

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 3446/Ahd/2016
(निर्धारण वर्ष / Assessment Year : 2010-11)

Alpesh Girishbhai Patel 11, Gopi Nagar, College Road, Nadiad - 387001	बनाम/ Vs.	The ACIT Kheda Circle, Nadiad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AHUPP1695F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri S. N. Divatia, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri S. K. Dev, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	31/07/2019
घोषणा की तारीख /Date of Pronouncement	02/08/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-2, Vadodara ('CIT(A)' in short), dated 20.09.2016 arising in the penalty order dated 23.03.2015 passed by the Assessing Officer (AO) under s. 271(1)(c) of the Income Tax Act, 1961 (the Act) concerning AY 2010-11.

2. As per grounds of appeal, the assessee has challenged the imposition of penalty under s. 271(1)(c) of the Act in respect of additions to the extent

of Rs.6,58,616/- towards claim of various expenses, such as, car loan interest, petrol expenses, salary expenses, telephone bill etc.

3. When the matter was called for hearing, the learned AR for the assessee assailed the order of the AO and the CIT(A) and submitted that the assessee has *inter alia* had claimed certain expenses of Rs.6,58,616/- from income reflected under the head 'income from other sources'. The AO framed assessment by disallowing expenses and made additions on estimated basis. It was submitted that all the material facts relevant for assessment were placed on record. The learned AR submitted that while the disputed disallowances might have been sustained in the quantum proceedings by appellate authority including ITAT, this by itself, is not sufficient to warrant imposition of penalty under s. 271(1)(c) of the Act which is altogether a different and independent proceedings. It was submitted that expenses have been incurred to earn business income and are therefore deductible from business income although incorrectly claimed under the head 'income from other sources'. As regards disallowance of car expenses and car depreciation, it was contended that the observation of the lower authorities that no evidence regarding ownership of vehicle has been submitted is incorrect. The learned AR for the assessee referred to the balance sheet of the assessee concerning AY 2007-08, 2008-09 and 2009-10 to submit that the vehicles have been duly reflected in the balance sheet. The registration of vehicle in the name of assessee is not necessary. The assessee has purchased two vehicles and is reflected in the balance sheet. The learned AR for the assessee submitted that the disallowance in the quantum proceedings for inadequacy of evidences should not lead to imposition of onerous penalty.

4. The learned DR, on the other hand, pointed out that the disallowance of expenses have been confirmed by the co-ordinate bench of ITAT in ITA No. 1243/Ahd/2014 concerning AY 2010-11 where the ITAT has clearly observed lack of any evidence as well as utilization of such expenses for the purpose of business of various firms where assessee is a partner, the

income of which received by way of salary interest is assessed as 'business income'.

5. We have considered the rival submissions. The imposition of penalty under s. 271(1)(c) of the Act on disallowance of business expenses claimed is in controversy. While rejecting the claim of expenses of assessee in quantum proceedings the co-ordinate bench of ITAT in *ITA No. 1243/Ahd/2014* order dated 06.01.2017 has recorded its findings as under:

"4. We now come to assessee's latter substantive ground that the CIT(A) as well as the Assessing Officer have erred in disallowing business expenses of Rs.6,44,023/-. We first come to assessee's tabulation in page 5 of the CIT(A)'s order and notice that the above disallowance figure comprised of car loan interest, car depreciation, bank commission, petrol expenses, car expenses, salary & telephone expenses of Rs.78,702/-, Rs.4,38,257/-, Rs.2985/-, Rs.6400/-, Rs.65,356/-, Rs.51,000/- & Rs.1323/-; respectively. The Assessing Officer observed that the assessee had not furnished any evidence regarding ownership of the vehicles in question followed by their utilization for the purposes of the business of seven firms wherein he is a partner. He further noticed that there was no proof by way of vouchers and bills etc. regarding other claims of expenditure.

5. We now come to the CIT(A)'s order wherein he observed that the assessee has not been able to demonstrate in any manner as to how the above expenses shown in the computation of income are incurred for the purpose of business and earning of the business income in question. This leaves the assessee aggrieved.

6. We have heard both the parties. Relevant findings in both the lower authorities' orders stand perused. The assessee has not been able to file any evidence in the instant appeal so as to substantiate his claim of having incurred all heads of the above expenses by way of car loan interest, depreciation, bank commission, petrol expenses, car expenses, salary and telephone charges. We make it clear that there is not even a single piece of paper in the nature of a self-attested voucher to fortify any of the above claim of expenditure much less than the substantive evidence of ownership of the corresponding vehicles and their nexus with assessee's business income. We thus find no reason to agree with assessee's expenditure claim in question amounting to Rs.6,44,023/-. We thus confirm the same. The assessee losses in its latter substantive ground as well."

6. A bare reading of the quantum order shows that the assessee could not substantiate the claim of expenses claimed by him by any documentary evidence in the quantum proceedings. Even in the penalty proceedings, the assessee has failed to substantiate the expenses except for making generalized observations towards existence of car in the balance sheet and

incurring other expenses. The entry shown in an unaudited balance sheet does not inspire confidence in the absence of any tangible documentary evidence adduced. The claim of the expenditure allegedly incurred in relation to earning of income by way of interest and remuneration from partnership firm is also totally unproved in the quantum proceedings. The explanation offered by the assessee, thus, cannot be assumed to be bonafide. In the absence of relevant facts relating to expenses claimed, the observations of the co-ordinate bench in quantum proceedings would squarely apply. We also note that the CIT(A) has categorically observed the claim of the assessee to be false and without any evidence. The plea of the assessee sounds hollow on the face of such reasonings. We thus find no infirmity in the conclusion drawn by the CIT(A) and thus decline to interfere therewith.

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

This Order pronounced in Open Court on 02/08/2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad: Dated 02/08/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

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

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।