

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH (SMC), INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.711/Ind/2017  
Assessment Year: 2008-09**

Nihalchand Balaram 257, Jawahar Marg Khachrod Dist. Ujjain (Appellant)	<u>बनाम/</u> Vs.	ACIT-2(1) Ujjain  (Revenue )
P.A. No.AACFN0685Q		

Appellant by	Shri Pankaj Shah, A.R.
Respondent by	Smt. Vinita Dubey, Sr. D.R.
<b>Date of Hearing:</b>	<b>26.09.2019</b>
<b>Date of Pronouncement:</b>	<b>27.09.2019</b>

**आदेश / O R D E R**

**PER KUL BHARAT, J.M:**

This appeal by the assessee is directed against order of the CIT(A), Ujjain dated 4.8.2017 pertaining to the assessment year 2008-09. The assessee has raised following grounds of appeal:

**GROUND OF APPEAL**

**GROUND-I**

1. On the facts and in the circumstances of the case and in law, the Commissioner of Income tax (Appeals)-Ujjain erred in confirming the disallowance of partners remuneration to the extent of Rs. 3,53,579
2. The Appellant humbly prays that the said disallowance be deleted.

**GROUND-II**

1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the disallowance of payment made to deceased partner to the extent of Rs.2,41,841 of the Act.
2. The Appellant humbly prays that the said disallowance be deleted.

**GROUND-II**

1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the disallowance of payment made to deceased partner to the extent of Rs.2,41,841 of the Act.
2. The Appellant humbly prays that the said disallowance be deleted.


**GROUND-III**

1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the disallowance of Rs. 13283 on account of alleged prior period payment for electricity.
2. The Appellant humbly prays that the said disallowance be deleted.

**GROUND-IV**

The Appellant craves leave to add, to amend, to alter and/or to delete all or any of the above grounds of appeal

Date: 17.11.2017

For :-Nihalchand Balaram  
Signature:   
Partner

2. Ground Nos.1 & 2 of the assessee's appeal are against disallowance of remuneration paid to the partner. The facts giving rise to this ground are that the A.O. while framing assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter called as 'the Act') disallowed the excess remuneration claimed of Rs.3,53,579/-.

3. Aggrieved against this, the assessee preferred an appeal before Ld. CIT(A). Ld. CIT(A) after considering the submissions confirmed the disallowance.

4. Aggrieved against this, the assessee is in present appeal. Ld. Counsel for the assessee submitted that authorities below were not justified in making the additions and confirmed the same. He submitted that initially partnership was constituted and it was envisaged in the partnership deed dated 1.4.1995 that as per clause 8 remuneration will be calculated in accordance with the Income Tax Act. Thereafter, the partnership was

reconstituted vide deed of partnership dated 20.8.2007, whereby the remuneration of the working partners was fixed at Rs.96,000/-. It is contended that remuneration could be modified by way of mutual consent dated 21.8.2007 it was agreed that each partner would get 33 1/3 as remuneration is to be paid in accordance with section 40(b) of the Act. However, the A.O. by computing the disallowance adopted the remuneration allowable @ Rs.96,000/- without considering the submission that the remuneration is revised by mutual consent. Ld. Counsel submitted that copy of mutual consent was duly placed before the Ld. CIT(A), who also did not interfere with the finding of the Ld. CIT(A).

5. On the contrary, Ld. D.R. opposed these submissions and submitted that the assessee had not filed copy of mutual consent before the A.O. Therefore, the A.O. is justified in adopting fixed remuneration.

6. I have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. Ld. Counsel has drawn our attention to the mutual consent dated 21.8.2007 enclosed in the paper book at page Nos.14 to 15. The revenue has not rebutted the fact that the mutual consent was placed before the Ld. CIT(A). I find that one of the clause of the partnership deed authorises the partners to revise remuneration by way of mutual consent. Therefore, I direct the A.O. to allow the remuneration as per the mutual consent executed by the partners. These grounds of the assessee's appeal are allowed in terms indicated above.

7. Ground No.3 is against disallowance of electricity expenses. Apropos to this ground, Ld. Counsel of the assessee contended that an amount of Rs.13,283/- was paid on 19.4.2007 for the electricity bill for the month of Mar'07. The payment was made late because the electricity

bill was generated late by the electricity company. It is further contended that the expenditure related to electricity is claimed only for 12 months. He submitted that the A.O. ought to have allowed this expenditure.

8. On the contrary, ld. D.R. opposed these submissions and supported the order of the authorities below.

9. I have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. There is nothing on record suggesting that the expenditure was claimed doubly. The liability relates to Mar'07, therefore, the A.O. ought to have allowed the expenditure. I therefore, direct the A.O. to delete this addition.

10. In the result, the appeal filed by the assessee in ITA No.711/Ind/2017 for the A.Y. 2008-09 is allowed.

*Order was pronounced in the open court on 27.09.2019.*

Sd/-  
(KUL BHARAT)  
JUDICIALMEMBER

Indore; दिनांक Dated : 27/09/2019  
VG/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard  
file.

By order

**Assistant Registrar,  
ITAT, Indore**