

आयकर अपीलालय अधिकरण, अहमदाबाद ँयायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
"SMC" BENCH, AHMEDABAD

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
AND
Ms MADHUMITA ROY, JUDICIAL MEMBER

अपील सं./ITA No.803/Ahd/2018
& ँनधाण वष/Asstt. Year:2014-2015

M/s.Meghachem Industries, Plot No.8, Phase-II, GIDC, Vatva, Ahmedabad-382245. PAN: AAIFM1621R	Vs.	D.C.I.T., Circle-3(2), Ahmedabad
--	-----	--

(Applicant)		(Responent)
--------------------	--	--------------------

Assessee by :	Shri Sohan U.Mashruwala, A.R
Revenue by :	Shri N.K. Goyal, Sr. DR

सुनवाई का ताराख/Date of Hearing : 23/01/2020
घोषणा का ताराख /Date of Pronouncement: 30/01/2020

आदेश/O R D E R

PER Ms MADHUMITA ROY, JUDICIAL MEMBER:

The instant application at the instance of the assessee is directed against the order dated 02.02.2018 passed by the Learned Commissioner of Income Tax (Appeals)-3, Ahmedabad arising out of the order dated 26.12.2016 passed by the DCIT, Circle-3(2) , Ahmedabad under section 143 (3)of the Income Tax Act, 1961(hereinafter referred to as 'the act') for Assessment Year 2014-15 whereby and whereunder disallowance of remuneration to the tune of Rs.10,25,000/- paid by the firm to the partner being the karta of Hindu undivided family (HUF) was made.

2. At the time of hearing of the instant appeal the Learned Advocate appearing for the assessee submitted before us that the issue is squarely covered in favour of the assessee by and under different judgements including the judgement passed by the Honøble Apex Court in the case of Rasiklal & Co.Vs CIT reported in (1998) 229 ITR 458 (SC). It was further argued by the Learned Advocate that in the similar set of facts the Co-ordinate Bench in ITA No. 1912/Ahd/2010 in the matter of M/s. P Gautam & Co. Versus JCIT, Ahmedabad, the salary to partner a Karta of HUF who is otherwise actively engaged in conducting the affairs of the business of the assessee firm has been allowed. A copy of the said judgement passed by the Honøble Co-ordinate Bench has also been submitted before us. The Learned AR, therefore, prays for similar relief before us. The contention made, as above, by the learned AR has, however, failed to be controverted by the Learned DR.

3. Heard the parties, perused the relevant materials available on record including the order passed by the Co-ordinate Bench. While allowing the appeal preferred by the assessee the Co-ordinate Bench in IITA No. 1912/Ahd/2010 in the matter of M/s. P Gautam & Co. Versus JCIT, Ahmedabad has been pleased to observe as follows;

“...9. From the above Explanation-4 to Section 40(b), it is seen that a working partner can be an individual who is actively engaged in conducting the affairs of business of the firm of which he is a partner, it is not the objection of the Assessing Officer or of Ld, DR otthe Revenue that salary was not paid by the firm to an individual. It is also not an objection that the concerned individual is not actively engaged in conducting the affairs of the business of the assessee-firm. The objection is this that such individual is not a partner of the assessee-firm in his individual capacity but he is a partner in the capacity of representative of HUF of which he is a karta and for this reason, the Revenue has rejected the claim of the assessee. As per this judgment of Hon'ble apex court rendered in the case of Raslk Lal And Co. (supra), it was held that it is the individuals constitute the firm who are its partners, St was also held that a partner does not act in the representative capacity in the partnership and he functions in his personal capacity like any other partner. This goes to show that a partner of a firm is individual only even if he is partner as a representative of HUF. If that be so, the requirements of Explanation-4 to Section

40(b) are complied with in respect of payment of remuneration to such a partner also who is a partner in his representative capacity being karta of the HUF partner. In our considered opinion, in the light of this judgment of Hon'ble apex court, the requirement of Explanation-4 to Section 40(b) stand complied with in the present case and hence, there is no valid reason for making this disallowance because it is not the case of the Assessing Officer that the concerned partner, Shri Vikram N Gandhi was not actively engaged in conducting the affairs of the business of the assessee-firm. We, therefore, hold that the disallowance made by Assessing Officer and confirmed by Ld. CIT(Appeals) is not justified and hence the same is deleted.

10. *In the result, assessee's appeal is allowed...*"

Respectfully relying upon the observation made hereinabove by the Co-ordinate Bench, we find no justification in making disallowance by the Revenue towards the salary given to the partner of the firm to the tune of Rs.10,25,000/-. We, therefore, delete the same.

4. In the result, the appeal of the assessee is **allowed**.

Order pronounced in the Court on 30/01/2020 at Ahmedabad.

**-Sd-
(AMARJIT SINGH)
ACCOUTANT MEMBER**

(True Copy)

**-Sd-
(Ms MADHUMITA ROY)
JUDICIAL MEMBER**

Ahmedabad; Dated 30/01/2020
Manish