

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, ' B' BENCH : CHENNAI

श्री इंटूरी रामा राव, लेखा सदस्य एवं
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष

[BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER]

आयकर अपील सं./**I.T.A. No.3529/CHNY/2018**
निर्धारण वर्ष /Assessment year : 2012-13

**M/s.Tulip Valves and
Controls,**
19,Vasantha Press Road,
Adyar,Chennai.

Vs. The Assistant Commissioner
of Income Tax,
Non Corporate Circle 15(1),
Wanaparty block,
Chennai 600 034.

[PAN AADFT 5131 G]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.Baskar,Advocate
प्रत्यर्थी की ओर से /Respondent by : Dr.Balina Suresh Kumar,
JCIT, D.R

सुनवाई की तारीख/Date of Hearing : 16-07-2019
घोषणा की तारीख /Date of Pronouncement : 08-08-2019

आदेश / O R D E R

PER INTURI RAMA RAO, ACCOUNTANT MEMBER

This appeal of the assessee is directed against the order of the Commissioner of Income-tax (Appeals)-16, Chennai dated 31.10.2018 for assessment year 2012-13.

2. The assessee raised following grounds for our consideration.

1. The order of the CIT(A) is erroneous, illegal, opposed to facts and is liable to be reversed.

2.1 The Learned CIT(A) erred in confirming the disallowance of remuneration paid to the Partners amounting to Rs.5,50,0001-.

2.2 The Learned CIT(A) erred in not appreciating that there is no legal requirement to register a Partnership Deed.

2.3 The Learned CIT(A) erroneously held that the omission to register the supplemental Partnership Deed will render the amended clauses unexecutable.

2.4 The Learned CIT(A) ought to have allowed the claim of remuneration paid to Partners considering the Partnership Deed dated 11.01.2010.

3.1 The Learned CIT(A) erred in confirming the disallowance of depreciation on motor- cars amounting to Rs.1 ,97,707/-.

3.2 The Learned CIT(A) ought to have appreciated that "commercial vehicle" includes the light motor vehicles used for the purpose of business as per the Motor Vehicles Act, and not necessarily to a freight or goods vehicle.

4. The Learned CIT(A) erred in not following the plethora of judgments relied upon by the Appellant before him.

5. Any other ground/s that may be raised at the time of hearing.

3. The brief facts of the case are that the assessee namely M/s.Tulip Valves and Controls is a Partnership Firm. It is engaged in the business of manufacturing and assembling of valves. The return of

income for the assessment year 2012-13 was filed on 01.09.2012 declaring a total income of Rs.78,23,870. Against the said return of income, the assessment was completed by the Assistant Commissioner of Income Tax, Non Corporate Circle-15(1), Chennai, (hereinafter referred as 'AO') vide order dated 23.02.2015 passed u/s.143(3) of the Income Tax Act, 1961 (in short 'the Act') accepting the returned income. Subsequently, the Assessing Officer based on the following information had come to conclusion that income had escaped assessment to tax.

- i) It is seen from P&L A/c for assessment year 2012-13 that a sum of Rs.9,10,000/- has been allowed as Partner's salary. But it is seen from the partnership deed dated 1.1.2008 of the firm that the remuneration payable to working partners is Rs.15,000/- p.m for each of the 2 working partners Sh.R.Mohan and Sh. R.Subbiah. As per section 40(b), only the amount authorized by the partnership deed is allowable as deduction towards remuneration paid by a firm to its working partner. Hence, the excess allowed remuneration amounting to Rs.5,50,000/- has to be disallowed.

- ii) It is seen from the Fixed Assets statement, that there is excess allowance of depreciation on the following assets:

Asset/value	Allowable Depreciation		Allowed Depreciation		Excess
	Rate	Amount	Rate	Amount	
Honda car/ 2,63,169	15%	39475	50%	131585	92110
Toyota car/ 3,01,706	15%	45256	50%	150853	105597
					1,97,707

- iii) It is seen from 26 AS that TDS for A.Y 2012-13 is only Rs.105/-.

However, TDS taken into account in computation of tax is Rs.5366/-. The difference of Rs.5255/- being excess allowed TDS should be recovered from the assessee.

Accordingly re-opened the assessment by issue of notice u/s.148 of the Act on 29.03.2016. In response to notice u/s.148, no return of income was filed and the assessment was completed after issuing notice u/s.143(2) of the Act vide order dated 26.12.2016 passed u/s.143(3) r.w.s.147 of the Act total income of Rs.85,76,832/-. While doing so, the Assessing Officer made additions on account of excess remuneration paid to partners of Rs.5,50,000/- and excess depreciation of Rs.1,97,707/- and addition of TDS liability of Rs.5,255/-. Aggrieved, the assessee preferred an appeal before the Id.CIT(A), who vide impugned order dismissed the appeal. Being aggrieved with

the order of the Id.CIT(A), the Revenue is before us in the present appeal.

4. It is submitted by Id.AR that the remuneration to the partners cannot be disallowed for want of registration of partnership firm. As regards depreciation, it is submitted that depreciation on motor car is eligible for higher depreciation i.e.50% as the motor vehicle purchased falls within the definition of commercial vehicle.

5. On the other hand, the Senior Id.DR placed reliance on the order of lower authorities.

6. We have heard the rival contentions and perused the material available on record. Ground No.2 of appeal challenges the disallowance of remuneration paid to partners. There is no requirement under the law that the partnership firm should be duly registered under the Partnership Act. Therefore, remuneration paid to partners cannot be disallowed for want of registration of firm. Accordingly, we direct the Assessing Officer to allow the remuneration paid to partners of Rs.5,50,000/-. Accordingly, Grounds Nos.2.1 to 2.4 stands allowed.

6.1 As regards disallowance of higher rate of depreciation on vehicle, we find that reasoning of the Id.CIT(A) vide para 7.4 is based on provisions of income tax Rules governing the allowance of depreciation and therefore, we do not any merit in the grounds of appeal filed by the assessee.

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

Order pronounced on 08th August, 2019, at Chennai.

Sd/-
(धुव्वुरु आर.एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(इंटूरी रामा राव)
(INTURI RAMA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 08th August, 2019.

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |