

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"D" BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.2349/Mum./2023**

**(Assessment Year : 2018-19)**

M/s. Ruskin Chemipharm  
4/A, 1<sup>st</sup> Floor, Bhangwadi Shopping Arcade  
Kalbadevi, Mumbai 400 002  
PAN – AAAGR8482M

..... Appellant

v/s

Asstt. Commissioner of Income Tax  
Central Processing Centre  
Bengaluru 560 500

..... Respondent

Assessee by : Shri Satyaprakash Singh  
Revenue by : Smt. Mahita Nair

Date of Hearing – 12/10/2023

Date of Order – 16/10/2023

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 22/06/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Center, Delhi, [*"learned CIT(A)"*], for the assessment year 2018-19.

2. In its appeal, the assessee has raised the following grounds:-

*"1. The order dated 22/06/2023 bearing No.ITBA/NFAC/S/250/2023-24/1053874407[1] passed under section 250 of Income Tax Act, 1961 by the Hon'ble CIT[Appeals]. National Faceless Appeal Centre [NFAC], Delhi, is*

*excessive, unreasonable, arbitrary, against the provisions of Income Tax Act, 1961 and therefore liable to be quashed.*

*2. On facts and circumstances of the case and in law, the Hon'ble C.I.T.(Appeals)/the Assessing Officer, NFAC, Delhi has erred in disallowance a sum of Rs.64,06,330/- being interest paid to partners due to mistake done by Auditor in the Tax Audit Report, ignoring the fact that, the Tax Auditor has revised the Form 3CD on 27th November 2019 indicating that no amount is inadmissible.*

*3. The appellant craves to alter, add, delete, substitute, or modify and other grounds of appeal."*

3. The only dispute raised by the assessee, in the present appeal, is against disallowance of interest paid to partners due to mistake in the Tax Audit Report.

4. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the assessee is a registered partnership firm and for the year under consideration filed its return of income on 26/09/2018 declaring a total income of Rs. 1,34,90,214, which comprised of income under the head profits and gains from business and profession. The return filed by the assessee was processed vide intimation dated 01/07/2019 issued under section 143(1) of the Act, whereby the total income of the assessee was computed at Rs. 1,98,96,544, after making an addition of Rs. 64,06,330 under section 40(b) of the Act on account of disallowance of interest paid to the partners. Being aggrieved by the aforesaid intimation, the assessee filed a rectification application under section 154 of the Act. However, the said application was also disposed of without granting any relief to the assessee. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee against the rectification order on the basis

that the auditor has remarked that the interest of Rs. 64,06,330 paid to the partners is not admissible.

5. It is evident from the record that as per the partnership deed the capital contributed by the partners, as may be mutually agreed, shall bear interest at 12% per annum. We find that as per section 40(b)(iv) of the Act, the interest paid to the partners in accordance with the terms of the partnership deed is not allowable insofar as such amount exceeds the amount calculated at the rate of 12% per annum. During the hearing, the learned AR submitted that the auditor revised the Tax Audit Report in Form no. 3CB and rectified the mistake made in the earlier Tax Audit Report, wherein the interest paid to the partners was declared as inadmissible. The learned AR further submitted that the revised Tax Audit Report dated 04/08/2018 was filed during the rectification proceedings. However, the same was completely ignored while disposing of the rectification application filed by the assessee. We find that the learned CIT(A) also did not consider the revised Tax Audit Report, wherein the amount of Rs 64,06,330 paid to the partners as interest is declared as admissible under section 40(b) of the Act. In view of the facts and circumstances as noted above, we deem it appropriate to restore this issue to the file of the learned CIT(A) for *de novo* adjudication as per law after considering all the material available on record. The assessee shall be at liberty to furnish any other evidence in support of its claim that the interest was paid to the partners within the limit permissible under section 40(b) of the Act. Needless to mention, the learned CIT(A) shall be at liberty to call for a remand report from the Assessing Officer in this regard. With the above directions, the impugned

order passed by the learned CIT(A) is set aside and the grounds raised by the assessee are allowed for statistical purposes.

6. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 16/10/2023

**Sd/-**  
**PRASHANT MAHARISHI**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 16/10/2023**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai