

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &
SHRI B.R.R.KUMAR, ACCOUNTANT MEMBER**

**ITA No. 5087/Del./2014
Assessment Year: 2010-11**

BEC Industries C-108, Mayapuri Indl. Area, Phase-2 New Delhi PAN : AAFB4450B (Appellant)	vs.	JCIT Range-39 New Delhi (Respondent)
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Revenue by	Sh. S.L.Anuragi, Sr. DR
Assessee by	Shailendra Kr. Bajaj, CA

Date of Hearing	18.04.2018
Date of Pronouncement	04.07.2018

ORDER

Per B.R.R.KUMAR, A.M.:

This is an appeal filed by the assessee against the order dated 19/06/2014 of CIT (A)-XXVIII, New Delhi for Assessment Year 2010-11 following the grounds of appeal

:-

- 1. That the Ld. CIT (A) has erred both in facts and in law while sustaining the disallowance of working allowance of Rs. 9,60,000/- paid to the partners by holding that it is not in accordance with section 40(b)(v).*
- 2. That the Ld. CIT(A) has erred both in facts and in law while sustaining the disallowance of interest of Rs. 4,50,000/- paid to the partners by holding that it is not in accordance with section 40(b)(iv).*
- 3. That the Ld. CIT(A) has erred both in facts and in law while sustaining the disallowance of Rs. 39,936/- being 10% of telephone expenses on estimate basis .*
- 4. That the Ld. CIT(A) has erred both in facts and in law while*

sustaining the disallowance of Rs. 53,163/- being 10% of travelling, petrol and conveyance expenses on estimate basis .

5a. That the Ld. CIT(A) has erred both in facts and in law while sustaining the disallowance of Rs. 75,000/- ,on estimate basis, out of diwali and sales promotion expenses on estimate basis .

5b. That the Ld. CIT(A) failed to appreciate that Diwali Expenses and sales promotion expenses incurred were wholly and exclusively for business purposes.

6. That the order of the CIT(A) is bad in law and against the facts of the case.

2. Brief facts of the case are that the Assessing Officer has disallowed remuneration paid to the partners in the grounds that the partnership deed does not specify the amount of the remuneration payable to each working partner or lays down the manner of quantify such remuneration. The assessing officer held that the partnership deed of the assessee has not defined the conditions required for allowing the remuneration paid to the partners u/s 40(b)(v). The ld. CIT(A) confirmed the addition on the grounds that the matter is squarely covered by the decision of the Jurisdictional High Court in the case of Sood Brij & Associates vs. CIT, New Delhi 2011, 15 Taxman. Com 76 (Delhi).

3. Before us the Ld. AR submitted that the partnership deed vide para no. 7 clearly mentions “that it has been mutually decided that party of the first part and third part shall be the working partners and will be paid for rendering services to the firm. It has been mutually decided to pay working allowances of Rs. 1,00,000/- per month each however, the parties may mutually vary the amount of working allowance depending upon profits of the business”. The Ld. AR further submitted that the payment was made at the rate of 40,000/- per month to each partner which is below the terms of the

partnership deed and hence the disallowance made by the AO and as confirmed by the CIT(A) was wrong on facts.

4. We have gone through the partnership deed and found that the amount of remuneration payable and also manner of quantification of such remuneration has been clearly mentioned in the partnership deed. Hence the finding of the Ld. CIT(A) that the partnership deed does not mention the extent of remuneration and also the reliance on the case of Sood Brij associates which is on a different set of facts cannot be accepted as the case dealt with the supplementary partnership deed where the remuneration was not quantified, whose facts or in contrary to the facts are in the instant case wherein the remuneration and the manner of quantification has been clearly determined in the partnership deed.

Hence the Appeal of the assessee on this ground is allowed.

5. Regarding the ground no. 2 pertaining to the interest of Rs. 4,50,000/-, it is observed that terms of interest payments were also mentioned in the partnership deed. The assessee has paid interest @ 9% to the partners which is in consonance with the terms of the partnership deed. Hence the amount of interest claimed by the assessee is hereby allowed.

6. The appeal of the assessee on his ground is allowed

7. Ground no. 3, 4 relates to disallowance of 10% of expenses on account of telephone and travelling and ground no. 5 a relates to disallowance of 75,000/- on account of Diwali and sales expenses.

8. During the hearing when asked about the availability of the complete details and use of telephone and travelling and Diwali expense purely for the business purposes, the Ld. AR has fairly

conceded and not pressed the matters further. Since the personal nature of these expenses cannot be ruled out, we hereby decline to interfere in the disallowances confirmed by the Ld. CIT(A).

9. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 04.07.2018

Sd/-

(AMIT SHUKLA)

JUDICIAL MEMBER

Dated: 04.07.2018

BR

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

TRUE COPY

Sd/-

(B.R.R.KUMAR)

ACCOUNTANT MEMBER

ASSISTANT REGISTRAR

ITAT NEW DELHI

