

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA
[Before Shri M. Balaganesh, AM & Shri S. S. Viswanethra Ravi, JM]

I.T.A No. 1039/Kol/2016
Assessment Year: 2005-06

Income-tax Officer, Wd-40(1), Kolkata Vs. M/s. Narayan Road Lines
(Appellant) (PAN: AAGFN3828D)
(Respondent)

Date of hearing: 29.11.2016
Date of pronouncement: 02.12.2016

For the Appellant: Shri amitabha Bhattacharya, JCIT
For the Respondent: Miss Roya Athaghara, ACA, Ld. AR

ORDER

Per Shri M. Balaganesh, AM:

This appeal by assessee is arising out of order of CIT(A)-12, Kolkata vide Appeal No. 312/CIT(A)-12/Kol/Wd.40(1)/2014-15 dated 29.02.2016. Assessment was framed by ITO, Ward-56(1), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) for Assessment Year 2005-06 vide his order dated 03.10.2007.

2. At the outset, the Ld. AR of the assessee raised a preliminary objection that the issue under dispute involves an amount of Rs.37,764/- only and accordingly, the tax effect on the same would be less than Rs. 10 lacs and hence, in view of the Circular No. 21/2015 dated 10.12.2015 the appeal of revenue is to be dismissed as not maintainable. In response to this, the Ld. DR stated that this is an appeal against the order passed by the AO u/s. 154 of the Act. The proceedings u/s. 154 of the Act had been triggered out of the revenue audit objection as could be evident from the statement of facts filed by the department before the Tribunal. Hence, the case falls under the exception clause to the CBDT Circular cited supra. We are in agreement with the argument of the Ld. DR and accordingly, dismiss the preliminary objection of the Ld. AR in this regard.

3. The only issue to be decided in this appeal is as to whether the Ld. CIT(A) is justified in deleting the disallowance of Rs.37,764/- made towards remuneration paid to partners of the firm in the facts and circumstances of the case.

4. Brief facts of this issue are that the assessee is a partnership firm and had paid remuneration of Rs.1,20,000/- to its working partners. Based on the computation of profits in accordance with the provisions of section 40(b) of the Act, the remuneration allowable under the Act worked out to Rs.1,57,764/- which was accordingly claimed as deduction from the profits of the firm by the assessee. The AO though originally allowed such deduction in the assessment framed u/s. 143(3) of the Act dated 03.10.2007 later on sought to rectify the same by an order u/s. 154 of the Act dated 08.03.2012 restricting the allowability of remuneration paid to working partners at Rs.1,20,000/-. Agitated by this disallowance the assessee preferred an appeal before the Ld. CIT(A) who on verification of the computation of remuneration paid to partners held that the same was claimed by the assessee in accordance with the provisions of section 40(b) of the Act and also held that the actual payment of remuneration is irrelevant in this regard. Accordingly, he deleted the disallowance. Aggrieved, the revenue is in appeal before us on the following grounds:

I. That, on the fact and in circumstances of the case, the Ld. CIT(A) erred in allowing relief by deleting the addition of Rs.37,764/-, made by rectification u/s. 154 of the I. T. Act as the mistake was apparent from record by adding back excess remuneration which was allowed while making scrutiny assessment u/s. 143(3) of the I. T. Act.”

5. The Ld. DR relied on the order of the AO and on the other hand, the Ld. AR relied on the order of the Ld. CIT(A).

6. We have heard rival submissions and gone through facts and circumstances of the case. We find that the assessee had only claimed the remuneration paid to the partners in accordance with the provisions of section 40(b) of the Act based on the availability of the profits in the firm. In this scenario, the actual payment of remuneration to the partners does not matter. Hence, we find that the order of the Ld. CIT(A) does not require any interference. Accordingly, the ground raised by the revenue is dismissed.

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

Order is pronounced in the open court on 02.12.2016

Sd/-

(S.S. Viswanethra Ravi)
Judicial Member

Sd/-

(M. Balaganesh)
Accountant Member

Dated :2nd December, 2016

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – ITO, Wd-40(1), Kolkata.
2. Respondent –M/s. Narayan Road Lines, 7, Tarachand Dutta Street, Kolkata-700 073.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.