

**IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 3746/MUM/2023
(Assessment Year: 2012-2013)**

T.P. Ostwal & Associates LLP,
Suite# 1306-1307, 13th Floor,
Lodha Supremus, Senapati Bapat Marg,
Lower Parel, Mumbai - 400013
[PAN: AAFT8386J]

..... **Appellant**

**Assistant Commissioner of Income -
16(3), Mumbai,**
Room No. 446, Aayakar Bhavan,
Maharshi Karve Marg,
Mumbai - 400020

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Atul T. Suraiya
For the Respondent/Department : Shri Salil Mishra

Date

Conclusion of hearing : 28.02.2024
Pronouncement of order : 18.03.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 14/09/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2012-13, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Rectification Order, dated 04/01/2018, passed under Section 154 of the Income Tax Act, 1961 (hereinafter referred to as

'the Act').

2. The Assessee has raised the following grounds of appeal:

1. *The Order of Learned Commissioner of Income-tax (Appeals) is bad in law and void-ab-initio and against the principles of natural justice as it has not considered the submissions made, and those available on e-filing portal.*
2. *The Learned Commissioner of Income-tax (Appeals) erred in upholding the Order u/s 154 of Income-tax Act, 1961 (Act) in respect of disallowance of partners remuneration of Rs.67,58,815/- by holding the appeal is time-barred by 45 days.*
3. *The Learned Commissioner of Income-tax (Appeals) erred in not appreciating that the Order u/s 154 of Act was not served on the Appellant by post and was personally collected by partner of assessee firm only on 20.02.2018, and, therefore, the appeal was filed within time.*
4. *The Learned Commissioner of Income-tax (Appeals) erred in dismissing the Appellant's appeal even though the Assessing Officer had accepted in his remand report that the addition made by him in the impugned order was erroneous.*
5. *The Learned Commissioner of Income-tax (Appeals), having called for a remand report and thus having begun the process of adjudication, could not have dismissed the appeal in limine.*
6. *The Learned Commissioner of Income-tax (Appeals) erred in not appreciating the method of determining the partners remuneration in accordance with the provisions of section 40(b) of Act and circular no.739 dated 25.03.1996 requires that "no deduction u/s 40(b)(v) of Act admissible unless partnership deed either specifies the remuneration to payable to each individual working partner or lays down the manner of quantifying such remuneration.*
7. *The Learned Commissioner of Income-tax (Appeals) failed to appreciate that in any event, there was no mistake apparent from record so as to justify passing of an order under section*

154 of the act.”

3. The relevant facts in brief are that the Appellant, a limited liability partnership firm carrying on the profession of Chartered Accountancy, filed return of income for the Assessment Year 2012-13 on 29/09/2012. The case of the Appellant was selected for regular scrutiny and vide order dated 18/03/2015, assessment under Section 143(3) of the Act was framed on the Appellant at the assessed income of INR 2,15,06,184/-. Subsequently, vide order, dated 04/01/2018, passed under Section 154 of the Act, the aforesaid Assessment Order, dated 18/03/2015 was rectified by the Assessing Officer and an addition of INR 67,58,815/- was made in respect of remuneration paid to the partner.
4. Being aggrieved, the Appellant preferred appeal before CIT(A) which was dismissed as being barred by limitation vide order, dated 14/09/2023.
5. The Appellant is now in appeal before us against the above order dated 14/09/2023, passed by the CIT(A) on the grounds reproduced in paragraph 2 above. Since all the grounds are connected they have been taken up together hereinafter.
6. The Ld. Authorised Representative for the Appellant appearing before us submitted that pursuant to initiation of rectification proceedings vide notice dated 11/04/2016, the Appellant had filed reply dated 19/05/2016. Thereafter, in response to notice dated 19/04/2017 issued by the Assessing Officer directing the Appellant to file reply to the notice dated 11/04/2016, the Appellant filed reply letter dated 24/04/2017, which was accompanied by the Admission Deed, dated 11/09/2009 and copy of Resolution passed at the

meeting of partners on 01/04/2011. However, the Assessing Officer failed to take the same into consideration and passed rectification order, dated 04/01/2018, under Section 154 of the Act incorrectly stating that no response had been furnished by the Appellant. The Assessing Officer made addition of INR 67,58,815/- holding the same to be payment of remuneration to the partners in excess of the amount specified in the Admission Deed, dated 11/09/2009. According to the Assessing Officer, as per the Admission Deed, the amount of remuneration which could be paid to the partners was INR 2,41,37,630/- whereas the Appellant had debited remuneration to partners aggregating to INR 3,08,96,445/- to the Profit & Loss Account. Even during the appellate proceedings before CIT(A), the Appellant had filed detailed written submission, dated 17/09/2018, providing all the relevant details and documents. A copy of the Admission Deed, dated 11/09/2009, and a copy of Resolution passed at the meeting of partners on 01/04/2011 was also provided to the CIT(A). The CIT(A), vide letter, dated 07/11/2019, intimated the Appellant that a remand report had been sought by the CIT(A) from the Assessing Officer vide letter, dated 18/09/2018, on the basis of the aforesaid written submission. The Assessing Officer had given remand report, dated 04/11/2019, which was forwarded to the Appellant for comments/rejoinder. The remand report clearly stated that Circular No. 739, dated 25/03/1996, issued by Central Board of Direct Taxes (CBDT) was complied with by the Appellant and the remuneration paid to the working partners was in accordance with provisions contained in Section 40(b) of the Act. In response to the notice of hearing dated 13/11/2019, issued by CIT(A), the Appellant filed submissions dated 26/11/2019 bringing on record relevant facts. The fact that in the remand report, dated 04/11/2019, the

Assessing Officer had verified the submissions dated 17/09/2018, made by the Appellant and given a report that the remuneration debited to the Profit & Loss Account was in accordance with the provisions contained in Section 40(b)(v) of the Act and that the Circular No. 739, dated 25/03/1996 was complied with by the Appellant. Thereafter, in response to notice dated 18/03/2020, issued by the CIT(A), a response was submitted online on 26/03/2020 which was followed by another response submitted on 11/01/2021. On 15/05/2023, again notice was issued by CIT(A) directing the Appellant to upload documents and written submissions. On 16/05/2023, a response was filed by the Appellant. Thereafter, another notice dated 25/07/2023, was issued by the CIT(A) and in response thereto all relevant documents including remand report, submissions dated 26/11/2019, 26/07/2023 and 17/09/2018 were uploaded electronically. Subsequently, another notice dated 28/08/2023, was issued by the CIT(A) in response to which again relevant documents and submissions were uploaded electronically on 30/08/2023. Without considering the submissions & documents furnished by the Appellant, the CIT(A) dismissed the appeal as being barred by limitation observing that the appeal preferred by the Appellant was filed after a delay of 45 days and that the Appellant has failed to mention any reasons for delay. The Ld. Authorised Representative for the Appellant submitted that there was no delay on the part of the Appellant in filing the appeal since the copy of the order dated 01/04/2018 was received by the Appellant on 20/02/2018, and this fact was stated in Form 35 filed before CIT(A). The CIT(A) without confronting the Appellant and completely ignoring the submissions made by the Appellant dismissed the appeal on the ground of limitation. The Ld. Authorised

Representative for the Appellant submitted that the order passed by CIT(A) and the Assessing Officer were laden with factual and legal infirmities and were, therefore, bad in law.

7. Per contra, the Ld. Departmental Representative supported the order passed by CIT(A) and submitted that the Appellant had not filed any application for condonation of delay before the CIT(A), therefore, the CIT(A) was justified in dismissing the appeal as being barred by limitation.
8. We have considered the rival submissions and perused the material on record. It emerges that assessment was framed on the Appellant under Section 143(3) of the Act vide order, dated 18/03/2015. Subsequently, notice was issued under Section 154 of the Act as the Assessing Officer was of the view that the Appellant has been mistakenly allowed excess deduction of INR 67,58,818/- in respect of remuneration paid by the Appellant to its partners in excess of the amounts specified in the Admission Deed, dated 11/09/2009. In response, the Appellant filed reply dated 19/05/2016 and 24/04/2017 explaining that partners remuneration has been paid in accordance with the terms of the Admission Deed, dated 11/09/2009, read with the Resolution, dated 01/04/2011. It was explained therein that Clause 8(d) of the Admission Deed, dated 11/09/2009, contained provision for payment of additional remuneration to the working partners and in accordance with Clause 8(f) of the said Admission Deed a Resolution, dated 01/04/2011, was passed by the partners of the Appellant approving payment of additional remuneration to the partners and resolving that the remuneration payable in accordance with Clause 8 of the said Admission Deed shall be subject to the overall limits prescribed

under Section 40(b) of the Act. Thus, the remuneration of INR 3,08,96,445/- debited to the Profit & Loss Account was not excessive and that the provisions contained in Section 40(b) of Act and Circular No.739, dated 25/03/1996, issued by the Central Board of Direct Taxes were complied with. While at the time of passing order under Section 154 of the Act, the then Assessing Officer rejected the aforesaid contentions of the Appellant, the incumbent Assessing Officer giving the remand report as sought by the CIT(A) during the course of appellate proceedings accepted the aforesaid submissions of the Appellant. After verifying the Admission Deed, dated 11/09/2009 and Resolution, dated 01/04/2011, the Assessing Officer giving the remand report returned a finding that remuneration debited to the Profit & Loss Account was in accordance with the terms of partnership deed and the provisions contained in Section 40(b)(v) of the Act as well as Circular No. 739, dated 25/03/1996, issued by CBDT were complied with. During the appellate proceedings before us, the Revenue was unable to controvert the findings returned by the Assessing Officer in the remand report. Therefore, on merits the addition of INR 67,58,815/- made by the Assessing Officer while passing rectification order dated 11/04/2016, cannot be sustained. As regards, the order of CIT(A) dismissing the appeal on the ground of limitation is concerned, we are of the view that the order has been passed by CIT(A) without application of mind to the material on record. In Form No. 35 filed by the Appellant before CIT(A) date of service of the order was stated as 20/02/2018. The appeal was filed within a period of 30 days from the aforesaid date. According to the Appellant, there was no delay in filing the appeal and therefore, no application seeking condonation of delay in filing the appeal was filed by the Appellant.

It is admitted position that the CIT(A) had called for a remand report on the submissions/documents filed by the Appellant on 18/09/2018. Thereafter, a number of notices were issued by the CIT(A) to the Appellant. On perusal of the same, we do not find any query raised by the CIT(A) in relation to delay in filing the appeal. The CIT(A) decided the appeal moving on the premise that Appellant had time till 03/02/2018 to file the appeal without taking into consideration the fact that the Appellant had stated 20/02/2018 as the date of service of order. In view of the aforesaid, the order passed by CIT(A) dismissing the appeal preferred by the Appellant as being barred by limitation cannot be sustained and is hereby set aside. All the material facts for adjudication of the issue raised in the present appeal on merits are on record. We have already concluded hereinabove that the addition of INR 67,58,815/- made by the Assessing Officer vide rectification order, dated 04/01/2018, cannot be sustained in the facts and circumstances of the present case. Accordingly, addition of INR 67,58,815/- made by the Assessing Officer is deleted. Accordingly, Ground No. 1, 2, 3, 6 and 7 are allowed while Ground No. 4 and 5 are dismissed as being infructuous.

9. In result, the present appeal preferred by the Assessee is allowed.

Order pronounced on 18.03.2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 18.03.2024
Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai