

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.1033/PUN/2016

निर्धारण वर्ष / Assessment Year : 2005-06

Satish Madhukar Gokhale,  
Anandi Apartments,  
V.G. Kale Road,  
Pune - 411004

PAN : AEHPG7164G

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Addl. Commissioner of Income Tax,  
Range - 3, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri C.H. Naniwadekar  
Revenue by : Shri Aseem Sharma

सुनवाई की तारीख / Date of Hearing : 31-05-2018

घोषणा की तारीख / Date of Pronouncement : 31-05-2018

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM :**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-1, Pune dated 14-01-2016 for the assessment year 2005-06.

The solitary ground raised by the assessee in appeal is against disallowance made u/s. 40(A)(2)(b) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") of Rs.5,50,336/-.

2. The brief facts of the case as emanating from records are: The assessee is engaged in the business of designing. During the course of scrutiny assessment proceedings, the Assessing Officer observed that the assessee paid professional fee for designing to the tune of Rs.14,25,000/- to his wife Mrs. Falguni Gokhale. The Assessing Officer held that in the past the assessee has been paying professional fee to Mrs. Falguni Gokhale approximately 10% of the total turnover, however, during the assessment year under appeal, the assessee has paid professional fee which is more than 17% of the turnover. The Assessing Officer disallowed fee paid to Mrs. Falguni Gokhale over and above 10% of the gross receipts of project handled by the professional i.e. Rs.5,50,366/-. The Assessing Officer filed appeal against the assessment order dated 15-11-2007, inter alia challenging disallowance made u/s. 40(A)(2)(b) of the Act. The Commissioner of Income Tax (Appeals) after considering the submissions of assessee confirmed the findings of Assessing Officer on this issue. Now, the assessee is in second appeal before the Tribunal against confirming of disallowance u/s. 40(A)(2)(b) of the Act.

3. Shri C.H. Naniwadekar appearing on behalf of the assessee submitted that the wife of assessee is a graphic designer with an experience of more than 15 years. She is a Diploma holder from National Institute of Design. She has been working for the assessee in the past. It was because of her expertise that the turnover of the firms owned by assessee has grown significantly. The reason given by the Assessing

Officer that in the past the assessee has been remunerating Mrs. Falguni Gokhale @ 10% of the gross receipts of projects handled is against the facts on the case. A perusal of the table at page 12 of the assessment order shows that in the Financial Year 2004-05 the percentage of fee paid to the gross receipts is 10.39% and in the Financial Year 2005-06 the same increased to 11.02%. The professional fee paid to Mrs. Falguni Gokhale is not related to the turnover or gross receipts from the project handled by her but on the basis of work performed. The ld. AR further submitted that the assessee and his wife, both are in the tax bracket of 30%, therefore, there would be no difference if the amount paid as fee is either assessed in the hands of assessee or Mrs. Falguni Gokhale. There is no element of tax planning for reducing tax liability of the assessee. To support his submissions, the ld. AR furnished copy of the Income Tax Return of Mrs. Falguni Gokhale for the assessment year 2005-06 and the decision of Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Indo Saudi Services (Travel) (P) Ltd. reported as 310 ITR 306.

4. Shri Aseem Sharma representing the Department vehemently defended the action of Commissioner of Income Tax (Appeals) in confirming the disallowance u/s. 40(A)(2)(b) of the Act.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The only issue in appeal is disallowance of Rs.5,50,336/- paid by assessee to his wife u/s. 40(A)(2)(b) of the Act. The assessee during the period relevant to assessment year under appeal has paid professional fee for designing to his wife Rs.14,25,000/- in the past. It is an undisputed fact that Mrs. Falguni Gokhale is a qualified graphic designer. The assessee has been

paying professional fee for designing to his wife in the past as well. However, no disallowance u/s. 40(A)(2)(b) of the Act was made. The only reason for making disallowance in the assessment year under appeal is that the rate of payment of fee during the period relevant to the assessment year 2005-06 is higher than the fee paid in the earlier assessment years. We do not find merit in the reasoning given by the Assessing Officer for making such disallowance. For making disallowance u/s. 40(A)(2)(b) the Assessing Officer has to ascertain whether the remuneration paid to the 'relatives' falling in Clause (b) of section 40(A)(2) is commensurate to the market rate. If the remuneration paid is higher than the market rate, disallowance has to be made to the extent of remuneration paid is in excess of the market rate. No such exercise was carried out by the Assessing Officer before making such disallowance. The Assessing Officer in order has referred to the fee paid to two designers which is at much lower rate. However, no comparison has been drawn vis-à-vis the qualification, experience etc. of Mrs. Falguni Gokhale and the other two designers i.e. Amal Patil and Nisha Mistry.

6. Another facet to the issue is that both, the assessee and his wife are in same tax bracket of 30%. Whether the amount paid as fee is assessed in the hands of wife or the amount is taxed in the hands of the assessee, it would be subject to same rate of tax. Therefore, there would be no loss to the revenue even if it is taxed in the hands of Mrs. Falguni Gokhale or the assessee. The Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Indo Saudi Services (Travel) (P) Ltd. (supra) has held that where the payment made to sister concern is subject to same rate of tax, there would be no evasion of tax. We are therefore of considered view that

the disallowance made by the revenue u/s. 40(A)(2)(b) is not warranted. Accordingly, the same is deleted and the appeal of assessee is allowed.

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

Order pronounced on Thursday, the 31<sup>st</sup> day of May, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 31<sup>st</sup> May, 2018

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-1, Pune
4. The Pr. C.I.T.-2, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune