

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'A', HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA No. 2262/Hyd/2017
Assessment Year: 2014-15

Asst. Commissioner of
Income-tax,
Circle – 4(1), Hyderabad

vs. Ch. Kishore Kumar,
Hyderabad.

PAN – AAIFC 6943 Q

Appellant

Respondent

Revenue by: Shri R.S. Arvind Dakshan
Assessee by: None

Date of hearing: 31/10/2018
Date of pronouncement: 15/11/2018

ORDER

PER S. RIFAUR RAHMAN, AM:

This appeal is filed by the Revenue against order of CIT(A) - 1, Hyderabad, dated 31/08/2017 for AY 2014-15.

2. Brief facts of the case are that the assessee, engaged in the business of undertaking transport contracts. The assessee filed its return of income for the AY 2014-15 on 30/11/2014 declaring total income of Rs. 2,59,66,200/-. Subsequently, the case was selected for scrutiny under CASS and notices were issued u/s 143(2) & u/s 142(1). The AO completed the assessment u/s 143(3) on 30/12/2016 determining the total income of Rs. 3,22,79,700/-.

2.1 During the assessment proceedings, the Assessing Officer asked the assessee to submit the complete details of the expenditure incurred along with vouchers. The assessee has not submitted any documents to support the expenses

claimed by the assessee. In view of this, the Assessing Officer estimated the net profit @5% on total turnover of Rs.64,55,94,049/-amounting to Rs.3,22,79,702/- by rejecting the books of account u/s.145(3) of I.T. Act,1961. The Authorised Representative has agreed for estimating the net profit at 5% of turnover.

3. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A).

4. Before the CIT(A), the assessee submitted that the book profit admitted by the assessee was Rs.3,44,40,852/- which is more than 5% of its turnover, but, the Assessing Officer estimated net profit of Rs.3,22,79,700/-. The assessee submitted that the book profit returned by the firm is more than the income estimated by the Assessing Officer. The assessee submitted that the Assessing Officer has not deducted the interest of Rs.63,74,652/- and remuneration of Rs.21,00,000/- paid to partners from the income estimated. He submitted that the income admitted by him is Rs. 2,59,66,200/- which is more than the income determined by the AO i.e. Rs. 2,38,05,048/-. The assessee, therefore, submitted that the interest and remuneration paid to partners should be allowed from income.

5. After considering the submissions of the assessee, the CIT(A) observed that the AO estimated the net profit of the assessee @ 5% on the total turnover of Rs. 64,55,94,049/- and accordingly determined the income at Rs. 3,22,79,702/-. He further observed that the assessee submitted that the interest and remuneration paid to partners amounting to Rs. 84,74,652/- was not considered while estimating the net profit @ 5%. He observed that the proviso to section 44AD(2) clearly says that salary and interest paid to the partner shall be

deducted from the income computed under sub-section (1) of 44AD subject to limitation u/s 40(b) of the act. Relying on the decision of M/s C. Eswara Reddy & Co., Hyderabad in ITA No. 668/hyd/2009, dated 31/01/2011, directed the AO to allow deduction towards salary and interest paid to partners, from out of income estimated.

6. Aggrieved by the order of CIT(A), the revenue is in appeal before us raising the following grounds of appeal:

"(i) The order of the Ld. CIT(Appeals) is erroneous on facts and law of the case.

(ii) The Ld. CIT (A) erred in directing the AO to allow deduction towards salary and interest paid to partners amounting to Rs.84,74,652/- from the estimated income of Rs.3,22,79,700/- as the same is allowable as per provisions of Sec.44AD.

(iii) Any other ground that may be urged at the time of hearing of appeal."

7. None appeared on behalf of the respondent-assessee at the time of hearing of this appeal, though the notice served by the Registry of ITAT as well as by the department. However, we proceed to decide the appeal after hearing the Id. DR and on merits of the case.

8. Considered the submissions of the Id. DR and perused the material on record. The issue is squarely covered by the decision of the coordinate bench of this Tribunal in the case of M/s C. Eswara Reddy and Co (supra), as observed by the CIT(A). In the said case, the coordinate bench has held as under:

"14. Now coming to the payment of interest and salary to the partner. Proviso to [section 44AD\(2\)](#) clearly says that salary and interest paid to the partner shall be deducted from the income computed under sub-section (1) of [section 44AD](#) subject to limitation u/s. 40(b) of the Act. As we have already observed,

though there were restrictions with regard to application of [section 44AD](#) wherever the total contract receipts exceed Rs.40 lakhs, with effect from 1.4.2011 such restriction was removed by the Legislature. Moreover, the co-ordinate Bench this Tribunal in M. Bhaskar Reddy (supra) after taking a clue from [section 44AD](#) estimated the profit at 8% of the contract receipt. Therefore, by taking a clue from the provision of [section 44AD](#) as is applicable for the assessment year under consideration and the provisions which would come into operation with effect from 1.4.2011, in our opinion, the payment of interest and salary to the partner shall be allowed subject to limitation specified in [section 40\(b\)](#) of the Act from the estimated income.”

Respectfully following the said decision, it is observed that section 44AD(2) clearly shows that the provisions of section 30-38 shall be deemed to have been claimed. The provisions of section 40 are not deemed to have been allowed. Therefore, assessee is eligible to claim deduction u/s 40. Accordingly, we do not find any infirmity in the order of CIT(A) in directing the AO to allow deduction towards salary and interest paid to partners as deduction as per section 44AD(2) out of the income estimated, as his decision is in consonance with the said decision. Accordingly, grounds raised by the revenue are dismissed.

9. In the result, appeal of the revenue is dismissed.

Pronounced in the open court on 15th November, 2018.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, dated 15th November, 2018

kv

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2. *M/s Ch. Kishore Kumar, 3-5-574, F. No. 201, City Home Apartments, Vittalwadi Lane, Narayanaguda, Hyd – 500 029*
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