

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR
BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER AND
SHRI YOGESH KUMAR U.S, JUDICIAL MEMBER

ITA No.43/Nag./2018
(Assessment Year : 2008-09)

S.M.Industries
To be read as M/s. M.S.Industries
C/o Kaloti & Lathiya, CA
Pimple complex Opp.Baheti Hospital
Ambapeth, Amravati-444 601

..... Appellant

PAN No: ABEFS3256K

v/s

ITO,Ward-3
Aaykar Bhawan
Ambapeth
Amravati-444 601

..... Respondent

Assessee by : Shri K.P.Dewani, Advocate
Revenue by : Shri Rajeev Benjwal, CIT

Date of Hearing - 09.06.2022

Date of Order - 09.06.2022

ORDER

PER SHRI VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee directed against order of the Learned Commissioner of Income Tax-1, Nagpur, dated 21.07.2017, wherein the limited grounds relates to sustaining of disallowance of ₹. 46,206/- and ₹. 2,10,181/- in respect of partner's remuneration and interest on partner's capital respectively pertaining to A.Y. 2008-09.

2. At the outset, it is noted that there is a delay of '55' days in filing the present appeal. After considering the affidavit filed by the assessee and hearing both the parties, the delay in filing appeal is hereby condoned and the appeal is admitted for adjudication.

3. During the course of hearing, the ld. AR submitted that the sole reason for disallowance of partner's remuneration and interest on partner's capital is on account of non-furnishing of the partnership deed as held by the Assessing Officer. It was submitted that during the course of appellate proceedings as also evident from the order of the ld.CIT(A). It was submitted that the copy of the partnership deed has been duly filed along with the return of income for A.Y. 2006-07 and the same is available on record with the Assessing Officer. It was further submitted that the appellant firm was constituted on 24.11.2005 and thereafter, there has been no change in the constitution as well as content of the partnership deed and in this regard, our reference was drawn to the copy of the partnership deed, which is placed at pages No 5 to 8 of the assessee's paperbook. It was accordingly submitted that the disallowance so made by the Assessing Officer and confirmed by the ld.CIT(A), we directed to be deleted.

4. Per contra, the ld. DR has relied on the order of the lower authorities.

5. After hearing both the parties and perusing the material available on record, we find that the sole reason for disallowance of the partner's remuneration as well as interest on partner's capital is on account of non-furnishing of the partnership deed, during the course of assessment proceedings, at the same time, it is the matter of record that the assessee has duly filed the copy of the partnership deed, with the return of income for A.Y. 2006-07 and which is available as part of the assessment records with the Assessing Officer. Given the statement of the Id. AR at the Bar that there has been no change in the constitution or contents of the partnership deed and taking into account, the entirety of facts and circumstances of the case, we hereby direct the deletion of partner's remuneration as well as interest on the partner's capital account.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 09 .06.2022

Sd/-
YOGESH KUMAR U.S
JUDICIAL MEMBER

Sd/-
VIKRAM SINGH YADAV
ACCOUNTANT MEMBER

NAGPUR, DATED: 09 .06.2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Nagpur City concerned;
- (5) The DR, ITAT, Nagpur;

(6) *Guard file.*

*Kasarla Thirumalesh
Sr. Private Secretary*

True Copy
By Order

(A.R./Sr. P.S./P.S.)
ITAT, Nagpur