

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

**BEFORE: SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 1117/Ahd/2025
(निर्धारण वर्ष / Assessment Year : 2018-19)

Income Tax Officer Ward 4(1)(1), Ahmedabad	बनाम/ Vs.	Shri Govindam Agro Foods Private Limited B-14, Phase-2, GIDC Industrial Area, Naroda, Ahmedabad, Gujarat – 382330
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAMCS0204K		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Smt. Mamta Singh, Sr.DR
प्रत्यर्थी की ओर से/Respondent by :	Shri Bhupendra Singh Rajput, AR

Date of Hearing	02/09/2025
Date of Pronouncement	07/11/2025

(आदेश)/ORDER

PER ANNAPURNA GUPTA, AM:

The present appeal has been filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals), (hereinafter referred to as “CIT(A)”), National Faceless Appeal Centre (hereinafter referred to as “NFAC”), Delhi dated 27.03.2025 passed under Section 250 of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) and relates to Assessment Year (A.Y.) 2018-19.

2. Ground No.1 raised by the Revenue reads as under:

“(a) The Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs1,06,68,000/ on account of cessation of liability u/s 41(1) of the Act despite the fact the assessee has shown "Loan Taken from others" in liability side of Balance Sheet and there was no change in the credit balances of the loans during the AY 2018-19 as compared to previous years and the assessee has failed to furnish basic documentary evidences such as confirmation from lenders, bank trail evidencing receipt of loans or loan agreements to establish the genuineness of transaction.”

3. The issue involved in the above ground relates to addition made of outstanding loans amounting to Rs.1.06 Crores u/s.41(1) of the Act. The facts relating to the issue is that during assessment proceedings the AO noted that loans amounting to Rs.1,06,68,000/- were outstanding for more than three years and had neither been repaid nor any interest paid thereon. Further noting that the loan must have been used for working capital purposes and expenses claimed on account of same, he held that the provisions of Section 41(1) of the Act were attracted which required trading liabilities incurred by the assessee which had seized to exist, to be treated as income of the assessee. Accordingly, he added the amount of outstanding unsecured loans of Rs.1.06 Crore to the income of the assessee invoking Section 41(1) of the Act.

4. The Ld. CIT(A), however, deleted the addition noting that the loans were not utilized for working capital purposes but in fact were utilized for incurring capital expenditure. He accordingly held that the provisions of Section 41(1) of the Act did not apply

and, therefore, in the facts of the present case, directed the deletion of addition made. The factual findings of the Ld.CIT(A) with regard to the unsecured loans having been utilized for the purpose of incurring capital expenditure and not for working capital purposes is contained at page 5 of his order as under:

“During the course of appellate proceedings, the appellant has submitted that at the time of acceptance of these loans there were no commercial activities in the company and the amount was utilised for the purpose of capital expenditure incurred to establish the manufacturing unit. The company started commercial activities during the year only and for the purpose of working capital the company had accepted share capital too. The appellant has also stated that it may also be verified that working capital involvement is very less i.e. 20.82 lakhs (Inventories 18.04+Sundry Debtors 14.78 less Current Liabilities 12.00 lakhs) and which is from share capital and not from unsecured loans. The appellant has provided the copy of audited financial statements for the year 2009-10 to show that the loans were outstanding and no commercial operations existed in that year.

From the submissions of the appellant, it is clear that the Ld. AOs assumptions that the amount was taken for the purpose of working capital utilisation is not correct. The application of section 41(1) of the Act is also not correct in respect of the aforesaid submissions of the appellant.”

5. Ld. DR before us relied on the order of the AO though he was unable to controvert the factual findings of the Ld. CIT(A) that the unsecured loans were not utilized for working capital purposes. In the light of the same and noting the findings of the Ld. CIT(A) to the effect that when the impugned loans of Rs.1.06 Crores were taken by the assessee company, no commercial activity had been commenced therein, it remains an uncontroverted fact that the impugned loans were utilized for capital purposes in the company and not for revenue purposes. Having noted so and

also having noted the fact that the AO's case for making addition on account of cessation of the impugned liability rested on the fact that these loans were utilized for working capital purposes, we see no reason to disagree with the Ld. CIT(A) that the provisions of Section 41(1) of the Act did not apply in the present case when the basic fact on the basis of which the AO proceeded to apply Section 41(1) of the Act itself stood reversed i.e. the utilization of the loans for revenue purposes as noted by the AO which on the contrary was found to have been utilized for the capital purposes by the Ld. CIT(A) and which fact has remained undisturbed before us. In the light of the same, we find that there is no case made out by the Revenue before us against the deletion of addition made u/s. 41(1) of the Act amounting to Rs.1.06 Crore.

6. Ground of appeal No.1 is, therefore, dismissed.

7. The Ground No.2 of appeal raised by the Revenue as under:

“(b) The Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs 7,66,531/ on account of disallowance u/s 37 for business expenses despite the fact that the assessee has failed to furnish corroborative evidences like vouchers, bills, payments proofs or third party confirmation to establish that the expenditure was incurred wholly and exclusively for business purpose.”

8. The issue involved in the above ground relates to disallowance of expenses made by the AO u/s.37(1) of the Act. The facts related to the issue is that during assessment proceedings the AO noted the assessee to have debited various expenses to his P&L account amounting to Rs.25,55,104/- for which no details

like PAN, address, identity and source of payments and purpose had been submitted to establish the genuineness of the payments. The AO, accordingly, disallowed 30% of the total amount of these expenses, resulting in addition of Rs.7,66,531/- being made to the income of the assessee.

9. The Ld. CIT(A), however, noted that the assessee had submitted various bills and vouchers alongwith copy of ledger account of the expenses to the AO who had completely ignored the same and noting so he found no basis with the AO to have made on ad hoc disallowance of expenses and, accordingly, directed deletion of the same.

10. Before us, the finding of fact recorded by the Ld. CIT(A) that the assessee had submitted all bills and vouchers alongwith the ledger account of the expenses has remained uncontroverted by the Ld.DR. In the light of the same, we agree with the Ld. CIT(A) that the very basis with the AO for making an ad hoc disallowance of these expenses i.e. non-submission of details and evidences relating to these expenses, does not remain. Ld. CIT(A), therefore, we hold, has rightly directed the deletion of the ad hoc disallowance made by the AO.

11. Ground of appeal No.2, accordingly, is dismissed.

12. The Ground No.3 of appeal raised by the Revenue as under:

“(c) The Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs 1,08,80,385/- u/s 40A(3) of the Act in respect of cash payment despite the fact that the assessee has not furnished complete evidences to establish that no payments above Rs. 10,000/- made in cash.”

13. The issue involved in the above ground relates to the disallowance of expenses amounting to Rs.1,08,93,739/- made by the AO by invoking Section 40A(3) of the Act noting that the expenses had been incurred in cash in excess of the limit specified for the same under the said Section. The Ld. CIT(A), however, noted that as a matter of fact that all the expenditures had been incurred through banking channels. His findings in this regard are contained at page 6 of the order as under:

“During the course of appellate proceedings, the appellant has again filed the final salary sheet and explained the mode of payment of expenditure on the salary expenses. The appellant has provided the details of expenditure incurred through banking channel alongwith copy of relevant bank statements. It can be seen that all the expenses excess of Rs. 10,000/- have been made through banking channel by the appellant.”

14. Before us, the finding of the Ld. CIT(A) of the impugned expense having been incurred by way of banking channels has remained uncontroverted by the Ld. DR. In view of the same, we find that the very basis with the AO for disallowing the impugned expenses on account of the same having been incurred in cash in excess of the limit specified u/s.40A(3) of the Act does not survive. We, therefore, see no reason to disagree with the Ld. CIT(A) that the AO had wrongly invoked the provisions of Section 40A(3) of the Act in the facts of the present case. The order of the

Ld. CIT(A), therefore, directing the deletion of addition made u/s.40A(3) of the Act amounting to Rs.1,08,93,739/- is upheld.

15. Ground of Appeal No.3 is dismissed.

16. The Ground No.4 of appeal raised by the Revenue as under:

“(d) The Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs 1,59,728/- u/s 28 of the Act on account of Audit Fees Payable and Statutory due payable despite the fact that the assessee has furnished contradictory replies during assessment proceedings and has not submitted any payment evidence.”

17. The issue involved in the above ground relates to addition made of Rs.1,59,728/- u/s.28 of the Act on account of provision made for audit fees. The addition being made on account of no evidence being submitted by the assessee for the provisions so made. Before the Ld. CIT(A), the assessee submitted that the provisions for audit fees had been made as per accounting standard and that it was not a statutory provision which was required as per law to be paid before the date specified in law for claiming deduction under the Income Tax Act. The Ld. CIT(A) agreed with the contention of the assessee and directed the deletion of the disallowance made.

18. We have noted that before the AO the assessee had submitted that the provision of audit fees payable of Rs.1,20,000/- was not only in relation to the impugned year but also included provisions made in earlier years and were certified by the Auditors

themselves who had signed the balance sheet. Considering the above contention of the Ld. Counsel for the assessee, we are in complete agreement with the Ld. CIT(A) that there was no occasion at all for disallowing provision for audit fees amounting to Rs.1,20,000/-. The genuineness of the expenditure was confirmed by the Auditors themselves who had signed the balance sheet and merely because it was outstanding for payment did not warrant any disallowance of the same. In view of the above, the order of the Ld. CIT(A) deleting the disallowance of audit fees payable amounting to Rs.1,20,000/- is upheld.

19. Ground of Appeal No.4 is dismissed.

20. In the result, appeal filed by the Revenue is dismissed.

This Order pronounced on 07/11/2025

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad; Dated 07/11/2025

S. K. SINHA

True Copy

आदेश की प्रतिलिपि अद्योषित/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.

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

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