

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं डॉ दीपक पी. रिपोटे, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
Dr. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **212/CHNY/2022**

निर्धारण वर्ष/Assessment Year: 2012-13

M/s. J Ranjeet Jewellers,
No.64, 1st Floor, NSC Bose Road,
Sowcarpet,
Chennai – 600 079.

The ACIT,
vs. Non-Corporate Circle 4(1),
Chennai.

PAN: AAHFJ 8195J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri D. Anand, Advocate
: Shri Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 23.08.2022

घोषणा की तारीख/Date of Pronouncement : 26.08.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-18, Chennai in ITA No.453/2017-18/CIT(A) dated 15.03.2022. The assessment was framed by the ACIT, Non-Corporate Circle 4(1), Chennai for the

assessment year 2012-13 u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 19.12.2017.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in restricting the remuneration to Rs.4.50 lakhs as against claimed by the assessee at Rs.6 lakhs, even though the remuneration was paid to the partner in view of the amended deed dated 12.01.2022 and as per the deed, remuneration are to be paid in term of section 40(b) of the Act.

3. We have heard rival contentions and gone through the facts and circumstances of the case. Brief facts are that the assessee firm is engaged in the business of wholesale trading in silver jewellery. The AO during the course of assessment proceedings noted that the assessee firm has paid excess remuneration to one of the partners namely Smt. Kanchan Devi to the extent of Rs.4.50 lakhs. The AO required the assessee to explain as to why the excess remuneration paid be not disallowed. The assessee explained but the AO was not convinced with the explanation and made addition. The CIT(A) also confirmed the action of the AO by stating that the basis of allocation of remuneration is not supported by any document and whether such document was executed before

the close of the financial year is not clear. Therefore, he inferred that the remuneration fixed and paid to Smt. Kanchan Devi for an amount of Rs.6 lakhs is not correct as she became working partner only for and from January, 2012. Then the CIT(A) estimated the remuneration per month at Rs.50,000/- and allowed only Rs.1.50 lakhs as against claimed by assessee at Rs.6 lakhs. Aggrieved, assessee came in appeal before us.

4. We have perused the case records and also the clauses of partnership deed reproduced in CIT(A)'s order. We noted that the partner Smt. Kanchan Devi was partner from the beginning of 1st April, 2011 but was made working partner by the amended deed w.e.f. 01.01.2012. The remuneration paid by assessee firm in term of section 40(b) of the Act was to the extent of Rs.6 lakhs and for this in the partnership deed, the remuneration prescribed are as provided in the provisions of section 40(b) of the Act. The relevant clause as reproduced in the order of CIT(A) is being reproduced for the sake of clarity as under:-

"CLAUSE 5 OF RANJEET JEWELLERS PARTNERSHIP DEED

That party of the FIRST, SECOND and THIRD PARTS have agreed to look after the partnership firm as working partner. It is agreed that in consideration of parties devoting their time and attention to the business of the Partnership Firm they shall be paid remuneration calculated in the manner set out below in the equal ratio.

i] The aggregate remuneration payable to the working partner shall not exceed the amount calculated as under:

[a] on the first Rs. 3,00,000/- of the Rs. 1,50,000/- or at book- profit or in case of loss 90% of the book profit, whichever is more

[b] on the balance of the book-profit at the rate of 60%

ii] Remuneration to working partners will be payable annually and it will be due on the last day of the Accounting year of the firm.

iii] The partners shall be entitled to increase or decrease the above said remuneration from time to time as may be agreed upon by them. "

In term of the above, the assessee computed remuneration and paid remuneration to one of the partner i.e., Kanchan Devi as she was admitted as working partner from 01.01.2012 at Rs.6 lakhs. For this, the assessee computed the book profit as under:-

BOOK PROFIT (Annexed)	Rs.1,10,64,639.40
REMUNERATION AS PER FIRST	
RS.3,00,000 @90%	Rs. 2,70,000
REMUNERATION AS PER	
BALANCE PROFIT 60%	Rs. 61,53,383
TOTAL REMUNERATION PAYABLE	Rs. 64,23,383
TOTAL PAYABLE PER PARTNER (1/3)	Rs. 21,41,127.6666667
TOTAL PAID TO APPELLANT	Rs. 6,00,000

4.1 We noted from the above working that the partner Smt. Kanchan Devi is eligible for remuneration for entire year at

Rs.21,41,127/- but it is a fact that as per amended partnership deed amended w.e.f. 01.01.2012, the assessee became working partner and eligible for three months only. The assessee has apportioned the remuneration which comes to Rs.7,13,709/- but paid only a sum of Rs.6 lakhs and claimed deduction of the same. We noted from the CIT(A)'s order that he noted that the assessee has not supported the basis of allocation by any document produced and according to him, the said document was executed before the close of financial year is not very clear. We noted that the assessee before CIT(A) categorically made representation in the written submissions that the deed was amended w.e.f. 01.01.2012 by the amended deed dated 12.01.2012 that means the partner Smt. Kanchan Devi became working partner from January, 2012 and for three months, she is entitled for remuneration. We find that the entire details was available before CIT(A) i.e., partnership deed, the computation of book profit and allocation of remuneration to this working partner Smt. Kanchan Devi. The assessee has rightly allocated Rs.6 lakhs rather it is less because if we allocate the remuneration to working partner which comes to Rs.7,13,709/- for these three months. Hence, we are of the view that the assessee has rightly claimed the payment of remuneration to working partner Smt. Kanchan Devi in term of provisions of section 40(b) of the Act

and the CIT(A) as well as AO both erred in not allowing the claim.
We allow the claim and reverse the orders of lower authorities.

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

Order pronounced in the open court on 26th August, 2022 at Chennai.

Sd/-

(डॉ दीपक पी. रिपोटे)

(Dr. DIPAK P. RIPOTE)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 26th August, 2022

RSR

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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