

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted Through Virtual Court)

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 124/Rjt/2016 &  
ITA No. 115/Rjt/2019  
Assessment Year: 2011-12**

Kantilal Babulal Solanki, 8 – Chitrakut Society, Nr. Nobal School, Junagadh  PAN No: BPZPS8321D (Appellant)	Vs	The Income Tax Officer, Ward-1(2), Junagadh  (Respondent)
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**Assessee Represented: Written Submission/None  
Revenue Represented : Shri Ashish Kumar Pandey, Sr.D.R.**

Date of hearing : 12-09-2023  
Date of pronouncement : 27-09-2023

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

These two appeals are filed by the Assessee as against the Appellate order dated 01-03-2016 and 22-04-2019 passed by the Commissioner of Income Tax (Appeals)-3, Rajkot arising out of the assessment order passed under section 144 and Penalty order u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2011-12.

2. Brief facts of the case is that the assessee is an individual. For the Asst. Year 2011-12 the assessee filed his Return of Income declaring total income of Rs.1,52,620/- only which is below the basic limit of Rs.1,60,000/-. The assessee has shown gross "income from other sources" amounting to Rs.6,72,483/- and claimed the expenses/deduction of Rs.5,19,863/- against the above income. The AO during the assessment proceedings required the assessee to justify the expenses/deduction under section 57 of the Act of Rs.5,19,863/- against the income earned from other sources. The assessee failed to file any reply to the FOUR notices issued under sections 142[1] and 143[2] of the Act and not filed any evidence for the above claim of expenses. Further the assessee failed to reply to the final Show Cause Notice issued by the AO. Accordingly, the AO treated the entire gross income of Rs.6,72,483/- as the total income of the assessee.

3. Aggrieved against the exparte assessment order the assessee filed an appeal before the Commissioner of Income Tax [Appeals]. Even before the Ld. CIT(A) none appeared on behalf of the assessee but only a Written Submission filed without any evidences on the claim of expenses incurred under section 57 of the Act. After considering the same the Ld. CIT[A] passed a detailed appellate order partly allowing the assessee appeal observing as follows:

*5.1 The assessment order gives clear indication that the assessment proceeding was initiated by system for verification of issue as indicated by CASS. It also indicates that even after giving half a dozen opportunities, none appeared from the side of the appellant to explain the item picked up for verification. The A.O. had disallowed the claim of deduction u/s.57 as appellant had not come forward to substantiate his claim even once. The A.O. had passed the order u/s.144 because of the persistent*

*non-appearance by appellant. But grounds of appeal as reproduced above give impression that A.O. had committed grave mistake in not giving opportunity to the appellant and therefore order passed u/s 144 should be annulled (Ground No.1 to Ground No.7). Considering the totally contradictory statement by the appellant, the assessment folder was called for. It is apparent from the assessment folder that:-*

- 1. The case was picked up for scrutiny to verify the claim of large deduction claimed u/s.57.*
- 2. In the return, gross receipt under the head 'Income from Other Sources has been returned at Rs.672483/- and against the same Deduction u/s.57 of Rs.519863/- has been claimed.*
- 3. Notices u/s.143(2), 142(1) and detailed questionnaire were issued in the manner as narrated in the assessment order.*
- 4. The notices as narrated in the assessment order were also dispatched by RPAD and at least on two occasions (notices u/s. 142(1) along with questionnaire dt.22/10/2013 & November 2013) these RPAD were received by the appellant as apparent from the acknowledgement.*
- 5. Vide letter dt. 22/1/2014 dispatched via RPAD, the appellant was clearly informed that non-compliance will result in disallowance of its claim u/s.57 and therefore appellant should submit books and other documents supporting his claim.*
- 6. There was not even one compliance by appellant and the assessment order was passed u/s.144 on 3/2/2014.*

*Under these circumstances, I do not find any force in the grounds (as referred above) raised by the appellant and accordingly Grounds No.1 to 7 are dismissed.*

*5.2 Ground Nos. 8, 9 & 10 are unnecessary and infructuous and no material, information, evidence or comparable case were submitted by the appellant. These grounds are dismissed.*

*5.3 Ground No.11 is regarding non-application of section 44AD by the A.O. suo-moto (or at least the principle of Section 44AD). It is a strange ground; appellant had shown Income from Other Sources; and not from any (small) business having eligible turnover as per Section 44AD. Section 44AD is applicable to assessee conducting small scale business*

*enterprises wherein concept of 'deemed profit' on presumptive basis can be safely applied as business results are generally predictable in long run. But how can this principle be applied in case of receipts falling under the head 'Income from other sources' which are unsystematic, often onetime, non-recurring transaction with no predictable outcome. Obviously, there is no force in this ground and the same stands dismissed.*

*5.4 Rest of the grounds are specifically with the plea that total gross receipts of Rs.672483/- should not be taxed entirely without giving deduction to any expenditure. The Ld. AR has pointed out to a double addition wherein the net receipt of Rs.152620 (i.e. gross receipt of Rs.672483 less deduction u/s.57 of Rs.519863) was again added back with the gross receipts of Rs.672483- and not with the deduction u/s.57. To this extent, the AR's argument is correct.*

*5.5. But the further argument that some deduction should be given on an estimate basis even if no details have been submitted by the appellant as gross receipt can never be the net income, lacks logic. As already indicated, the return as well as the written submission during the appellate proceedings does not show that assessee is conducting any business. The logic given above and the case laws cited in support this logic definitely hold force in the case of any systemic enterprise of business which requires capital, efforts and expenses to derive the income out of the gross receipts/But in the case of non-recurring, non-systematic, one-time receipts falling under the head of "other sources" this logic does not apply unless the appellant is able to show that these receipts are also basically of the nature of a secondary or accessory business. For eg. a trader-manufacturer may also indulge in the side business of money lending or share trading and may return the receipts thereof under the head 'Income from other sources' after claiming the required expenses, viz. interest, brokerage etc. But in the present case, no such material is available to arrive at the conclusion that the appellant is actually running a small business. He has himself offered his receipts as income from other sources' and claimed deduction u/s.57. Verification of this deduction was the main purpose of the assessment. The receipt being under the head income from other sources, it was on the appellant to prove and substantiate that he has actually incurred an expenditure of Rs.519863 in earning the gross receipts of Rs.672483. Despite repeated opportunity given by the AO, no details of this item of claim was submitted nor any details of this deduction. i.e. its nature, relation with the receipt etc. were submitted during the appellate proceedings. The primary onus claiming this deduction is on the appellant in which he has miserably failed. In such- circumstances, invoking general principle that no business can be run without incurring expenditure is not proper on the part of the appellant.*

*First of all, he has to show that he is running a business and he has incurred certain expenses and these expenses have relation with the receipt. He has not done any such thing and wants to take shelter of the general principle that some expenses should be estimated and allowed to the appellant. This argument is not only invalid but lacks bonafide also as appellant was consistently avoiding giving details and appearing before the A.O. These grounds are dismissed.*

*5.6 In a nutshell, the A.O. is directed to delete the double addition, Le to substitute the amount of disallowance from Rs.672483 to Rs.519863. Subject to this, the addition is confirmed.*

4. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

*1. The Ld. CIT(A) has erred in law as well as on facts in confirming an assessment order passed U/s. 144 of the act. The order deserves annulment.*

*2. The Ld. CIT(A) has erred in law as well as on facts in not considering that no reasonable opportunity was provided to the appellant by the Ld. A.O. The order deserves annulment.*

*3. The Ld. CIT(A) has erred in law as well as on facts in confirming passing of order U/s. 144 without properly service of the notice on the appellant. The proceedings being bad in law deserve annulment.*

*4. The Ld. CIT(A) has erred in law as well as on facts in not considering that the Ld. A.O. has not provided material available with him and utilized against the assessee. The assessment thus made is in violation of principles of natural justice and deserves annulment following the guidelines issued by the Hon. Supreme Court in 249 ITR 216 (SC).*

*5. The Ld. CIT(A) erred in not considering that there was error by the Ld. A.O. in not giving any notice against propose determination of total income as made by him and thereby violated the principals of natural justice.*

*6. The Ld. CIT (A) has erred in not considering that by not giving any notice against propose determination of total income as confirmed by him was without providing opportunity to the assessee for invocation a provisions of section 144A and depriving the assessee to have the*

- benefit of valuable guidance of Joint CIT Sir, though statutorily provided.*
- 7. The assessment order passed being bad in law ought to have been annulled.*
- 8. The Ld. CIT(A) has erred in law as well as on facts in confirming addition of Rs. 6,72,473/- (as per A.O. para 3 Rs. 5,19,863/-). The same needs deletion.*
- 9. The Ld. CIT(A) has erred in law as well as on facts in confirming addition Rs. 6,72,473/- (as per A.O. para 3 Rs. 5,19,863/-) based on irrelevant material. The same needs deletion.*
- 10. The Ld. CIT(A) has erred in law as well as on facts in not considering the expenses, deductions and exemptions available to the appellant under the various provisions of the Act.*
- 11. Without prejudice, the Ld. CIT(A) has erred in law as well as on facts in not applying guidelines available U/s. 44AD. The taxability of gross income in full is neither legal nor statutory nor logical.*
- 12. Without prejudice, the income determined needs suitable reduction.*
- 13. Without prejudice the Ld. CIT(A) erred confirming disallowance of expenditure at 100%. The same needs suitable reduction.*
- 14. Without prejudice the Ld. CIT(A) erred in not considering the identical cases to compare his own action. The assessment needs annulment.*
- 15. The appellant craves leave to add/alter/amend and/or grounds of appeal before the actual hearing takes place.*
5. None appeared on behalf of the assessee and the assessee has Not Authorised any Representative to appear on his behalf, but filed a Five pages Written Submission without any evidences in support of his claim. So with the available materials on record and

with the assistance of Ld Sr DR, we need to proceed with the appeal.

5.1. It is seen that this is the second round of appeal before us, while in the first round of appeal, Co-ordinate Bench of this Tribunal dismissed the assessee appeal vide order dated 20-09-2019 observing as follows:

“... 8. We have heard the learned DR and perused the materials available on record. The assessee in the instant case has shown gross income of ₹6,72,483 and claimed an expense of ₹5,19,860 against such gross income leaving the balance of ₹1,52,620 under the head ‘income from other sources’. The authorities below made the disallowance of all the expenses claimed by the assessee against the gross income of ₹6,72,483 in the absence of any documentary evidence.

8.1 From the preceding discussion, we note that the primary onus lies on the assessee to justify the nature of the income shown under the head other sources but the assessee has failed to clarify the same. Similarly, the assessee has not specified the nature of the expenses against such gross income based on any cogent material.

8.2 Generally, the income cannot be generated without incurring the expenses qua to the income. But it does not apply to each and every kind of income. For example, in case the assessee has invested his own fund in the bank account and earning interest income thereon. Then, there cannot be any claim of the expenses against such income. Yet, if the assessee claims any expense against such income, then the onus lies on the assessee to justify such expenses based on the documentary evidence.

8.3 The provisions of section 57 of the Act requires that the expenditure against the income from other sources will be deducted provided it is not in the nature of capital expenditure and laid out or expended wholly and exclusively for the purpose of making or earning such income. Thus, it is the duty of the assessee to justify

that the deduction claimed by him was incurred in connection with the impugned gross income. But the assessee, failed to do so.

Therefore, we do not find any reason to interfere in the finding of the authorities below. Hence the ground of appeal of the assessee is dismissed.”

6. It is thereafter assessee filed MA No.35/RJT/2020 dated 21-12-2022 and thereby this above order was recalled on the ground that another Co-ordinate bench decision dated 14-09-2022 in the case of Naranbhai Rambhai Zala -Vs- ITO in ITA No.477/RJT/2017 was not considered by this Tribunal.

6.1. Thus this is the second round of appeal before us, as stated earlier, None appeared on behalf of the assessee but a Written Submission is filed by the assessee, the same is considered carefully. This Written Submission is filled with all the provisions of the Income Tax Act, but without any piece of evidences like bills, vouchers, etc about the claim of expenditure u/s.57 to earn this ‘income from other sources’.

6.2. In para 3.1. of the Written Submission, assessee claims that AO is not correct in disallowing 100% expenses of Rs.5,19,683/- and relied upon few case laws. It is clear from the orders of the lower Authorities that the assessee neither filed any details before any Authorities nor before this Tribunal to establish its claim of expenses. Further the assessee failed to appear before the Ld AO and not responded to any of the notices issued under section 143[2] or 142[1] of the Act which were duly served on the assessee for five times. In the absence of relevant evidences on the claim of expenses u/s.57 of the Act, the case laws relied by the assessee are

therefore not clearly applicable to the facts of his case and the same is hereby rejected.

6.3. In paras 3.2 and 3.3 of the Written Submission, the assessee claims that AO made exparte assessment with undue addition and relied upon various case laws.

6.4. It is seen from the assessment order, the assessee was issued with u/s. 143(2) notice on 08-08-2019 and thereafter u/s. 142(1) notices on 04-09-2013, 22-10-2013, 19-11-2013 and 22-01-2014 requesting the assessee to furnish basic information of the expenses claimed by the assessee. For all the above notices, the assessee neither attended nor filed adjournment or any explanation about the expenses. Therefore with the available materials on record, the Ld. Assessing Officer disallowed the claim of expenses. Even before the Ld. CIT(A) only a written submission was filed by the assessee without any material details or evidences on the claim of deduction u/s. 57 of the Act. Thus the assessee's submission before us are clearly contradictory and the case laws relied thereon is clearly distinguishable and will not be applicable to the facts of the present case.

6.5. In Para 4 of the written submission, the assessee claimed that the provisions of Section 44AD and levy of tax at 8% and thereby the Act itself provides 92% of the income is allowable for expenditure in case of small businessman. The Ld. CIT(A) considered the above submission of the assessee and held that the assessee has shown "income from other sources" only and not from

“Business income” who is eligible to make provisions of Section 44AD of the Act. We do not find any force in the arguments of the assessee. Therefore this submission of the assessee is hereby rejected.

6.6. The other submissions made by the assessee in Paragraphs 5 to 8 are has no relevance to the claim of expenses u/s. 57 of the Act. In this paragraph, the assessee pleads that he is a very small taxpayer, no assessment proceeding has been taken place for any preceding or succeeding assessment years and the assessee was heavily burden with levy of penalty u/s. 271(1)(c) of the Act.

7. It is seen from the Penalty order, the Ld. A.O. proceeded with the Penalty proceedings after the disposal of appeal by Ld. CIT(A) who has confirmed the disallowance of Rs. 5,19,863/-. The A.O. issued a show cause notice dated 08-01-2018 and served on the assessee by RPAD to explain its case on 29-01-2018. Even for this Penalty proceedings, the assessee has not responded thereby the Assessing Officer imposed a minimum penalty of Rs. 70,551 under section 271(1)(c) of the Act. Even before the Ld. CIT(A), the assessee has mentioned about the pendency of the appeal before the ITAT and not explained the expenditure claimed u/s. 57 of the Act. Therefore the Ld. CIT(A) also confirmed the levy of penalty u/s. 271(1)(c) of the Act.

8. As it can be seen from the assessment proceeding as well as penalty proceeding, the assessee failed to substantiate its claim of expenditure made u/s. 57 of the Act to earn the “income from other

sources". In the absence of the same, even before the Lower Authorities as well as before this Tribunal mere filing written submission for 5 pages without any material evidences cannot yield good result to the assessee. We do not find proper assistance from the assessee by simply filing a written submission without any material evidences before us as well as before Ld. CIT(A). It is not the case of the Revenue that made the addition without hearing the assessee, whereas five opportunities were given to the assessee to explain its case which were never responded by the assessee and nor filed any details or evidences in respect of the expenses claimed u/s. 57 of the Act.

8.1. The decision cited by the assessee in Narenbhai Rambhai Zala case is also distinguishable with the facts of the present case. Therefore, we have no hesitation in confirming the order passed by the Lower Authorities. Thus the grounds of appeal raised by the assessee is hereby rejected.

9. In the result, the quantum appeal in ITA No. 124/Rjt/2016 filed by the assessee and Penalty appeal in ITA No. 115/Rjt/2019 filed by the assessee are hereby dismissed.

Order pronounced in the open court on 27 -09-2023
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**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 27/09/2023**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
राजकोट