

**आयकरअपीलीयअधिकरण,सुरतन्यायपीठ,सुरत**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**SURAT BENCH, SURAT**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**  
**AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A. No.56/SRT/2018**

**निर्धारणवर्ष / Assessment Year : 2014-15**

The Assistant Commissioner of Income Tax, Circle-1(2), Surat.	<b>Vs.</b>	M/s. Raivat Impex, 7/Cravi Chhaya Apartment, Opp. Lourdes Convent School, Athwalines, Surat-395 007.  <b>[PAN: AAMFR 8558 G]</b>
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी / Respondent</b>

निर्धारितकीओरसे /Assessee by	Shri Kiran K. Shah-AR
राजस्वकीओरसे /Revenue by	Shri Om Prakash Singh - CIT(DR)

सुनवाईकीतारीख / Date of hearing:	12-12-2019
उद्घोषणाकीतारीख/Pronouncement on:	13-12-2019

**आदेश / O R D E R**

**PER O.P.MEENA, AM:**

1. This appeal filed by the Revenue is directed against the order of learned Commissioner of Income Tax (Appeals)-2, Surat (in short “the CIT (A)”) dated 24-11-2017 pertaining to Assessment Year 2014-15.

2. The grounds raised by the Revenue read as under :

- “1. Whether on the fact and circumstance of the case and in law, the Ld. CIT(A) was justified in deleting the disallowance made by the Assessing Officer by invoking provisions of Section 80(IA)(10) r.w.s 10AA(9) in giving deductions of interest on Capital and Remuneration to partners of the assessee firm after finding that the assessee had taken undue benefits of Section 10AA by not claiming Interest on Capital and Remuneration to partners which resulted increase in exempted profit of the assessee?”

2. *Whether on the facts and circumstances of the case and in law, the CIT(A) is justified in not appreciating the fact that by not providing interest and remuneration to the partners, the firm has claimed higher profits leading to higher claim of deduction u/s 10AA of the Act and thus, devolving the revenue from due amount of tax?*
3. *On the facts and circumstances of the case, the Ld. CIT(A) ought to have upheld the order of the assessing officer."*

3. At the outset, the ld. counsel submitted that this issue under consideration is covered by the decision of ITAT, Surat in the case of ACIT v. Bluestone Jewellery [ITA No. 198/SRT/2017/AY.2013-14 dated 06-06-2019] and in the case of Alidhara Taxspin Engineers [Tax Appeal No. 265/2017 dated 02-05-2017]. Wherein, it was held that disallowance made by the AO on account of non-provision of interest and remuneration u/s.10AA deduction is erroneous and incorrect in law and facts.

4. We have heard the rival submissions and perused the relevant material available on record. We find that both parties were agreed that the issue under consideration is covered by the decision to this bench in the case of Bluestone Jewellery (supra) dated 06-06-2019, wherein Hon'ble ITAT Surat as held Para 7 to 9 as under:

*"7. We have heard the rival submissions and perused the material available on record. We find that the ld. CIT (A) has given his finding as under:*

*"6.1.1. I have considered the assessment order as well as the submissions of the appellant. The Grounds of appeal- Ground No.1 to 3 pertains to learned AO erred in resorting to provisions of section 80(IA)(10) r.w.s. 10AA(9) and thrusting interest and*

remuneration payment to partners and consequently reducing the deduction claimed u/s 10AA to the tune of Rs.94,63,66,731/- . The appellant derived income from manufacturing activity and claimed deduction u/s 10AA of Rs.1,47,67,42,521/-. The AO found that the appellant has not claimed interest and remuneration to the partners from the business income and the supplementary partnership deed executed on 01.02.2010 does not provide any provision for payment of interest and remuneration to partners. The AO relying on the judgment in the case of Meridian Impex 37 taxmann.com 22(2013) by ITAT Rajkot Branch, held that interest and remuneration to partners are allowable though it has not been claimed in the partnership deed. The AO held that non-charging of the interest on the invested capital and no remunerations for the working partners has been done to enhance the profit of the appellant concern which is exempt from taxation and reduce the taxable income of the individual partners to same extent. The AO held that the partnership deed itself is a vehicle of collusive tax avoiding action and relying on the MeridipanImpex (supra) calculated the payment of interest and remuneration to partners and the amount of Rs.95,05,14,050/- was excluded from the deduction u/s 10AA of the Act. The AO had restricted the claim of deduction u/s 80IA(10) to the tune of Rs.53,03,75,790/- as against the total claim of deduction of Rs.1,47,67,42,521/- on account of interest to partners remuneration. The appellant submitted that the AO's finding is incorrect as it was clearly mentioned in the supplementary partnership deed that no partner is eligible for interest on capital as well as remuneration.

6.1.2 On the perusal of the details, it is observed that as per the Partnership Deed the appellant has not debited interest and remuneration to the partners as the supplementary partnership deed does not provide any provision for payment of interest and remuneration to the partners. The main contention of the appellant is that the interest and remuneration of the partners are not claimed by the appellant as the same was not authorized by or is not in accordance with the terms of the partnership deed. The appellant has relied on the circular No.739 dated 25.03.1996 wherein the CBDT has clarified that no deduction 40(b)(v) of the Act will be admissible unless the partnership deed either specifies the amount of remuneration payable to each individual working partner or lays down the manner of quantifying such remuneration. The clause of the Partnership Deed specifically restricts payment of Interest to Partners on their Capital as well as Remuneration to Partners. This is the main reason why the appellant has not claimed both the expenses against the Business Income shown in Income Tax Return.

6.1.3. The AO has mainly relied in the case of Meridian Impex (supra) to disallow the interest on capital partner remuneration but the facts in this case of Meridian Impex (supra) was different as there was the specific clause regarding the payment of interest on capital and partners remuneration in the original partnership Deed submitted at

the time of scrutiny assessment and the supplementary deed was made amending the clause regarding non-payment of interest on capital and remuneration to partners. This supplementary deed was not submitted before the AO during the assessment proceedings. In the instant case, the Partnership deed itself does not have any clause pertaining to payment of interest and remuneration to the partners.

6.1.4 This issue came up for consideration before the jurisdictional ITAT Bench Ahmedabad, in the case of M/s Sagar Foods and Shreeji Dehydrate Export, 2017 (3) TMI 1297. The Hon'ble Bench, in its order dated 22.02.2017, held that the AO could not have compelled the appellant to charge interest or remuneration by invoking section 40(b)(v) of the Act. Similarly in the case of M/s Al Reza Food vs. ITO, Ward-2(4), Bhavnagar 2017 (3) TMI 1237 – ITAT Ahmedabad similar view was taken relying on the judgment in the case of M/s Sagar Food and Shreeji Dehydrate Exports vs. ITO, Ward-2(4), Bhavnagar. In a recent decision of Hon'ble Gujarat in the case of AlidharaTaxspin Engineers, Tax Appeal No.265 of 2017 dated 02.05.2017 held that mere incorporation of interest partners capital account and remuneration does not signify that the same are mandatory in nature. These decisions of the jurisdictional high court and ITAT Bench Ahmedabad are squarely applicable in this case of the appellant. The appellant has not charged any interest and remunerations as per the partnership deed and therefore, the appellant cannot be compelled to charge interest or remuneration.

6.1.5 In view of the above facts, the disallowance made by the AO on account of non provision of interest and remuneration of 10AA deduction is erroneous and incorrect in law and facts. The partnership deed clearly lays down that no interest and remuneration is payable and therefore the addition made by the AO is deleted and the grounds of appeal is allowed.”

**8. We further find that the issue is covered by the order of in ACIT, Circle-1(2), Surat Vs. Ruta Jewels for A.Y. 2013-14 & 2014-15 [ITA No's.195/SRT/2017 & 205/SRT/2018 dated 26.10.2018] held as under :-**

“6. On careful consideration of above rival submissions, from the relevant operative part of first appellate order, especially paras 6.1.3 & 6.1.4, we observe that the AO has relied on the order of ITAT, Rajkot 6.1.4, we observe that the AO has relied on the order of ITAT, Rajkot Bench in the case of Meridian Impex 37 taxmann.com 22 (2013) but the facts of the case are different from the facts and circumstances of the present case as in that case there was a specific loss in the partnership deed regarding payment of interest on capital and partner's remuneration in the original partnership deed submitted during scrutiny proceedings. Subsequently, a supplementary/addenda to said partnership deed was made amending the said clause providing the clause of non-payment of interest on capital and remuneration to the partners, which was not

submitted before AO during assessment proceedings but in the present case undisputedly in the partnership deed there is no clause providing payment of interest on capital and remuneration to the partners therefore, the Id.CIT(A) was right in denying application of order of ITAT, Rajkot in favour of the Revenue in the present case having distinct and dissimilar facts and circumstances.

7. Further, from the decision of the Hon'ble High court of Gujarat in the case of AlidharaTaxspin Engineers (supra), wherein their lordship speaking for the Jurisdictional High Court clearly held that mere incorporation of interest on partners' capital account and remuneration does not signify that the same are mandatory in nature. As we have noted above, in the present case the appellant has not charged any interest and remuneration as per partnership deed therefore, the appellant firm cannot be compelled to charge interest or remuneration. Therefore, we are inclined to hold the Id. CIT(A) was right in observing that the disallowance made by the AO on account of non-provision of interest and remuneration of s. 10AA of the Act deduction is erroneous and incorrect and law and facts as in the peculiar facts of the present case the partnership deed clearly lays down that no interest and remuneration is payable and hence, the first appellate authority right in deleting the disallowance made by the AO on account of non-provision of interest and remuneration from amount of deduction u/s. 10AA of the Act. We are unable to see any valid reason to interfere with the same and thus, we confirm the same. Accordingly, grounds of Revenue are dismissed.

9. *Considering the totality of facts and in the light of the above decision of Tribunal in the case of Ruta Jewels (supra). We find that in the present case, the assessee firm has not charged any interest and remuneration as per partnership deed does not prescribed so, therefore, the assessee firm cannot be compelled to charge interest or remuneration. Therefore, we are inclined to hold the Id. CIT(A) was right in observing that the disallowance made by the AO on account of non-provision of interest and remuneration of cannot be disallowed under section 10AA(9) of the Act. Hence, disallowances so made by the AO are found to be erroneous and incorrect in law and facts as in the peculiar facts of the present case the partnership deed clearly lays down that no interest and remuneration is payable and hence, the CIT (A) was right in deleting the disallowance made by the AO on account of non-provision of interest and remuneration from amount of deduction under section 80IA(10) read with section 10AA(9) of the Act. We further observed that the issue is covered by the decision Co-ordinate Bench of ITAT, Surat in favour of the assessee in the case of Ruta Jewels (supra) and no reason to deviate with the finding of Id. CIT(A), accordingly same is upheld. Thus, the grounds of appeal of*

*the Revenue are dismissed. We are unable to see any valid reason to interfere with the order of learned CIT (A) it and thus, we confirm the same. Accordingly, all grounds of appeal of the Revenue are dismissed.*

5. Therefore, we respectfully follow the decision of the Co-ordinate Bench. Accordingly, the appeal of the Revenue is dismissed.
6. In the result, the appeal of the Revenue is dismissed.
7. The order pronounced in the open court on 13-12-2019.

Sd/-  
(SANDEEP GOSAIN)  
(JUDICIAL MEMBER)

Sd/-  
(O.P.MEENA)  
(ACCOUNTANT MEMBER)

सुरत/ **Surat**, दिनांक **Dated:** 13<sup>th</sup> December, 2019/S. Samanta, PS  
Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

**By order**

**// TRUE COPY //**

**Assistant Registrar, Surat**