

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

BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER
&
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.63/Ran/2017
A.Y. : 2010-2011

Sri Gopal Pandey, Prop: M/s Maa Shardey Automobiles, SOH, Panchperwa, Garwah- 822114	vs	ITO Ward-3(6), Daltongaj
		PAN No. : AIJPP 4436 C
(Appellant)	.	Respondent

Assessee by : Shri Pankaj Khejriwal, Advocate
Revenue by : Shri P.K.Mondal, JCIT

Date of Hearing : 29.05.2018
Date of Pronouncement : 30.05.2018

O R D E R

Per Pavan Kumar Gadale, JM:

This is an appeal filed by the assessee against the order of CIT(A), Ranchi, dated 21.12.2016 for the assessment year 2010-2011.

2. The assessee has raised the following grounds of appeal :-

1. *For that initiation of proceedings u/s 147 was illegal and unjustified. Proceeding u/s 147 cannot be initiated on the basis of change of opinion. At the time of assessment made u/s 143(3) all informations/documents were submitted before Ld. Assessing Officer. There was no escapement of income. Proceedings u/s 147 was ab-initio null and void and fit to be deleted.*
2. *For that initiation of proceedings u/s 147 was ab-initio null and void. No recorded reasons were supplied to the appellant as such assessment made u/s 147 was illegal and unjustified.*

3. *For that Ld. C.I.T(A) was not justified for not considering remuneration and interest received from partnership firm as business income. As per section 28(v) of the I.T. Act, 1961 the salary, bonus, commission or remuneration received from partnership firm is termed as business income. As such order passed by Ld. C.I.T.(A) was bad in the eye of law and fit to be deleted.*
4. *For that the Ld. C.I.T.(A) was not justified for not considering remuneration and interest received from partnership firm as business income on the basis of definition of business as given in the case of Narayan Swedeshi Weaving Mills vs CIT (26 ITR 765 SC). The above case was not related to the Income Tax Act rather it was case of Excess Profit tax Act. The finding was given by Hon'ble Apex Court in this case in the year 1954 i.e. before enactment of present Income Tax Act,1961. As such finding of Ld. C.I.T.(A) was totally wrong, unjustified and illegal.*
5. *For that the Ld. C.I.T(A) was not justified for not allowing expenses of Rs.4,14,420/- claimed under different heads deducted from business income received as remuneration and interest received from partnership firms. The expenses were fully reasonable and related with earning of appellant's business income. As such the order passed by Ld. C.I.T.(A) has no leg to stand and fit to be deleted.*
6. *For that in any view of the case addition of Rs.4,14,420/- made to the total income is highly excessive, incorrect and unjustified.*
7. For that interest u/s.234A and 234B is to be charged on returned income and not on assessed income following the decision of Hon'ble Jharkhand High Court.

3. At the time of hearing, Id. AR of the assessee has not pressed the grounds No.1 & 2 and made endorsement. Accordingly, ground Nos.1 & 2 are dismissed as not pressed.

4. Brief facts relating to the effective grounds No.3, 4, 5, 6 & 7 are that the assessee derives income from trading of petrol, diesel & lubricants and filed the return of income for the assessment year 2010-2011 on 18.10.2010 with total income of Rs.5,58,370/- and the return of income was duly processed u/s.143(1) of the Act and the case was selected for scrutiny

under CASS. Subsequently, notice u/s.143(2) & 142(1) of the Act were issued to the assessee. In compliance, the AR of the assessee appeared from time to time and case was discussed. Thereafter the AO completed the assessment and made various additions and assessed total income at Rs.5,93,205/- and passed order u/s.143(3) of the Act, dated 31.12.2012. Subsequently it was noticed that the assessee had not considered Rs.5,14,424/- in his computation. Accordingly, notice u/s.148 of the Act was issued. The AO on examination of the evidences filed by the assessee made an addition of Rs.5,14,424/-. The AO also retained the addition of Rs.34,835/- made during the course of assessment u/s.143(3) of the Act was made and assessed the total income at Rs.11,07,630/- and passed order u/s.147/143(3) of the Act, dated 16.11.2015.

5. Aggrieved by the assessment order, the assessee has filed an appeal with the CIT(A). In the appellate proceedings the assessee argued the grounds and reiterated the submissions made before the AO. The CIT(A) after considering the submissions of assessee and the findings of AO, dismissed the appeal of the assessee.

6. Aggrieved by the order of CIT(A), the assessee has filed an appeal before the Tribunal.

7. Ld. AR before us submitted with respect of ground No.3 & 4 that the interest and remuneration received from partnership firm is business income. As per section 28(v) of the I.T. Act, 1961 the salary, bonus, commission or remuneration received from partnership firm is termed as

business income. Further with respect to ground No.5 & 6, the Id. AR of the assessee submitted that the CIT(A) has confirmed the addition of expenses claimed under the different heads of income deducted from the business income received as remuneration and interest received from partnership firms and the Id. AR also substantiated his stand of remuneration received from the partnership firm relying on the income tax details and prayed for allowing the claim

8. Contra, Id.DR relied on the orders of lower authorities.

9. We heard the rival submissions and perused the material on record. Prima facie, on the first disputed issue of taxability of remuneration and interest received from partnership firm as business income. Ld. AR submitted that the assessee is having proprietary business and interest income is offered separately and also income from partnership firm in the nature of remuneration and interest on capital. The AO and the CIT(A) has not treated this income under the income from business and also disallowed the claim of expenses of the assessee. Before us, Id. AR demonstrated with copy of the income tax return for the assessment year 2010-2011 in respect of partnership Nandlal Pandey where assessee's share of profit and partnership remuneration was disclosed and further in respect of second claim of income from partnership firm M/s Lalita Construction, Id. AR substantiated with income tax return and also the profit and loss account, partner's remuneration and share of profit. We found strength in the arguments of Id. AR and also on perusal of the

Section 28(v) of the Act which specifically mentions that the chargeability of interest income and the remuneration of the partners which reads as under

:-

28. The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession",—

(v) any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from such firm :

Provided that where any interest, salary, bonus, commission or remuneration, by whatever name called, or any part thereof has not been allowed to be deducted under clause (b) of section 40, the income under this clause shall be adjusted to the extent of the amount not so allowed to be deducted ;

10. Therefore, we considering the facts and circumstances and provisions of law, are of the opinion that the interest income and remuneration are as per the provision of Act are taxable as business income and accordingly we allow this ground of appeal.

11. Similarly, on the second disputed of allowability of expenditure of Rs.4,14,420/-, which was claimed as deduction in the business income. This expenditure was not allowed to the assessee. We find that the assessee's income is chargeable under the business income as discussed above and also the assessee is entitled for the claim of expenditure which is wholly and exclusively utilized for the earning of above income are allowable. Ld. AO has disputed the genuineness of the expenses, therefore, we are of the opinion that the assessee should not be deprived to claim the addition if allowable. Accordingly, we direct the AO to verify the

expenditure as claimed on the business income and remit to the file of AO.

This ground of appeal is allowed for statistical purposes.

12. Next ground is with regard to charging of interest u/s.234A&234B of the Act, which is consequential, and the AO is directed to calculate the interest u/s.234A & 234B of the Act as per the law laid down by the Hon'ble jurisdictional High Court in case of Ajay Prakash Verma in ITA No.38 of 2010 reported in 2013(1) TMI 140. We order accordingly.

13. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 30/05 /2018

Sd/-
(N.S.SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Ranchi, Dated 30/05/2018
Prakash Kumar Mishra, Sr. Ps

Copy of the Order forwarded to :

1. The Appellant –
Sri Gopal Pandey,
Prop: M/s Maa Shardey Automobiles, SOH,
Panchperwa, Garwah-822114
2. The Respondent –
ITO Ward-3(6), Daltongaj
3. The CIT(A) concerned
4. CIT , concerned
5. DR, ITAT, Ranchi
6. Guard file.

BY ORDER,

//True Copy//

SR.PS, ITAT, RANCHI