

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.158/SRT/2020

Assessment Year: (2012-13)

(Physical Court Hearing)

The DCIT, Circle-1(3), Surat.	Vs.	Vipulbhai Manjibhai Patel, 44, Laxmi Villa, Shubham Bungalows, Parle Point, Surat-395007.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ADWPP2674E		
(Revenue)/(Assessee)		(Assessee)/(Respondent)
Assessee by	Shri Avkash C. Jariwala, CA	
Respondent by	Shri Vinod Kumar, Sr. DR	
Date of Hearing	08/07/2022	
Date of Pronouncement	25/07/2022	

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the Revenue, pertaining to the Assessment Year (AY) 2012-13, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-2, Surat [in short “the Id. CIT(A)”] in Appeal No. ITBA/APL/S/250/2019-20/1026129462(1), dated 04.03.2020, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 07.11.2017.

2. Grounds of appeal raised by the Revenue are as follows:

“(i) Whether on the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) is justified in deleting the addition of Rs.2,16,53,056/-, in respect of remuneration and interest paid to partner Shri Vipul Manjibhai Patel, ignoring that the non-payment of the remuneration and interest to partners through a supplementary partnership deed is nothing but a collusive arrangement to evade tax in the hands of the partners and availing tax benefit U/s 80IB (1) of the IT Act in Firm's case?

(ii) Whether on the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) is justified in accepting the additional evidence in the form of supplementary partnership deed pertains to

M/s Ghelani Builders submitted by the assessee during the appellate proceedings without calling remand report from AO and thereby not following Rule 46A of IT Rules 1962?

(iii) Whether on the fact and circumstance of the case and in law, the Ld.CIT(A) was justified in not appreciating the fact that the AO while completing the assessment in the case of Firm M/s Ghelani Builders, has allowed the deduction U/s 80IB of the Act after deducting the interest and remuneration liable to the partners and hence, the same was taxable in the hands of partners?

(iv) It is therefore, prayed that the order of the Ld. CIT(A) may be set aside and that of assessing officer may be restored to the above extent.

(v) The assessee craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal.”

3. Succinct facts are that assessee did not file his return of income therefore his case was re-opened u/s 147 of the Act, on the basis of information received from the Central Circle, Surat that assessment proceedings in the case of M/s Ghelani Builders had been completed and interest on partners' capital amounting to Rs.3,15,82,314/- and partners remuneration amounting to Rs.5,23,24,391/- as per partnership deed was allowed from the total profit and allowed the deduction u/s 80IB(1) of the Act, as claimed by the said firm. In view of the matter, Shri Vipul Manjibhai Patel, being a partner and holding 20% share in the said firm, was liable for receipt of interest on partners' capital amounting to Rs.1,11,88,178/- and remuneration amounting to Rs.1,04,64,878/-, on 31.03.2017 declaring total income of Rs.1,88,42,290/-. Further, the assessee filed his return of income in response to the notice u/s 148 of the Act dated 31.03.2017 declaring total income of Rs.1,88,42,290/-. Accordingly, assessment u/s. 143(3) r.w.s. 147 of the IT Act was finalized at Rs.4,04,95,350/- after making addition of Rs. 2,16,53,056/- on account of interest on partners' capital amounting to Rs.1,11,88,178/- and remuneration amounting to Rs.1,04,64,878/- totaling to Rs.2,16,53,056/-.

4. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before ld. CIT(A), who has deleted the addition made by the Assessing Officer observing as follows:

“The instant case relates to an order u/s. 147 r.w.s. 143(3) on the basis of an information received from Central Circle, Surat. Addition of Rs.2,16,53,056/- was made an account of interest on partners capital and remuneration from M/s. Ghelani Builders.

During course of the appellate proceedings, appeal order in the case of M/s. Ghelani Builders was cited where addition was deleted by my predecessor. It is noted that in Appeal No. CAS/2/132/2015-16 dated 10.05.2016, my predecessor has given relief to the assessee. "Para 6.1.3~and~para 6T1.4~& para~7 of the order are quoted as follows:

"6.1.3. In view of the changes made in the Supplementary Deed, the assessee was not eligible to claim interest as well as remuneration to partners, as clause No.6 & 7 of the Partnership Deed specifically restricts payment of Interest to Partners on their Capital, as well as Remuneration to Partners. This is the main reason why the assessee has not claimed both the expenses against the Business Income shown in Income Tax Return. The AO has not considered the supplementary deed dated 01.04.2006. While the same AO when completing the assessment of the assessee for AY 2013-14 has himself in para 3.6 of the assessment order dated 11.03.2016 has made reference of the partnership deed and supplementary partnership deed and the clauses relevant to payment of remuneration and interest and has accepted the clauses of supplementary partnership deed and no disallowance has been made.

6.1.4. In view of the above facts, the disallowance made by the AO on account of non-provision of interest and remuneration of 80IB deduction is fallacious and incorrect in law and facts. The supplementary partnership deed clearly lays down that no interest and remuneration is payable and therefore the addition made by the AO is deleted and the grounds of appeal is allowed.

7. In the result, this appeal is allowed.

Since reopening was done on this basis and the basis of reopening has been knocked down, in instant case too; assessee gets relief. The appeal is hereby allowed.”

5. Aggrieved by the order of the Id. CIT(A), the Revenue is in appeal before us.

6. Learned DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

7. On the other hand, Id. Counsel for the assessee relied on the findings of Id. CIT(A).

8. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We note that issue under consideration is covered by the Co-ordinate Bench of Surat, in the case of M/s Ghelani Builders (in ITA No.2153/AHD/2016), order dated 21.04.2021 wherein it was held as follows:

“6. We have considered the rival submission of both the parties and perused the order of Lower Authorities carefully. We have noted that the AO restricted the claim of assessee under section 80IB(10) of the Act by disallowing remuneration and interest to the partner. Before restricting / disallowing claim the AO has not issued show cause notice to the assessee. Before the Id.CIT(A), the assessee explained that the AO has not considered the partnership deed dated 01.04.2006 wherein the partners are not eligible for interest and remuneration. The Id.CIT(A) after considering the contents of partnership deed dated 01.04.2006 held that the AO himself accepted the contents of second partnership dated 01.04.2006 and its relevant causes and no such disallowance [interest and remuneration] has been made. We have perused the contents of assessment order for A.Y. 2013-14 dated 11.03.2016 passed under section 143(3) by same Assessing Officer. We find that the observation of Id.CIT(A) that no disallowances in subsequent assessment year is made by AO, are correct. The Hon'ble Jurisdictional High Court in PCIT vs. AL Reza Food (supra) held that mere incorporation of interest on the partner's capital and remuneration does not signify that same are mandatory in nature. Considering the aforesaid factual and legal position, we affirm the order of Id.CIT(A). No contrary facts or law is brought to our notice to take the other view. Thus, the grounds of appeal raised by the Revenue are dismissed.”

9. As the issue is squarely covered in favour of the assessee by the decision of the Coordinate Bench, in the case of M/s Ghelani Builders(supra), and there is no change in facts and law and the Revenue is unable to produce any material to controvert the aforesaid findings of the Coordinate Bench (supra). We find no reason to interfere in the said order of the Coordinate Bench, therefore, respectfully following the binding judgment of the Coordinate Bench, we dismiss the appeal filed by Revenue.

10. In the result, appeal filed by the Revenue is dismissed.

Order is pronounced in the open court on 25/07/2022 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 25/07/2022

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat