

**आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता**

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA**

श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 682/Kol/2022**  
**Assessment Year: 2019-20**

Globe Perfumery Works (PAN: AAEEFG 4249 F)	Vs.	DCIT, Circle-43, Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	21.03.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	21.08.2023
For the Appellant/ निर्धारिती की ओर से	Shri S. K. Saha, FCA
For the Respondent/ राजस्व की ओर से	Smt. Ranu Biswas, Addl. CIT D.R

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 14.10.2022 for the AY 2019-20.

2. Issue raised by the assessee in the grounds of appeal is against the confirmation of addition of Rs. 1, 84,29,780/- by the Ld. CIT(A) which was made by the AO by disallowing salary and interest on capital to the partners in terms of partnership deed dated 15.05.2018.

3. Facts in brief are that the assessee paid interest on capital and remuneration to partners pursuant to the partnership deed dated 15.05.2018 copy of which is filed from Page 16 and 17 of PB. The interest on partner capital was Rs. 1,65,09,780/- and

partner remuneration was Rs. 19,20,000/-. The assessee correctly claimed this amount in the original return of income filed for AY 2019-20. However due to some mistake in the audit report the amount of said claim was show as admissible as well as non admissible. The AO CPC issued notice dated 3.01.2021 proposing adjustment u/s 143(1)(a) of the Act which states the inconsistencies in form 3CD. The assessee revised the return however in the revised return of income the said amount of Rs. 1,84,29,780/- was added. The assessee filed rectification petition u/s 154 of the Act for mistake. However the AO passed the order u/s 154 of the Act dated 21.05.2021 assessing total income of Rs. 4,40,39,977/- instead of Rs. 2,56,10,197/-.

4. Aggrieved the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) also dismissed the appeal by observing and holding as under:

*“5. The appellant has e-filed return of income on 19.09.2019 vide CPC Letter dated 03.01.2020. The CPC proposed adjustment of Rs. 1,84,29,780/- being inconsistency in amount of interest salary, bonus, commission or remuneration paid to any member or partner.*

*5.1. The revised return of income was filed on 18.03.2020, it was processed on 28.02.2020, where the income returned and assessee are Rs. 4,40,39,977/-. Against this order of CPC, dated 28.04.2020 rectification petition u/s 154 of the Act was filed on 03.05.2021 i.e. after 13 months from the order of CPC. This rectification request is rejected on 21.05.2021 as there was no variation made by CPC while processing revised return of income on 28.04.2020.*

*5.2. Against this dismissal of 154 petition. The appellant has filed appeal before NFAC on 26.08.2021. As the grounds of appeal are not arising out of order u/s 154 or intimation u/s 143(1) of the Income Tax Act, 1961 dated 28.04.2020. Therefore this appeal is dismissed.*

5. After hearing the rival contentions and perusing the material on record, we find that the assessee is entitled to claim interest and remuneration to the partners in terms of partnership deed dated 15.05.2018. We note that during the year the assessee has claimed interest of Rs. 1,65,09,780/- and remuneration of Rs. 19,20,000/- to the partners which was in accordance with the provisions in Partnership Deed as stated hereinabove. However due to mistake in the tax audit report the CPC proposed adjustment of Rs. 1,84,29,780/- being inconsistent to the amount of interest and salary paid to partners vide letter dated 03.01.2020. The return was revised pursuant to notice from CPC that the amount of interest and remuneration was correctly claimed

in the original return however again a mistake was committed by adding the amount of interest and salary to partners to the income. The assessee filed a rectification petition dated 03.05.2021 which was decided on 21.05.2021 assessing the same. Now the issue before us is whether the assessee is entitled to legitimate and de jure claim of salary interest which is inconsonance with the terms of Partnership Deed. More so, when the salary and interest have been allowed in all the preceding and succeeding years by the revenue. In our opinion, this is a technical mistake on the part of the assessee cannot be used to punish the assessee as this has happened due to wrong audit report by the tax auditor of the assessee who has by mistake mentioned the same amount of salary and interest under Clause 21(c) under the column admissible as well as inadmissible which has resulted into issue of adjustment letter dated 03.01.2020 by the CPC. In our opinion, the assessee's claim is in accordance with the deed of partnership dated 15.05.2018 i.e. the only requirement for claim of remuneration in case of partnership firm and the remaining formalities are only in the nature of subservient. Therefore taking judicious view on the matter, we are of the view that the order of Ld. CIT(A) is wrong and cannot be sustained. Consequently we set aside the order of Ld. CIT(A) and direct the AO to allow the deduction of salary and interest on capital to the assessee.

6. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 21<sup>st</sup> August, 2023

Sd/-

Sd/-

(SonjoySarma /संजय शर्मा)  
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)  
Accountant Member/लेखा सदस्य

Dated: 21<sup>st</sup> August, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Globe Perfumery Works , 3, Sir Hariram Goenka Street Bara Bazar, Kolkata-700007
2. Respondent – DCIT, Circle-43, Kolkata
3. Ld. CIT(A)- NFAC, Delhi
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata