

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

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.6173/MUM/2024
(Assessment Year:2019-2020)**

Anirudh A. Damani

A-3201, 31st Floor, Indiabulls Blu,
Ganpatrao Kadam Marg, Lower Parel,
Delisle Road, Mumbai – 400013.
Maharashtra
[PAN:AFFPD5457A]

..... **Appellant**

**Deputy Commissioner of Income Tax
Circle 17(1), Mumbai**

Kautaliya Bhavan, Mumbai – 400098.
Maharashtra.

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Nihar H. Mehta
For the Respondent/Department : Shri Pravin Salukhe

Date

Conclusion of hearing : 16.01.2025
Pronouncement of order : 07.04.2025

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Assessee is directed against the order, dated 03/10/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the **CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had partly allowed the appeal against the Assessment Order, dated 25/09/2021, passed under Section 143(3) read with Section 144B of the Act for the Assessment Year 2019-2020.
2. The Assessee has raised following grounds of appeal :
 - "1. *The learned Faceless Appeal Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), Delhi (Commissioner*

of Appeals) has erred in confirming the addition amounting to 38,40,000/- under the head income from salary.

Your appellant submits that under the facts and circumstances of the appellant's case the above addition is erroneous, bad-in-law and illegal, the same ought to be deleted.

2. *The learned Commissioner of Appeals erred in law by confirming that remuneration paid to working partner is taxable under the head "Income from Salary.*

Your appellant submits that the aforesaid addition is in contravention of section 28(v) of the Act and the same ought to be deleted.

3. *The learned Commissioner of Appeals erred in confirming the addition of Rs. 38,40,000/- without appreciating proviso to section 28(v) of the Act.*

Your appellant submits that the aforesaid addition is in violation of proviso to section 28(v) of the Act and the same ought to be deleted.

4. *Your appellant craves leave to add to, alter, amend or vary all or any of the aforesaid ground(s) of appeal as they/their representative may deem it."*

3. The relevant facts in brief are that the assessment under Section 143(3) read with Section 144B of the Act was framed on the Assessee whereby the income of the Assessee was assessed at INR.45,15,587/- after making an addition of INR.38,40,000/- under the head salary. The appeal preferred by the Assessee challenging the aforesaid addition was dismissed by the CIT(A) vide order dated 03/10/2024. As a result, the Assessee has preferred the present appeal before the Tribunal on the ground reproduced in Paragraph 2 above.
4. We have heard both the sides and have perused the material on record
5. The facts as emerging from record are that the Assessee filed return

of income for the Assessment Year 2019-2020 on 31/10/2019 declaring total income of INR.6,75,590/- which was selected for regular scrutiny. During the assessment proceeding the Assessing Officer noted that the Assessee was a working partner in M/s. Artha Signularity Venture Partners LLP, a limited liability partnership [hereinafter referred to as 'the **Firm**'] and had received remuneration of INR.39,90,000/-. As per Form 26AS, the Firm had deducted tax at source under Section 192A of the Act in respect of aforesaid remuneration whereas in the return of income the Assessee had not disclosed any salary income. Accordingly, the Assessee was asked to explain the aforesaid discrepancy. In response, the Assessee filed reply, letter dated 28/08/2021, wherein it was contended that the Assessee was a partner in the Firm and was entitled to draw remuneration as per the terms of the Limited Liability Partnership Deed. The Firm had incorrectly deducted tax at source under Section 192A of the Act in respect of remuneration of INR.39,90,000/- paid to the Assessee. In support of the aforesaid contention, the Assessee furnished computation of income and Income Tax Return of the Firm for the Assessment Year 2019-2020. Reliance was also placed on behalf of the Assessee on the provision contained in Section 28(v) of the Act to contend that any salary/remuneration (or any part thereof) received by a partner of a firm from such firm shall not be taxed under the head 'Profit & Gains Business or Profession' to the extent the same has not been allowed as deduction to such Firm under Section 40(b) of the Act. It was submitted that while computing income of the Firm, INR.38,40,000/- (INR,39,90,000 – INR.1,50,000/-) was disallowed and therefore, no addition to the extent of the aforesaid amount could be made in the hands of the Assessee. However, the Assessing Officer was not convinced and submitted that the Assessee had failed to furnish any justification and documentary evidence. Observing as aforesaid, the Assessing Officer made addition of INR.38,40,000/- in the hands of

the Assessee. During the appellate proceedings before the CIT(A), the Assessee reiterated the submission made before the Assessing Officer. However, the CIT(A) agreed with the Assessing Officer and confirmed addition of INR.38,40,000/- in the hands of the Assessee as salary income.

6. During the proceedings before the Tribunal, the Learned Authorized Representative for the Assessee relied upon the copy of submission made before CIT(A) and placed on record return of income tax return for the Assessment Year 2019-2020 filed by the Assessee and the Firm. Per contra the Learned Departmental Representative relied upon the order passed by the Assessing Officer and CIT(A).
7. On perusal of the material on record, we find that for the Assessment Year 2019-2020, the Firm had claimed deduction only to the extent of INR.1,50,000/- paid as remuneration to the working partners. Therefore, the averment made on behalf of the Assessee that no deduction has been allowed to the Firm for INR.38,40,000/- under Section 40(b) of the Act is factually correct. We further note that Proviso to Section 28(v) of the Act includes within its ambit salary as well as remuneration received by a partner from the firm. While Section 28(v) of the Act provides that income in the nature of salary/remuneration due to or received by a partner of a firm from such firm shall be chargeable to tax under the head 'Profit & Gains of Business or Profession'. The Proviso to the said section excludes from the ambit of the aforesaid income, the salary/remuneration (or part thereof) that has not been allowed as deduction under Section 40(b) of the Act to the aforesaid firm. Accordingly, in the facts of the present case amount of Rs.38,40,000/- would fall within the ambit of Proviso to Section 28(v) of the Act and shall not be included in income chargeable to tax in terms of Section 28(v) of the Act. Thus, accepting the contention of the Assessee, we hold that Assessing Officer erred in making addition of INR.38,40,000/- in the hands of

the Assessee and therefore, the same is deleted.

8. In view of the above, order passed by the Assessing Officer and the CIT(A) is overturned. Ground No.1 to 4 raised by the Assessee are allowed.
9. In result, the appeal preferred by the Assessee is allowed.

Order pronounced on 07.04.2025.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated :07.04.2025
Milan,LDC

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