

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री जी. मंजुनाथ, लेखा सदस्य एवं श्री राहुल चौधरी, न्यायिक सदस्य के समक्ष
BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER
AND SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A.No.1555/Chny/2019

(निर्धारणवर्ष / Assessment Year: 2004-05)

M/s. Allure Fashions 1/488, Vinayakapuram Main Road Mugalivakkam Chennai-600 116.	Vs	The Deputy Commissioner of Income Tax, Business Circle-1 Tambaram.
PAN:AAHFA 7360G		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	None
प्रत्यर्थीकीओरसे/Respondent by	:	Mrs. V.Sreedevi, JCIT

सुनवाई कीतारीख/Date of hearing	:	01.06.2022
घोषणा कीतारीख /Date of Pronouncement	:	01.06.2022

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the assessee is directed against order of the learned Commissioner of Income Tax (Appeals)-10, Chennai, dated 28.02.2019 and pertains to assessment year 2004-05.

2. Brief facts of the case are that the assessee is a partnership firm which is engaged in the business of export of shoe uppers has filed its return of income for the assessment year 2004-05 on 01.11.2004 declaring total income of Rs.37,57,310/-. The assessment has been completed u/s.143(3) of the Income Tax Act, 1961, on

28.12.2006 and assessed total income at Rs.69,21,043/-. The case has been subsequently reopened u/s.147 of the Act, and assessment has been completed u/s.143 r.w.s 147 of the Act on 31.12.2010 and determined total income at Rs.76,41,590/- by making additions towards disallowance of partners' remuneration u/s.40(b) of the Income Tax Act, 1961, and also disallowance of interest on partners' capital account u/s.40(b)(iv) of the Act. The assessee carried the matter in appeal before the first appellate authority, but could not succeed. The learned CIT(A), for the reasons stated in his appellate order dated 28.02.2019, dismissed appeal filed by the assessee and sustained additions made by the Assessing Officer towards disallowance of remuneration to partners and interest on capital u/s.40(b) of the Act. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

3. None appeared for the assessee. We have heard learned D.R. and perused necessary materials available on record. We find that the assessee is neither appearing nor filed any petition for adjournment of appeal, despite appeal filed by the assessee has been posted for hearing on 8

occasions on various dates starting from 9th August, 2021 to 1st June, 2022. From the above, it is very clear that the assessee is not interested in pursuing its appeal. Therefore, left with no option, we proceed to dispose off the appeal ex-parte on the basis of materials available on record.

4. The Assessing Officer has made additions towards excess claim of remuneration to partners u/s.40(b) of the Income Tax Act, 1961, on the ground that the assessee has debited partners remuneration of Rs.18,12,000/- in the profit & loss account, however, claimed deduction of Rs.45,01,531/- in the statement of total income, which is contrary to the provisions of section 40(b) read with Explanation 3 of Income Tax Act, 1961. We find that as per provisions of section 40(b) read with Explanation 3, actual amount of remuneration allowable is amount debited to profit & loss account, subject to the maximum permissible u/s.40(b) of the Act. In this case, the assessee has claimed deduction u/s.40(b) over and above amount of remuneration debited to profit & loss account. Therefore, we are of the considered view that there is no error in the reasons given by the Assessing Officer to make

additions towards disallowance of excess remuneration. The learned CIT(A), after considering relevant facts has rightly sustained additions made towards disallowance of remuneration. Hence, we are inclined to uphold findings of the learned CIT(A) and reject grounds taken by the assessee.

5. As regards disallowance of excess interest on partners capital account, it was noticed that the assessee has claimed interest on partners capital account of Rs.8,18,000/- and Rs.5,96,000/- respectively for Mr. Niranjan Mathur and Mr. Prabir Roy. It was further noted that in the partnership deed dated 19.08.2002 remuneration is provided @ 18% per annum, however, as per section 40(b)(iv) of the Act, allowable interest rate of partners capital account is only 12% per annum. Therefore, the Assessing Officer has disallowed excess interest paid on partners capital account and added back to total income.

6. Before us, the assessee neither appeared nor filed any details to justify interest on partners capital account paid @ 18% contrary to the provisions of Section 40(b)(iv) of the Income Tax Act, 1961. Therefore, we are of the considered

view that there is no error in the reasons given by the Assessing Officer to disallow excess interest on partners capital account and thus, we are inclined to uphold findings of the learned CIT(A) and reject grounds taken by the assessee.

7. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on 1st June, 2022

Sd/-

(राहुल चौधरी)

(Rahul Chaudhary)

न्यायिक सदस्य /Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 1st June, 2022

DS

Sd/-

(जी. मंजुनाथ)

(G.Manjunatha)

लेखा सदस्य / Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.