

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'B' NEW DELHI  
BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER  
&  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
ITA No.-1515/Del/2016(A.Y. 2012-13)**

RP Associates H-11, Alpha-II, Distt. Gautam Budh Nagar Greater Noida PAN : AANFR1249K <b>Appellant</b>	vs	DCIT Circle-3 Noida  <b>Respondent</b>
<b>Assessee by</b>		<b>Sh. S.K.Chaturvedi, CA</b>
<b>Revenue by</b>		<b>Ms. Nidhi Srivastava, CIT DR</b>

<b>Date of Hearing</b>	<b>21.08.2019</b>
<b>Date of Pronouncement</b>	<b>23.10.2019</b>

**ORDER**

**PER SUCHITRA KAMBLE, J.M.**

This appeal is filed by the assessee against the order dated 04.02.2016 and 21.12.2015 passed by the Commissioner of Income Tax (Appeals)- I, Noida for Assessment Year 2012-13.

2. Grounds of appeal are as under :

*“1. That Ld. CIT(A)-I Noida has erred by confirming the addition of Rs. 28,80,000/-, the amount of salary to working partners, disallowed by AO in spite of the facts that the same was well within permissible limits under section 40(b)(v) and the partnership deed also specifies the method for quantifying the same. This action is arbitrary, illegal and against settled judicial pronouncements.*

*2. The appellant craves leave to add, delete, modify any ground of appeal with the permission of Hon’ble Bench.”*

3. The assessee firm is engaged in the business of providing Man Power during the year. As per profit and loss a/c, total receipts from contract work was disclosed at Rs. 9,89,40,542/- on which net profit of Rs. 17,97,511/- was declared. The assessee filed return declaring taxable income of Rs. 17,97,510/- on 27.09.2012. The case was selected for scrutiny and notice u/s 143(2) of the Income Tax Act, 1961 was issued on 26.08.2013 and served upon the assessee. Subsequently, notices u/s 142(1) along with questionnaire were also issued requiring the assessee to furnish certain details / information. In response to the same partner of the assessee attended the assessment proceedings from time to time and furnish details and replies to the queries raised during the assessment proceedings. The Assessing Officer made additions of Rs. 28,80,000/- by way of disallowance of salary to partners which was held not to be in accordance with the provisions of section 40(b) of the Income Tax Act, 1961 and disallowed Rs. 8,00,000/- on estimated basis from the expenses which were claimed by the assessee and not supported by the vouchers.

4. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) partly allowed of the appeal.

5. The Ld. AR submitted that the CIT(A) erred by confirming the addition of Rs. 28,80,000/-. The Ld. AR further submitted that the amount of salary to working partners was wrongly disallowed by the Assessing Officer despite the fact that the same was well within the permissible limits u/s 40(b)(v) and the partnership deed also specifies the method for quantifying the same. The Ld. AR relied upon the following decisions :

- “1.CIT v. ASIAN MARKETING ITA NO. 271/2010 (RAJ. H.C)
2. DURGA DAS DEVKI NANDAN V. ITO ITA NO. 4/2005 (HIMACH)
3. CLASSIC LAW V. ACIT ITA NO. 3403/DEL/2016
4. SANTLAL AGARWAL & SONS V. ACIT ITA NO. 434-436/AGR/2012
5. PANDA FUELS V. ITO. ITA NO. 07/CTK/2018 (CUTTACK)
6. UNITEC MARKETING SERVICES. V. ACIT ITA NO. 822/MUM/2018

6. Ld. DR submitted that the CIT(A) has rightly disallowed the remuneration. The Ld. DR relied upon the decision of the Hon'ble Delhi High Court in case of Sood Brij and Associates vs. CIT 203 taxman 188.

7. We have heard both the parties and perused all the material available on record. The CIT(A) held as under :

*"11. I have considered the partnership deed placed on record by the Id. counsel for the appellant. I have also examined the judgment of Hon'ble Himachal Pradesh High Court relied upon by the appellant. The clarificatory circular of the CBDT relied upon by the Id. A.O. at para 4 very categorically states that any remuneration paid to an individual partner will be admissible as deduction only when the said partner is a working partner. The said instruction has taken into account the effect of such blanket bar and has permitted a grace period up to A.Y. 1996-97 and has directed for disallowing the remuneration paid to the partners only thereafter. The intent of the statute is therefore very clear. The remuneration paid to the partners are to be allowed only when the partners are working partners and not otherwise. Even in the case of working partners the claim of deduction over payment of remuneration to the partners is subject to further conditions in so much as the partnership deed must provide the amount of remuneration to each individual working partner or lays down the manner of quantifying such remuneration to be paid to the partners of the firm.*

*12. The clause 7 of the partnership deed which has been executed much later to the CBDT's Circular No.739 dated 25/05/19S6 is extracted and reproduced hereinbelow:*

*"The partner may with their mutual consent draw remuneration from partnership firm at a rate/amount that may be mutually agreed to from time to time. They may increase or decrease such remuneration by mutual consent."*

*13. From a plain reading of the said provision in the partnership deed it is clear that there is no reference to the partners being the working partners. It simply provides for payment of remuneration to the partners by the mutual consent of the partners. It does not say in any manner whatsoever that the remuneration will be paid to the partners because of the partner being a working partner. There is also no reference to the manner in which the quantum of the remuneration is to be decided. The deed does not specifies the quantum of remuneration either.*

*14. The authority being the judgment of Hon'ble Himachal Pradesh High Court is of no help to the appellant. The facts of the case before Hon'ble Himachal Pradesh High Court were totally different from the case of the appellant as in that case there was manner prescribed to fix and compute the remuneration payable to the partners. Further, the issue in dispute before Hon'ble High Court was completely different as Hon'ble High Court was examining the issue of*

*precedence as in view of the revenue the Id. ITAT was in error in not following the principle of precedent of its earlier decision dated 27/05/2004 in ITA No.562/Chandi/2002 titled as Mela Ram Mitter Bhushan Vs. ITO. After considering the facts of the case the Hon'ble High Court held that the facts of the case before them was different from the facts of the case in Mela Ram Mitter Bhushan Vs. ITO. The present case is completely on different issues and the dispute is with regard to issues which were not even present in the dispute adjudicated by Hon'ble Himachal Pradesh High Court. The reliance placed by the appellant on the said judgment is therefore misplaced and of no help to it.*

*15. In view of this the provisions for payment of remuneration to the partners of the appellant firm is not in accordance with the provisions of law u/s. 40(b)(v) of the I.T. Act, 1961 as clarified by the CBDT Circular No. 739 dated 25/03/1996. Therefore, the additions made by the Id. A.O. on account of disallowance of salary paid to the partners of the appellant firm suffers from no infirmity. The addition of Rs. 28,80,000/- is therefore confirmed.”*

The Hon'ble Delhi High Court in case of Sood Brij and Associates (supra) has held that where quantum or amount of remuneration and manner of computation is not specified or stipulated in partnership deed but was left to be decided at the future time as per the requirements of section 40(b)(v) which were not specified then in that case remuneration paid to partners would not be allowed as deduction u/s 40(b)(v). However, in the present case, the partners have agreed to pay the specific remuneration as per addendum to partnership deed dated 25<sup>th</sup> April, 2011 which is not in dispute. Thus, the remuneration was quantified and stipulated by the partners. Thus, the decision of the Hon'ble Delhi High Court will not be applicable in the present case as the facts in the present case are distinguishable. As regards CBDT circular the same is also not applicable in the present case as well. Therefore, the appeal of the assessee is allowed.

9. In result appeal of the assessee is allowed.

**Order pronounced in the Open Court on 23<sup>rd</sup> October, 2019.**

**Sd/-**

**(R.K.PANDA)  
ACCOUNTANT MEMBER**

**Sd/-**

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 23.10.2019

\*BR\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	29/08/2019
Date on which the typed draft is placed before the dictating Member	30/08/2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	