

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

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

**ITA NO.4285/MUM/2023  
Assessment Year 2017-18**

Favourite Marine Services  
Through Partner Zubair Hussain Nevrekar,  
129B, Old Anjirwadi, Near Hasnabad,  
Mazgaon, Mumbai -400 010  
PAN:AAAFF-0221-C

- Appellant

Vs.

Income Tax Officer 20(1)(1), Mumbai.  
Piramal Chambers, Lalbaug,  
Mumbai 400 012.

- Respondent

Appellant by : Shri Rakesh Milwani  
Respondent by : Shri Suni Mathews

Date of Hearing : 29/04/2024  
Date of Pronouncement : 29/04/2024

**ORDER**

The assessee has filed the appeal challenging the order dated 31-10-2023 passed by Ld. Addl CIT(A)-4, Kolkatta and it relates to the assessment year 2017-18. The assessee is aggrieved by the decision of Ld CIT(A) in partially confirming the additions made by the CPC while processing the return of income u/s 143(1) of the Act.

2. I heard the parties and perused the record. The return of income filed by the assessee for the year under consideration was processed u/s 143(1) of the Act. The assessee is a partnership firm and, in the Profit and Loss account, it had debited a sum of Rs.15,60,000/- towards remuneration payable to the partners. However, the amount of remuneration allowable as deduction in terms of sec.40(b) worked out to Rs.39,985/- only. It is the submission of Ld A.R, the assessee voluntarily disallowed partners remuneration of Rs.15,60,000/- and did not claim deduction of even the allowable amount of Rs.39,985/-. However, it appears that the Tax Auditor

has wrongly reported the above said details in the Tax audit report. It was submitted that the Tax Auditor has filed a revised tax audit report to rectify his mistakes. It is stated that the CPC, however, did not consider the revised tax audit report and made adjustments as detailed below:-

Remuneration to partners was disallowed - 15,60,000

Remuneration to partners in excess of sec.40(b) - 15,20,015

The CPC added both the above amounts to the total income declared by the assessee.

3. In the appellate proceedings, the Ld CIT(A) partially allowed the appeal of the assessee and hence the assessee has filed this appeal before the Tribunal.

4. It is the main contention of the Ld A.R that the assessee did not claim deduction of Partners' remuneration of Rs.15,60,000/- and hence the question of making disallowance of Rs.15,60,000/- does not arise. Further, the addition of Rs.15,20,015/- is not called for, since the same would amount to double disallowance and further, the assessee did not claim remuneration of Rs.15,60,000/- as deduction. In support of the above, the Ld A.R took us through the copy of return of income and the details furnished therein. However, from the order passed by Ld CIT(A), I notice that the confusion has arisen on account of mistake committed by the Tax auditor in the Tax audit report. There should not be any dispute that the books of accounts shall prevail over the tax audit report, if there are mistakes in the tax audit report.

5. Though the factual aspects presented by Ld A.R weights in favour of the assessee, yet I of the view that they require verification at the end of the AO. If the factual aspects narrated by the Ld A.R is found to be correct, then no disallowance is called for. Accordingly, I set aside the order passed by Ld

CIT(A) and restore all the issues to the file of the AO for examining them afresh. The assessee is also directed to place all factual aspects before the AO. After examining the issue, the AO may take appropriate decision in accordance with law.

6. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 29<sup>th</sup> April, 2024.

Sd/-

(B.R. Baskaran)  
Accountant Member

Mumbai, Date : 29<sup>th</sup> April, 2024

VM.

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, "SMC" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai