

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.2203/Bang/2017
Assessment Year :2008-09

M/s. Sapna Investments, No. 01, SKS and GTM (P) Ltd., Subramanyapura, Bangalore – 560 061. <b>PAN: AAYFS 5951L</b>	Vs.	The Assistant Commissioner of Income Tax, Circle – 3 (2)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri C. Ramesh, CA
Respondent by	:	Shri Vimal Anand, Addl. CIT (DR)

Date of hearing	:	18.01.2018
Date of Pronouncement	:	24.01.2018

**ORDER**

*Per Shri A.K. Garodia, Accountant Member*

This appeal is filed by the assessee which is directed against the order of Id. CIT(A) – 3, Bangalore dated 10.10.2017 for Assessment Year 2008-09.

2. The grounds raised by the assessee are as under.

*“1. The order of the learned Commissioner of Income Tax (Appeals) is opposed to the facts of the case and law applicable to it.*

*2. The learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of remuneration to partners of Rs.5,00,000/- ignoring the position of law that, the same was provided in the partnership deed and hence allowable under the provisions of section 40(b) of the act.*

*3. The learned Commissioner of Income Tax (Appeals) erred in confirming the order of the Assessing Officer and holding that, the remuneration to partners is not allowable only for the reason that, the amount of such remuneration was not specified in the partnership deed, ignoring the fact that, as per law if the partnership deed authorizes payment of remuneration, such authorization would be sufficient and remuneration has to be allowed once it is within the limits laid down U/s.40(b) of the act.*

4. *The learned Commissioner of Income Tax (Appeals) erred in ignoring the fact that, clause 10(b) of the partnership deed authorizes payment of salary to working partners and hence the same has to be allowed as long as it is within the limits laid down U/s.40(b) of the act.*

5. *The learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing Officer in relying on the Board Circular No.739, dated 25.03.1996 ignoring the fact that, the law requires authorization of payment of salary to partners and the law does not require the quantum to be specified and under the circumstances, the board did not have the powers to import into the statute the words which are not there in the statute.*

6. *The learned Commissioner of Income Tax (Appeals) erred in ignoring the deed of amendment of partnership dated 30.09.2006 which specifically provided for the quantum of remuneration as contemplated under the provisions of section 40(b) of the act.*

7. *The learned Commissioner of Income Tax (Appeals) erred in confirming the order u/s. 143(3) r.w.s 147 of the act ignoring the fact that, the same is bad in law and hence deserved to be annulled.*

8. *The learned Commissioner of Income Tax (Appeals) erred in not appreciating the fact that, there was already an order U/s.143(3) of the act passed on 30.08.2010 accepting the return and on a mere change of opinion the provisions of section 147 of the act could not have been invoked in the absence of any new evidence on record.*

9. *The learned Commissioner of Income Tax (Appeals) erred in not appreciating the position of law that, the provisions of section 147 of the act cannot be invoked after a period of four years from the end of the assessment year, once an assessment is concluded U/s.143(3) of the act, unless it is established that the appellant has failed to disclose fully and truly all material facts necessary for assessment.*

10. *The learned Commissioner of Income Tax (Appeals) erred in ignoring the ratios laid down in the following decisions wherein it is held that, on a mere change in opinion the provisions of section 147 of the act, cannot be invoked.*

- i) *Rallies India Ltd Vs. ACIT & Another (2010) 323 ITR 54 (Bom)*
- ii) *CIT Vs. (i) Kelvinator of India Ltd (ii) Eicher Ltd (2010) 320 ITR 561 (SC).*
- iii) *Asian Paints Ltd Vs. Deputy Commissioner of Income Tax & Another (2009) 223 CTR 141 (Bom)*
- iv) *CIT Vs. Younus Kunju (1997) 228 ITR 147 (Kerala)*

11. *The appellant craves permission to add, delete or alter any of the grounds at the time of hearing.”*

3. The Id. AR of assessee submitted that in the present case, proviso to section 147 is applicable because assessment order was earlier framed by AO u/s. 143(3) on 30.08.2010 and copy of this assessment order is available on page no. 36 of the paper book. He also submitted that in the present case, the reopening is made by the AO by issuing notice u/s. 148 on 17.03.2015 as noted by the AO in para no. 3 of the assessment order. He submitted that under these facts, the proviso to section 147 is applicable which provides that if assessment was earlier made u/s. 143(3) of IT Act, no action shall be taken under this section after the expiry of four years from the end of relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year. He submitted that in Para no. 2 of the assessment order, the AO has reproduced the reasons recorded by him for reopening and as per the same, it is not the allegation that there was any failure on the part of the assessee to disclose fully and truly all the material facts of the assessee for the present year and there is no such allegation also that no return of income was filed by the assessee as required u/s. 139, 142(1) or 148 of IT Act. Therefore, the present reopening is bad in law and it should be quashed. The Id. DR of revenue supported the order of CIT(A).
4. I have considered the rival submissions. This is noted by the AO in page no. 1 of the assessment order that the assessment was completed on 30.08.2010 u/s. 143(3) accepting the return of income. The reasons recorded by the AO for reopening are also reproduced in para 2 of the assessment order and as per the same, there is no such allegation of the AO that there was failure on the part of the assessee to disclose material facts fully and truly. This is also true that the reopening in the present case is by issuing notice u/s. 148 dated 17.03.2015 which is after expiry of four years from the end of the present assessment year i.e. 2008-09. In my considered opinion, reopening in the

present case is bad in law in the facts of the present case as discussed above and hence, I quash the assessment order.

5. In view of this decision regarding validity of reopening, other grounds raised by the assessee do not call for any adjudication.
  
6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-  
(ARUN KUMAR GARODIA)  
Accountant Member

Bangalore,  
Dated, the 24<sup>th</sup> January, 2018.  
/MS/

- Copy to:
1. Appellant
  2. Respondent
  3. CIT
  4. CIT(A)
  5. DR, ITAT, Bangalore.
  6. Guard file

By order

Senior Private Secretary,  
Income Tax Appellate Tribunal,  
Bangalore.