

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 7053/Del/2017
(Assessment Year: 2014-15)

Anand Prasad, 2 nd Floor, Aradhana Enclave, RK Puram, Sector-13, New Delhi PAN: AAOPP4043J	Vs.	ACIT, Circle-63(1), New Delhi
(Appellant)		(Respondent)

Revenue by :	Shri Pradeep Dinodia, CA Shri RK Kapoor, CA
Assessee by:	Shri Vipul Kashyap, Sr. DR
Date of Hearing	14/10/2020
Date of pronouncement	28/10/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of Id CIT(A)-20, New Delhi dated 25.09.2017 for the Assessment Year 2014-15, challenging the confirmation of disallowance of expenses of Rs. 871316/- claimed by the assessee against remuneration received from partnership firm. The Id CIT(A) has also held that partners remuneration cannot be considered as business income.
2. The assessee has raised the following grounds of appeal:-
 - "1. That the Id CIT(A) has erred in law and on the facts and circumstances of the case in confirming the disallowances of expenses of Rs. 871316/- claimed by the assessee against remuneration received from Partnership firm.
 2. That the Id CIT(A) has erred in law in holding that the Partner's remuneration cannot be considered as business income."
3. Brief facts of the case shows that the assessee is an individual and advocate by profession. He received income from house property, business and profession, capital gain and income from other sources. He

filed his return of income for AY 2014-15 on 29.11.2014 declaring income of Rs. 3,67,82,630/-. The case of the assessee was selected for scrutiny firstly as limited scrutiny and subsequently converted to complete scrutiny. The assessee has claimed the expenditure of Rs. 2257453/- against remuneration received from a law firm as a partner. The Id AO disallowed this expenses. The major expenditure is with respect to the car wherein, the Id AO held that the car is used for office. He further held that there is no segregation of personal and official use. He therefore, held that there is no nexus of expenses incurred with the remuneration received from the firm. Therefore, total expenditure is not allowable u/s 37(1) of the Act. However, as the assessee offered disallowance of Rs. 1386137/- on account of personal nature and disallowance u/s 14A, the Id AO made the net disallowance of Rs. 871316/-. Thus, assessee was assessed at Rs. 32553950/- as per order u/s 143(3) of the Act dated 09.12.2016.

4. The assessee filed an appeal before the Id CIT(A) who confirmed the action of the Id AO. Therefore, assessee is aggrieved and has preferred an appeal before us.
5. The Id AR submitted that the issue is squarely covered in his favour by the decision of the coordinate bench in case of Anil Gupta Vs. ITO in ITA No. 5654/Del/2013. He further stated that assessee's remuneration is chargeable to tax as business income u/s 28(v) of the Act. He further submitted the details of the various expenditure incurred by the assessee. He therefore, submitted that these expenditure are incurred by the assessee wholly and exclusively for the purpose of the business of the assessee. Therefore, same should be allowed.
6. The Id DR vehemently supported the orders of the Id CIT(A).
7. We have carefully considered the rival contentions and perused the orders of the lower authorities. The fact shows that the assessee is an individual who is a partner in a law firm namely Trilegal and received a remuneration of Rs. 3,22,60,925/- which is offered for taxation u/s 28(v) of the Act. The assessee also received share of profit from the above firm of Rs. 31624561/- which is claimed as exempt u/s 10(2A) of the Act. The

assessee incurred certain expenditure of running and maintenance of car with driver, communication expenditure, certain professional fees, depreciation on car and other miscellaneous expenditure amounting to Rs. 22,57,453/-. Out of above expenditure assessee identified Rs. 13,86,137/- on account of personal use and disallowances u/s 14A of the Act. Thus, only Rs. 871316/- were claimed as allowable expenditure. On careful examination of the facts and details of the expenditure, we find that there is no reason that the expenditure cannot be allowed to a partner whose income is taxed on account of remuneration and interest received from the firm u/s 28(v) of the Act as business income. The only criteria for allowance of the expenditure are that expenditure should have been incurred by the assessee wholly and exclusively for the purpose of the business. In the present case the assessee has given details of expenditure such as salary expenditure of driver, communication expenditure, insurance and depreciation on the vehicle. The total of such expenditure is Rs. 2257453/-. Out of the above expenditure the assessee himself has disallowed Rs. 1386137/- as part of personal expenditure and disallowance u/s 14A of the Act. The lower authorities could not say that in all these expenditure has not been incurred by the assessee wholly and exclusively for the purpose of his business. The allegation of the Id AO was that the expenses incurred by the assessee does not have any nexus with remuneration earned does not have any legal backing. He does not say that these expenditure are not incurred by the assessee for the purpose of the business. Naturally when the income is taxed as remuneration from firm as business income, any expenditure incurred to earn that income is an allowable business expenditure, if it satisfy the relevant criteria. It is not the case of the lower authorities that whole of the expenses incurred by the assessee were not incurred wholly and exclusively for the purposes of the business i.e. to earn remuneration from partnership firm. Therefore, disallowance made by the Id AO and confirmed by the Id CIT(A) cannot be sustained. In view of the fact that the assessee himself has disallowed personal expenditure and u/s 14 A of the act to the tune of Rs. 1386137/-. In view of this we direct the Id

AO to delete the disallowance of expenditure of Rs. 871316/-. Accordingly ground no. 1 and 2 of the appeal are allowed.

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

Order pronounced in the open court on 28/10/2020.

Sd/-
(H.S.SIDHU)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 28/10/2020

A K Keot

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	28.10.2020.
Date on which the typed draft is placed before the dictating member	28.10.2020.
Date on which the typed draft is placed before the other member	28.10.2020.
Date on which the approved draft comes to the Sr. PS/ PS	28.10.2020.
Date on which the fair order is placed before the dictating member for pronouncement	28.10.2020.
Date on which the fair order comes back to the Sr. PS/ PS	28.10.2020.
Date on which the final order is uploaded on the website of ITAT	28.10.2020.
date on which the file goes to the Bench Clerk	28.10.2020.
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	