

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 602-603/SRT/2018 & ITA No.662-663/SRT/2018
(AYs 2009-10 & 2010-11)
(Hearing in Virtual Court)

Assistant Commissioner of Income-tax, Ciurcle-1(2), Room No.213, 2 nd Floor, Ayakar Bhavan, Majura Gate, Surat-395001	Vs	Pramukh International 101, Yogi Estate, Sarthi Industries, Vasta Devi Road, Katargam Road, Surat PAN : AAJFP 0695 F
Revenue / appellant		Assessee / respondent

Assessee by	ShriMehul R. Shah, C.A
Revenue by	Shri Sreenivas T. Bidari, CIT –DR& Shri Sita Ram Meena, Sr-DR
Date of hearing	29.07.2021
Date of pronouncement	29.07.2021

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. These group of four appeals by Revenue are directed against the separate orders of ld. Commissioner of Income tax (Appeals)-2 [CIT(A)], Surat dated 28.06.2018 & 10.07.2018 for assessment year (AYs) 2009-10& 2010-11, out of which ITA Nos 602-603/SRT/2018 relates to quantum assessments and ITA No(s).662-663/SRT/2018 relates to deleting the penalty under section 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act'). Facts in first two

appeals are similar, except variation of deduction under section 10AA, the Revenue has raised certain common grounds of appeal, therefore, with the consent of the parties are clubbed together, heard and are decided by a consolidated order for appreciation of fact. The facts of appeal for A.Y 2009-10 was treated as lead case. The Revenue has raised the following grounds of appeal:-

“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the claim of assessee on deduction u/s 10AA of Rs.2,97,40,470/- inspite of the fact that the assessee claimed excess deduction without allowing the interest and remuneration to partners which was otherwise taxable in the hands of partners.

2. The assessee has tried to cover its intentions behind the provisions of section 40(b) of taking undue benefits of section 10AA by making reverse interpretation of the same which says that a firm is entitled for claim of remuneration and interest paid to partners only if the same is authorized in the Partnership Deed.

3. The income in the hands of the a firm was computed in terms of Sec 28 to 43D and Sec 40(b) in respect of allowance of interest and salary falls between these two provisions and therefore full effect has to be given to this provisions also. Hence, the action of the AO was in accordance of the existing law and provisions.”

2. Brief facts of the case are that assessee is a partnership firm, engaged in manufacturing activities. The assessee filed its return of income for assessment year (A.Y.) 2009-10, declaring nil income. In the computation of income the assessee claimed exemption under section 10AA as the assessee derived income from manufacturing activities. During the assessment the assessing officer noted that the assessee has not claimed / debited interest on the capital of partners and their remuneration. The assessing officer by relying on the decision of Rajkot Tribunal in Meridian Impex (37 taxmann.com 22) held the interest on the partners' capital and remuneration is allowable to them. The assessing officer held that non-charging of interest and remuneration thereof has been done to enhance the profit of eligible exempt income. The assessing officer worked out the interest and remuneration of Rs. 2.97 Crore and thereby excluded it from the eligible amount of deduction under section 10AA and initiated penalty under section 271(1)(c). On appeal before learned CIT(A), the action of assessing officer was reverse. Thus, aggrieved by the order

of Ld. CIT(A), the revenue has filed present appeal before this Tribunal.

3. We have heard the submissions of the learned Commissioner of Income tax-departmental representative (CIT-DR) for the revenue and the learned authorised representative (AR) for the assessee and have perused the order of the lower authorities carefully. The Ld. CIT-DR for the revenue supported the order of the assessing officer and would submits that the assessee has not charged interest on partners' capital and remuneration thereto to enhance the profit of eligible exempt income. The Ld. CIT-DR for the revenue relied on the decision of Tribunal in Meridian Impex (supra).

4. On the other hand the learned AR for the assessee supported the order of Ld. CIT(A) and would submits that the ground of appeal raised by the revenue is squarely covered by the decision of Jurisdictional high Court in Alidhara Taxspin Engineers (Tax Appeal No. 265 of 2017 dated 02.05.2017) and various other decisions of the Tribunal, which are passed after considering the said decision of Hon'ble High Court. The Ld. AR for the assessee submits that there is no clause in the

partnership deed to make payments to the partners either on account of capital contribution or remuneration. All these facts were considered by Ld. CIT(A) while granting relief to the assessee.

5. We have considered the rival submissions of the parties and have gone through the orders of the lower authorities. As noted above the assessing officer restricted the claim of section 10AA by taking view that that the assessee has not claimed interest on the capital of partners and their remuneration. The assessing officer relied on the decision of Rajkot Tribunal in Meridian Impex (supra) and held that non-charging of interest and remuneration thereof has been done to enhance the profit of eligible exempt income. The assessing officer worked out the interest and remuneration of Rs. 2.97 Crore and thereby restricted the claim of section 10AA. The Ld. CIT(A) deleted the disallowance by following the decision of Jurisdictional high Court in Alidhara Taxspin Engineers (supra) and also held that in the partnership deed it is clearly mentioned that no interest on capital or remuneration is payable to the partners.

6. We find that the Hon'ble Gujarat High Court in Alidhara Taxspin Engineers (supra) held mere incorporation of interest on partners' capital account and remuneration does not signify that the same is mandatory in nature. The case of the assessee is rather on the better footing, as the clause in the partnership deed clearly spelt out that no interest on capital of partners or remuneration is payable to the partners. Therefore, we do not find any merit in the grounds of appeal raised by the revenue. The case law relied by Ld. CIT-DR is not helpful to the revenue after the decision of Hon'ble Gujarat High Court in Alidhara Taxspin Engineers (supra).

7. In the result the appeal filed by the revenue is dismissed.

ITA 603/SRT/2018 by revenue for AY 2010-11

8. As recorded above the revenue has raised identical grounds of appeal as raised in appeal for A.Y. 2009-10, which we have dismissed, therefore, following the principle of consistency, the appeal for A.Y. 2010-11 is also dismissed with similar observation.

**ITA No. 662& 663/SRT/2018 for A.Y. 2009-10 & 2010-11
by revenue**

9. In the aforesaid appeals ld. CIT(A) deleted the penalty levied under section 271(1)(c) by taking view that the additions / disallowances on the basis of which the penalty was levied, has been deleted, therefore, the penalty under section 271(1)(c) was also deleted.

10. Considering the facts that we have affirmed the order of ld CIT(A) in deleting the additions for both the assessment years under consideration, therefore, the grounds of appeals raised by the revenue will not survive. Therefore, both the appeal of the revenue are dismissed.

11. In the result, all the appeals of the revenue are dismissed.

Order announced at the time of hearing of appeal on 29th July 2021 in the Virtual Court hearing.

Sd/-

(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Surat, Dated: 29/07/2021

Dkp. Sr.P.S. O.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-2, Surat
4. CIT
5. DR
6. Guard File

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

By order
Assistant Registrar, ITAT, Surat