

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "SMC" Bench, Mumbai.

Before Shri Narender Kumar Choudhry (JM)
&
Smt. Renu Jauhari (AM)

I.T.A. No. 286/Mum/2024 (A.Y. 2019-20)

Supreme Corporation A 1 113 Shah and Nahar Industrial Estate, Sunmill Compound, Lower Parel, Mumbai-400 069. PAN : AAYFS5495D (Appellant)	Vs.	ITO-22(3)(6) Piramal Chambers Mumbai. (Respondent)
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Assessee by	Shri Vimal Punmiya
Department by	Shri Nagnath Pasale
Date of Hearing	28.05.2024
Date of Pronouncement	31.05.2024

O R D E R

Per Narender Kumar Choudhry (JM):-

In the instant case, the CPC vide intimation/order dated 18.12.2019 under section 143(1) of the I.T. Act, made the addition of Rs. 1,20,000/- on account of disallowance qua remuneration paid to the partner of the assessee's firm under section 40b of the Act, against which the assessee preferred a rectification application dated 11.1.2020, however, could not get succeeded, as the CPC vide rectification order dated 5.2.2020 under section 154 of the Act, made no rectification and consequently reiterated the disallowance to the tune of Rs. 120,000/- referred to above.

- 2.** On appeal, the Ld. Commissioner affirmed the said addition.

- 3.** The assessee being aggrieved is in appeal before us. The assessee has raised the legal issue that CPC has added amount of Rs. 1,20,000/- disallowing remuneration paid to the partner Shri Aditya Jajodia, however, it is a fact that before issuing order under section 143(1) of the Act and making the addition, has not given any notice. Therefore, adjustment made/order passed under section 154 of the Act is liable to be set aside. Even otherwise provisions of section 40b of the Act allows maximum amount of Rs. 1,50,000/- or @ 90% of the Book-profit, whichever is more on the first amount of Rs. 3 lakhs of book profit or in case of loss and therefore if the book profit of the assessee is considered in light of section 40b of the Act that the payment of remuneration paid to the partner to the tune of Rs. 1,50,000/- is allowable, but still the assessee has allowed only Rs. 1,20,000/-.

- 4.** On the contrary the Ld. DR refuted the claim of the Assessee.

- 5.** We have given thoughtful consideration to the peculiar facts and circumstances and rival claim of the parties. Admittedly, the CPC while processing the return of the assessee and making adjustment/addition violated the mandatory provisions of section 143(1) of the Act by not giving any intimation/opportunity to the assessee, hence, on this aspect itself, intimation/order passed by CPC under section 143(1) is liable to be set aside. Even otherwise, as per mandates of section 40b of the Act, as claimed by the assessee, the assessee is empowered to pay salary payment of Rs. 1,50,000/- to its working partner, which in fact in the instant case was restricted to Rs. 1,20,000/- and therefore on this score as well the assessee is entitled to get benefit of section 40b of the Act . Hence, considering the peculiar facts and circumstances in totality, we are inclined to allow the claim made by the assessee and consequently appeal under consideration.

6. In the result, appeal filed by the assessee stands allowed.

Order pronounced in the open court on 31st May, 2024.

Sd/-
(Renu Jauhari)
Accountant Member

Sd/-
(Narender Kumar Choudhry)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS