering the letter and spirit of Circular no. 14(XL-35) dated 11-4-1955 by bringing to the notice to the appellant that the appellant had committed a mistake in treating in write back amount of Rs. 32,44,095/- personal loan taken by the appellant in the year 1999 considered wrongly as income by appellant under the head income from other sources. Therefore, it is submitted that it may be so held now and the said income be deleted as per the said circular of CBDT.

2. The appellant craves leave to add to, alter, amend and/or delete any of the grounds aforesaid.”

4. The assessee is an individual and carrying out business activity as partner in the firm related to exporting construction activities. The assessee filed belated return of income under Section 139(4) of the Act for A.Y. 2015-16 on 30.03.2017 declaring total income at Rs. 7,68,450/-. The Assessing Officer observed that the assessee has shown Rs. 11,86,798/- under the head “income from other sources” and in the schedule of other sources. The assessee has shown Rs. 41,15,221/- and claimed expenses of Rs. 29,28,423/-. The Assessing Officer further observed that the expenses claimed has no nexus with the income from

offered and therefore, made addition of Rs. 29,28,423/- which was claimed under Section 57(iii) of the Act by the assessee.

5. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) has dismissed the appeal of the assessee.

6. The Ld. A.R. submitted that the loan and advances taken by the assessee from Mr. Rasik Shah was related to business expenses as during the year under consideration the assessee carried out business activity for exporting construction material to Democratic Republic of Congo (in short "DR Congo") where he initiated to export the construction materials to the said country but unfortunately due to civil wars in the said country the activities had not been scaled up. As a part of business activities the assessee carried out several amount with business groups, government and semi-government organization alongwith mediator at Congo. The assessee contributed by way of capital during the year under consideration towards his towards his agreed contribution in the said business activity and the business activity and the said partnership carried out during the year under consideration. Since the assessee has taken personal loan in the year 1999 the person Shri Rasik C. Patel was not contactable/traceable and therefore, the assessee presumed that the said personal loan is not repayable and on the basis of unilateral act of assessee, the Assessing Officer wrongly considered the same as income during the year under consideration. The Ld. A.R. further submitted that the assessee has not claimed any deduction in the balance sheet and it is not a part of trading receipt as contemplating by the CIT(A) but the

benefit of Circular issued by the CBDT dated 11.04.1955 should be taken into account.

7. The Ld. D.R. relied upon the assessment order and the order of the CIT(A).

8. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that as regards addition ground raised by the assessee the Circular No. 14 dated 11.04.1955, the Ld. AR submitted that the assessee had committed a mistake in treating amount of Rs. 32,44,095/- which was taken as personal loan taken by the assessee in the year 1999 as income for the year under head “income from other sources”. But the fact remains that the assessee has shown in the return in respect of old dues not payable as income from other sources and was never shown the same as debts and liabilities by the assessee in the previous year. This fact was not denied by the assessee at any juncture. Merely stating that it is wrongly treated under income from other sources cannot show the genuineness of the assessee related to old dues. The assessee has not brought on record in particular instant where the assessee has right to approach Shri Rasik C. Patel. If the advance was taken from Shri Rasik C. Patel who is now expired as per submissions made before the CIT(A) by the assessee, the assessee has not shown any measures taken by him as to whether in legal heirs of the said party are present to whom the dues can be repaid. Merely writing off the dues cannot allow the claim of the assessee. Thus, the CIT(A) rightly said that the old dues not payable is rightly shown as “income

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from other sources". The CIT(A) has rightly placed the total expenses which reveals that no expenses were related to the advances against purchase received from Mr. Rasik Shah. Therefore, the same also cannot be allowed from the income. There is no need to interfere with the finding of the CIT(A). Hence, the appeal of the assessee is dismissed.

9. In result, the appeal of the assessee is dismissed.

This Order pronounced in Open Court on	11/11/2022
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Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 11/11/2022

TANMAY, Sr. PS

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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)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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