

**IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH VIRTUAL
HEARING AT KOLKATA**

डॉ. मनीष बोरड, लेखा सदस्य

एवं

श्री संजय सरमा, न्यायिक सदस्य

के समक्ष

Before

Dr. Manish Borad, Accountant Member

&

Shri Sonjoy Sarma, Judicial Member

I.T.A. No.37/PAT/2018

Assessment Year: 2010-11

Income Tax Officer, Ward-3(3), Appellant

Vs.

M/s. Samrat Fuel Enterprises Respondent
(PAN: AARFS0206P)

Appearances by:

Shri Ashwani Kumar, Sr. DR appeared for Appellant
Shri Rajesh Mahajan, CA appeared for Respondent.

Date of concluding the hearing : 11.07.2024

Date of pronouncing the order : 14.08.2024

ORDER

Per Dr. Manish Borad, Accountant Member:

This appeal filed by the revenue pertaining to the Assessment Year (in short "AY") 2010-11 is directed against the order passed u/s 250(6) of the Income Tax Act, 1961 in short the "Act") by ld. Commissioner of Income-tax (Appeal)-1, Patna [in short ld. "CIT(A)"] dated 05.12.2017 arising out of the assessment order framed u/s 143(3) of the Act by ITO, Ward-3(3), Gaya dated 27.12.2012.

2. Grounds of appeal raised by the department are as under:

“1. Considering the facts and in the circumstances of the case, the Ld. CIT(A) has erred while allowing inclusion of interest income in book profit for the purpose of computation of remuneration to partners as the issue was never disputed by the assessee in the course of proceedings taken u/s 154 and no explanation or evidence was advanced by the assessee firm in the course of the proceeding to claim that the said interest income had sufficient nexus with business or profession carried out by it .

2. Any other grounds that may be urged at the time of hearing.”

3. We have heard the rival contentions and perused the material available on record and also the orders of the lower authorities. The only grievance of the revenue is that Ld. CIT(A) erred in allowing the inclusion of interest income in book profit for the purpose of computation of remuneration to partners as the issue was never disputed by the assessee in the course of proceedings taken u/s. 154 of the Act.

4. We observe that the assessee is a partnership firm and furnished its return of income for AY 2010-11 on 2nd October, 2010 declaring total income of Rs.5,86,794/-. Case selected for scrutiny through manual selection and assessment u/s. 143(3) of the Act completed on 27.12.2012 assessing income at Rs.6,67,794/-. Later on, Ld. AO while examining the assessment records noticed that the assessee firm has claimed remuneration to its partners at Rs.11,05,190/- and for calculating the remuneration interest on FDR has also been included in the Book Profit. Ld. AO denied the said claim and recomputed the remuneration and disallowed the alleged excess amount of

remuneration at Rs.3,09,503/-. Finally, with the said action of the Ld AO, assessee filed appeal before the Ld. CIT(A) and made reference to the relevant provisions of section 40(b)(v) of the Act which provides that up to Rs. 3 lakh of book profit 90% of such book profit or Rs.1,50,000/- whichever is higher and on the balance of book profit at 60% could be claimed as remuneration. Ld. CIT(A) after referring to the judgment of Hon'ble Supreme Court in the case of *T. S. Balaram, ITO Vs Volkart Bros. 82 ITR 150* held that the rectification of mistake apparent from record u/s. 154 of the Act should be such mistake which has no two opinions and such mistake must be an obvious and pattern mistake and not something which can be established by a long drawn process of reasoning. Ld. CIT(A) accordingly, directed the Ld. AO to recompute the remuneration including the interest income on bank and fixed deposits but excluding the interest on income tax refund as it cannot be treated as business income or profession of the assessee.

4. We after going through the finding of the Ld. CIT(A) fail to find any infirmity in the said finding and are of the considered view that assessee is eligible to claim remuneration for the partners on the basis of calculation provided u/s 40(b)(v) of the Act and Ld. AO erred in making the impugned addition in the order u/s. 154 of the Act as it is not an apparent mistake from the record. Thus, revenue fails to succeed in the sole ground raised before us. Accordingly, ground no.1 raised by the revenue is dismissed.

5. In the result, the appeal of the revenue is dismissed.

Order is pronounced in the open court on 14th August, 2024.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
(Dr. Manish Borad]
Accountant Member

Dated: 14th August, 2024

J.D. Sr. PS.

Copy of the order forwarded to:

1. **Appellant – ITO, Ward-3(3), Aurangabad**
2. **Respondent – M/s. Samrat Fuel Enterprises, Tendua Pahleja, Rohtas, Bihar**
3. CIT(A)-1, Patna.
4. CIT-
5. Departmental Representative
6. Guard File.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata