

आयकर अपीलिय अधीकरण, न्यायपीठ – “C(SMC)” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C(SMC)” BENCH: KOLKATA
 (समक्ष) श्री ए. टी. वर्की, न्यायीक सदस्य)
 [Before Shri A. T. Varkey, JM]

ITA No.1275/Kol/2019
Assessment Year: 2015-16

A.K. Steel Industries (PAN: AAVFA4161H)	Vs.	Income-tax Officer, Wd-43(1), Kolkata
Appellant		Respondent
Date of Hearing	25.11.2019	
Date of Pronouncement	31.12.2019	
For the Appellant	Shri M. Satnaliwala, Advocate	
For the Respondent	Shri Jayanta Khanra, JCIT, Sr. DR	

ORDER

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-13, Kolkata dated 27-03-2019 for the assessment year 2015-16.

2. The sole ground of appeal of the assessee is against the action of the Ld. CIT(A) in confirming the disallowance of partner's salary of Rs.1,80,732/- paid to Sri Kishan Das Jindal.

3. Briefly stated facts as observed by the AO are that the partner of assessee Firm (Late) Shri Krishna Jindal was about 80 years old during the year under consideration, so, according to AO, he (shri Krishna Jindal) would not have been in a position to actively participate in the day to day affairs of the firm diligently and efficiently. Therefore, according to AO, payment of salary to Shri Krishna Jindal cannot be justified under any circumstances when normal retirement age is 60 years. According to AO, at the age of 80 years it cannot be expected that an individual can put his best efforts into business and at the best he can play the role of only an advisor. The AO also observed that the function of (Late) Krishna Jindal was supervision of accounts and financial position of the Firm. This, according to AO, does not involve regular attendance or active participation in the affairs of the Firm. According to AO, paying salary to such a partner is not a prudent business practice. Thus according to AO, payment of salary to such a senile partner is only done to reduce profit and tax burden on the Firm. So, the AO disallowed the claim of assessee in

respect of salary to this partner and added the amount in respect of salary to the tune of Rs.1,80,732/- to the total income of the assessee Firm. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who confirmed the action of the AO. Aggrieved, assessee is before us.

4. I have heard rival submissions and gone through the facts and circumstances of the case. According to the assessee, initially it was a proprietorship concern; and later the proprietary concern got converted to a partnership firm on 01.04.2012, [a copy of the partnership deed is found placed at pages 1 to 6 of paper book]. As per the partnership deed, the main partner was Shri Kishan Jindal since he started the business from its inception and was the sole proprietor till 01.04.2012 when it was converted to a Firm. However, the main grievance of the assessee Firm is that the salary which has been disbursed to the main partner Shri Krishna Jindal to the tune of Rs.1,80,732/- was disallowed by AO on pure surmises and guess work and on the personal belief of AO that a person at the age of 80 years cannot be expected to do any meaningful activities regarding the affairs of the Firm which cannot be countenanced by me because the AO has made his observations not based on any material but purely on conjectures and surmises and his personal belief. Moreover, it was brought to my notice that till the earlier assessment years no disallowance of the salary to Shri Krishna Jindal has been made and for the AY 2016-17 (subsequent assessment year) the AO has allowed the claim of the assessee in respect of salary to (Late) Shri Kishan Jindal. Thus, from the aforesaid discussion, it is observed that the action of the AO cannot be countenanced firstly for the sake of consistency and secondly there is no evidence on record to show that this partner is a senile or inactive or non-working and cannot be considered as working partner. The disallowance made on conjecture and surmises cannot be accepted and therefore, the addition is deleted.

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

Order is pronounced in the open court on 31st December, 2019.

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated :31st December, 2019

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. A. K. Steel Industries, 20, Maharshi Debendra Road, Kolkata-700 007.
2. Respondent – ITO, Ward-43(1) , Kolkata.
3. CIT(A)-13, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

/True Copy,

By order,

Assistant Registrar