

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER

ITA No. 6061/MUM/2014  
(Assessment Year : 2010-11)

Income Tax Officer 14(2)(2),  
R.No. 304, 3<sup>RD</sup> Floor,  
Earnest House, Nariman Point,  
Mumbai -21

... Appellant

Vs.

M/s. Pattani Opticals & Contact Lens Clinic ,  
42, Ridge Road, Mini Purab Apartment,  
Walkeshwar, Mumbai 400 026  
PAN : AAAFP 8247L

.... Respondent

Appellant by	:	Shri Sunil Kumar Agarwal
Respondent by	:	Ms. Vinita Shah
Date of hearing	:	20/10/2015
Date of pronouncement	:	20/10/2015

**ORDER**

**PER G.S. PANNU,AM:**

The captioned appeal is preferred by the Revenue and is directed against the impugned order dated 23/07/2014 of CIT(A)-25, Mumbai, pertaining to the assessment year 2010-11, which in turn has arisen from an order passed by the Assessing Officer dated 11/03/2013 under section 143(3) of the Income Tax Act, 1961( in short "the Act").

2. In this appeal the Revenue has raised the following Grounds of appeal:-

*“1. On the facts and in the circumstances, the CIT(A) has erred in deleting the addition of Rs.17,63,276/- being interest paid to the partners on notional capital being capital accretion on revaluation of shop.*

*2. On the facts and in the circumstances, the CIT(A) has erred in allowing the interest paid to the partners on capital balances which reflects book entry only, the partners did not bring any money or new capital asset in the firm.*

*3. For the above mentioned reason and any other reasons that may be urged at the time of hearing, it is requested that the order of the CIT(A) be quashed and that of the AO be restored.”*

3. Briefly put, the relevant facts are that the respondent assessee is a partnership firm, which is engaged in the business of retail trading of Spectacles, etc. In the assessment finalized under section 143(3) on 11/3/2013, the Assessing Officer made a disallowance of Rs.17,63,276/- out of interest paid to partners on notional capital. The relevant background is that shop premises owned by the assessee firm were revalued in the past Assessment Year of 2000-01 and corresponding credit was given to the capital account of the partners. In Assessment Year 2000-01 and in some of the subsequent Assessment Years including the Assessment Year under consideration, the Assessing Officer treated such amount credited to the partner's capital account as a notional capital and disallowed interest paid on such capital balance. For Assessment Year under consideration, such disallowance worked out to Rs.17,63,276/-, which is the subject matter of dispute before me.

4. The CIT(A) has since set aside the action of the Assessing Officer by noticing that in the preceding Assessment Years of 2007-08 and 2008-09 in assessee's own case, the Tribunal vide its orders in ITA No.1818/Mum/12 dated 03/1/2014 has deleted the disallowance, after considering the judgment of the Hon'ble Supreme Court in the

case of Munjal Sales Corporation vs. CIT, 298 ITR 298(SC). Against such decision the Revenue is in appeal before the Tribunal.

5. Before me it was a common point between the parties that the precedent relied upon by the CIT(A) continue to hold the field as the same has not been altered by any higher authority and, therefore, the issue is liable to be decided in the light of such precedent. There is no change in the facts for the instant year, which has been brought out by the Ld. Departmental Representative before me, and under these circumstances following the order of the Tribunal dated 3/01/2014 (supra), I hereby affirm the conclusion of the CIT(A).

6. As a consequence, the appeal of the Revenue is dismissed.

The above decision was pronounced in the open court at the conclusion of the hearing on 20/10/2015 in the presence of both the parties.

Sd/-

(G.S. PANNU)  
ACCOUNTANT MEMBER

Mumbai, Dated 20/10/2015

**Copy of the Order forwarded to :**

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

Vm, Sr. PS

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai