

**IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR**

**BEFORE SH. G.D.AGRawal, HON'BLE PRESIDENT AND
SH. MAHAVIR SINGH, JUDICIAL MEMBER**

ITA No.296, 297/NAG/2015 & 136/NAG/2017
(Assessment Year: 2011 -12, 2012-13 & 2013-14)

ACIT, Circle-3, SARAF Chambers, Sadar, Nagpur-440001.	VS	Weldwell Electrodes, D-59, Hingna Road, MIDC, Nagpur-440028. PAN-AAAFW2633B
(Appellant)		(Respondent)
Appellant by		Sh. Gitesh Kumar, Sr.DR
Respondent by		Sh. J.M.Ranade, CA
Date of Hearing		08.03.2018
Date of Pronouncement		08.03.2018

ORDER

PER BENCH

These three appeals by Revenue is arising out of the order of Ld.CIT(A)-II, Nagpur in order No.CIT(A)-II/347/14-15; CIT(A)-II/353/14-15; and CIT(A)-2/488/15-16 vide order dated 24.09.2015; 24.09.2015; and 12.01.2017 respectively for the A.Y. 2011-12 to 2013-14.

2. The only common issue in these three appeals of Revenue is against the order of Ld.CIT(A) deleting the addition made by the AO by disallowing the remuneration paid to non-working partner by invoking of provisions of section 40(b)(i) of the Income Tax Act, 1961 (in short "Act"). For this, Revenue has raised identically worded grounds in all the three years i.e. A.Y. 2011-12 to 2013-14. The facts and grounds are taken from ITA No.296/NAG/2015 while

deciding the issue. For this issue, Revenue has raised following three grounds:-

1. *“On the facts and circumstances of the case, and in law, the CIT(A erred in deleting the addition made u/s 40(b)(i) in respect of remuneration paid to non working partner Mrs. Manjushree Soman as under:-*

<i>Sr.No.</i>	<i>A.Year(s)</i>	<i>Remuneration paid</i>
1.	2011-12	1,37,55,999/-
2.	2012-13	1,67,16,629/-

2. *On the facts and circumstances of the case, and in law, the CIT(A) erred in holding that Mrs. Manjushree Soman is a working partner eligible for remuneration.*
3. *On the facts and circumstances of the case, and in law, the CIT(A) was not right in being influenced by the charges made in the partnership deed in the F.Year 2013-14. While contemporaneous evidence should relate to the years under appeal.”*

3. At the outset, Ld. Counsel for the assessee as well as Ld. DR agreed that exactly identical issue was dealt by the Tribunal in earlier years in assessee’s own case in *ITA No.262, 263 & 265/NAG/2015 in ACIT vs Weldwell Electrodes* vide order dated 24.11.2017 wherein Tribunal has deleted the addition vide para 7 to 9 as under:-

7. “We noted that the CIT(A) has deleted the addition made by the Assessing Officer in each of the assessment year by holding as under :

“5.3 I have considered the facts of the case and submissions of the appellant. There is substantial merit in the various submissions made. The main arguments raised by the appellant in its submissions are as under :

1. *The Action of the Id. AO is revenue neutral.*

2. *On the basis of the statements recorded it cannot be concluded that Mrs. Soman is not actively involved in the business.*

3. *Evidences were produced to establish that Mrs. Soman was involved in varied activities of the business of the firm*

4. *The partners are jointly and severally liable for acts of other partner and that the liability of each partner is unlimited.*

5. *Mrs. Soman is presently having 75% share in profit / loss and is the . main working partner as Mr. Sudhir Soman has retired from partnership firm w.e.f 01.10.2013 which would establish that she has always been actively involved in the business.*

5.4 *There is merit in each of the above issues raised- Taking up the first argument of the appellant, it has been correctly pointed out by the appellant that this entire exercise is Revenue neutral as both the individual partner as well as the firm are taxed at the same rate and therefore the payment of remuneration to the partner cannot be viewed as an attempt to conceal income to reduce tax liability. The expenses debited in the books of the firm would become income in the hands of the partner. If the Id. AO taxes the firm by disallowing the remuneration, he will also have to issue refund to Mrs. Soman as the same would not be taxable in the partners hand as it is disallowed in firms case. Thus the net effect of this exercise is tax neutral for the department as both the firm and partner fall in highest tax slab.*

5.5 *Various case laws have commented upon the futility of undertaking such an exercise where increasing income in one hand and reducing the income in other hand with almost the same tax effect does not result in any net benefit to the Revenue. In the case of Shri. Mohd. Nizamuddin vs. ACIT, on similar facts, the Hon'ble Jaipur ITAT Bench in ITA No.41/JP/2013 held as under :-*

"4.6 *We have carefully considered the submission made by both the parties... We do not agree with the contention of the Id. CIT (A) that a/I the partners were not working partners, which finding is recorded without any basis... It is noticed that although the firm was constituted in A. Y. 2004-05 and it is not disputed that the assessee firm has been making this claim right since A.Y. 2004-05 but all along the revenue has been accepting such a claim even in the assessment made under scrutiny hence we do not find any justification to make a departure from the settled position in the past without bringing any material change in the facts and the*

circumstances of the case in this year. In any case, the issue in hand is revenue is neutral in as much as even assuming a certain part of the claimed remuneration is disallowed in the hands of the firm, the same cannot be treated to be an income from business in the hands of the partners and a necessary safeguard has already been provided under the proviso below the Sec.28(v) against the double taxation of the same income hence, even if the disallowance so made is upheld, deduction to that extent has to be allowed in the hands of the partners/s. Thus, revenue shall not be put to any loss if the remuneration as claimed, is allowed in the hands of the assessee firm. We thus, find no justification in the disallowance so made and confirmed, for the detailed reasons stated herein above, hence, the disallowance of-Rs. 20,47,000/- made u/s 40(b) Is hereby deleted. Therefore, Ground no. 2 raised by the assessee is allowed.”

6. In the result, appeal of the assessee is partly allowed."

5.6 Thus the Hon'ble Jaipur Bench has held the Revenue shall not to be put to any loss if the remuneration claimed is allowed in the hands of the assessee firm as same cannot be treated as income from business in the hands of the individual partner. Similarly in the case of M/s Om Terrace, Surat Vs DCIT Surat ITA No. 440/Ahd/2012, it was held by the Hon'ble ITAT Ahmedabad Bench as under-

“No disallowance from partners' remuneration was therefore warranted. In any case, the whole exercise of disallowing partners' remuneration is tax neutral as only the amount allowed as deduction is required to be taxed in the hands of the partners. ”

5.7 Attention is also invited to the decision of Hon'ble Bombay High Court in the case of Commissioner of Income tax Vs Nagari Mills Co. Ltd 33 ITR 681 & Delhi High Court's judgment in the case of Commissioner of Income Tax Vs, Shri Ram Pistons and Rings Ltd. (220 CTR 404) wherein it was held that the department should not fritter away its energy in such matters which are tax neutral and that it is a pity that so much time and energy are spent to determine the year of taxability of the income, The said judgments have been extensively followed in a large number of cases in which a exercise undertaken by the department was fundamentally tax neutral. In this context judgment of Hon'ble Delhi High Court in the case of Commissioner of Income tax Vs Triveni Engineering & Industries (ITA No. 346 of 2009) is reproduced here under :-

"...12. We are reminded of the classic observations made by Justice Tendolker in the case of the Commissioner of Income-tax, Vs. Nagri Mills Co. Ltd. [33 ITR 681], which reads as under:

"We have often wondered why the Income-tax authorities, in a matter such as this where the deduction is obviously a permissible deduction under the Income-tax Act, raise disputes as to the year in which the deduction should be allowed. The question as to the year in which a deduction is allowable may be material when the rate of tax chargeable on the assessee in two different years is different; but in the case of income of a company, tax is attracted at a uniform rate, and whether the deduction in respect of bonus was granted in the assessment accounting year 1952, that is in the assessment year 1953-54, should be a matter of no consequence to the Department; and one should have thought that the Department would not fritter away its energies in fighting matters of this kind. But, obviously, judging from the references that come up to us every now and then, the Department appears to delight in raising points of this character which do not affect the taxability of the assessee or the tax that the Department is likely to collect from him whether in one year or the other."

13. The aforesaid observations of the Bombay High Court were reiterated by this Court in the case of Commissioner of Income Tax Vs. Shri Ram Pistons and Rings Ltd. [220 CTR 404], as under:

"Finally, we may only mention what has been articulated by the Bombay High Court in Commissioner of Income Tax, Delhi, Ajmer, Rajasthan and Madhya Pradesh vs. Nagri Mills Co. Ltd. [1958] 33 ITR 681 as follows:

In the reference that is before us there is no doubt that the Assessee had incurred an expenditure. The only dispute is regarding the date on which the liability had crystallized. It appears that there was no change in the rate of tax for the Assessment Year 1983-84 with which we are concerned. The question, therefore, is only with regard to the year of deduction and it is a pity that all of us have to expend so much time and energy only to determine the year of taxability of the amount.

14. In such circumstances, we are of the view that insofar as present appeal is concerned, substantial questions of law that need to be

answered does not arise. We, therefore, dismiss this appeal on this ground alone."

*5.8 Thus from the above judgment it is seen that when the action of the department is tax neutral, no purpose is served by adding the amount in one case and giving corresponding relief in another case. Here, however, the action of the Ld.AO is all the more objectionable in view of the fact that while he has disallowed the claim of remuneration, he has not given corresponding relief in the case of individual partner by reducing her income to the extent of disallowance made in the case of the firm. If the Ld.AO was of the view that the remuneration was not allowable in the case of the firm, corresponding relief in the case of the partner should have been simultaneously initiated and the income of the partner should have been reduced accordingly. Once having held that the remuneration was not allowable as expenditure in the case of the appellant firm, the department cannot take the contradictory view in the hands of the recipient of remuneration and decide that no relief is required to be given in the hands of individual partner. The department cannot approbate as well as reprobate. The maxim qui approbat reprobate (one who approbates cannot reprobate) is firmly embodied in English Common Law and often applied by Courts in this country. It is akin to the doctrine of benefits and burdens, which at its most basic level provides that a person taking advantage under an instrument that both grants a benefit and imposes a burden, cannot take the former without complying with the latter. A person cannot approbate and reprobate or accept and reject the same instrument. He cannot, to use the words of Honyman, J. in *Smith v. Baker* (1878) LR 8 CP 350 at p. 357 'at the same time blow hot and cold', He cannot say at one time that the transaction is valid and thereby obtain some advantage to which he could only be entitled on the footing that it is valid, and at another time say it is void for the purpose of securing some further advantage. The fact that the Ld.AO has disallowed remuneration on one hand and has not given corresponding relief in the case of the partner in her individual capacity and this itself shows that the Ld.AO is not very sure of the view taken by him.*

5.9 Thus it is evident that since the appellant firm and the partner are both subject to be taxed at the maximum rate, the payment of remuneration is in no way a scheme to conceal income or evade tax, There is evidently no tax planning or tax saving mechanism employed by the assessee or its partners. The department will tax the firm by disallowing the remuneration on one hand and on other hand department will have to issue refund to individual partner

(Mrs. Soman) as the same would not be taxable in partners hand as it is disallowed in firms case. Thus the net effect of this exercise is tax neutral for department as both the firm and partner fall in highest tax slab. Hence on this ground itself, this addition is unwarranted and unjustified solely on ground of tax neutrality.

6. Coming to the second argument of the appellant, on perusal of the submission made by the appellant before the Ld.AO, the facts brought on record in the assessment order and on perusal of the two statements recorded of Smt. Soman, it is seen that there is no material before the Ld.AO to co'me to the conclusion that Smt. Soman is not a working partner or that she is not actively engaged in the business activity of the appellant firm. In the two statements recorded during and after the Survey u/s. 133A about 30 questions were asked to Smt. Soman and the Ld.AO has based the entire disallowance on about 5-6 answers and has come to the conclusion that she is not actively involved in the business activities. In the process the Ld.AO has totally ignored answers given to 24-25 questions from which it becomes evident that Smt. Soman is a partner who is actively involved in the business activity..

6.1 In its submission, the appellant firm has given detailed explanation with regard to each of the questions that the Ld.AO has focused upon. The explanation of the appellant clearly establishes that the conclusion drawn by the Ld.AO to the said question are erroneous and misleading. The appellant firm is 30 years old, well established and is staffed with persons having designation of Manager, General Manager etc. who are able to take care of day to day business activities and hence requirement of the partners to be involved in the day to day activity does not arise. The role of the partner would broadly be to decide policies, give strategic inputs and to monitor various aspects of business.

6.2 The fact that Smt. Soman stated in an answer that she only occasionally goes to the firm premises or that she is not associated with day to day working of the firm or that she has nobody reporting to her, cannot lead to the conclusion that she is not actively involved in the business activities of the firm. Modern business are complex entities that requires continue strategic thinking planning, formulation of business policies and evolved senior level intervention. Any partner who is even slightly involved in such matters would be contributing immensely to the business activity of the firm. Being a partner, Smt. Soman in addition to policy formulation and strategic thinking along with the other partner, could in any case call for any employecto direct or to guide him / her. The fact that nobody reports to Smt. Soman does not by itself

lead to conclusion that she is not actively involved in the business activities of the firm as she can call any employee and ensure compliance to the needs and requirements of the organization.

6.3 In the above context, it is also vital to see the answers given by Smt. Soman to various questions asked to her. In her statement recorded on 08-11-2012 Smt. Soman gave details like .Assessing Officer, PAN and details regarding the firm and also informed the Ld.AO that she visits the premises when the other partner is absent and that as a partner she is getting remuneration and profit from the firm. She has further stated that she is a Postgraduate in English Literature and Music and is looking after the administration and personal relation of the firm and ensures friendly relation with the staff. On being asked to give details of staff who are on pay roll of the firm she gave names of four staff members and their area of specialization and on being asked where the books of accounts are maintained, she explained that the same are maintained in the company premises itself. Further, on being asked regarding the instances of sale and purchase of property by the firm, she explained that a land had been purchased alongwith shed in plot No.57 about 3 years back and that an advance of Rs.1,5 crores has been "given in January 2012 to one M/s J.D. Builders for purchase of one plot in Shivaji Nagar, Nagpur though the sale deed has not been executed as yet. On being asked she further informed that she signed the Income Tax returns and documents regarding the purchase of land of the firm. Thus on perusal of statement recorded on 08-11-2012 it becomes evident that Smt. Soman is actively involved in business activity of the firm and is aware of the staff members, the nature of work they took after and is also well aware regarding books of accounts and sale / purchase of immovable property by the appellant firm.

6.4 Also in the statement recorded on 29-11-2012, she explained that she has no other business interest other than the appellant firm and on being asked bank account details, she gave information about the Pratap Nagar, Bank of India Branch. Onbeing asked regarding ownership of movable assets she stated that the firm owned Toyota Altis and Hyundai i-10 and on being asked to give details of withdrawals during the F.Y. 2011-12, she explained that the withdrawal of Rs.1.5 crores was made from Bank of India. On being asked if she was associated with decision making in the firm she replied in the affirmative. She further stated that she is involved in purchase of land, machine, applying for bank loan etc. though she does not remember the exact names of the parties from whom the machines were -purchased. She further explained the sources of

funds, investments in various Mutual funds, Insurance policies etc. are her salary. Herr again Smt. Soman is very clearly able to establish the fact that she is actively involved in the business activities of the firm and is aware of all business related aspects as otherwise she would not be in a position to give such details as the bank account, movable assets, sources of her various investments, details of withdrawals from bank account etc.

6.5 In the face of such clear assertions by Smt. Soman of her continued involvement in all facets of business activities, the conclusion of the Ld.AO that she is actively involved in the business on the basis of 4-5 answers is misplaced and incorrect. Evidently Smt. Soman is able to establish that she is actively involved in every aspect of business though she may be visiting the premises occasionally. There is abundant judicial authority in this regard.

6.6 The Honorable Gujarat High Court in the case of CIT vs Natwarlal Tribhovandas reported in 87 ITR 703 answered in the affirmative the question as to whether expression "actively engaged in conduct of business" occurring in section 2(7)(iii)(b) does not necessarily signify active and continuous participation in actual transaction of day-to-day business of firm and held that it is flexible enough to take in case of" a partner who devotes time, attention and labour to some activity or assignment calculated or designed to lead to preservation, growth or advancement of business of firm. The relevant portion of the order is reproduced hereunder:

"Accordingly, before the business income of an assessee, who is 3 partner of a firm, could be treated as earned income, the conditions which are required to be satisfied are that the assessee should be: (i) actively, (ii) engaged in, (iii) the conduct of the business of the firm, (iv) for the whole of the previous year. The submission was that the first three of the four conditions are expressly found in section 2(7)(iii)(b) and the fourth condition is necessarily implied therein having regard to the manner in which a partnership functions and its accounts are made up. Unless the assessee is able to show, therefore, that for the whole of the relevant previous year he was continuously and in an active manner occupied or busy with the work of carrying on or transacting the business of the firm, the business income earned by him as a partner would not qualify for the earned income relief.

Mr. Kaji, learned counsel for the assessee, contended on the other hand that the words now under consideration require to be construed broadly having , regard to the context in which they are

used. He urged that it is not unknown that in a partnership there are partners who, in popular parlance, are called "sleeping partners" and who are brought into the firm either because of their financial contribution or family ties or the like. A sleeping partner, though really not engaged in the conduct of the business of the firm, would nevertheless be considered as having been so engaged in the eye of law because of the principle of mutual agency involved in partnership and his share in the profits of the firm would, therefore, qualify for the earned income relief in his hands. The word "actively", which is prefixed to the expression "engaged in the conduct of the business", is used precisely with a view to ensuring that a partner who participates in the conduct of the business of the firm only through the agency of his co-partners does not get the benefit of the earned income relief. The expression "actively engaged in the conduct of the business", proceeded the argument, read in the context and as a whole, meant that the partner should personally participate in some manner in the business of the firm, that is, undertake some activity which is necessary or desirable for the preservation and growth of the business of the firm. The expression, according to the assessee, did not signify that the partner should take active part in the actual day-to-day transaction of the business of the firm. It was also urged that participation in the conduct of the business need not have continued for the whole of the previous year and that if it is shown that the concerned partner has participated in the conduct of the business of the firm for a substantial part of the previous year, the business income earned by him would qualify for the earned income relief.

The question is as to which out of the two rival constructions suggested at the Bar should be preferred. Leaving out of consideration for the time being the question whether or not the engagement in the conduct of the business must be for the whole of the previous year, we shall first attempt to ascertain the plain grammatical meaning of the expression "actively engaged in the conduct of the business". The word "actively" ordinarily means in an active manner, that is, effectively, energetically and diligently. It is sometimes also used to signify direct participation in contradistinction to impersonal interest or passive role. The expression "engaged in" is a term of various meanings depending on the context in which it is used but ordinarily it is intended to signify continuous occupation or employment; it involves the concept of continuity of action as well as of physical participation. However, the term is often employed to denote a present obligation to devote time, attention and efforts to a particular activity, although, for the time being, there may not be any active participation or wholetime involvement in such activity. The expression "the conduct of the

business" in a narrower sense means actual direction, handling, management or regulation of business day-after-day. In a broader sense, however, it is also capable of connoting contribution to the business by carrying out some assignment or undertaking, some activity unconnected with the day-to-day management of the business, which might ultimately lead to the preservation and development of the business. It would thus appear that on a plain meaning of the words comprised in the relevant phrase, both constructions—the narrower as well as the broader—for which the parties have contended are possible. We would, in these circumstances, naturally prefer that construction which favour the assessee..."

6.7 *The Honorable ITAT Delhi, in the case of Vivek Ispat Udyog vs Income Tax Officer (2005) 95 TTJ Delhi 1090 held as under: '*

"9. On going through the observations of the learned CIT(A), it is found that he has not treated Shri Pawan Kumar Pahadia as a working partner on the ground that he was not a whole-time worker. This approach cannot be said to be justified. A partner may supervise and Control in a case of a firm at different place. If he devotes time and remains engaged in the business of the firm, it cannot be said that he is not actively engaged in the business of the firm. It may be pointed out that the same CIT(A) has upheld the action of the AO in allowing remuneration to Shri Sunil Kumar Navetia who too was residing at Calcutta and was supervising the affairs of the firm at Ghaziabad. J"he only reason for allowing remuneration to that partner is that the telephone number of Calcutta belonged to him. So far as other partner, namely, Shri Pawan Kumar Pahadia in whose case remuneration has been disallowed is concerned, in my view, the difference made by the learned CIT(A) cannot be appreciated. From the documents contained in the paper book, it is found that he was making correspondence to the firm and was also issuing instructions on telephone. Thus, it cannot be said that he was not conducting the affairs of the business or not engaged in the conduct of the working of the firm. In the case of CIT v. NatwarialTribhovandas (supra), term "actively engaged in the conduct of the business" occurring in Section 2(7)(iii)(b) of the Finance (No. 2) Act[^] 1962, was explained by the Hon'ble Gujarat High Court and it was observed that the expression must be given liberal meaning. It was held that the said expression does not necessarily signify active or continuous participation in the actual transaction of the day-to-day business of the firm and it is flexible enough to take in the case of a partner who devotes time, attention and supervise the work. Thus, a partner to be a working partner for the purpose of Section 2(7)(iii)(b) also, it can be said that

sufficient requirements of law for the said partner to whom the remuneration is paid is to supervise the work of the firm from different place and may be by devoting hours and not a whole day. In my considered opinion, the claim of the assessee-firm was fully justified and the learned CIT(A) was not justified in upholding the view of the AO. The disallowance of remuneration to the partner to the tune of Rs. 39,100 and the addition of the same amount Js, therefore, deleted. The ground No. 2 is, therefore, allowed in favour of the assessee,"

6.8 The Honorable ITAT Kolkata, in the case of S.B.Agency, Kolkata vs ACIT in ITA No. 680/Kol/2012 decided a case on similar facts. In the said case, the claim of Rs. 2,20,000/- remuneration to one of the partners had been restricted to Rs. 36,000/- by the Id. AO and in appeal the learned Commissioner of Income-tax (Appeals) allowed the same to the extent of Rs. 1.20 lakh. The reason for making the disallowance was her statement which had been taken wherein, as per the Id. AO, it was proved that Smt. Madhumita Paul did not know of the operations of the assessee's business. In such facts it was held as under:

"6. We have considered the rival submission. A perusal of the assessment order clearly shows that Smt. Madhumita Paul, had been summoned u/s. 131 of the Act and her statements have been recorded. It is shown in the statements recorded that Smt. Madhumita Paul did do work at the business premises of the assessee's firm. However, the AO had restricted the salary allowable to Smt. Madhumita Paul at Rs. 36,000/-. It is also noticed that the AO has mentioned that there were discrepancies in her statements recorded u/s. 131 of the Act. A perusal of the order of the learned Commissioner of Income-tax (Appeals) clearly shows that the learned Commissioner of Income-tax (Appeals) has considered the objections of the AO, but looking into the qualification and age factor of Smt. Madhumita Paul restricted the disallowance to Rs. 1 lakh. Here it is noticed that the AO and the Id, CIT(A) has estimated the salary of Smt. Madhumita Paul without any comparative case or without laying any foundation for such estimation itself. In the circumstances, we are of the view that there is no ground for restricting the salary paid to Smt. Madhumita Paul at Rs. 1.20 lakh as against the claim of Rs. 2.20 lakh. In the circumstances, the AO is directed to ITA. No. 680/Kol/12-B-GM allow the assessee's claim of the salary paid to Smt. Madhumita Paul at Rs. 2.20 lakh p.a. In the circumstances, the appeal of the assessee is allowed."

6.9 Similarly, the Honorable ITAT Kolkata, held that even a full time engineering student is actively involved in the business of the firm if

he is looking after some aspect of business. In the case of Kalipada Packaging Industries vs. ITO (I.T.A. No.09/Kol/2013) it was held as under:

"4. We have heard rival submissions and gone through facts and circumstances of the case. We find that the assessee has contended that Shri Soumen Paul, the partner was engaged in procurement of orders for the firm despite the fact that he was a student of Engineering College, Jalpaiguri. Simply on the statement of Shri Bhusan Chandra Paul, one of the retired partners and that also during the course of survey cannot be the sole basis for disallowing remuneration Co tne partner. Here, admittedly, the assessee f's engaged in the procurement of orders and once he is engaged in the procurement of orders, he can safely be stated that he is working partner. Accordingly, we delete the disallowance and appeal of assessee is allowed.

5. In the result, the appeal of the assessee is allowed. "

6.10 Thus, the concept of being actively engaged in the conduct of the business has to be given a broader and liberal meaning and does not necessarily signify active or continuous participation in the actual transaction and conduct of the day-to-day business of the firm and it is flexible enough to take in the case of a partner who devotes some time and attention to the work of the firm. In the case of Mrs. Soman however, it is evident that her participation in the activity of the firm is more than a partner who devotes only 'some' time and attention to the work of the firm.

7. This becomes evident from the third argument of the appellant. Documents were filed before the Id. AO that evidence Mr;, . Soman's active involvement in the affairs of the firm. The Id. AO however simply brushed aside the said documents without given any cogent reasons. The Id. AO has not taken efforts to establish that the documents produced before him are misleading or fraudulent. It is also a fact that by signing the documents she takes full personal responsibility of the correctness of the contents of the documents. Some such documents produced during appellate proceedings are as under:

<i>Sr. No.</i>	<i>Nature of documents</i>
<i>1.</i>	<i>Application for industrial plot to MIDC</i>
<i>2.</i>	<i>Application for power supply to M.S.E.B.</i>
<i>3.</i>	<i>Possession receipts for purchase of Plot No A-6 & A-7 in MIDC Industrial Area, Naypur dt. 14. 03. 2011</i>
<i>4.</i>	<i>Papers regarding a gratuity scheme for the employees</i>
<i>5.</i>	<i>Correspondence with State Bank of India, Hingna Industrial Estate Branch, Nagpur</i>
<i>6.</i>	<i>Application for Amendment in EM to District Industries Centre</i>
<i>7.</i>	<i>Tripartite agreement with MIDC & SBI</i>
<i>8.</i>	<i>Minutes of Management Review Meeting with General Manager, Manager Marketing, Works Manager & Management Representative</i>
<i>9.</i>	<i>Deed of Assignment cum Sale dt. 22.03.2011 for purchase of plot No. D57 MIDC, Hingna Road, Nagpur from Raj Wire Industries, Nagpur</i>
<i>10.</i>	<i>Wages Register signed by Mrs. Soman monthly</i>

7.1 The appellant had submitted above evidences to establish the fact that Mrs. Soman is actively involved in the business activity of the firm and the same have been perused. Perusal of the said documents clearly establishes the fact that the appellant is involved in varied activities and has taken responsibilities of various types and is completely involved in the business of the firm. The documents produced includes applications made before the Statutory / Private Authorities like MIDC, MSEB, State Bank of India etc. The appellant has also produced copies of Wage Register, which is duly signed by Mrs. Soman. Also other documents like possession

Receipt for purchase of plot, Minutes of review meeting, Deed of Assignment cum Sale for purchase of plot etc. have been filed. These documents clearly establish the active and continuous role of Mrs. Soman in almost all facets of organization work. Special mention may be made of minutes of management review meeting wherein in the presence of Mrs. Soman wide variety of subjects have been discussed. Thus, the above documents produced by the appellant clearly establish the active involvement of Mrs. Soman in the firm.

8. It is also a fact that the partners in a firm are jointly and severally liable for acts of other partner. The liability of each partner is unlimited. Both the partners have taken risk liabilities and uncertainties of business and if there is accident, theft, fire, disability / death of worker in factory or a criminal case both the partners are jointly and severally liable. It is also a fact that for all practical purposes Mrs. Soman is individually liable under labour laws like PF Act, Tax Laws like Excise Act, Maharashtra Vat Act, CST Act, and Factory Act etc. and she is also liable for the Bank loan taken by the firm. In that sense also it would be unfair if the remuneration is measured only based on time given by each partner for day to day working of the firm as the business risks and liabilities of each partner also have to be taken into consideration for deciding the allwability of remuneration to the partner.

9. The last argument of the appellant is also a valid argument. It is stated that changes have been made in the partnership w.e.f. 1st Oct. 2013 and the respective shares now are as under :-

<i>Mrs. Manjushree Sorrian</i>	<i>70%</i>
<i>Mr. Shantanu.Soman (son)</i>	<i>15%</i>
<i>Mr. Shaunak Soman (son)</i>	<i>15%</i>

9.1 It is stated that Mr. Sudhir Soman has since retired from partnership firm w.e.f 01.10.2013 and that therefore the assessee firm is being currently run mainly by Mrs. Manjushree Soman (having 70% share in profit / loss) as main working partner having 90% share in remuneration. There is merit in the submission as this strongly indicates that Mrs. Soman was actively engaged in business of the assessee firm from the very beginning.

10. Taking into consideration the above totality of facts of the case and the clear judicial position on the issues concerned, the action of the Id. AO of disallowing the claim of remuneration to the partner Mrs. Soman in each of the years is held to be incorrect and consequently the additions made in respective years are hereby deleted. Consequently the disallowances made of Rs.12,00,000/-,

Rs.32,81,326/-, Rs.47,72,505/- & Rs.68,66,620/- for assessment years 2006-07, 2007-08, 2008-09 & 2009-10 respectively are hereby deleted. This ground of appeal is allowed.

11. In the result these four appeals are hereby partly allowed.

8. In our view, the CIT(A) has while deleting the disallowance made by the Assessing Officer, has exhaustively and extensively dealt with whether Mrs.Manjushree Soman can be regarded to be in whole time partner or not. He has also while holding in favour of the assessee taken into account re-constituted partnership deed amended with effect from 01.10.2013. We do agree that the finding of the CIT(A) that whether partner is working or not, not to be decided on the basis of the time given by each partner in day to day working, but it has to be decided with overall liabilities, responsibilities as well as work undertaken by the partner.

9. In our opinion, this is not a fit case which warrant our interference. We, accordingly confirmed the order of the CIT(A) by endorsing the finding given by the CIT(A).”

4. At the time of hearing, Ld Sr DR could not point out any difference in facts and hence, respectfully following the earlier years decision of Tribunal (cited supra), we confirm the order of Ld.CIT(A) deleting the addition.

5. In the result, all three appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 08th March, 2018.

Sd/-
(G.D.AGRawal)
HON'BLE PRESIDENT

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Dated: 08th MARCH, 2018

Amit Kumar

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A), Nagpur*
4. *The CIT, Nagpur*
5. *The DR, Bench, ITAT, Nagpur*

By Order

*Assistant Registrar
ITAT, Nagpur Bench, Nagpur*