

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "SMC" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.2169/PUN/2017
निर्धारण वर्ष / Assessment Year : 2010-11

Vimal and Sons,
6, Abhyuday Apartments,
Bhandarkar Road,
Pune – 411 004
PAN : AADFV7541E

.... अपीलार्थी/Appellant

Vs.

Income-tax Officer,
Ward-3(1), Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Smt. Deepa Khare
प्रत्यर्थी की ओर से / Respondent by : Shri Ajay Modi, JCIT

सुनवाई की तारीख / Date of Hearing : 13.03.2018	घोषणा की तारीख / Date of Pronouncement: 13.03.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This is the appeal filed by the assessee against the order of CIT(A)-3, Pune, dated 31-05-2017 for the Assessment Year 2010-11.

2. Grounds raised by the assessee are as under :

“1. The Ld.CIT(A) erred in law and on facts in confirming disallowance of Rs.5,44,540/- towards remuneration to partners u/s.40(b) in respect of interest income on Fixed Deposit with Bank and credited to Profit and Loss Account as business income.

2. The Ld.CIT(A) erred in law and on facts in not appreciating that the interest income was earned from Fixed Deposit with Bank kept for the working capital requirements of the business and was business income forming part of the book profit for the purpose of section 40(b) of the Act.”

3. The core issue raised by the assessee in the above-mentioned grounds revolves around the correctness of exclusion of interest income earned from the Fixed Deposits with the banks from the scope of “net

profit” for the purpose of computing the allowable remuneration paid to partners u/s.40(b) of the Act.

4. Briefly stated relevant facts are that the assessee is a firm and filed the return of income originally on 26-09-2010 declaring total income of Rs.22,49,680/-. In the proceedings u/s.143(3) of the Act, the assessed income is determined at Rs.27,94,218/-. In the assessment proceedings, on finding that assessee earned interest income of Rs.22,40,578/- which was considered as business income both for specifying the head of income for taxing it as well as for the purpose of section 40(b) of the Act, AO recomputed the allowable remuneration to partners by rejecting the assessee’s claim of treating the interest income as “business income” of the assessee. The said income was treated as “income from other sources” and the remuneration paid to the partners was recomputed and restricted to Rs.10,55,460/- as against the claim of Rs.16 lakhs.

5. Aggrieved with the same assessee filed an appeal before the CIT(A) who dismissed the appeal of the assessee. The CIT(A) confirmed the AO’s finding treating the income as “income from other sources’ and also restricting the allowable remuneration to the partners to a sum of Rs.10,55,460/- only.

6. Aggrieved with the same, assessee filed the present appeal before the Tribunal with the grounds extracted above.

7. Before me, Ld. Counsel for the assessee submitted that the assessee is a broker in the National Stock Exchange (in short “NSE”) and is required to keep the deposit of Rs.76 lakhs with HDFC Bank as per the requirement of NSE. Further, assessee was also to maintain

other deposits of Rs.2.07 crores (Rounded off) as security for obtaining the overdraft facility. In effect, as per assessee, the said deposits are maintained for the purpose of business of the assessee and also for meeting the working capital of the firm. Assessee claimed that the interest earned on the said deposits constitutes "business income". Therefore, the claim of the assessee qua the determination of remuneration payable to the partners u/s.40(b) of the Act is valid. In this regard, Ld. Counsel filed the copies of the following judgments/decisions which were relied upon by the Ld. Counsel for the assessee in support his case :

1. *CIT Vs. Jaypee DSC Ventures Ltd. 335 ITR 132*
2. *CIT Vs. Dalmia Promoters Developers Pvt. Ltd. 281 ITR 346 (Del)*
3. *Md. Serajuddin & Brothers Vs. CIT 210 Taxman 0084*
4. *CIT Vs. J.J. Industries 358 ITR 0531 (Guj.)*
5. *M/s. P.G. Bhagwat Vs. ITO – ITA No.1562/PN/2007, order dated 15-04-2009 for the A.Y. 2002-03*
6. *ACIT Vs. West Gujarat Expressway Ltd. 57 taxmann.com 384 (Mumbai-Trib.)*
7. *CIT Vs. Green Infra Ltd. 392 ITR 7 (Bombay)*

8. Ld. DR for the Revenue relied on the orders of the AO and the CIT(A).

9. I heard both the parties. I have gone through the facts of the case, orders of the Revenue and the judgments/decisions relied on by the Ld. Counsel for the assessee. I find in the case of **Md. Serajuddin & Brothers Vs. CIT 210 taxman 0084**, the Hon'ble Calcutta High Court held that for the purpose of section 40(b)(v) there cannot be separate method of accounting for ascertaining net profit and/or book profit. The net profit is shown in the profit and loss account is relevant. According to the said judgment, if the said net profit includes the interest earned by the assessee from the banks the same should not be

excluded for computing the allowable remuneration u/s.40(b) of the Act. The conclusion from the judgment is extracted as under:

“Conclusion :

For purpose of computation of allowable remuneration to partners, book profit has to be ascertained not only from income from business alone but also from income from other sources. In calculation of allowable remuneration profit means profit as per profit and loss account.”

Further, in the case of **CIT Vs. J.J. Industries** 216 Taxman 0162 (Gujarat), the Hon’ble Gujarat High Court held that the interest income earned by the assessee firm from the fixed deposit receipts cannot be ignored for the purpose of working the book profit to ascertain the ceiling of the partner’s remuneration.

Further also, in the case of **M/s. P.G. Bhagwat Vs. ITO** – ITA No.1562/PN/2007, dated 15-04-2009, the Coordinate Bench of the Tribunal answering a similar question has explained the book profits occurred in section 40 (b) of the Act held and allowed the appeal in favour of the assessee. While holding so, the Tribunal relied on the decision of the Coordinate Bench of the Tribunal in the case of **ACIT Vs. Sheth Brothers** 99 TTJ 189. Para No. 6 of the order of Tribunal is relevant and therefore the same is extracted below for the sake of completeness :

“6. We see no reasons to take any other view of the matter than the view so taken by the Coordinate Bench. The bank interest income was admittedly included in the profit and loss account in the case before us. Respectfully following the Coordinate Bench, we hold that the said interest income should have been taken into account for the purpose of computing allowable remuneration u/s.40(b) of the Act. The Assessing Officer is directed to recompute the allowable remuneration u/s.40(b) accordingly and grant the assessee admissible relief on that basis.”

Further, the Hon’ble Bombay High Court in the case of **CIT Vs. Green Infra Ltd.**, 78 taxmann.com 340 (Bombay) held that the interest

income earned by the assessee from the short term fixed deposits for commercial consideration constitutes “business income” of the assessee.

Thus, relying on the above decisions, various High Courts/Tribunal, the Ld. Counsel for the assessee demonstrated that the interest income in this case is earned by the assessee from banks from the deposits made for the purpose of brokerage business. The assessee, who is a broker in National Stock Exchange is required to comply with the guidelines of the regulating body and then the income constitutes “business income”.

The same being an integral part of the net profits for the purpose of section 40(b) of the Act, the remuneration of Rs.16 lakhs should be allowed in full without any restrictions as done by the AO and the CIT(A).

10. In view of the settled legal proposition on the solitary issue in this appeal, I find the judgments discussed above are self explanatory. In the instant case, it is a fact that the fixed deposits are kept with the banks for the purpose of brokerage business and for commercial consideration. Hence, the same is required to be taxed as “business income” of the assessee. Further, the net profit as defined by various decisions above, for the purpose of section 40(b) of the Act, the exclusion of interest income from the same as done by the AO for the purpose of restricting the allowable remuneration, is unsustainable in law. Accordingly, I am of the opinion that the grounds raised by the assessee are required to be allowed and in favour of the assessee.

11. In the result, appeal of the assessee is allowed.

Order pronounced on this 13th day of March, 2018.

Sd/-
(D.KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 13th March, 2018.
Satish

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-3, Pune
4. आयकर आयुक्त / The CIT-3, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC" /
DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
 आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune