

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B+ SMC": NEW DELHI**

**BEFORE
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 6847/Del/2017

Singh Construction Company C/o. Vinod Kumar Goel. 282, Boundary Road, Civil Lines, Meerut Uttar Pradesh.	Vs.	ITO, Ward – 2(3) Meerut
(Appellant)		(Respondent)

Asstt. Year: 2006-07

Assessee by:	Shri Vinod Kumar Goel, CA
Department by :	Shri Umesh Takyar, Sr. DR
Date of Hearing	31/10/2019
Date of pronouncement	27/01/2020

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

This appeal is preferred by the assessee against order dated 31.10.2017 passed by the Ld. Commissioner of Income Tax (Appeals), Meerut (CIT(A)) for assessment year 2006—07.

2.0 The brief facts of the case are that the assessee firm is a contractor and during the year under consideration the total

receipts were Rs. 50,72,778/- and after applying the provisions of section 44AD of the Income Tax Act, 1961 (hereinafter called 'the Act') profit @ 8% amounting to Rs. 4,05,822/- was determined. Against this income, the firm debited interest/remuneration paid to the partners to the tune of Rs. 4,11,756/- and worked out a net loss of Rs. 5,944/-. No balance sheet was filed by the assessee firm.

2.1 On the case being selected for scrutiny, the assessee was required to file various details like stock in trade, work in progress, share, money in fixed deposits, details of trade tax etc, but the assessee did not provide any details. The AO proceeded to cast the balance sheet of the assessee on his own and disallowed the interest/remuneration to partners amounting to Rs. 4,11,756/-. Further, an addition of Rs. 75,874/- was made on account of allegedly concealed receipts and a further addition of Rs. 12,586/- was made on account of interest on income tax refund not declared.

2.2 The assessee approached the Ld. CIT (A) who dismissed the assessee's appeal. Thereafter, the assessee filed an application u/s 154 of the Act before the Ld. CIT (A) pointing out

certain mistakes committed by the Ld. CIT (A). The Ld. CIT (A) rejected the application u/s 154 of the Act moved by the assessee on the ground that the application was filed after 20 months from the date of the original order of the Ld. CIT (A). The assessee approached the ITAT against the rejection of the assessee's application u/s 154 of the Act and the ITAT, vide order dated 27.6.2016 in ITA No. 5203/Del/2015, held that the provisions of section 154 did not permit the Ld. CIT (A) to review its order. However, ITAT set aside the matter to the file of the Ld. CIT (A) to dispose of assessee's application u/s 154 by passing a speaking order. The Ld. CIT (A), vide the impugned order dated 31.10.2017, noted that the assessee was disputing addition on account of denial of interest on partners capital. It was also observed by the Ld. CIT (A) that as per the submission of the assessee itself, no books of accounts had been maintained nor any balance sheet has been drawn and, therefore, in absence of these documents, the assessee's claim for allowing salary to partners could not be entertained as this was not a mistake apparent on the face of the record.

2.3 Now, the assessee is again in appeal before this Tribunal and has challenged the action of the Ld. CIT (A) in disallowing interest and salary to the partners.

3.0 The Ld. AR vehemently argued that the assessee had submitted its return of income in terms of provision of section 44AD declaring a net profit of 8% and that as per the provision of the Act in sections 184 and 185, the partners' salary and interest could not be disallowed even though the books of accounts have not been maintained.

4.0 The Ld. Sr. DR vehemently supported the order of the Ld. CIT (A) and submitted that the same could not be allowed at this stage.

5.0 Having heard both the parties, we are of the considered opinion even though the assessee has not maintained any books of accounts and has submitted its return of income under the provision of section 44AD, in terms of provision of sections 184 and 185 of the Act, interest and salary to partners has to be allowed. The only thing required is that the partnership should be evidenced by an instrument and the individual shares of the partners be specified in such instrument. It is also

required that the interest and remuneration should be duly quantified in the instrument of partnership. Accordingly, we direct the AO to allow remuneration and interest to the partners after duly examining the instrument of partnership and after providing adequate opportunity to the assessee to present its case.

6.0 In the final result the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 27.01.2020.

sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 27/01/2020

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi