

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 187/SRT/2017 (AY 2013-14)
(Hearing in Virtual Court)

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| ACIT, Circle-1(2), Room No.213, 2 nd Floor, Ayakar Bhavan, Majura Gate, Surat-395001 | Vs | M/s Desire Jewellery, 709, Navratan Chambers, Mini Bazar, Varachha Road, Surat-395006 PAN : AAGFD 4454 K |
| Appellant / Revenue | | Respondent / assessee |

| | |
|-----------------------|-----------------------------|
| Assessee by | Shri Sapnesh R Sheth, CA |
| Revenue by | Shri Deependra Kumar, Sr-DR |
| Date of hearing | 27.10.2021 |
| Date of pronouncement | 01.11.2021 |

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by revenue is directed against the order of Id. Commissioner of Income tax (Appeals)-2 Surat dated 14.08.2017 for assessment year (AY) 2013-14. The Revenue has raised the following grounds of appeal:-

“1. Whether on the fact and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the disallowance made by the Assessing Officer by invoking provisions of Section 80(IA)(10) r.w.s. 10AA(9) in giving deductions of interest on Capital and Remuneration to partners of the assessee firm after finding that the assessee had taken undue benefits of Section 10AA by not claiming interest on Capital and Remuneration to partners which resulted increase in exempted profit of the assessee?

2. Whether on the facts and circumstances of the case and in law, the CIT(A) is justified in not appreciating the fact that buy not providing interest and remuneration to the partners, the firm has claimed higher profits leading to higher claim of deduction u/s 10AA of the Act and thus, devoiding the revenue from due amount of tax?

2. Brief facts of the case are that assessee is a partnership firm engaged in manufacturing and export of diamonds studded jewellery in Special Economic

Zone (SEZ). The assessee filed its return of income for AY 2013-14 on 07.09.2013 declaring nil income. In the computation of income, the assessee claimed deduction under section 10AA of the Income Tax Act, 1961 (in short 'the Act') of Rs.3.37 crores. On perusal of record, the Assessing Officer noted that assessee has not claimed interest on capital contribution and remuneration to its partners from the business income. The Assessing Officer issued show cause notice, for allowance of remuneration to the partners and interest to their capital contribution. The assessee filed its reply dated 18.03.2016. The contents of the reply is extracted in para-2.1 in assessment order. In reply, the assessee claimed that the partners had not claimed interest on their capital interest and remuneration and that similar treatment was accepted in earlier years. For the day-to-day affairs of firm, the assessee has paid salary to their Manager so there is no need to claim notional expenses in profit and loss account and accordingly no such expenses on account of remuneration and interest on capital contribution of partners claim. The explanation furnished by the assessee was not accepted by the Assessing Officer. The Assessing Officer by invoking the provision of Section 80IA(10) worked out the remuneration and interest on capital contribution of Rs.2,08,76,390/- in the following manner:-

| Name of the partner | Amount of allowable remuneration to the partner computed as per section 40(b) | Allowable interest to the partners of the firm on their capital @ interest is 12% per annum |
|----------------------|---|---|
| Shri Sailesh P Lukhi | 4867323/- | 19256/- |

| | | |
|----------------------|-----------|-------------|
| Shri Nandesh P Lukhi | 4867323/- | 142737/- |
| Smt. Jalapa S Lukhi | 4867323/- | 392238/- |
| Smt. Neeeta N Lukhi | 4867323/- | 852867/- |
| Total | A+B | = 2087631/- |

3. The A.O. thereby restricted the eligible deduction to the extent of Rs.1,28,29,529/-. Aggrieved by the disallowance on account of partners remuneration and interest on capital contribution the assessee filed appeal before Ld. CIT(A). Before Ld. CIT(A) the assessee made detailed written submission. Detailed written submission of the assessee is recorded in para-5 of the order of Ld. CIT(A). In the written submission, the assessee stated that assessee is deriving income from manufacturing activity and claimed deduction under section 10AA of the Act of Rs.3.37 crores. The assessee has not debited interest on partners' capital contribution and remuneration as partnership deed does not provide such provision for payment of interest and remuneration to partners. The Assessing Officer issued show cause notice on the basis of order of co-ordinate Bench of Rajkot Bench in the case of *ACIT vs. Meridian Impex* (37) Taxmann.com 22 (2013). In reply to show cause notice, assessee is specifically contended that interest and remuneration of partners are not claimed by the assessee as the same is not authorized by or not in accordance with terms of partnership deed. The assessee also relied on the CBDT Circular No.739 of 1996 dated 25.03.1996, wherein it was clarified that no deduction under section

40(b)(v) will be admissible unless partnership deed either specified the amount of remuneration payable to each individual working partner or lays down the manner of quantifying such remuneration. The assessee has shown their partnership deed that there is no such interest or remuneration is payable to the partners. The assessee also stated that Assessing Officer cannot compel the assessee to charge interest and remuneration by invoking the section 40(b)(v) of the Act well it is not mandatory but discretionary for the assessee who have made such claim. The Ld. CIT(A) after considering the submission of the assessee, contents of the partnership deed and decision of Hon'ble jurisdictional High Court in the case of *Pr. Commissioner of income Tax vs. Alidhra Taxspin Engineers* Tax Appeal No.265 of 2017 dated 02.05.2017, wherein it was held merely incorporation of interest on partners' capital account and remuneration does not signify that same are in mandatory in nature. The Ld. CIT(A) also relied upon the order of ITAT Ahmedabad Benches in the case of *M/s Al Reza Food vs. ITO Ward-2(4) Bhavnagar 2017 (3) TMI 1237 – ITAT Ahmedabad* and directed the Assessing Officer to delete the disallowance made by the Assessing Officer for restricting the claim under section 10AA of the Act. aggrieved by the order of Ld. CIT(A) the Revenue has filed appeal before the Tribunal.

4. We have heard the submissions of Ld. Senior Departmental Representative (DR) for the Revenue and Ld. Authorized Representative (AR) for the assessee. The ld. Sr. DR for the Revenue submits that ld. CIT(A) has not appreciating the fact in proper manner. The deduction under section 10AA of the Act is allowable on net income and not on gross income. The assessee has deliberately not incorporated such clauses in the partnership deed. The Assessing Officer has rightly apply the provision of section 80IA(10) by bringing the fact on record that assessee has made arrangement in the partnership deed which does not provide for interest or remuneration to the partners, which resulted in excessive profit of eligible business. The Ld. Sr. DR prayed for restoring the order of Assessing Officer.
5. On the other hand, Ld. AR for the assessee submits that the grounds of appeal raised by Revenue is covered by a series of decisions wherein the decision of Hon'ble jurisdictional High Court in the case of *Alidhra Taxspin Engineers* (supra) was followed. The Ld. AR for the assessee submits that he has placed on record the copy of partnership deed dated 01.04.2010. And as per clause (8) of the partnership deed, the partners mutually agreed not to charge any interest on their capital contribution. Further, clause (9) of the partnership deed prescribed that none of the partners shall be entitled to any remuneration. The Ld. AR for the assessee submits that there is no violation of law and the law

authorize the assessee to make a tax planning. What is the only prohibition is avoidance of tax and not tax planning. The assessee has not avoided any tax rather made tax planning, which is permissible under law. Further no tax can be levied without the authority of law as mandated by Article 265 of the Constitution of India. The Ld. AR for the assessee submits that grounds of appeal raised by Revenue is in fact covered by the decision of Hon'ble jurisdictional High Court in the case of *Alidhra Taxspin Engineers* (supra) which is followed by Ld. CIT(A) while granting relief to the assessee.

6. We have considered the submission of both the parties and have gone through the orders of authorities below. The assessee claimed deduction of Rs. 3.37 Crore under section 10AA. We find that Assessing Officer while passing the assessment order restricted the deduction under section 10AA of the Act by making allowance of remuneration to partners and interest @ 12% on their capital contribution. The Assessing Officer worked out such allowance of Rs. 2.08 Crore thereby restricted the deduction under section 10AA to the extent of Rs. 1.28 Crore. We find that Ld. CIT(A) while granting relief to the assessee followed the decision of Hon'ble jurisdictional High Court in the case of *Alidhra Taxspin Engineers* (supra), wherein it was held that mere incorporation of interest on partner's account and remuneration does not signify that same are mandatory in nature. We also find that Ld. CIT(A) also considered the CBDT's

Circular No.739 of 1996 dated 25.03.1996 wherein it has been clarified that no deduction under section 40(b)(v) of the Act is admissible under partnership deed either specified the amount of remuneration payable to each individual working partners or laid down the manner quantify of such remuneration. In the present case, the clauses of partnership deed specifically restrict not to charge payment of interest to partners on their capital contribution as well as remuneration. We find that Id. CIT(A) has decided the issue after proper appreciation of fact and following the decision of Hon'ble jurisdictional High Court in the case of *Alidhra Taxspin Engineers* (supra). No contrary fact or law is brought to our notice to take other view. In the result the grounds of appeal raised by the revenue are dismissed.

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

Order pronounced in open court on 01/11/2021 by placing result on notice Board.

Sd/-

(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Surat, Dated: 01/11/2021

Dkp. Out Sourcing P.S

Copy to:

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

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

By order

/ / TRUE COPY / /

Assistant Registrar, ITAT, Surat