

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 3194/Mum/2022 (A.Y. 2013-14)

Babuda M. Kadam

C-1, Narmada Mahadev,
Cabin Cross Road
Bhayander East,
Thane- 401 105

PAN: ABDPK7421P

..... Appellant

Vs.

CIT (A)/NFAC

Delhi

..... Respondent

Appellant by : Smt. Ankita Lunia
Respondent by : Shri Chetan M. Kacha, Sr. AR

Date of hearing : 16/03/2023
Date of pronouncement : 15/05/2023

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of National Faceless Appeals Centre; Delhi (for short 'NFAC') dated 19.10.2022 u/s. 250 of the Income Tax Act, 1961 (for short 'the Act') for A.Y. 2013-14. The assessee has raised the following grounds of appeal:

“1. The Ld. CIT A erred in facts as well as in law by making additions amounting to Rs. 2,81,018/-, Rs. 75,177/- and Rs. 1,65,921/- being depreciation, car insurance and interest on car loan totalling to Rs. 5,22,116/- claimed u/s. 57(iii) of the IT Act 1961 as deduction without appreciating the fact that the said expenses are incurred wholly and exclusively for the purpose of earning taxable income Alternatively the Ld. CIT A further erred by not alternatively allowing the aforesaid expenses of Rs.5,22,116/- u/s. 37(1) of the IT Act, 1961.

2. The Ld. CIT A further erred by not alternatively allowing the interest expenses amounting to Rs. 2,49,345/- erroneously claimed u/s. 24(b) by the assessee u/s. 36(1) (iii) or us 57 (iii) of the IT Act.”

1. Brief facts of the case are that assessee individual filed its return of income declaring total income at Rs 63, 80,896/-. The case of the assessee was selected for scrutiny under CASS. Assessee individual is a partner in several firms. However, during the year under consideration the assessee has not carried out any business activity and has not offered income under the head income from business and profession. During the year under consideration assessee had income from income from house property and long-term capital gains on sale of land and also earned interest on bank deposits falling under the head income from other sources. During the year assessee has claimed Rs 5, 22,116/- as car insurance, depreciation and interest. Assessee further claimed interest of Rs 2, 49,345/- on amount borrowed from his HUF and claimed the same u/s. 24(b). Both of these amounts were disallowed by the AO and assessed the income accordingly. Assessee being aggrieved with this order filed an appeal before the Ld.CIT (A). In his order u/s. 250 Ld.CIT (A) also confirmed the order of AO.

2. Being further aggrieved assessee approached us through this appeal. We have gone through the order of the AO, order of the Ld.CIT (A) and submissions of the assessee along with the case laws relied upon. It is observed that assessee was partner in 4 partnership firms as under:

Name of Partnership firm wherein the assessee is partner	Share of profit of the assessee from the partnership firm for AY 2012-13	Share of profit of the assessee from the partnership firm for AY 2013-14	Share of profit of the assessee from the partnership firm for AY 2014-15
M/s.Kul Shree Builders	NIL	NIL	NIL
M/s. Narmada Associates	NIL	NIL	NIL
M/s. Kadam Industrial Estate	No PAN and address provided by the assessee		
M/s. Shree Jyotirlinga Const. Co.	No PAN and address provided by the assessee		

3. During the year under consideration assessee has primarily income under every head except for salary and business and profession. As far as income from house property is concerned there is no scope of any expenditure to

be claimed other than specifically provided in that chapter. So far as expenses claimed by the assessee are concerned none of those are following in that list. Same is the situation with income under the head capital gains. As far as income from other sources are concerned assessee may claim this expenditure subject to having direct nexus with the income earned. As in this case assessee earned income from other sources from bank interest. There is no evidence adduced by the assessee that how income earned from bank interest can be set off against the expenditure claimed by the assessee.

4. Notwithstanding the above observation as reproduced (supra) in a table that assessee was partner in 4 partnership firms. Apparently, there is no income to the assessee in the form of interest on capital, remuneration or share of profit ([which is although exempt u/s. 10(2A)) secondly, even if assessee claimed these expenditures those should have been claimed by the respective partnership firms as assessee doesn't have any proprietary business or any income chargeable under the head business and profession from these firms. It is further observed that the M/s. Kadam Industrial Estate is an AOP through which the appellant earns rental income which is chargeable under the head income from house property.
5. We have gone through the submission of the assessee along with case laws relied upon. The case laws cited by the assessee are distinguishable on facts

of the case and are not applicable to the facts of the assessee. In his submission assessee submitted a table vide page no. 5 where he has declared various amount of income from three partnership firms during various years from AY 2010-11 to AY 2017-18 but no where it is on record that how these firms are running their business operations as no ITR and financials of these firms pertaining to operations are there on record. In that situation claim of the assessee can't be uphold and to substantiate its claim **we restore the matter back to the file of jurisdictional AO with a direction to verify the claim of the assessee in the light of documents mentioned above relating to the above said partnership firms and status of their business operations in the relevant period keeping in view the chart furnished by the assessee.** It is further pertinent to mention that claim of the assessee can't be allowed under the head house property, capital gains and income from other sources. The only head under which these expenses can be allowed is business and profession and that is to subject to verification of the operations of the partnership firms mentioned above, in which assessee is partner.

6. In the result appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 15th day of May, 2023.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 15/05/2023

Mahesh R. Sonavane

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy. /Asstt. Registrar)
ITAT, Mumbai