

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD – BENCH ‘C’

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER  
AND  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 2543/Ahd/2017

निर्धारण वर्ष/Assessment Year: 2014-15

M/s.Manubhai Narottamdas & Co. 201, Parishram Building Mithakhali Six Roads Ahmedabad. PAN : AACFM 5147 Q	Vs	ITO, Ward-5(2)(5) Ahmedabad.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri M.K. Patel, Advocate
Revenue by :	Shri O.P. Pathak, Sr.DR

सुनवाई की तारीख/Date of Hearing : 18/03/2019

घोषणा की तारीख /Date of Pronouncement : 19 / 03/2019

### ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER : Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-5, Ahmedabad dated 15.9.2017 passed for the Asstt.Year 2014-15.

2. Sole issue involved in the appeal is whether remuneration paid to working partner, Shri Shrikant N. Jhaveri HUF amounting to Rs.2,03,585/- is admissible or not under section 40(b) of the Income Tax Act.

3. With the assistance of the Id.representatives, we have gone through the record carefully. It has been demonstrated before us that

identical disallowance was made in the case of the assessee for the Asstt.Year 2013-14 and dispute travelled upto the Tribunal, and the ITAT in ITA No.2628/Ahd/2016 has allowed appeal of the assessee and held that remuneration paid to HUF partner would be admissible as deduction to the assessee. The discussion made by the Tribunal reads as under:

*"3. With the assistance of learned representatives, we have gone through the record carefully. It emerges out from the record that the assessee is a partnership firm. It has filed its return of income electronically on 18.09.2013 declaring total income at Rs.1,15,700/-, The assessee has claimed deduction of Rs.1,99,022/- paid to Shrikant N. Javeri HUF. It was contended that Shrikant N. Javeri was a Karta representing their respective HUF and he was a working partner. The payment made to him in accordance with the partnership deed and the amounts are paid as per the provision made in the partner deed which is as per the section 40(b) of the Income tax Act. The Ld. Assessing Officer did not accept the contention of assessee and observe that remuneration paid to HUF is not allowable expenses, he disallowed the claim of the assessee.*

*4. The appeal to the CIT(A) did not bring any relief to the assessee.*

*5. A perusal of the record would indicate that assessee has made reference of seven decisions before the Learned Revenue Authorities below. The submissions of the assessee has been noticed by the CIT as under:*

*"The appellant firm filed its return of income declaring total income of Rs.1,15,700/- In the computation of total income, total remuneration of Rs.3,98,045/- paid to working partners was claimed as deduction which included remuneration of Rs.1,99,022/- paid to working partner Shrikant N Jhaveri who is a partner in the firm as karta and manager representing his Hindu Undivided Family. In the assessment proceedings, the learned officer has disallowed the remuneration on irrelevant grounds, though the question involved was whether remuneration paid to working partner who is a partner as nominee of his HUF is allowable u/s.40(b) of the Act in the assessment of the firm.*

The law on this point is well settled by the decision of the Honorable Supreme Court and followed by High Court and Tribunals that the HUF does not have the contractual capacity and therefore, it is only the Karta of an HUF who has the contractual capacity can enter into an agreement forming the Partnership Act. The partnership Act does not recognize the representative capacity of the partners. So far as the Partnership is concerned, it is only the individuals who have entered into the agreement of partnership are partners and therefore -whatever remuneration is paid, it is paid Individually to partners and not to the entity which they represent In the case of the appellant firm, as Shri Shrikant N Jhaveri who is actively engaged in the conduct of business and the remuneration paid to him is authorized by the partnership deed and is in accordance with and within the limit prescribed u/s. 40(b), the disallowance of Rs.1,99,022/- made by the assessing officer is had in law and requires to be struck down.

In support, the following judgments are relied upon:-

- i) Rasiklal and co, vs. CIT, 229 ITR 458(SC)
- ii) Commissioner Of Income tax vs Golden Touch, 263 ITR pg 261
- iii) CTT v/s. Jugal Kishore & Sons 347 ITR pg. 0325
- iv) ACIT vs Giriraj Mines, ITAT, Ahmedabad 'A' Bench, (2005) / SOT 279 (Ahd)
- v) Smruti Trading co. vs. ITO, (2001) 70 TTJ (Mum) U4
- vi) Vanson Kids Stuff vs. ATIT, 79 TTJ (Del) 155
- vii) ACIT Vs. Laxmi Sailaji Traders, (2005) I SOT 608 (Hyd)

The head notes of the above referred judgments are enclosed.

In view of the above submissions, your honor is requested to delete the addition of Rs. 1,99,022/- made in the total income. "

6. I find that in the case of CIT vs. Jugal Kishore and Sons Hon'ble Allahabad High Court has considered an identical issue the question before the Hon'ble Court was:-

"1. Whether the learned Income-tax Appellate Tribunal has erred in law and in facts In Ignoring the conations laid down in the provisions of section 40(b)(i) of the Income-tax Act, 1961, and

*Explanation 4 thereto with regard to the disallowance of salary paid to partners in the Hindu undivided family capacity."*

7. *The Hon'ble Court has replied this question by observing as under:*

17. *Thus, we hold that the judgments of the Commissioner of (Appeals) and the Income-tax Appellate Tribunal lay down the correct law. Once it is held that a Hindu undivided family cannot be a partner but the karta which he joins, is for all purposes an individual. As held In the case of Rashik Lal and Co. (1998) 229 ITR 458 (SC), a partner cannot be heard to say that he has received the commission as a partner of the firm but in a different capacity. The Income, received by a partner in a firm, even though as a karta of a Hindu undivided family, is as an individual and as a working partner, then the deduction is allowable.*

18. *For the aforesaid reasons, we find no merit in these appeals filed by the Revenue and they are, accordingly, dismissed.*

8. *Thus, a perusal of the Judgment would indicate that salary paid to Karta of a HUF who is a working partner in a firm would be admissible as a deduction u/s.40(b) of the Income tax Act. I allow the appeal of the assessee and delete the disallowance."*

5. Since there is no disparity on the facts, therefore, respectfully following the order of the ITAT, we allow the appeal of the assessee and delete the disallowance.

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

**Pronounced in the Open Court on 19<sup>th</sup> March, 2019.**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

**Sd/-  
(RAJPAL YADAV)  
JUDICIAL MEMBER**

Ahmedabad; Dated, 19/03/2019