

**आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत**  
IN THE INCOME TAX APPELLATE TRIBUNAL  
SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, Hon'ble JUDICIAL MEMBER  
AND Dr. ARJUN LAL SAINI, Hon'ble ACCOUNTANT MEMBER

(Virtual Hearing)

**आ.अ.सं./I.T.A No.156/SRT/2017**

**निर्धारण वर्ष/Assessment Year: 2014-15**

The Deputy Commissioner of Income Tax, Central Circle-3, Surat.	Vs	Ghelani Builders, F-/715-16, Jolly Acarde, Ghod Dod Road, Surat – 395001. <b>[PAN: AAGFC 6395 L ]</b>
<b>अपीलार्थी / Appellant</b>		<b>प्रत्यर्थी/Respondent</b>
निर्धारितकीओर से /Assessee by		Shri Mehul Patel Advocate
राजस्वकीओर से /Revenue by		Shri Ritesh Mishra – CIT-DR
सुनवाई की तारीख/ Date of hearing:		30.04.2021
उद्घोषणा की तारीख/Pronouncement on:		03.05.2021

**आदेश / O R D E R**

**PER PAWAN SINGH, JUDICIAL MEMEBER:**

1. This appeal by the Revenue is directed against the order of Id. Commissioner of Income Tax (Appeals)-IV, Surat hereinafter referred as “Ld.CIT(A)” dated 28.07.2017 for the assessment year (AY) 2014-15. The Revenue has raised following grounds of appeal:
  1. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in allowing deductions claimed under section 80IB(10) of the Act amounting to Rs. 10,46,04,525/-, which was restricted to Rs. 2,90,92125/- on account of allowable interest and remunerations to partners.*
  2. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A) ought to have upheld the order of assessing officer.*
  3. *It is therefore prayed that the order of the Ld. CIT (A) may be set aside and the assessing officer may be restored.*
2. At the outset of hearing the learned authorised representative (Id. AR) of the assessee submits that the grounds of the appeals raised by the

assessee are covered in favour of the assessee and against the revenue by the decision of Tribunal in assessee's own case for assessment year (AY) 2012-13 in ITA No. 2153/Ahd/2016 dated 21.04.2021. The ld. AR for the assessee submits that the copy of the decision of Tribunal for AY 2012-13 (supra) has been already sent (supplied) by way of e-mail to learned departmental representative (DR) for the revenue. The ld AR for the assessee further submits that the ld. CIT(A), while granting relief to the assessee followed the order of his predecessor for AY 2012-13, which has been affirmed by this Tribunal (supra).-

3. On the other hand the ld DR for the revenue after going through the order of ld. CIT(A) and the order of Tribunal for AY 2012-13(supra) submits that he strongly rely of the order of assessing officer.
4. We have considered the rival submissions of the parties and gone through the order of the lower authorities and the order of Tribunal for AY 2012-13 (supra). We note that this Tribunal in assessee's own case in AY 2012-13, on similar set of facts and on similar grounds of appeals, while affirming the order of ld CIT(A) passed the following order:-

"4. We have heard the submission of ld. CIT-DR for the Revenue and ld. Authorised Representative (AR) of the assessee. The ld. CIT-DR for the Revenue supported the order of AO. However, on confronting the fact that AO himself accepted the similar claim subsequent assessment year on the basis of second/supplementary partnership deed dated 01.04.2006. The ld.CIT-DR submits that the partnership deed dated 01.04.2006 was not brought in the notice of AO.

5. On the other hand, the ld.AR of the assessee submits that the AO before restricting the claim of assessee under section 80IB(10) of the Act has not given any show cause notice or opportunity to explain the facts. Before the ld.CIT(A), the assessee explained the fact that as per supplementary/second partnership deed dated 01.04.2006, the partners are not eligible for interest as well as remuneration. The ld.CIT(A) appreciated the fact and allowed full relief to the assessee. The ld.AR further submitted that in subsequent assessment year, the same AO while considering the partnership deed dated 01.04.2006 allowed full relief with regard to deduction under section 80IB(10) of the Act to the assessee. The ld.AR submits that he undertake to send the copy of assessment order for A.Y. 2013-14 passed under section 143(3) of the Act dated 11.03.2016. To support his contention, the ld.AR of the assessee also relied upon the decision of the Tribunal in Alidhara Texspin vs. ACIT in 198/AHD/2016 dated 03.05.2016, order of Hon'ble Gujarat High Court in PCIT Vs. Alidhara Texspin in Income Tax Appeal No.265 of 2016 [confirming the order of Tribunal] and in AL Reza Food vs. ITO in Income Tax Appeal No.633/AHD/2014 dated 13.03.2017.

6. We have considered the rival submission of both the parties and perused the order of Lower Authorities carefully. We have noted that the AO restricted the claim of assessee under section 80IB(10) of the Act by disallowing remuneration and interest to the partner. Before restricting / disallowing claim the AO has not issued show cause notice to the assessee. Before the ld.CIT(A), the assessee explained that the AO has not considered the partnership deed dated 01.04.2006 wherein the partners are not eligible for interest and remuneration. The ld. CIT(A) after considering the contents of partnership deed dated 01.04.2006 held that the AO himself accepted the contents of second

partnership dated 01.04.2006 and its relevant causes and no such disallowance [interest and remuneration] has been made. We have perused the contents of assessment order for A.Y. 2013-14 dated 11.03.2016 passed under section 143(3) by same Assessing Officer. We find that the observation of Id. CIT(A) that no disallowances in subsequent assessment year is made by AO, are correct. The Hon'ble Jurisdictional High Court in PCIT vs. AL Reza Food (supra) held that mere incorporation of interest on the partner's capital and remuneration does not signify that same are mandatory in nature. Considering the aforesaid factual and legal position, we affirm the order of Id.CIT(A). No contrary facts or law is brought to our notice to take the other view. Thus, the grounds of appeal raised by the Revenue are dismissed.

7. In the result, appeal of the Revenue is dismissed.”

5. Considering the decision of Tribunal in assessee's own case on similar set of facts and following the principles of consistency, we do not find any merits in the grounds of appeal raised by the assessee.
6. In the result the appeal of the revenue is dismissed.

Order pronounced on 3<sup>rd</sup> May 2021 by placing the result on notice board.

**Sd/-**

(Dr. ARJUN LAL SAINI)

(लेखा सदस्य/ACCOUNTANT MEMBER)

(Author)

**Sd/-**

(PAWAN SINGH)

(न्यायिक सदस्य/JUDICIAL MEMBER)

सुरत/ **Surat**, दिनांक **Dated:** 3<sup>rd</sup> May 2021/

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

**By order**

/ / **TRUE COPY** / /

**Assistant Registrar, Surat**