

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC' NEW DELHI
BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER**

I.T.A. No. 4944/Del/2017
Assessment Year: 2012-13

M/s T.T. Autos,
C/o M/s AVC & Co.
5C/9, 2nd Floor, Opp. Liberty
Cinema, New Rohtak Road,
New Delhi
(PAN:AAFFT1552R)
(ASSEESSEE)

vs. Income Tax Officer,
Ward-4(2), Gurgaon

(RESPONDENT)

Assessee by: Sh. Virender Chauhan, CA
Revenue by: Sh. Pradeep Singh Gautam, Sr. DR.

ORDER

This appeal is filed by the assessee against the Order dated 29.05.2017 passed by the Ld. CIT(A)-1, Gurgaon relating to Assessment Year 2012-13 on the following grounds:-

"1.That having regards to the facts and circumstances of the case, Ld. CIT-(A) has grossly erred in law while partly dismissing the appeal on account of partner's remuneration by recording incorrect facts and making irrelevant observations. Therefore, the additions made as such may be liable to be deleted.

2.That having regards to the facts and circumstances of the case, Ld. CIT-(A) has grossly erred in law and on facts, while partly dismissing the appeal without giving an adequate opportunity of being heard, therefore, the additions made as such may be liable to be deleted.

3.That having regards to the facts and circumstances of the case, Ld. CIT-(A) has grossly erred in law while confirming additions of Rs. 9,92,000/- as on account of partner's remuneration by recording incorrect facts and making irrelevant observations. Therefore, the additions made as such may be liable to be deleted.

4. That under the facts and circumstances of the case and in law the Ld. CIT-(A) has grossly erred while confirming additions on account of "Partner's

Remuneration” of Rs. 9,92,000/- in as much as, in case there is a disallowance in the hands of the firm on account partner’s remuneration, the provisions as contained under section 155(1A) state the Ld. AO may amend the order of assessment of partners with a view to adjusting the income of the partner to the extent of the amount not so deductible. Therefore, the orders passed by the Ld. AO may be liable to be quashed.

5. That under the facts and circumstances of the case and in law interest charged under sections 234A, 234B and 234C may accordingly be liable to be deleted.”

2. At the time of hearing, learned counsel for the assessee stated that the learned First Appellate Authority has wrongly not admitted the additional evidence filed by the assessee i.e. Supplementary Deed which is very much essential for determination of the issue in dispute. He requested that the additional evidence filed by the assessee may be admitted and issue in dispute may be set aside to the learned First Appellate Authority to decide the same afresh, as per law, after giving full opportunity of hearing as well as production of evidences for substantiating the claim of the assessee.

3. Learned DR relied upon the order passed by the learned First Appellate Authority and stated that the additional evidence filed by the assessee has rightly been rejected by the learned First Appellate Authority because it was not permissible, as per law.

4. I have heard both the parties and perused the orders passed by the Revenue authorities and I am of the view that the learned Assessing Officer and the learned First Appellate Authority has not given full opportunity to the assessee for producing sufficient evidence for substantiating the claim

of assessee. The assessee has filed additional evidence in form of Supplementary Deed dated 20.09.2016 before the learned First Appellate Authority which was wrongly been not admitted. However, this evidence is very much essential / important for substantiating the claim of assessee. After going through the impugned order alongwith the order passed by the learned Assessing Officer, I am of the view that Assessing Officer has not given sufficient opportunity to the assessee for filing this supplementary deed dated 20.09.2016, therefore, the assessee has filed additional evidence before the learned First Appellate Authority but the learned First Appellate Authority has wrongly rejected the same without any basis only on technical grounds. Therefore, in the interest of justice, I admit this additional evidence of the assessee filed before the learned First Appellate Authority and directed the learned First Appellate Authority to decide the issues in dispute afresh and consider this additional evidence as a part of record and decide the issues in dispute as per law, after hearing the assessee.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 03/02/2020.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date: 03/02/2020
SH

Copy forwarded to: -

1. Appellant -
 2. Respondent -
 3. CIT
 4. CIT (A)
 5. DR, ITAT
- TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches