

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "SMC", LUCKNOW**

BEFORE SHRI T.S. KAPOOR, ACCOUNTANT MEMBER

ITA No. 217/Lkw/2020
Assessment Year 2016-17

Ajay Verma, C/o M/s. Sirohi Estates, Ground Floor, Centre Court, 3/c, 5 Park Road, Lucknow PAN – AEDPV 4942H (Appellant)	Vs.	Income Tax Officer 2(1), Lucknow (Respondent)
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Appellant by	Shri Nikhil Singhal, CA
Respondent by	Shri Harish Gidwani, DR
Date of hearing	04/07/2022
Date of pronouncement	06/07/2022

ORDER

This is an appeal filed by the assessee against the order of Id. CIT(A), Lucknow dated 10.02.2020. The assessee has taken the following grounds of appeal:

- “1. *The appellate order of the Id CIT(A) is erroneous and illegal by sustaining the additions made by the learned ITO of Rs.8,61,533/- being 50% share from profit (exempted u/s 10(2A) of the Income-tax Act, 1061) from M/s Sidha Construction (PAN No.ACCFS5958F), for the reason that the share of profit was not disclosed by the assessee in his return of income for the A.Y. 2016-17.*
2. *The learned CIT(A) has erred to ignore the explanations and evidences relating the exempt income i.e. 50% share of profit from partnership firm M/s Sidha Construction.”*

2. At the outset, the Id. AR invited my attention to the petition for condonation of delay and submitted that the delay in filing of appeal by fifty days has happened due to nationwide lockdown, which happened on the evening of

24.03.2020 and the order of learned CIT(A) is dated 10/02/2020 and therefore, lockdown happened in between the date of order of learned CIT(A) and date of lockdown and therefore, it was submitted that the delay had occurred due to unavoidable situation and being unintentional. It was submitted that the delay in filing the appeal may be condoned and the appeal be heard on merits. The learned D.R. did not raise any objection for condonation of delay.

3. Finding the reason for delay in filing the appeal as being plausible and beyond the control of the assessee. I condone the delay in filing the appeal and directed the Id. AR to proceed with his arguments.

4. The Id. AR submitted that in this case the Id. CIT(A) has upheld an addition on account of share of profit from a partnership firm in which the assessee is a partner which is against the law, as Section 10(2A) of the Act specifically exempts the share of income from a partnership firm. In this respect, the Id. AR read from the order of the Id. CIT(A). The Id. AR invited my attention to the copy of partnership deed of the firm M/s. Sidha Construction placed at P.B. pgs. 17 to 24 and copy of detailed ITR of such firm placed at P.B. pgs. 25 to 53. The Id. AR submitted that these evidences were filed before the Id. CIT(A) and therefore Id. CIT(A) should have allowed appeal of the assessee.

5. The Id. DR, on the other hand, relied on the orders of the authorities below.

6. I have heard the rival parties and have gone through the material placed on record. I find that the Assessing Officer made the additions on account of 50% share of profit and partner's salary as the Assessing Officer has held that no ITR/balance sheet/P&L account of M/s Sidha Construction was filed to substantiate the claim. Before Id. CIT(A) the assessee filed written submissions, copy of which is placed at P.B. pgs. 7 to 8 in which the assessee enclosed the detailed ITR of the firm and also filed the copy of partnership deed wherein the remuneration was mentioned in the partnership deed. It was also submitted that firm had paid tax as per the law on the profit and distributed the remaining profits to partners as per the provisions of partnership deed and also it was submitted that share of profit received from the firm is exempt u/s. 10(2A) of the Act.

However, the Id. CIT(A) accepted the claim of the assessee regarding partner's salary of Rs.3,60,000/- but upheld the addition on account of share of profit from the above firm by holding that assessee had not disclosed such share in his income tax return. I find that the share of profit from a partnership firm is specifically exempt under the provisions of Section 10(2A) of the Act and the undisputed fact is that such share was received from the partnership firm in which the assessee was a partner. The assessee vide written submissions, placed at P.B. pgs. 7 and 8, had filed with the Id. CIT(A), copy of partnership deed as well as detailed copy of the ITR of the firm, wherein the assessee was a partner and from where he had received the share of profit. Therefore, in view of above facts and circumstances of the case, I allow the appeal of the assessee.

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

(Order pronounced in the open court on 04/07/2022)

Sd/-

(T.S. Kapoor)
Accountant Member

Aks -

Dtd. 04/07/2022

Copy of order forwarded to:

<i>(1) The appellant</i>	<i>(2) The respondent</i>
<i>(3) Commissioner</i>	<i>(4) CIT(A)</i>
<i>(5) Departmental Representative</i>	<i>(6) Guard File</i>

Assistant Registrar