

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद।

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, AHMEDABAD

BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT
AND MS. SUCHITRA R. KAMBLE, JUDICIAL MEMBER

ITA No. 159/Ahd/2022

Assessment Year : 2016-17

The Joint Commissioner of Income-tax (OSD), Anand Circle, Anand	Vs	M/s. Asian Food Industries, N.H. No. 8, Opp. Escort Tractor, Post. Dabhan, Tal. Nadiad, Dist. Kheda, Dabhan-387320 PAN : AA-EFA 1288 Q
(Appellant)		(Respondent)
Assessee by :		Shri D.K. Parikh, AR
Revenue by :		Shri Satish Solanki, Sr. DR.

सुनवाई की तारीख/Date of Hearing : 30/09/2022

घोषणा की तारीख /Date of Pronouncement: 30/09/2022

आदेश/O R D E R

PER P.M. JAGTAP, VICE-PRESIDENT :

This appeal is preferred by the Revenue against the order of the learned Commissioner of Income-tax (Appeals), Ahmedabad-12 ["CIT(A) in short]" dated 08.12.2021 and the solitary issue involved therein relating to the deletion by the learned CIT(A) of the addition of Rs.1,52,34,661/- made by the Assessing Officer on account of disallowance of partners' remuneration under Section 40(b) of the Income-tax Act, 1961 ("the Act" in short) is raised by way of the following grounds:

"1. Whether on the facts and circumstances of the case and in law the Ld . CIT (A) was justified in directing the A.O. to consider interest income from FDRS and MGVCL for the purpose of computation of book profit, without appreciating that A.O. correctly worked out disallowance of remuneration to partners after recomputing book profit on the basis of adjusted net profit and loss representing profit and gains of business/profession , in accordance with the provision of explanation 3 below section 40(b)(v) of the Act.

2. Whether on the facts and circumstances of the case and in law the Ld.CIT (A) was justified in directing the A.O. to consider these incomes for the purpose of computation of book profit , without appreciating that interest income not forming part of business / profession are not included in the definition of business income , as defined in clause (i) to (vii) of section 28 of the Act.

3. Whether on the facts and circumstances of the case and in law the Ld.CIT (A) was justified in directing the A.O. to consider these incomes for the purpose of computation of book profit , without appreciating that the A.O. had correctly worked out income from business / profession for computing book profit for determination of disallowance of partners remuneration in accordance with the provision of section 29 of the Act wherein the procedure for determination of profit & gain of business referred to in section 28 of the Act by applying the various provisions contained in section 30 to 43D of the Act has been laid down .

2. The assessee, in the present case, is a partnership firm which is engaged in the business of exporting of processed spices and food stuff. The return of income for the year under consideration was filed by the assessee on 04.10.2016 declaring a total income of Rs.3,66,00,950/-. The case of the assessee was selected for scrutiny and a notice under Section 143(2) of the Act was issued by the Assessing Officer to the assessee on 03.07.2017. During the course of assessment proceedings, it was noticed by the Assessing Officer that the assessee has claimed deduction on account of remuneration paid to partners, even in respect of interest income of Rs.2,53,91,100/- on investment in FDRs etc.. According to the Assessing Officer, the said interest income was chargeable to tax under the head "income from other sources" and the same, therefore, could not be taken into account for the purpose of allowing deduction to the assessee on account of remuneration paid to the partners under Section 40(b) of the Act. He accordingly disallowed the claim of the assessee for deduction on account of remuneration to partners to the extent of Rs.1,52,34,661/-.

3. The disallowance made by the Assessing Officer on account of remuneration to partners was challenged by the assessee in an appeal filed before the learned CIT(A) and after considering the submissions made by the assessee as well as the relevant material available on record, the learned CIT(A) deleted the said addition for the following reason given in paragraph No.4.4 of his impugned order:-

"This issue is covered in favour of the appellant by the order of the ITAT in appellant's own case which has followed the order of jurisdictional High Court on the same issue in a different case. Respectfully following the order of Gujarat HC and ITAT Ahmedabad, I direct the AO to delete the addition of Rs.1,52,34,661/- made by the AO by reducing the remuneration claimed to have been paid to the partners u/s 40(b) on the ground that interest income aggregating to Rs. 2,53,91,100/- (MGVCL Interest income Rs. 7,40,819/- and Bank interest Rs. 2,46,50,281/-) credited to Profit & loss account and shown as business income is actually Income from other Sources and hence should be reduced from Book Profit for the purpose of computing allowable remuneration paid to the partners by the appellant firm as per section 40(b)(v) of the Act. Ground of appeal 1 to 4 are therefore allowed."

4. Aggrieved by the order of the learned CIT(A), the Revenue has preferred this appeal before the Tribunal.

5. We have heard the arguments of both the sides and also perused the relevant material available on record. As agreed by the learned representatives of both the sides, the solitary issue involved in the Revenue's appeal is squarely covered in favour of the assessee by the decision of this Tribunal rendered in assessee's own case for AY 2012-13 vide an order dated 28.01.2019 passed in ITA No.277/Ahd/2016. A copy of the said order is placed on record before us and perusal of the same shows that a similar issue has been decided by the Tribunal in favour of the assessee vide paragraph Nos. 5 & 6 of its order which read as under:-

"5. Heard the respective parties, perused the relevant materials available on record. This is a settled principle of law that the interest income for the purpose of ascertaining ceiling on the basis of book profit, the profit shall be in the profit and loss account. The interest income, thus, cannot be notionally be excluded for the purpose of determining the allowable of deduction of remuneration paid to the partners u/s 40(b) of the Act. In the case in hand both the shed rent and the interest income assessed as business income for the purpose of computing admissible deduction u/s 40(b). The Learned AO took a different view by not allowing the said deduction. However, in a similar set of facts, the Co-ordinate Bench in ITA No. 2853/Ahd/2011 for A.Y. 2008-09, decided the matter in favour of the assessee relying upon the judgment passed by the Jurisdictional High Court with the following observations:

"5. We find that the issue in appeal is now squarely covered by the judgment of Hon'ble Jurisdictional High Court in the case of CIT vs. J.J. Industries (358 ITR 531) wherein their Lordships have upheld the Tribunal's stand to the effect that for the purpose of ascertaining ceiling on the basis of book profit, the profit shall be in the profit and loss account. The interest income, therefore, cannot notionally be excluded for the purpose of determining the allowable deduction of remuneration paid to the partners under Section 40b of the Act. As in the present case, in this case also interest was assessed as business income, and yet, for the purpose of computing admissible deduction under section 40(b), a different path was followed. On these facts, Their Lordships have held a follows :-

"4. Section 40 of the Act pertains to amounts which are not deductible. Relevant portion of Section 40 reads as under:

"Notwithstanding anything to the contrary in [sections 30 to 38], the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",-

(a) in the case of any assessee-

(b) in the case of any firm assessable as such,-

(i) any payment of salary, bonus, commission or remuneration, by whatever name called (hereinafter referred to as "remuneration") to any partner who is not a working partner; or

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- (ii) any payment of remuneration to any partner who is a working partner, or of interest to any partner, which, in either case, is not authorized by, or is not in accordance with, the terms of the partnership deed; or
- (iii) any payment of remuneration to any partner who is a working partner, or of interest to any partner, which, in either case, is authorized by, and is in accordance with, the terms of the partnership deed, but which relates to any period (falling prior to the date of such partnership deed) for which such payment was not authorized by, or is not in accordance with, any earlier partnership deed, so, however, that the period of authorization for such payment by any earlier partnership deed does not cover any period prior to the date of such earlier partnership deed; or
- (iv) any payment of interest to any partner which is authorized by, and is in accordance with, the terms of the partnership deed and relates to any period falling after the date of such partnership deed in so far as such amount exceeds the amount calculated at the rate of [twelve] per cent simple interest per annum; or
- (v) any payment of remuneration to any partner who is a working partner, which is authorized by, and is in accordance with, the terms of the partnership deed and relates to any period falling after the date of such partnership deed in so far as the amount of such payment to all the partners during the previous year exceeds the aggregate amount computed as hereunder:-
- | | |
|---|----------------------------------|
| (a) On the first Rs.3,00,000 of the book- | Rs.1,50,000/- or at the |
| (b) profit or in case of a loss | rate of 90 per cent of the book- |
| | profit, whichever is more; |
| (b) On the balance of the book-profit | At the rate of 60 per cent |

5. From the above provision it can be seen that where an assessee is a partnership firm, any payment of salary, bonus, commission or remuneration to its partners under certain circumstances, if it exceeds the limits set out in Clause B, deduction to the extent of excess cannot be claimed. In the present case, such ceiling is prescribed in two slabs. On the first Rs. 30 lacs on the book profit or in case of loss such ceiling is Rs. 1,50,000/- or 90% of the book profit whichever is more. On the balance of the book profit such ceiling prescribed is @ 60%.

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6. *The question, therefore, arises whether the interest income earned by the assessee-firm from the fixed deposit receipts should be ignored for the purpose of working-out the book profit to ascertain the ceiling of the partners' remuneration.*

7. *The Tribunal has proceeded on the basis that for the purpose of ascertaining such ceiling on the basis of book profit, the profit shall be in the profit and loss account and is not to be classified in the different heads of income under Section 40 of the Act. The interest income, therefore, cannot be excluded for the purposes of determining the allowable deduction of remuneration paid to the partners under Section 40B of the Act.*

8. *Counsel for the revenue vehemently contended that for the purpose of ascertaining the limit, only business income would be relevant and not any other income. In the present case, however, we need not enter into such controversy. The assessee had held out that it is in the business of purchasing raw cotton and ginning the same. It is a seasonal business. The interest income was generated out of spare funds invested in the fixed deposit. Such income was declared as part of the business income and that is how even the Assessing Officer had accepted the same. That being the position, and the Assessing Officer in the assessment taxed such income as business income, we do not see any question of law arising."*

7. *We see no reasons to take any other view of the matter than the view so taken by the Hon'ble jurisdictional High Court.*

8. *Respectfully following the esteemed views of Their Lordships, we uphold the grievance of the assessee. The disallowance of Rs.7,03,921/- thus stands deleted."*

6. *We, therefore, find no infirmity in the order passed by the Learned CIT(A) taking into consideration the order passed by the Co-ordinate Bench and also judgment passed by the Hon'ble Jurisdictional High Court as mentioned therein. Hence, having no infirmity found in the order passed by the Learned CIT(A), we confirm the same."*

6. It is thus clear that the issue involved in this appeal of the Revenue is squarely covered in favour of the assessee by the decision of Co-ordinate Bench of this Tribunal in assessee's own case for AY 2012-13 as well as the

decision of the Hon'ble Gujarat High Court in the case of CIT Vs. J.J. Industries, [2013] 358 ITR 531 (Guj.). Respectfully following the said judicial pronouncements, we uphold the impugned order of the learned CIT(A) deleting the addition made by the Assessing Officer on account of disallowance of partners' remuneration and dismiss the appeal of the Revenue.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 30th September, 2022 at Ahmedabad.

Sd/-

Sd/-

(SUCHITRA R. KAMBLE)
JUDICIAL MEMBER

(P.M. JAGTAP)
VICE-PRESIDENT

Ahmedabad, Dated 30/09/2022

SR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधिआयकर अपीलीय अधिकरण ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

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आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad