

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ C ” BENCH, AHMEDABAD

BEFORE SHRI MUKUL Kr.SHRAWAT, JUDICIAL MEMBER And
SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.1727/Ahd/2010
(निर्धारण वर्ष / Assessment Year : 2006-07)

Tushar Shantilal Kothari 11, Parvatinagar B/h. Shyamal Row House Satellite, Ahmedabad	बनाम/ Vs.	Dy.CIT Circle-5 Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABEPK 2434M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Shri R.R.Shah
प्रत्यर्थी की ओर से/Respondent by :	Shri D.K.Singh, Sr.D.R.

सुनवाई की तारीख / Date of Hearing : 23/1/2013
घोषणा की तारीख /Date of Pronouncement : 31/1/13

आदेश / ORDER

PER SHRI MUKUL Kr. SHRAWAT, JUDICIAL MEMBER :

This is an appeal filed by the Assessee arising from the order of CIT(A)-XVI, Ahmedabad dated 8/03/2010 and the grounds raised are hereby decided as follows:-

1. *The Learned CIT(A)-XVI Ahmedabad has erred in confirming the adhoc addition of Rs.50,000/- (Rupees fifty thousand only on account of low GP – para 3 of the Assessment order page no.4.*

2.1. Facts in brief as emerged from the corresponding assessment order passed u/s.143(3) dated 15/12/2008 were that the assessee in individual capacity is in the business of whole-sale trading of auto-parts. It was noted by the AO that there was a fall in Gross Profit ratio. The assessee's explanation was that the whole-sale business was started from the earlier year and in that year the turnover was only Rs.7,60,000/-. As against that, it was explained that the turnover for the year under consideration was Rs.1,30,14,045/-. Because of the high turnover, the GP had gone down from 16.77% of the past year to 6.10% for the year under consideration. It has also been explained that the assessee had maintained complete stock record and the accounts were audited u/s.44AB of IT Act. However, the AO was not convinced and in his opinion, the valuation of the closing stock was not calculated by including the overheads. In his opinion, the stock was not maintained for different types of auto-parts. Resultantly, by applying provisions of section 145(3) of IT Act an adhoc addition of Rs.50,000/- was made. In first appeal, the action of the AO was confirmed.

3. Having heard the submissions of both the sides, we are of the considered opinion that the impugned disallowance/addition was on adhoc basis without assigning any specific reason. The only reason given by the AO was that the assessee had not included the overhead expenses while valuing the closing stock. But the question is that whether it was found by the AO that the assessee in fact had incurred overhead expenses which were required to be added in the value of the closing stock. As far as the explanation in respect of reduction in the

percentage of Gross Profit was concerned, we have noted that the wholesale business of auto-parts trading was started recently from the earlier year and in that year the turnover was nominal comparing to the turnover of the year under consideration, as noted supra. The correct picture of the Gross Profit of the whole year was therefore recorded in the books of accounts during the year under consideration which were found to be audited as per the provisions of section 44AB of the Act. Thus, considering all these circumstances the estimated addition is devoid of merits, hence we hereby direct to delete the same. Ground allowed.

4. Ground No.2 reads as under:-

2. *The Learned CIT(A) has wrongly opined that the AO can examine whether the tenant has incurred any expenditure towards the repair of the said premises and if yes, it would be included in the ALV of the property para 4.1 page of the Assessment order.*

4.1. It was noticed by the AO that the rent from the house property was disclosed at Rs.7,70,000/-. On examination of rent-deed, it was noticed by the AO that the repairing charges were required to be borne by the tenant. The contention of the AO was that the assessee has also claimed a deduction of 30% u/s.24(a) of IT Act which was nothing but allowance of repairs expenses. The AO has thus viewed that on one hand the assessee is claiming the benefit of repair expenses, however on the other hand, the repairing charges were borne by the tenant. Thus, the benefit of same expenditure would have been taken by both the persons at a

time. He has therefore disallowed the claim of 30% deduction of Rs.2,31,000/-. The matter was carried before the first appellate authority.

5. Although Id.CIT(A) was in agreement with the argument of the assessee that the deduction @30% as per section 24(a) is a statutory deduction in respect of income from house property, irrespective of the fact whether any expenditure was incurred towards repairs or not, but such type of arrangement had bearing on the Annual Letting Value of the property. In the opinion of Id.CIT(A), the Annual Letting Value of the property would be less if a tenant undertakes the responsibility of repairs, then the annual letting value of the property if the owner undertakes the repairs. According to him, AO can examine and determine the Annual Letting value and in case expenditure is to be borne by the tenant, then it would be includible in the Annual Letting Value of the property. He has directed the AO to determine the Annual Letting Value although he has deleted the disallowance by making the following observations:-

“4.1. I have considered the submissions of the app. The deduction of 30% in section 24(a) is mandatory in respect of all the assessee deriving income from house property irrespective of the fact whether any expenses towards repairs has been incurred by the assessee or not. To this extent I agree with the app that the Assessing Officer cannot make any disallowance of this 30% deduction u/s.24(a) on the pretext that as per rent deed the tenants are supposed to incur the expenditure towards repairs. But at the same time it will have some baring on the annual letting value of the property. In other words, the annual letting value of the property would be less if a tenant undertakes the responsibility of repairs than the annual letting value of the property if the owner undertakes the repairs himself. The Assessing Officer can examine whether the tenant has incurred any expenditure towards the

repair of the said premises, if yes, in my opinion, it would be includible in the value of annual letting value of the property. If no expenses towards repairs are incurred by the tenant, then the annual letting value would be the amount of actual rent received from this party. In other words, the Assessing Officer is free to determine the annual letting value of the property after considering the treatment of repairs undertaken by the tenant. He cannot make any disallowance u/s.24(a) as done by him in this case. Subject to the above, the disallowance of Rs.2,31,000/- is deleted.”

5.1. At the outset, our attention was drawn on a decision of ITAT Mumbai pronounced in the case of Mukesh D.Ambani [2006] 7 SOT 521(Mum.) and the relevant portion is reproduced below:-

“On the one hand, the terms of the agreement were explicit and unambiguous that the licensor was under an obligation to maintain the premises in question and bear the cost of maintenance. The licensee was also under obligation to reimburse the proportionate share in respect of the monthly outgoings, in respect of maintenance charges etc. On the other hand, it was not clear why the said amount was treated by the Assessing Officer as rent receivable in the hands of the assessee specially when the expenditure was nothing but outgoings in respect of the said flats. How an expenditure could be treated as rent received by the owner, was not clear from the order of the revenue authorities. In several cases the ratio laid down by the Court is that where the tenant has agreed to pay the maintenance charges or accepted to bear the cost of repairs, the same should not be ground for holding that the stipulated rent does not represent the annual letting value specially when there was no evidence or finding to show that the rent received was low compared with the prevailing rent for similar premises in the same locality. Further, in the instant case, admittedly, the expenditure were in respect of bills raised by the co-operative society having no element of income in the hands of the owners. Therefore, the annual value was wrongly determined

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by the Assessing Officer, and hence, there was no need to adjudicate upon the alternative grounds that the expenditure incurred might be allowed under section 57. [para 4]”

5.2. In the present set of facts, we have noted that the AO had considered the impugned repair expenditure as annual rent in the hands of the assessee which was without any basis. As far as the assessee was concerned, the deduction @ 30% is like a standard deduction as prescribed u/s.24(a) of IT Act, not necessarily incurred towards repairs of the house property as held in the case of JB Patel & Co. 118 ITD 556. Therefore, the alleged allegation of the AO that at the same time this expenditure would have been claimed both by the owner as also by the tenant has no legal basis, thus hereby overruled. We are also not convinced with the directions of the Id.CIT(A) that the amount of expenditure would be includible in the Annual Letting Value of the property, as it was held in the case of Mukesh D.Ambani (supra). Under the totality of the circumstances of the case, we hereby reverse the factual as also legal findings of the authorities below and direct to delete the addition.

6. In the result, Assessee’s appeal is allowed.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-
(MUKUL Kr. SHRAWAT)
JUDICIAL MEMBER

Ahmedabad; Dated 31/ 1 /2013

टी.सी.नायर, व.नि.स./ T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/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)-XVI, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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