

IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA

BEFORE SHRI S. S. GODARA, JM & DR. A.L. SAINI, AM

आयकरअपीलसं./ITA No.511/Kol/2016

(निर्धारणवर्ष / Assessment Year: 2011-12)

M/s. Haripada Dutta	Vs.	JCIT, Range-41, Kolkata
12,C, Bhupen Bose Avenue, Kolkata – 700 004.		Aaykar Bhawan, Poorva, Shantipally, Kolkata – 700 107.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AABFH 9358 R		
(Appellant)	..	(Respondent)

Appellant by : Shri A.K. Ghosh, Advocate
Respondent by : Shri S. Dasgupta, Addl. CIT, Sr. DR

सुनवाईकीतारीख/ **Date of Hearing** : **10/05/2018**

घोषणाकीतारीख/**Date of Pronouncement** : **06/07/2018**

आदेश / ORDER

Per Dr. A. L. Saini:

The captioned appeal filed by the assessee, pertaining to Assessment Year 2011-12, is directed against an order passed by the Ld. Commissioner of Income Tax (Appeals)-13, Kolkata in Appeal No.08/CIT(A)-13/Kol/R-41/2014-15 dated 30.12.2015, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), dated 31.03.2014.

2. The grievances raised by the assessee are as follows:

"1 For that on the facts of the case the ld. CIT(A) was not justified in sustaining the addition made on account of partners remuneration amounting to Rs.5,40,000/- paid to working partners of the appellant firm as per terms of the deed of partnership duly rectified by the supplementary deed and within the allowable limits of section 40(b)(v) of the Act, 1961 and as such the addition on this count may please be deleted.

2. For that on the facts of the case the Id. CIT(A) was not justified in sustaining the addition made on account of partners interest on capital amounting to Rs.6,57,468/- paid to partners of the appellant firm as per terms of the deed of partnership duly rectified by the supplementary deed, and as such the addition on this count may please be deleted.

3. For that on the facts of the case the Ld. CIT(A), was not legally justified in sustaining the addition of Rs.13,02,343/- on account of sundry debtors balance, without considering the balance of earlier years which is subject to reconciliation and the addition may please be deleted.

4. For that the appellant craves leave to add, alter, amend any further grounds of appeal before or at the time of hearing.”

3.The facts of the case which can be stated quite shortly are as follows:
The assessee is a partnership firm. During the assessment proceedings, the AO noted that interest on capital of Rs.6,57,468/- and partner`s remuneration of Rs.5,40,000/-, were not authorized by the partnership deed therefore the same were not admissible deduction and hence Id AO disallowed the same. The Id AO also noted that there was a difference of Rs.13,02,343/- on account of sundry debtors, as the assessee failed to reconcile the said difference therefore. Id AO made the addition.

On appeal by the assessee, the Id CIT(A) confirmed these additions made by assessing officer. Aggrieved, the assessee is in appeal before us.

4.At the outset itself, the Id. Counsel for the assessee pointed out that as per supplementary partnership deed, the remuneration of the partners amounting to Rs.5,40,000/- and interest on capital amounting to Rs.6,57,468/- was allowable. The Id. Counsel submitted that the terms and conditions of the old partnership deed was duly rectified by the Supplementary Partnership Deed within the allowable limits of section 40(b)(v) of the Act. Before the Bench, the Id Counsel submitted the copy of “Supplementary Deed of Partnership”.

The Id. Counsel for the assessee also submitted that addition on account of sundry debtors balance to the tune of Rs.13,02,343/- was without considering balance of earlier years which is subject to reconciliation and, therefore, addition may be deleted. Therefore, there should not be any disallowance on this score.

5. On the other hand, the Id. DR for the Revenue pointed out that the Supplementary Partnership Deed which has rectified the terms and conditions of the original partnership deed, has neither been furnished before the Assessing Officer nor before the Id. CIT(A), hence it is an additional evidence before the Hon`ble Tribunal. Therefore, this matter should go to the file of the Assessing Officer to examine the issue afresh in the context of the Supplementary Partnership Deed. Besides, the addition of Rs.13,02,343/- on account of sundry debtors balances which has been done by Ld AO, without considering the balances of earlier years, which is subject to reconciliation, should also be remitted to the file of the Id AO to examine the reconciliation.

6. We have heard both the parties and perused the material available on record. We note that since, the Supplementary Partnership Deed is a new evidence/additional evidence and the same should be examined by the Assessing Officer. We note that the addition of Rs.13,02,343/- on account of sundry debtors balance was without considering the balance of earlier years, which is subject to reconciliation and rectification. That is, in respect of addition on account of sundry debtors, the reconciliation of the previous years' debtors vis a vis current years' debtors have not been submitted before the Assessing Officer. We note that since the sundry debtors balances are subject to reconciliation and confirmation, therefore, this issue should be remitted back to the file of the Assessing Officer for his examination. We note that assessee has submitted a Supplementary Partnership Deed before the Bench. The said Supplementary Partnership

Deed has rectified the terms and conditions of the remunerations of the partners amounting to Rs.5,40,000/- and in respect of partners interest on capital amounting to Rs.6,57,468/-.The said Supplementary Partnership Deed has not been examined by the Id Assessing Officer. Therefore, we are of the view that these issues require examination at the end of the Assessing Officer, hence, we think it proper to remit the issues back to the file of the Assessing Officer with a direction to examine the issues afresh.

7. Since, these additional evidences are being submitted before the Bench first time therefore, keeping in mind the principle of natural justice and fair play, we are of the view that Assessing Officer should be allowed a reasonable opportunity to examine them because this ensures full, fair and detailed enquiry and verification. Therefore, we set aside the order of the Id. CIT(A) and remit the matter back to the file of the Assessing Officer to examine the relevant documents, evidences and adjudicate the issue in accordance with law. We also direct the assessee to participate diligently in assessment proceedings. Therefore, we allow this appeal for statistical purposes.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 06.07.2018.

Sd/-
(S. S. GODARA)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 06/07/2018

(RS, Sr. PS)

Sd/-
(A. L. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant- M/s. Haripada Dutta
2. प्रत्यर्थी/ The Respondent- JCIT, Range-41, Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT,
Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.