

IN THE INCOME TAX APPELLATE TRIBUNAL  
“G” BENCH, MUMBAI  
BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER &  
SHIR PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 3222/Mum/2022  
(A.Y: 2022-23)

Style Rite Optical Industries,Pattani House,425,Kalbadevi Road, Mumbai-400002	Vs.	ACIT18(3), 6 th floor, Earnest House, Nariman Point,Mumbai-400021
PAN/GIR No. : AACFS3919G		
Appellant	..	Respondent

Appellant by :	Mr.Shashank A Mehta.AR
Respondent by :	Ms.Sonia Kumar.DR

Date of Hearing	15.02.2023
Date of Pronouncement	17.02.2023

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order of the National Faceless Appeal Centre (NFAC), Delhi / CIT(A) passed u/s 143(3) and 250 of the Act.

2. At the time of hearing, the Ld.AR of the assessee submitted that there is a delay in filing the appeal before the Hon’ble Tribunal and filed an affidavit for condonation of delay. We found the facts mentioned in the affidavit are reasonable and the Ld. DR has no specific objections. Accordingly, condone the delay

and admit the appeal. The assessee has raised the following grounds of appeal:

*1. In the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in sustaining an ad-hoc disallowance of Rs 54,106 from petrol, motorcar, car insurance, telephone and travelling expenses.*

*2. In the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in sustaining the addition of notional interest amounting to Rs. 10,20,000, being 12% of the interest free security deposits for acquiring premises on rent.*

*3. The appellant craves leave to add, alter, delete or modify all or any of the above grounds of appeal. All the above grounds are without prejudice to each other.*

3. The brief facts of the case are that the assessee is a partnership firm and is engaged in the business of manufacture and export of spectacles. The assessee has filed the return of income for the A.Y 2014-15 on 26.11.2014 disclosing a total income of Rs.43,33,240/-and the return of income was processed u/s 143(1) of the Act. Subsequently notice u/s 143(2) and 142(1) of the Act along with questionnaire was issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and submitted the details and the case was

discussed. The AO on perusal of the financial statements found that the assessee has debited motor car expenses, car insurance and petrol expenses, telephone and travelling expenses. Further, the AO is of the opinion that the assessee has not made disallowance with respect personal usage and no proper details were filed and made aggregate disallowance of Rs.1,08,214/- Similarly the AO found that the assessee has acquired a business premises on a monthly rent of Rs. 2 lakhs from M/s Patni Ventures and for the acquiring the space the assessee has given interest free security advance/deposit of Rs. 85 lakhs to Patni Ventures and it is a sister concern. Therefore the AO is of the opinion that the provisions of Sec. 40A(2)(b) will apply and based on the information and the facts dealt at Para 6 of the assessment order has estimated the notional interest @ 12% on the security deposit which worked out to Rs.10,20,000/- and finally assessed the total income of Rs. 54,77,960/- and passed the order u/s 143(3) of the Act dated 23.12.2016.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) has

considered the grounds of appeal, submissions of the assessee, findings of the AO and has granted the partial relief in respect of disallowance of expenses by restricting the addition to Rs.54,106/- and sustained the addition of notional interest made by the AO and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Tribunal.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in sustaining the adhoc disallowance to the extent of Rs.54,106/- in respect of petrol, motorcar insurance, telephone and travelling expenses, irrespective of the fact that the AO has made the addition overlooking the details submitted. The CIT(A) has erred in sustaining the addition of notional interest without considering the factual aspects. Further the Ld.AR substantiated the submissions relying on the order of the Honble Tribunal in the assessee own case for the earlier year and prayed for allowing the appeal. Contra, the Ld. DR relied on the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The dispute issue is in respect of (i) disallowance of petrol, car insurance, telephone expenses and travelling expenses and (ii) the notional interest on security deposits calculated by the A.O. We find the Hon'ble Tribunal in the assessee's own case ITA.No.1925/M/2022 for the A.Y 2013-14 dated 08.11.2022 has dealt and observed at Page 3 Para 4 to 7 of the order read as under:

*4. So far as question of making disallowance on account of petrol expenses, travelling expenses and telephone expenses reduced by Ld.CIT(A) from Rs.1,20,000/- to Rs.60,000/- is concerned, the entire disallowance has been made on the basis of estimation and guess work. I examined para 4 of the assessment order, where Assessing Officer has specifically recorded fact that "the assessee was asked to produce necessary details / documents / bill, vouchers to substantiate its claim. On verification of the same on test check basis, it is seen that some of these expenses are incurred in cash and are supported by self made vouchers and are not fully verifiable."*

*5. No doubt, Auditor of the assessee has also pointed out in the tax audit report that some elements of personal expenses having been debited in the P&L Account is there, but we are of the considered view that when detailed enquiry has not been carried out by the Assessing Officer as well as Ld.CIT(A), rather proceeded on the basis of estimate and guess work, disallowance to*

*the tune of Rs.30,000/- is fair and reasonable keeping in view the total amount of expenses claimed by the assessee. So disallowance on account of petrol, travelling and telephone expenses is restricted to Rs.30,000/-.*

*6. So far as question of addition of Rs.10,20,000/- on account of notional interest being 12% of the interest on security deposit made by the Assessing Officer is concerned, the assessee, though claimed that it was having own surplus interest free funds which were utilized for depositing the security of Rs.85 lakhs with M/s Patni Ventures Pvt Ltd, but strangely enough, assessee has not brought on record any evidence to prove this fact before Ld.Assessing Officer as well as Ld.CIT(A).*

*7. However, during the course of argument, Ld.AR for the assessee filed balance-sheet and P&L Account showing surplus interest free funds at its disposal to meet with the expenses of depositing Rs.85 lakhs with M/s Patni Ventures Ltd, which have never been verified by the Assessing Officer. So the issue is required to be sent back to the Assessing Officer to verify the evidence brought on record by the assessee and allow the same, if found correct. Consequently, this ground is allowed for statistical purpose. Resultantly, appeal filed by the assessee is partly allowed.*

7. We respectfully follow the judicial decision of Hon'ble ITAT and accordingly direct the AO to restrict the addition to the extent of Rs.27,053/- and in respect of addition of notional interest on security deposits, the issue requires verification and on similar directions as in the earlier year the dispute

is restored to the file of the AO to verify and adjudicate on merits.

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

Order pronounced in the open court on 17.02.2023.

Sd/-

(OM PRAKASH KANT)  
**ACCOUNTANT MEMBER**

Sd/-

(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 17.02.2023

KRK, PS

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//()

1.

( Asst. Registrar)  
ITAT, Mumbai