

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.4993/Del/2015  
Assessment Year: 2011-12**

BEC Industries, C-108, Mayapuri Industrial Area,Phase-2, New Delhi-110064 (PAN: AAAFB4450B)	<b>vs</b>	ACIT, Circle 39(1), 22 <sup>nd</sup> Floor, E-2 Block, Civic Centre, New Delhi-110002
Appellant		Respondent

**Assessee by : Shri Shailendra Bajaj, CA  
Department by: Shri Sridhar Dora, Sr. DR**

**Date of hearing : 26.11.2018  
Date of pronouncement : 16.01.2019**

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER :**

This appeal is preferred by the assessee against the order dated 5.5.2015 passed by the Ld. CIT (Appeals)-20 for assessment year 2011-12. The main issues in dispute before us are the disallowance of remuneration paid to the partners amounting to Rs. 7,60,000/- out of total claim of Rs. 9,60,000/- and a further disallowance of interest paid to partners to the tune of Rs. 4,50,000/-.

2.0 The Ld. AR submitted that the issue is covered in favour of the assessee by the order of the ITAT in assessee's own case for assessment year 2010-11 in ITA No. 5087/Del/2014 vide order dated 4.7.2018. A copy of the said order was filed before the Bench.

3.0 The Ld. Sr. DR, in all fairness, agreed that the issue had been decided in favour of the assessee by the order of the ITAT as aforesaid. He, however, placed reliance on the order of both the lower authorities.

4.0 We have heard the rival submissions and perused the material available on record. We see that the averment of the Ld. AR is correct inasmuch as the issues regarding remuneration and interest paid to partners are squarely covered in favour of the assessee by the order of the Tribunal in assessee's own case in ITA No. 5087/Del/2014 for assessment year 2010-11. The relevant observations and findings of the Tribunal are contained in paragraphs 2,3, 4 & 5 of the aforesaid order and the same are reproduced here in under for a ready reference:-

*"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 Id. 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.”*

4.1 Thus, as the Ld. Sr. DR could not point out any change in facts during the year under consideration as compared to assessment year 2010-11, respectfully following the order of the Coordinate Bench in assessee's own case, we allow ground nos. 1.a, 1.b, 2.a and 2.b of the assessee's appeal.

4.2 Apart from this, the assessee is also challenging 10% disallowance sustained by the Ld. Commissioner of Income Tax (A) out of telephone expenses and a further disallowance of Rs. 53,163/- being 10% out of travelling, petrol and conveyance expenses and disallowance of Rs. 75,000/- out of Diwali and sales promotion expenses. During the course of hearing, the Ld. AR has fairly conceded and has not pressed the matter further. Therefore, these issues do not call for any interference from us and accordingly ground nos. 3.a, 3.b, 4.a, 4.b, 5.a and 5.b stand dismissed.

4.3 Ground no. 6 is general in nature and does not require any separate adjudication.

5.0 In the result, the appeal of the assessee stands partly allowed.

Order pronounced in the open court on 16.01.2019.

**Sd/-**

**(G.D. AGRAWAL)  
VICE PRESIDENT**

**Sd/-**

**(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER**

Dated: 16<sup>th</sup> JANUARY, 2019  
'GS'

Copy forwarded to: -

- 1) Appellant
- 2) Respondent
- 3) CIT(A)
- 4) CIT
- 5) DR

By Order

ASSTT. REGISTRAR

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	