

आयकर अपीलीय अधिकरण "SMC-I" न्यायपीठ मुंबई

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC-I" BENCH, MUMBAI

श्री विकास अवस्थी, न्यायिक सदस्य एवं श्री एन. के. प्रधान, लेखा सदस्य के समक्ष

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 1764/Mum/2019

(निर्धारण वर्ष / Assessment Year 2012-13)

Smt. Rujuta Janak Bhalaria 8, Madhu Parag, 69 Swastik Society, Jvpd Scheme Road, Vileparle (West), Mumbai-400 056	बनाम/ Vs.	The Income Tax officer, Ward-11(3), Ahmedabad
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AEWPB2676P		

अपीलार्थी की ओर से Appellant by	:	Shri Ankit Talsania, AR
प्रत्यर्थी की ओर से Respondent by	:	Shri Sanjay J. Sethi, dR

सुनवाई की तारीख / Date of hearing:	10.03.2021
घोषणा की तारीख / Date of pronouncement:	16.03.2021

आदेश / ORDER

श्री विकास अवस्थी, न्यायिक सदस्य के द्वारा

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-18, Mumbai [in short 'the CIT(A)'] dated 28.01.2019 for the AY 2012-13.

2. Shri Ankit Talsania appearing on behalf of the assessee submitted that the primary issue raised in this appeal by the assessee is against the addition of Rs. 16 lacs made on account of salary income from the partnership firm. Narrating the facts of the case, the learned AR submitted that the assessee is a working partner in partnership firm Unno Source Corporation. The assessee filed her return of income for



Assessment Year 2012-13 under section 139(1) of the of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') on 30.07.2012, disclosing the salary income from partnership firm as Rs. 18 lacs. Thereafter, the assessee filed revised return of income on 28.06.2013 declaring salary income from partnership as Rs. 2 lacs. The learned AR submitted that the assessee had filed original return of income indicating remuneration from partnership firm on tentative basis. However, when the books of partnership firm were finalized and audited, the remuneration of the partner was reduced to Rs. 2 lacs. The assessee accordingly filed the revised return of income in tune with the salary actually received. The learned AR referred to the Income and Expenditure account of the partnership firm at page 13 of the Paper Book to substantiate the remuneration allowed to the partner. The Id AR further referred to the intimation under section 143(1) of the Act vide which the return filed by the partnership firm for AY 2012-13 has been accepted. The learned AR submitted that the AO has primarily rejected the revised return on the ground that in the immediately preceding assessment year the salary of the partner was Rs. 24 lacs and there cannot be substantial reduction in remuneration to Rs.2 lacs in the impugned assessment year. The learned AR contended that the reason given by the AO is unsustainable as the partnership firm in its books of accounts has categorically declared remuneration to the partner in the FYs 2010-11 and 2011-12. The books of the partnership firm have been accepted by the department. Once, the department has not raised any dispute in the case of partnership firm, no dispute can be raised in the hands of the assessee. The learned AR further referred to the modified deed of

partnership dated 1st July 2008 at Page 21 to 24 of the Paper Book. The learned AR submitted that vide modified deed of partnership, the clause relating to the remuneration to the working partner was modified and the remuneration of working partner was fixed at Rs. 24 lacs per annum. However, the remuneration was payable to the working partner on ascertainment of book profits. In the impugned assessment year, the partnership firm suffered loss, therefore, the remuneration to the partner was considerably reduced.

3. Per contra, Shri Sanjay J. Sethi representing the department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The learned DR submitted that the partnership deed provides for remuneration to the working partner at the rate of Rs. 24 lacs per annum. The assessee in her original return of income has disclosed remuneration of Rs. 18 lacs and there is no reason as to why the remuneration to working partner is reduced to Rs. 2 lacs. The assessee had paid self-assessment tax on remuneration of Rs. 18 lacs. The deduction in salary in revised return would amount to refund of self assessment tax.

4. We have heard the submissions made by rival sides and have considered the orders of authorities below. We have also considered the documents furnished by the assessee in the paper book. Undisputedly, the assessee filed her original return of income disclosing remuneration from partnership firm as Rs. 18 lacs. Thereafter, the assessee filed revised return disclosing remuneration from partnership firm at Rs. 2 lacs. The AO refused to accept the revised return of income as he was not convinced with the reason



given by the assessee for substantial deduction in remuneration in the revised return of income. The assessee has furnished a copy of audited accounts of the partnership firm as on 31.03.2012. A perusal of the Income and Expenditure account at page 13 of the Paper Book reveals 'Remuneration to Partner' at Rs. 2 lacs. The return of income of the partnership firm was furnished based on the same very accounts. The same was accepted by the Revenue under section 143(1) of the Act. We notice that in the modified partnership deed dated 1st July, 2008, the remuneration to the working partner i.e. to the assessee was increased to Rs. 24 lacs per annum, however, the remuneration was payable to the working partner on ascertainment of book profits. The books of the partnership firm were finalised and audited in June, 2013, consequently, after finalization of books of partnership firm, the assessee filed revised return of income disclosing remuneration at Rs. 2 lacs. That explains the reason for filing revised return by the assessee with substantially reduced remuneration from the firm. The remuneration paid by the partnership firm and disclosed in its audited books of account cannot be different from the remuneration received by the assessee. No defect has been pointed in the books of the partnership firm. The remuneration declared by the assessee in the revised return of income is in consonance with the remuneration declared in the audited accounts of the partnership firm. We find merit in the ground No. 1 of appeal, consequently, the same is allowed and addition of Rs. 16 lacs on account of remuneration from the partnership firm is directed to be deleted.



5. The learned AR of the assessee stated at Bar that he is not pressing ground nos. 2, 3 and 4 of the appeal, consequently, the ground nos. 2, 3 and 4, are dismissed as not pressed.

6. Ground No. 5 is general in nature, hence, require no adjudication.

7. In ground No. 6 of the appeal, the assessee has assailed initiation of penalty proceedings under section 271(1)(c) of the Act. Challenge to penalty proceedings at this stage is premature, accordingly, the ground No. 6 is dismissed as such.

8. In ground No. 7 of the appeal, the assessee has assailed charging of interest under section 234 A/B/C of the Act Charging of interest under section 234 A/B/C is mandatory and consequential. The ground No. 7 of the appeal is dismissed, accordingly.

9. In the result, appeal of the assessee is partly allowed in the terms aforesaid.

Order pronounced in the open court on Tuesday the 16th day of March, 2021.

Sd/-

(एन. के. प्रधान / N.K. PRADHAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(विकास अवस्थी / VIKAS AWASTHY)

(न्यायिक सदस्य / JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 16.03.2021

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS



आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**