

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI
**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
AND SHRI RAM LAL NEGI, JUDICIAL MEMBER**

I.T.A. No.4637/M/2013

(Assessment Year: **2010-2011**)

M/s. Runwal & Associates, Runwal Chambers, 3 rd Floor, First Road, Chembur, Mumbai – 400 071.	बनाम/ Vs.	ACIT-Circle 23, Mumbai.
स्थायी लेखा सं./PAN : AAAFR2591M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by :	Shri Rishabh Shah
प्रत्यर्थी की ओर से/ Respondent by :	Ms. Kusum bansal, Sr.DR

सुनवाई की तारीख / Date of Hearing : 05.04.2016

घोषणा की तारीख /Date of Pronouncement : 22.04.2016

आदेश / O R D E R

PER D. KARUNAKARA RAO, AM:

This appeal filed by the assessee on 13.6.2013 is against the order of the CIT (A)-40, Mumbai dated 15.4.2013 for the assessment year 2010-2011.

2. In this appeal, the only issue raised by the assessee relates to the addition of Rs. 4,00,079/- made on account of remuneration of the partners. Briefly stated relevant facts are that the assessee is engaged in the business of 'building construction and electricity generation'. Assessee filed the return of income declaring the total income of Rs. 53,65,391/-. Assessment was completed u/s 143(3) of the Act and the assessed income was determined at Rs. 56,27,896/-. During the assessment proceedings, AO noticed that during the year, assessee debited Rs. 18.60 lakhs towards remuneration of the partners. He further noticed that in the accounts, assessee allotted a sum of Rs. 50,000/- out of common indirect expenses which include partners remuneration. Considering the above, AO is of the opinion, proper expenditure on this account was not debited thereby assessee claimed increased non-taxable income earned on account of power generation. He applied the sales turnover based principle of proportion and arrived at a sum of Rs. 4,00,079/- as an expenditure allocable to the power generation out of the sum of

Rs. 18.60 lakhs. Aggrieved, assessee carried the matter in appeal before the first appellate authority.

3. During the proceedings before the first appellate authority, after considering the submissions of the assessee, CIT (A) confirmed the addition made by the AO. While confirming the addition, CIT (A) held that the principle of *res judicata* does not apply to the income-tax proceedings. He further relied on the decision of the ITAT in the case of ACIT vs. Asea Brown Boveri Ltd [110 TTJ (Mum) 502] and the judgment of the Hon'ble Supreme Court in the case of Waterfall Estates Ltd vs. CIT (1996) [132 CTR 495]. Aggrieved with the said decision of the CIT (A), assessee is in further appeal before the Tribunal.

4. During the proceedings before us, at the outset, Id Counsel for the assessee submitted that on similar facts AO restricted 10% of the claim in the preceding assessment year 2009-2010, implying that the addition should be restricted to 10% ie 1.80 lakhs. However, he has nothing to contribute on the said principle of *res judicata* detailed by the CIT (A) in his order in para 3.4.

5. On the other hand, Ld DR for the Revenue relied heavily on the orders of the Revenue Authorities and explained the 10% of the claim debited by the AO in the earlier AY 2009-2010 is without basis and therefore, the turnover based disallowance is qualitatively better criteria than that of the ad-hoc based disallowance.

6. We have heard both the parties and perused the orders of the Revenue Authorities as well as the relevant material placed before us. After hearing both the parties, we find merit in the Ld DR's argument ie *the turnover based disallowance is qualitatively better criteria than that of the ad-hoc based disallowance*. We have also considered the fact of assessee's tendency of not to book expenses against the profit of the units which enjoys exemption / deduction. This being the presumption when the assessee's ad-hoc sum of Rs. 50,000/- is done without any basis, in principle, we are of the opinion, the claim of the assessee is not sustainable in law. Accordingly, the ground raised by the assessee is dismissed.

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

Order pronounced in the open court on 22nd April, 2016.

Sd/-

(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 22.4.2016

व.नि.स./ OKK, Sr. PS

Sd/-

(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**