

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.113/Nag./2020**  
(Assessment Year : 2011-12)

Asstt. Commissioner of Income Tax  
Amravati & Chandrapur Circle, Amravati ..... Appellant

v/s

M/s. A.M.G. Transformer Consortium  
Shop no.4, C/o N.S. Associates ..... Respondent  
Bhu Vikas Bank Building, Nagpur Road  
Chandrapur 442 401 PAN – AANFA4280F

Assessee by : Shri Shri Saket Bhatted  
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 04/06/2024

Date of Order – 04/06/2024

**ORDER**

**PER V. DURGA RAO, J.M.**

The present appeal has been filed by the Revenue challenging the impugned order dated 14/08/2020, passed by the learned Commissioner of Income Tax (Appeals)-2, Nagpur, [*learned CIT(A)*], for the assessment year 2011-12.

2. The Revenue has raised following grounds of appeal:-

*"1. On the facts and circumstances of the case and in law, the Ld. CIT(Appeals) has erred in deleting the excess remuneration paid in violation of section 40(b)(v) of the Act to partners amounting to Rs. 20.03712/- based on the supplementary partnership deed which AO found not to be complying with the provisions of section 184 with its sub section of the Act.*

*2. On the facts and circumstances of the case and in law, the Ld. CIT (Appeals) has erred in overlooking the provisions of I.T. Act contained in section 184 of the Act resulting in miscarriage of justice.*

3. Any other ground which may be taken at the time of hearing with the permission of Hon'ble ITAT."

3. Facts in Brief:- The assessee is a Firm. For the year under consideration, the assessee filed its return of income on 13/12/2011, declaring total income at ₹ 3,84,420. The case was selected for scrutiny and the assessment was completed on 28/03/2024, under section 143(3) Income Tax Act, 1961 ("*the Act*") assessing the total income at ₹ 43,93,185. The assessee has claimed deduction on account of remuneration paid to Partners amounting to ₹ 59,88,635, as per the new slab. On verification of Partnership Deed entered upon on 06/12/1997, it was agreed that the partners are entitled to the basic salary as under:-

<i>First ₹ 75,000</i>	<i>Next ₹ 75,000</i>	<i>Balance</i>
<i>90% of Book Profit</i>	<i>60% of Book Profit</i>	<i>40% of Book Profit</i>

4. Subsequently, the case was reopened under section 147 of the Act and notice under section 148 of the Act was issued on 04/04/2016 and the total income was assessed at ₹ 63,96,900, by impugned assessment order dated 06/09/2016, passed under section 143(3) r/w section 147 of the Act. This included an addition of ₹ 20,03,712, being the difference of remuneration paid to partners as claimed in the return of income amounting to ₹ 20,03,712, being the difference of remuneration paid to partners as claimed in the return of income amounting to ₹ 59,88,635, minus remuneration payable as worked out in assessment order amounting to ₹ 39,84,923.

The case of the Department is that no supplementary deed for adopting new slab relevant to the assessment year 2011-12 has been executed and the limit of total remuneration as specified in the partnership deed vide clause no.7, is lower than the new rate applicable under section 40(b)(v). The Assessing Officer further observed that the assessee should have paid remuneration as per the clause no.7, of Partnership Deed and omission has resulted into under assessment of income of ₹ 20,03,712. The Assessing Officer while perusing the supplementary deed filed by the assessee, it was further observed that the said Partnership Deed is not registered and was not notarized. No franking has been done either. He held that the assessee failed to furnish any third party evidence regarding execution of supplementary partnership deed. Accordingly, the Assessing Officer held that the assessee had made a wrong claim of remuneration at ₹ 20,03,712, was disallowed by him. Aggrieved, the assessee carried the matter before the first appellate authority.

5. The learned CIT(A) dealt with the issue in detail and directed the Assessing Officer to delete the impugned addition of ₹ 20,03,712, by observing as follows:-

*"5.1 Ground No.2 is the only substantial ground related to disallowance of Rs.20,03,712 which, in opinion of Ld. AO, was inadmissible remuneration paid to working partners.*

*5.1.1 The related discussion was made by the Ld. AO from para no. 2 to 11 of the impugned assessment order. However, in para No.10 the Ld. AO observed that on perusal of supplementary deed it was found that the said deed was not registered. In the case of the appellant for AY 2010-11 (in which a similar appeal was adjudicated on 28-02-2019 and relief was granted to the appellant in that case) as well as in this case the Ld. AO noted that the remuneration permissible to the partners depends upon the fulfilment of specific condition provided in Section 184 r.w.s. 40(b) of the Act. Now section 184 demands that*

*the copy of the partnership deed is to accompany the return of income in the first year in which the assessment of the assessee as a firm is first sought. Further, explanation has been appended below the sub section (2) of the Section 184 saying that the copy of partnership deed shall be certified in writing by all the non minor partners and by the legal representative of any partner who is dead.*

*5.1.2 The Ld. AO was of the opinion that since the supplementary deed now produced as per new slab did not comply with the provision of Section 184 and also when, the partnership deed was asked to be produced during the original assessment proceedings, no supplementary deed was furnished.*

*5.1.3 The Ld. AO further observed that neither the statutory Auditors nor the Tax Auditors anywhere mentioned or certified in the audit report or the tax audit report that there was a change in terms of the partnership deed on account of adopting the new slab during the previous relevant Assessment Year i.e. A.Y. 2011-12.*

*5.1.4 As discussed above, in the facts and circumstances of the case, the Ld. AO disallowed the claimed deduction on account of remuneration payable to partners amounting to Rs.59,88,625 and allowed remuneration only to the extent of Rs.39,84,923 which was found payable as per partnership deed dated 06-12-2007. This resulted in an addition of the difference amount of Rs.20,03,712.*

*5.1.5 The Ld. Counsel, in the appellate proceedings for A.Y. 2010-11, filed an affidavit of one of the attesting witness, viz. Dadaji Tanuji Ukey in which the witness stated that in his presence in the shop premises of the appellant the discussion was going on through about audit of the firm. It has also been submitted that since last date of statutory audit was 30-09-2009 that is why probably Shri Nitin Gundecha (one of the partners looking after the taxation matters) had put up date 30-09-2009 instead of 30-03-2009 i.e. the date of signing supplementary deed. In fact, the Ld. AO also observed this discrepancy of the claimed supplementary deed in para no.10 & 11 of the impugned assessment order dated 06-09-2016 besides other objections like supplementary deed not being executed on stamp paper etc.*

*5.1.6 In light of the entire discussion made supra and after a careful reading of the impugned assessment order, the written submission of the Ld. Counsel and considering all the facts and circumstances of the case it is found that the remuneration payable to partners as claimed by the appellant is allowable particularly in view of the case law relied by the Ld. Counsel and known as Balaji Construction vs ACIT Pune dated 25-11-2013 wherein supplementary deed was decided to be proper to provide deduction u/s 40(b) of the Act as well as it was held that "registration of partnership deed or quantification of remuneration is not necessary if the partnership deed authorises partners to decide remuneration." It is further noted that the expenditure was incurred by the appellant firm and the remuneration payable to the partners was in accordance and within the overall limit laid down by section 40(b) of the Act. In the submission of the earlier appeal many decisions were quoted and in one case of Talsa Ram Kanhiyalal & Sons, decided by Jodhpur Tribunal it was held that, remuneration to the working partners could be varied or amended by mutual consent and it could also be done verbally or even by conduct, and it was not necessary for the party to have reduced such terms in writing.*

*5.1.7 On the basis of the above discussion only, relief was granted to the appellant for A.Y. 2010-11 (appeal decided on 28-02-2019) and since the issue is one and the same the appellant gets relief in this case also. The Ld. AO is directed to delete the impugned addition of Rs.20,03,712. Ground No.2 is, therefore, allowed."*

6. Before us, the learned Departmental Representative could not make any effective arguments and simply relied upon the order passed by the Assessing Officer.

7. The learned Counsel for the assessee reiterated the submissions made before the authorities below and prayed for upholding the order passed by the learned CIT(A).

8. We have heard the arguments of rival parties, perused the material available on record and gone through the orders of the authorities below. We find that the supplementary deed of partnership was produced for the first time in re-assessment proceedings and was not part and parcel of the original proceedings. We, however, find that the entire re-assessment proceedings have been concluded by the Assessing Officer by not believing the supplementary deed which was stated by him to be not registered, which was signed on 30/09/2009 and not on 30/03/2009. We also agree with the learned CIT(A) that the Assessing Officer was not correct in initiating the re-assessment proceedings which was based on the change of opinion and at the instance of the audit party which was not binding on the Assessing Officer. We, therefore, see no legal infirmity in the impugned decision of the learned CIT(A) warranting interference at the instance of the Revenue. Accordingly, upholding the order passed by the learned CIT(A), the grounds of appeal raised by the Revenue are dismissed.

9. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 04/06/2024

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**NAGPUR, DATED: 04/06/2024**

Copy of the order forwarded to:

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

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

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur