

आयकर अपीलीय अधिकरण न्यायपीठ “एक-सदस्य” मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAIPUR BENCH “SMC”, RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष  
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

**आयकर अपील सं./ ITA No. 27/RPR/2023**

**निर्धारण वर्ष / Assessment Year : 2020-21**

S.A. Aluminium  
17/198 Station Road, Nahar Para,  
Raipur (C.G.)-492 009  
PAN: ACKFS5874J

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Raipur (C.G.).

.....प्रत्यर्थी / Respondent

Assessee by : Shri Aditya Chhajed, Advocate  
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 11.04.2023

घोषणा की तारीख / Date of Pronouncement : 18.04.2023

**आदेश / ORDER****PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 24.11.2022, which in turn arises from the intimation issued by the Centralized Processing Center (CPC)/A.O. under Sec.143(1) of the Income-tax Act, 1961 (in short 'the Act') dated 29.10.2021 for the assessment year 2020-21. The assessee has assailed the impugned order on the following grounds of appeal:

- “1. Because the order passed by the Ld. CIT(A) is bad in law and against the facts of the case.
2. Because, the Ld. CIT(A) erred in disallowing the claim of Rs.4,01,002/-which was the entitled salary payable to partners u/s 40(b) of the Act and was duly assessed and allowed in all the preceding years.
3. Because, the Ld. CIT(A) erred in considering the settled position of law that merely quantification of the limit of remuneration to the partners of the firm is sufficient to be eligible for deduction u/s 40(b) of the Act.
4. Because, under the facts and circumstances of the instant case the Appellant has duly quantified the upper limit of remuneration as per the provisions of the Act in the Partnership Deed.
5. Because, the Ld. CIT(A) erred in disregarding the fact that the partners of the Appellant who were entitled for the remuneration have already included this income in their respective income tax returns and has duly paid the tax on the same.

6. Because, the CIT(A) ignored the fact that making an addition in the hands of the Appellant would lead to double taxation of income which is against the foundational intent of the Act.

7. Because, the Ld. CIT(A) erred in disregarding the position that inadvertent mistake of third party/auditor in the Tax Audit Report cannot form basis for disallowance of expenses/deduction rightfully incurred by the Appellant.

8. Because, the Ld. CIT(A) erred in confirming the total interest of Rs.15,161/- u/s 234B Rs.11,723/- and Rs. 3,438/- u/s 234C of the Act.

The Appellant craves leave to add, amend, alter, modify or withdraw any of the ground of appeal at the time of hearing.”

2. Succinctly stated, the assessee firm had e-filed its return of income for A.Y.2020-21 on 26.11.2020 declaring an income of Rs.1,17,340/-. Intimation u/s.143(1) of the Act was issued by the CPC, Bengaluru dated 29.10.2021 wherein after disallowing the assessee's claim for deduction of remuneration paid to partners of Rs.4,01,002/- u/s.40(b) of the Act its income was determined at Rs.5,18,340/-.

3. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) but without any success.

4. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before me.

5. I have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record.

6. Shorn of unnecessary details, controversy involved in the present appeal leading to the impugned disallowance u/s.40(b) of the Act of the assessee's claim for deduction of remuneration paid to partners at Rs.4,01,002/- lies in a narrow compass, i.e., as to whether or not the A.O was right in law and facts of the case in triggering the provisions of Section 40(b)(ii) of the Act for disallowing assessee's claim for duction of remuneration to working partners u/s.40(b)(ii) of the Act? As is discernible from the records the assessee firm had raised a claim for deduction of the remuneration paid to its partners of Rs.4,01,002/-, as under:

Sr. No.	Particulars	Amount
1.	Remuneration paid to Shri Avinash Karnani (partner)	Rs.2,00,501/-
2.	Remuneration paid to Shri Shivpal Singh (partner)	Rs.2,00,501/-
Total		Rs.4,01,002/-

Ostensibly the aforesaid remuneration paid by the assessee firm was calculated as per clause (vi) of its partnership deed. On a perusal of

the records it transpires that the aforesaid claim for deduction of remuneration was disallowed by the A.O for the reason that the assessee firm had failed to mention Clause 21(c) of Form 3CD of his audit report the amount of remuneration that was admissible u/s. 40(b)/40(ba) of the Act. It is a matter of fact borne from record that the assessee had not made any mention of the amount of remuneration paid to its partners in Clause 21(c) of its audit report. For the sake of clarity the relevant Clause 21(c) (supra) is culled out as under:

(c) Amounts debited to profit and loss account being, interest, salary, bonus, commission or remuneration <b>inadmissible under section 40(b)/40(ba)</b> and computation thereof						
	Particulars	Section	Amount debited to P/L A/C	Amount admissible	Amount inadmissible	Remarks

(emphasis supplied)

I find on a careful perusal of Clause 21(c) that the same contemplates mentioning of the amount of interest, salary, bonus, commission or remuneration which though is debited by the assessee in its profit & loss account but is inadmissible u/ss.40(b)/40(ba) of the Act a/w. computation thereof. I am of the considered view that now when Clause 21(c), inter alia, envisages mentioning of the amount of

remuneration that is inadmissible u/s.40(b) of the Act, therefore, no adverse inferences could have been drawn for the reason that the assessee firm had failed to make mention of the amount admissible under the said statutory provision. Although the details referred to in Clause 21(c) does make a reference of both the amounts admissible and inadmissible, but a careful perusal of the same reveals that the said details are sought only as regards the expenses therein set out which are inadmissible u/ss.40(b)/40(ba) of the Act. On the basis of my aforesaid observations, I am of the view that no infirmity emerges from the non-mentioning of the amount of remuneration paid by the assessee firm to its partners in Clause 21(c).

7. Be that as it may, as the assessee firm had in no way contravened the provisions of sub-section (b) of Section 40 of the Act viz. (i) claimed deduction of remuneration paid to a partner who is not a working partner; or (ii) claimed deduction for payment of remuneration to a working partner which is either not authorized by, or is not in accordance with the partnership deed; or (iii) claimed deduction for payment of remuneration to a working partner relating to any period falling prior to the date of partnership deed; or (iv) claimed deduction for payment of remuneration to a working partner which though 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 but exceeds the amount computed as per the mechanism set out in clause (v) of sub-section (b) to Section 40 of the Act, therefore, no part of the same could have been disallowed by the A.O. On the basis of my aforesaid observations I am unable to persuade myself to subscribe to the view taken by the lower authorities who had disallowed the assessee's claim for deduction of remuneration of Rs.4,01,002/- under sec. 40(b) of the Act. I, thus, in terms of my aforesaid deliberations set-aside the order of the CIT(Appeals) and vacate the disallowance of Rs.4,01,002/- made by the A.O u/s. 40(b) of the Act. Thus, the **Grounds of appeal Nos. 1 to 7** raised by the assessee are allowed in terms of my aforesaid observations.

8. As the levy of interest u/ss.234B and 234C are mandatory in pursuance to the judgment of the **Hon'ble Supreme Court** in the case of **Anjum M.H Ghaswala & Ors (2001) 252 ITR 1 (SC)**, therefore, the A.O is directed to rework out the same while giving appellate effect. Thus, the **Ground of appeal No.8** raised by the assessee is disposed off in terms of my aforesaid observations.

9. In the result, appeal of the assessee is allowed in terms of my aforesaid observations.

Order pronounced in open court on 18<sup>th</sup> day of April, 2023.

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 18<sup>th</sup> April, 2023.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT-1, Raipur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच, रायपुर / DR, ITAT, "SMC" Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव /Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur