

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.6180/Del./2017
(Assessment Year : 2008-09)**

**ITA No.6181/Del./2017
(Assessment Year : 2009-10)**

M/s. BEC Industries,
C – 108, Mayapuri Industrial Area,
Phase – 2,
New Delhi – 110 064.

vs. ACIT, Circle 49 (1),
New Delhi.

(PAN : AAAFB4450B)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Shailendra Bajaj, CA
REVENUE BY : Shri Om Prakash, Senior DR

Date of Hearing : 28.10.2021

Date of Order : 12.11.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Since common questions of facts and law have been raised in the aforesaid appeals, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. Appellant, M/s. BEC Industries (hereinafter referred to as the 'assessee') by filing the present appeals sought to set aside the

impugned orders both dated 28.07.2017 passed by the Commissioner of Income - tax (Appeals)-17, New Delhi qua the Assessment Years 2008-09 & 2009-10 on the identical worded grounds inter alia that :-

“1.a That the Ld. CIT (A) has erred both in facts and in law while confirming the reopening of the assessment proceedings under section 147 after four years from the assessment year and the entire proceedings are illegal and void ab initio.

1.b The Ld. CIT(A) failed to appreciate that the original assessment order under section 143(3) was passed on similar facts and after due application of mind and the reassessment proceedings initiated by the assessing officer on similar facts are illegal .

2.a That the Ld. CIT(A) has erred both in facts and in law while sustaining the disallowance (Rs.3,60,000/- & Rs.7,20,000/- for AYs 2008-09 & 2009-10 respectively) under section 40(b)(v).

2.b That the Ld. CIT(A) failed to appreciate that the working allowance paid to the partners was s in accordance with the partnership deed and lower than the amount permissible under section 40(b)(v).

3. That the Ld. CIT(A) has erred both in facts and in law while sustaining the disallowance of interest (Rs.5,01,000/- & Rs.4,50,000/- for AYs 2008-09 & 2009-10 respectively) paid to the partners which did not exceed the rate prescribed in the partnership deed and the provision of section 40(b)(iv).

5. That the order passed by the Ld. CIT(A) is bad in law and against the facts of the case.

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : During the assessment proceedings, Assessing Officer (AO) noticed that an amount of Rs.8,61,600/- & (remuneration of Rs.3,60,000/- and interest on capital of partner of Rs.5,01,600/-) & Rs.11,70,000/- (remuneration of Rs.7,20,000/-

and interest on capital of partner of Rs.4,50,000/-) for AYs 2008-09 & 2009-10 respectively from its profit & loss account and found the information that income chargeable to tax to the tune of Rs.8,61,600/- & Rs.11,70,000/- for AYs 2008-09 & 2009-10 respectively has escaped assessment and accordingly reopened assessment u/s 147/148 of the Income-tax Act, 1961 (for short 'the Act').

4. AO perused the partnership deed, computation of income, balance sheet, profit & loss account, audit report and complete detail of working allowance and interest paid to the partners. Declining the contentions raised by the assessee, AO proceeded to conclude that either the amount of remuneration has to be specified or manner of quantifying such remuneration has to be specified, otherwise it cannot be allowed as deduction u/s 40(b) of the Act. So, salary/remuneration paid to the partner cannot be allowed as deduction u/s 40(b)(v) of the Act as the partnership deed in this case has specified the amount of salary to each of the working partner nor it has laid down any specific method or quantification thereof. Consequently, AO made addition of Rs.3,60,000/- & Rs.7,20,000/- for AYs 2008-09 & 2009-10 respectively by way of deduction claimed on account of working allowance paid to the partner.

5. AO also proceeded to made addition of Rs.5,01,600/- & Rs.4,50,000/- by way of disallowance of interest paid to the partners and thereby framed the assessment at total income of Rs.42,85,930 & Rs.60,81,800/- for AYs 2008-09 & 2009-10 respectively.

6. Assessee carried the matter before the Id. CIT (A) by way of filing the appeals who has confirmed the additions by way of dismissing the appeals. Feeling aggrieved by the orders passed by the Id. CIT (A), the assessee has come up before the Tribunal by way of filing the present appeals.

7. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

8. At the very outset, Id. AR for the assessee challenging the impugned additions on account of disallowance of Rs.3,60,000/- & Rs.7,20,000/- for AYs 2008-09 & 2009-10 respectively under section 40(b)(v) of the Act contended that this issue has already been decided by the **coordinate Bench of the Tribunal in assessee's own case for AY 2010-11 in ITA No.5087/Del/2014 order dated 04.07.2018.** Ld. DR for the Revenue has not controverted the factual position enunciated by the Id. AR for the

assessee qua the identical issue decided by the coordinate Bench of the Tribunal in **assessee's own case** (supra).

9. We have perused the order passed by the coordinate Bench of the Tribunal which is on identical issue and operative part thereof is extracted for ready perusal as under :-

“3. Before us the Ld. AR submitted that the partnership deed vide para no.7 clearly mentions "that it has been mutually decided that party of the first part and third part shall be the working partners and will be paid for rendering services to the firm. It has been mutually decided to pay working allowances of Rs. 1,00,000/- per month each however, the parties may mutually vary the amount of working allowance depending upon profits of the business". The Ld. AR further submitted that the payment was made at the rate of 40,000/- per month to each partner which is below the terms of the partnership deed and hence the disallowance made by the AO and as confirmed by the CIT(A) was wrong on facts.

4. We have gone through the partnership deed and found that the amount of remuneration payable and also manner of quantification of such remuneration has been clearly mentioned in the partnership deed. Hence the finding of the Ld. CIT(A) that the partnership deed does not mention the extent of remuneration and also the reliance on the case of Sood Brij associates which is on a different set of facts cannot be accepted as the case dealt with the supplementary partnership deed where the remuneration was not quantified, whose facts or in contrary to the facts are in the instant case wherein the remuneration and the manner of quantification has been clearly determined in the partnership deed.

Hence the Appeal of the assessee on this ground is allowed.

5. Regarding the ground no. 2 pertaining to the interest of Rs.4,50,000/-, it is observed that terms of interest payments were also mentioned in the partnership deed. The assessee has paid interest @ 9% to the partners which is in consonance with the terms of the partnership deed. Hence the amount of interest claimed by the assessee is hereby allowed.”

10. When the issues in question qua payment of remuneration to the partners and payment of interest to the partners have already been decided by the **coordinate Bench of the Tribunal in assessee's own case** (supra), the issues in controversy are no longer res integra. So, we are of the considered view that AO/CIT(A) have erred in making disallowance on account of working allowance paid to the partner of Rs.3,60,000/- & Rs.7,20,000/- and addition of Rs.5,01,600/- & Rs.4,50,000/- by way of disallowance of interest paid to the partners for AYs 2008-09 & 2009-10 respectively which are in accordance with the agreed provisions contained in the partnership deed. Consequently, aforesaid additions made by the AO and confirmed by the Id. CIT (A) are ordered to be deleted. Resultantly, both the appeals filed by the assessee are allowed.

Order pronounced in open court on this 12th day of November, 2021.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Dated the 12th day of November, 2021
TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-17 New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.