

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND

DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 381/SRT/2023 (AY: 2017-18)

(Virtual Hearing)

Dinesh India Company, 5019, World Trade Centre, Ring Road, Surat-395001. PAN No. AAJFD 9144 M	Vs.	A.C.I.T., Circle-1(2), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Aditya Nemani, C.A.
Department represented by	Shri S.M. Keshkamat, CIT-DR
Date of Institution of Appeal	29/05/2023
Date of hearing	12/09/2023
Date of pronouncement	18/09/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned National Faceless Appeal Centre, Delhi (NFAC)/Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 20/02/2023 for the Assessment Year (AY) 2017-18. The assessee has raised following grounds of appeal:

- "1 On the facts and the circumstances of the case and as per law, the Id. CIT(A) has erred in confirming the additions made by the Id. Assessing Officer.*
- 2. On the facts and circumstances of the case as well as law on the subject, the learned A.O. erred in disallowing U/s 10AA of the Act Rs. 4,38,44,221/- by considering notional interest on partners' capital and notional partners remuneration.*
- 3. On the facts and circumstances of the case as well as law on the subject, the learned A.O. erred in disallowing U/s 10AA of the Act of Rs. 4,38,44,221/- even though supplementary deed of the appellant firm specifically provided that no interest and remuneration payable to partners.*

4. *On the facts and circumstances of the case as well as law on the subject, the learned A.O. erred in thrusting the interest on Partner's capital and remuneration to partners, even though it was not prescribed by the partnership deed and thus not even by law.*
 5. *On the facts and circumstances of the case as well as law on the subject, the learned A.O. erred in treating income of Rs. 19,178/- on payment of employees contribution of PF/ESI after due date.*
 5. *The appellant craves to leave, to add, to amend and/or alter any of the ground of appeal, if need be."*
2. Perusal of record shows that the impugned order was passed by the Id. CIT(A) on 20/02/2023, however, the present appeal is filed before the Tribunal on 29/05/2023. The Registry of this Tribunal has calculated the delay of 38 days in filing appeal. The assessee has filed application for condonation of delay which is supported by the affidavit of Shri Dinesh Malani, partner of assessee-firm. The learned Authorised Representative (Id. AR) of the assessee submits that the impugned order was passed by the Id. CIT(A) on 20/02/2023 in confirming the partial disallowance of deduction under Section 10AA of the Income Tax Act, 1961 (in short, the Act), with regard to interest on capital and remuneration to partners. The assessee was exploring the legal advice and opinion either to file writ petition or appeal before the Tribunal. In seeking advice and taking final decision, the delay of 38 days occurred. The delay is neither intentional nor deliberate. The delay occurred beyond the control of assessee and as the engagement of assessee was with legal expert. The assessee never intended to file appeal belatedly. The Id. AR of the assessee submits that one of the partner of assessee

has filed affidavit explaining the cause of delay. The Id. AR of the assessee submits that there was no deliberate or intentional delay in filing appeal rather for the facts explained above. The assessee is not going to be benefitted. The assessee has good case on merit and is likely to succeed if one more opportunity is provided to the assessee. The assessee has not taken any recourse of law against the impugned order except of filing this appeal. Therefore, the Id. AR of the assessee prayed for condoning the delay.

3. On the other hand, the learned Commissioner of Income Tax- Departmental Representative (Id. CIT-DR) for the revenue submits that the Bench may take appropriate decision to condone the delay as per law.
4. We have considered the submissions of both the parties and find that there is no deliberate delay or malafide on the part of assessee in causing delay. The delay is only of 38 days which may not be fatal to the revenue. The revenue is not going to be suffered if they have merit in their favour. Considering the facts and circumstances of the case and the submissions of the parties, we find that the assessee has shown reasonable cause for condoning the delay, therefore, the delay in filing appeal is condoned. Now adverting to the merit of the case.
5. Brief facts of the case are that the assessee is a partnership firm engaged in manufacturing and trading of Tobacco Gutka and other

Tobacco products. The assessee filed its return of income on 29/08/2017 declaring income of Rs. NIL. In the computation of total income, the assessee claimed deduction under Section 10AA of the Act of Rs. 7.61 crores. The case was selected for complete scrutiny. During the assessment, the Assessing Officer noted that the partner of assessee firm has not claimed interest on capital contribution and remuneration to its partners. The Assessing Officer issued show cause notice that why the assessee has not claimed such allowable expenditure while claiming profit from eligible business, vide show cause notice dated 15/11/2019. The contents of show cause notice is recorded in para 3 of assessment order. In the show cause notice, the Assessing Officer mentioned that on verification of partnership deed dated 05/12/2013 wherein as per clause (5) of partnership deed, interest to the partners is payable @ 12% per annum. Further as per clause (6) of partnership deed, remuneration is also payable as per calculation of Section 40B of the Act. The assessee subsequently prepared a supplementary deed dated 19/06/2014 and clause related to interest and remuneration to partners was omitted. This was done with the intention to increase the exempt income. The Assessing Officer on the basis of original partnership deed dated 05/12/2013 worked out the remuneration and interest on capital to partners of Rs. 4.91 crores

and asked the assessee as to why deduction to the extent of such amount should not be disallowed.

6. The assessee filed its detailed reply dated 21/11/2019. The contents of reply is recorded in para 3.2 of assessment order. The assessing officer recorded that assessee in its reply submitted that the assessee firm has executed notarized supplementary partnership deed on 19/06/2014 wherein all the partners mutually agreed not to claim interest and remuneration w.e.f. 01/04/2014 onwards. Copy of supplementary partnership deed was filed. The assessee further stated that the business of partnership is governed as per contract of partnership. The firm has not paid any interest on capital or partners' remuneration in accordance with partnership deed. The assessee cannot be compelled to charge such interest or remuneration by invoking provisions of Section 40B of the Act. The assessee also relied on various case laws including decision of Hon'ble Jurisdictional High Court in PCIT Vs. Alidhra Taxspin Engineers and another in Tax appeal No. 265 of 2017 dated 02/05/2017, decision of Surat Tribunal in ACIT Vs Mukta Enterprise (2018) 100 taxmann.com 44 (Surat-Trib), ACIT Vs Kiran Jewellery ITA No. 192 and 193/Srt/2017.
7. The reply of assessee was not accepted by Assessing Officer. The Assessing Officer by referring various case laws that as per provisions of Section 40B of the Act, the payments of interest @ 12% in capital or

partners and remuneration to the working of partner is payable. The assessee firm has not made any payment thereof to partners nor made any provisions of liability. The Assessing Officer reduced the amount of interest and remuneration from the computation of business profit allowable for deduction under Section 10AA of the Act thereby disallowed Rs. 4.38 crores.

8. Aggrieved by the additions in the assessment order, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee filed detailed written submissions and reiterated almost all similar contentions as submitted before the Assessing Officer. The assessee also stated that they have paid tax under Section 115JC of Rs. 1.62 crore.
9. The Id. CIT(A) after considering the submission of assessee, upheld the order of Assessing Officer by referring and relying upon the decision of Rajkot Tribunal in ITO Vs Devine Impex ITA No. 279/Rjt/2012 dated 24/01/2013 and Chandigarh Tribunal in ITO Vs M/s Shivam Industries ITA No. 510/Ahd/2012 and 616/Chd/2012. Further aggrieved, the assessee has filed present appeal before the Tribunal.
10. We have heard the submissions of Id. AR of the assessee and the Id. CIT-DR for the revenue. The Id. AR of the assessee submits that the grounds of appeal raised by assessee are covered by the decision of Hon'ble Jurisdictional High Court in PCIT Vs. Alidhra Taxspin Engineers

and another (supra) and in PCIT Vs Ruta Jewels in Tax Appeal No. 165 of 2019 dated 24/06/2019. The Id. AR of the assessee submits that the Hon'ble Jurisdictional High Court in PCIT Vs. Alidhra Taxspin Engineers and another (supra) made specific finding that mere incorporation of interest on partners' capital account and remuneration does not signify that the same are mandatory in nature. Once the assessee has not charged any interest and remuneration as per partnership deed, therefore, the assessee cannot be compelled to charge interest or remuneration. The Id. AR of the assessee submits that the case is on better footing that the partner of assessee firm has agreed vide supplementary partnership deed dated 19/06/2014 for not to charge any interest on capital contribution and remuneration to the partners. Copy of partnership deed furnished to the Assessing Officer. The Assessing Officer wrongly recorded that supplementary partnership deed is notarized, rather a photo copy of said supplementary partnership deed, which was attested by notary public as true copy. The Id. AR of the assessee further submits that by following the decision of Hon'ble Jurisdictional High Court, Jurisdictional Tribunal in ACIT Vs. Mukta Enterprise (supra), and Ahmedabad Tribunal in Al Reza Food Vs ITO ITA No. 663/Ahd/2014 dated 23/03/2017 and Sagar Foods Mahuva Vs ITO ITA No. 750/Ahd/2014 dated 22/02/2017, allowed similar relief to those assesseees. The Id. AR of the assessee submits that he has filed

on record the copies of all the decisions. On the basis of aforesaid submissions, the Id. AR of the assessee submits that the grounds of appeal raised by assessee is in fact squarely covered in favour of assessee.

11. On the other hand, the Id. CIT-DR for the revenue supported the orders of lower authorities. The Id. CIT-DR for the revenue submits that the assessee before the Assessing Officer claimed that a notarized supplementary deed was prepaid. Copy of such notarized deed was never shown or filed before the lower authorities.
12. We have considered the rival submissions of both the parties and have perused the orders of the lower authorities carefully. We have also deliberated on the various case laws relied by the Id. AR of the assessee. There is no dispute that the assessee is eligible for deduction under Section 10AA of the Act. Further the assessee claimed deduction of Rs. 7.61 crores during the year. The Assessing Officer disallowed the part of claim by taking a view that the assessee has not charged any interest on capital contribution and remunerations to its partner. The Assessing Officer worked out the disallowance of interest on capital of partner and remuneration and restricted the claim of deduction under Section 10AA of the Act by subtracting Rs...4.58 crore on account of remuneration to partners and Rs. 32,50,778/- on account of interest on capital contribution by partners. The Id. CIT(A) confirmed the action of

Assessing Officer on the basis of decision of Rajkot Tribunal in ITO Vs Devine Impex ITA No. 279/Rjt/2012 dated 24/01/2013 and Chandigarh Tribunal in ITO Vs M/s Shivam Industries ITA No. 510/Ahd/2012 and 616/Chd/2012.

13. Before us, the Id. AR of the assessee vehemently relied upon the decision of Jurisdictional Tribunal as well as Jurisdictional High Court. The assessee also claimed that similar relief was claimed in A.Y. 2016-17 on the basis of supplementary partnership deed and the assessee was allowed similar deduction without disallowance of similar interest on partners' contribution and remuneration. The assessee has also filed copy of intimation under Section 143(1) wherein claim of deduction under Section 10AA of the Act of Rs. 5.49 crore was allowed. The assessee has not charged any interest or remuneration as per their partnership deed, the assessee firm cannot be compelled to charge interest or remuneration. We find that the facts of present case is on better footing. The partner of assessee firm vide their supplementary partnership deed 19/06/2014 agreed not to charge any interest on their capital contribution and any remuneration to them.
14. We find that the grounds of appeal raised by assessee is covered by the decision of Hon'ble Jurisdictional High Court in PCIT Vs. Alidhra Taxspin Engineers and another (supra) wherein the Hon'ble High Court has clearly held that mere incorporation of interest on partners' capital

account and remuneration does not signify that the same are mandatory in nature.

15. The only objection of Id. CIT-DR for the revenue was that before the Assessing Officer, the assessee claimed notarized supplementary deed. On such objection, we directed the Id. AR of the assessee to show the original or supplementary partnership deed. Supplementary partnership deed was brought before the Bench and copy thereof was provided to the Id. CIT-DR for the revenue. On perusal of such supplementary partnership deed, we find that before assessing officer, the assessee has filed copy of said partnership deed attested by Notary Shri M.S. Ratnu, advocate, Jodhpur. On comparing the contents of supplementary partnership deed with copy thereof on record, original was returned to the assessee's counsel.
16. In view of aforesaid factual and legal discussion, we are of the considered view that the grounds of appeal raised by assessee are covered in favour of assessee. Hence, the disallowance of interest capital and remuneration from the allowable profit under Section 10AA, is deleted. Accordingly, the Assessing Officer is directed to allow full relief to the assessee. Hence, grounds No. 1 to 4 of the appeal are allowed.
17. Ground No. 5 of the appeal relates to confirming the action of Assessing officer in treating income of Rs. 19,178/- on payment of employee's

contribution of PF/ESI after due date. The Id AR for the assessee at the time of hearing submits that he is not pressing this ground of appeal. Considering the submissions of Id AR for the assessee, this ground of appeal is dismissed.

18. In the result, this appeal of assessee is partly allowed.

Order announced in open court on 18th September, 2023.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 18/09/2023

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat