

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'C(SMC)' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Vice-President

**I.T.A. No. 2118/KOL/2019
Assessment Year: 2015-2016**

**Neamatpur FL Off Shop II, Burdwan,.....Appellant
Neamatpur, Lithuria Road, Sundarchak,
Burdwan-713360
[PAN: AAIFN0208R]**

-Vs.-

**Income Tax Officer,.....Respondent
Ward-1(3), Asansol**

Appearances by:

Shri T.P. Roy, Advocate, for the Appellant

Shri Jayanta Khanra, JCIT, Sr. D.R., for the Respondent

Date of concluding the hearing : February 19, 2020

Date of pronouncing the order : May 04, 2020

O R D E R

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals), Asansol dated 18.06.2019.

2. The issue involved in Ground No. 1 of this appeal relates to the disallowance of Rs.1,21,071/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of remuneration paid by the assessee to its partners.

3. The assessee in the present case is a partnership firm, which is engaged in the business of trading in foreign liquor and country spirit. The return of income for the year under consideration was filed by it on 11.03.2016 declaring total income of Rs.62,684/-. As noticed by the

Assessing Officer during the course of assessment proceedings from the perusal of the partnership deed, each of the two partners of the assessee-firm was entitled for a remuneration of Rs.10,000/- per month. He also noticed that the assessee-firm, however, had claimed partners remuneration of Rs.3,61,071/-. In this regard, it was explained on behalf of the assessee-firm that the relevant clause of the Partnership Deed authorized the partners to revise the partners remuneration, as may be agreed upon by and between them from time to time and exercising the said authority remuneration to partners as fixed at Rs.10,000/- per month per partner was increased for the year under consideration. In the absence of any revised partnership deed furnished by the assessee to support and substantiate this explanation, the Assessing Officer did not accept the same and disallowed the partners remuneration to the extent of Rs.1,21,071/- (Rs.3,61,071/- minus Rs.2,40,000/-).

4. The disallowance of Rs.1,21,071/- made by the Assessing Officer on account of partners remuneration was challenged by the assessee in the appeal filed before the Id. CIT(Appeals). During the course of appellate proceedings before the Id. CIT(Appeals), a Resolution dated 01.04.2014 was produced by the assessee authorising the increase of partners remuneration. Since this Resolution dated 01.04.2014 was not filed by the assessee during the course of assessment proceedings, the Id. CIT(Appeals) treated the same as an after-thought and proceeded to confirm the disallowance made by the Assessing Officer on account of partners remuneration.

5. I have heard the arguments of both the sides on this issue and also perused the relevant material available on record. As rightly submitted by the Id. Counsel for the assessee, the Resolution dated 01.04.2014 authorizing the increase in the partners remuneration was a relevant evidence to adjudicate upon the issue involved in the assessee's case relating to the allowability of partners remuneration and the Id.

CIT(Appeals) ought to have admitted the same. I, therefore, consider it fair and proper and in the interest of justice to admit the said evidence in the form of Resolution passed by the partners of the assessee-firm authorizing the increase in partners remuneration and restore the matter to the file of the Assessing Officer for giving him an opportunity to verify the same. The Assessing Officer is directed to decide this issue afresh in the light of the said evidence as well as after considering the decision of the Hon'ble Delhi High Court in the case of CIT -vs.- Vaish Associates (I.T.A. No. 50/2014 dated 11th August, 2015) and the decision of the Hon'ble Himachal Pradesh High Court in the case of M/s. Durga Dass Devki Nandan -vs.- ITO (Income Tax Appeal No. 4 of 2005 dated 11.03.2011). Ground No. 1 of the assessee's appeal is accordingly treated as allowed for statistical purposes.

6. Ground No. 2 raised by the assessee in this appeal relating to the disallowance of Rs.28,030/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of provision for income-tax is not pressed by the Id. Counsel for the assessee at the time of hearing before the Tribunal. The same is accordingly dismissed as not pressed.

7. Ground No. 3 involves the issue relating to disallowance made by the Assessing Officer out of sales commission, miscellaneous expenses, packing charges and staff fooding welfare, which is partly sustained by the Id. CIT(Appeals).

8. In the Profit & Loss Account filed along with its return of income, the assessee-firm had claimed the following expenses:-

(i)	Sales commission	Rs.1,02,540/-
(ii)	Miscellaneous expenses	Rs.1,02,519/-
(iii)	Packing charges	Rs.1,14,436/-
(iv)	Staff fooding and welfare	Rs. 98,580/-

During the course of assessment proceedings, the Assessing Officer found that the above expenses claimed by the assessee were supported only by self-made debit vouchers prepared by the assessee. He, therefore, treated the said expenses as not fully verifiable and disallowed the same to the extent of 15%. On appeal, the Id. CIT(Appeals) restricted the disallowance of 15% made by the Assessing Officer out of the said expenses to 5% observing that no specific instance of any bogus claim of expenses was specifically pointed out by the Assessing Officer.

9. I have heard the arguments of both the sides on this issue and also perused the relevant material available on record. It is observed that the various expenses claimed by the assessee were treated as un-verifiable by the Assessing Officer as the same were supported only by self-made vouchers prepared by the assessee and there was no third-party independent evidence. Keeping in view that there was no specific instance pointed out by the Assessing Officer doubting or disputing the genuineness of any expenses claimed by the assessee, the Id. CIT(Appeals) restricted the disallowance of 15% made by the Assessing Officer to 5%. Having regard to all the facts and circumstances of the case, I am of the view that the Id. CIT(Appeals) has already allowed a substantial relief to the assessee on this issue and since the disallowance sustained by him to the extent of 5% of the relevant expenses is quite fair and reasonable, I do not find any justifiable reason to interfere with his impugned order on this issue. The same is accordingly upheld dismissing the Ground No. 3 of the assessee's appeal.

10. In the result, the appeal of the assessee is treated as partly allowed for statistical purposes.

Order pronounced in the open Court on May 04, 2020.

**Sd/-
(P.M. Jagtap)
Vice-President)**

Kolkata, the 4th day of May, 2020

- Copies to :
- (1) **Neamatpur FL Off Shop II, Burdwan,
Neamatpur, Lithuria Road, Sundarchak,
Burdwan-713360**
 - (2) **Income Tax Officer,
Ward-1(3), Asansol**
 - (3) *Commissioner of Income Tax (Appeals), Asansol;*
 - (4) *Commissioner of Income Tax- , Kolkata*
 - (5) *The Departmental Representative*
 - (6) *Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.