

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri George George K, JM & Shri Laxmi Prasad Sahu, AM

ITA No.304/Coch/2015 : Asst.Year 2010-2011

M/s.Blastline India 48/34, A-4 Kaloor-Perandoor Road, Elamakkara PO Cochin – 682 026. PAN : AAHFB2353E.	v.	The Assistant Commissioner of Income-tax, Circle 2(1) Ernakulam.
(Appellant)		(Respondent)

Appellant by : Sri.Joseph Markose, Advocate
Respondent by : Sri.Shantam Bose, CIT-DR

Date of Hearing : 29.06.2022	Date of Pronouncement : 30.06.2022
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ORDER

Per George George K, JM :

The Tribunal vide its order dated 04.10.2017 had confirmed the Principal Commissioner of Income Tax's (PCIT) orders passed u/s 263 of the I.T.Act, wherein the PCIT had directed the Assessing Officer to modify the assessment order dated 24.08.2012 by disallowing the remuneration paid to partners amounting to Rs.1,75,54,584 (claimed as deduction u/s 40(b) of the I.T.Act). The assessee filed appeal u/s 260A of the I.T.Act against the ITAT's order dated 04.10.2017 before the Hon'ble High Court of Kerala. The Hon'ble jurisdictional High Court vide judgment dated 02.03.2022 in ITA No.10/2018 set aside the ITAT's order dated 04.10.2017 directed the Tribunal to consider and dispose afresh after considering additional material produced before the Hon'ble

High Court. The relevant finding of the Hon'ble High Court reads as follows:-

“2.1 The assessee claims to be a partnership firm and has filed return for the assessment year 2010-11. The return deals with the remuneration to partners amounting to Rs.1,75,54,584/-. The Assessing Officer disallowed the expenditure paid as remuneration to the partners and the same was confirmed by the Appellate Authority as well as the Tribunal. The Tribunal in the order impugned before us, after examining the case of the assessee and Revenue, held that it is not convinced to accept the claim of remuneration paid to the partners as paid to working partners, particularly in the absence of positive proof showing that the partners on whom the remuneration has been booked are working partners. Vide order dated 02.03.2022, we have permitted the assessee to bring on record the additional material and after perusing the material, we are of the view that the Tribunal ought to be allowed to reconsider the issue as evidence is brought on record on the status of the partners for whom remuneration is booked by the assessee-firm.

The matter requires reconsideration by the Tribunal. Hence the order under appeal is set aside, the matter remitted to the Tribunal for consideration and disposal afresh in accordance with law. The assessee is given liberty to file the very documents filed in the instant appeal by enclosing a copy of the judgment within three months from today.”

2. Consequent to the remand by the Hon'ble High Court, the appeal was heard on 29.06.2022. The additional material / evidence filed before the Hon'ble High Court has been placed on record before the Tribunal. It was submitted by the learned Senior Counsel that the short point to be adjudicated is whether the remuneration paid to the partners of the assessee-firm is to be allowed as deduction u/s 40(b) of the I.T.Act. The Tribunal in its earlier order dated 04.10.2017 had held that the partners of the assessee-firm are not working partners, therefore, the remuneration paid cannot be allowed as

deduction u/s 40(b) of the I.T.Act. Further, the Tribunal upheld the order of the CIT(A) passed u/s 263 of the I.T.Act. The learned AR submitted that it is revenue neutral since in the hands of the partners of the assessee-firm the remuneration was taxed at the maximum rate. Further, it was contended that the remuneration was paid to the partners for the preceding assessment years and the subsequent assessment years and no disallowances were made for those years.

3. The learned Departmental Representative supported the order of the PCIT passed u/s 263 of the I.T.Act.

4. We have heard rival submissions and perused the material on record. It is the claim of the learned senior Counsel that the partners of the assessee-firm are not dormant / sleeping partners, but actively participating in the day to day activities of the assessee-firm. It is stated that partners are negotiating deals and concluding the contract with the clients stationed abroad. It is stated that most of the clients of the assessee-firm are abroad and that is the very reason why assessee's partners are also stationed abroad. The assessee has filed additional evidence / material before the Hon'ble High Court and the same has been placed on record. The details of the same are as follows:-

- (i) True copy of the Industrial Investment License issued to Saudi Abrasives Factory Co. in the year 2006 along with English translation.

- (ii) True copy of the extract of Commercial Registration particulars issued in the name of "Blast Line-Qatar" in the year 2007 by the State of Qatar along with English translation.
- (iii) True copy of email dated 10.08.2009 from the partners with respect to supplies.
- (iv) True copy of the invoice dated 13.08.2009 issued by the Appellant.
- (v) True copy of the Air Waybill dated 15.08.2019 pertaining to invoice dated 13.08.2009.
- (vi) True copy of the Packing list pertaining to invoice dated 13.08.2009.
- (vii) True copy of the invoice dated 24.09.2007 from Blastline Qatar.
- (viii) True copy of the Customs Duty Receipt dated 11.05.2009 pertaining to invoice dated 24.09.2007.
- (ix) True copy of the invoice dated 27.04.2009 issued by the Appellant to Blastline Qatar W.L.L.
- (x) True copy of the B/L dated 01.05.2009 pertaining to consignment shipped to Blastline Qatar under invoice date 27.04.2009.
- (xi) True copy of the Packing List pertaining to invoice dated 27.04.2009.

4.1 The additional evidence / material has been taken on record as per the directions of the Hon'ble High Court. The same needs verification by the A.O. to determine whether the partners of the assessee-firm was actively participating in the day to day affairs of the assessee-firm so as to conclude contracts in respect of supplies made to the clients. Further, it

has been stated that the partners have disclosed remuneration paid in their return of income and tax has been levied at the maximum taxable rate, consequently, it is revenue neutral. It was further contended by the learned Senior Counsel that similar remuneration has been paid to the very same partners for the preceding assessment years well as for the subsequent assessment years and no disallowance was made by the A.O. The above assertion made by the learned Senior Counsel is not backed by any evidence on record. In the interest of justice and equity, we restore the issue of disallowance of claim of deduction u/s 40(b) of the I.T.Act to the files of A.O. The A.O. shall take a decision in the matter after affording reasonable opportunity of hearing to the assessee, *de hors* the observations made by the PCIT in his order passed u/s 263 of the I.T.Act and the ITAT's order dated 04.10.2017. It is ordered accordingly.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 30th day of June, 2022.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Kochi ; Dated : 30th June, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-2, Kochi.
4. The CIT, Cochin.
5. The DR, ITAT, Cochin.
6. Guard File.

Asst.Registrar/ITAT, Cochin