

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,
NEW DELHI**

**BEFORE MS. SUSHMA CHOWLA, JUDICIAL MEMBER
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

**ITA No. 3695/DEL/2016
[A.Y 2012-13]**

**M/s Mayasheel Construction
C/o Kapil Goel, Adv
F - 26/124, Sector 7
Rohini, Delhi**

Vs.

**The Dy. C.I.T
Circle - 1
Ghaziabad**

PAN: AAPFM 5854 R

(Applicant)

(Respondent)

**Assessee By : Shri Kapil Goel, Adv
Department By : Shri S.N. Meena, Sr. DR**

**Date of Hearing : 18.12.2019
Date of Pronouncement : 23.12.2019**

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals], Ghaziabad dated 18.05.2016 pertaining to assessment year 2012-13.

2. The solitary grievance of the assessee is that the Id. CIT(A) erred in not allowing the claim of interest on capital and remuneration to partners from the assessed income.

3. Briefly stated, the facts of the case are that a survey operation was conducted at the business premises of the assessee on 11.09.2014. In the aftermath of survey, the Id. counsel for the assessee declared net profit @ 8% of gross turnover, over and above the returned income as per return filed on 30.09.2012.

4. During the course of scrutiny assessment proceedings, the assessee was confronted with the impounded documents pursuant to which the assessee filed detailed reconciliation statement, which has been exhibited at pages 3 to 7 of the assessment order, and through this reconciliation statement, explained the cash expenses of Rs. 10.39 lakhs being below the permissible limit of Rs. 20,000/- and further explained that cash entries are, in fact, imprest accounts for various construction sites.

5. The Assessing Officer was not impressed with the reconciliation statement and rejected the book results as well as the books of account of the assessee. The Assessing Officer proceeded to complete the assessment by adopting 8% of gross turnover as net profit and made addition of Rs. 2,22,56,154/-.

6. The assessee carried the matter before the Id. CIT(A) and claimed interest on capital and remuneration paid to partners as per partnership deed. However, the claim of the assessee was denied by the Id. CIT(A) who was of the opinion that since profit has been estimated on gross receipts after survey u/s 133A of the Act, the assessee is not entitled for any further deduction.

7. Aggrieved by this, the assessee is before us.

8. Before us, the Id. counsel for the assessee vehemently stated that the claim of interest on capital and remuneration to partners is as per partnership deed, which is in line with the provisions of section 40B of the Act and, therefore, the assessee is entitled for claim of deduction. Strong reliance was placed on the decision of the Tribunal in ITA Nos. 164/HYD/2013, 713 to 715/VIZ/2013 and 430/AHD/2011.

9. The ld. counsel for the assessee also referred to the relevant clause of the partnership deed and supplementary partnership deed, which are placed at pages 1 to 8 of the paper book. Computation of income for earlier Assessment Years has also been provided, which are placed at pages 9 to 16 of the paper book.

10. Per contra the ld. DR strongly supported the findings of the Assessing Officer. It is the say of the ld. DR that once profit is estimated, all these expenses are deemed to be allowed and, therefore, no further deduction should be allowed to the assessee.

11. We have given thoughtful consideration to the orders of the authorities below. We find that partnership deed dated 01.05.2008 at clause 8 contains provision for interest on capital @ 12% per annum and clause 17 provides for remuneration to whole time working partners and method of computation of remuneration is also provided.

12. Vide supplementary deed dated 01.04.2010, manner of paying remuneration to whole time working partners have been revised. We find that in Assessment Years 2009-10 to 2011-12, the assessee has been claiming interest on capital and remuneration to partners, which

are verifiable from the computation of income placed in the paper book.

13. The Hon'ble High Court of Allahabad in the case of Vijay Constructions 213 CTR 105 had the occasion to consider an appeal where the books of account were rejected and best judgment assessment was made. The relevant findings of the Hon'ble High Court read as under:

"The procedure for making assessment in a matter where voluntary return submitted by the assessee under [Section 139\(1\)](#) is not accepted by the assessing officer has been given under [Section 143\(3\)](#) whereas procedure for giving best judgment assessment is given under [Section 144](#). Merely because the procedures for such assessment have been separately provided in the aforesaid two sections relating to an assessee where the voluntary return has not been found as acceptable by the assessing officer and where the books of account have been rejected and best judgment assessment has been made, it would not in itself be sufficient to hold that the statutory deductions which are otherwise available to the assessee, would not be available to the assessee who has been assessed under best judgment assessment by the assessing officer, unless, of course, any rule or provision of the Act

expressly excludes the benefit of statutory deductions to such an assessee.. if the interpretation given by the revenue is accepted, it would mean that in a case where the assessee's books of account have been rejected or, for any other reason, whatsoever, best judgment assessment has been made, that would entail penalty or adverse civil consequences of depriving the assessee from having the statutory deductions, which would have been otherwise available to him, in case his voluntary return filed under [Section 139\(1\)](#) has been accepted or regular proceedings under [Section 143\(3\)](#) of the Act were taken. This interpretation would lead to an anomalous situation, besides the same does not flow from the scheme of assessment under the Act. It is only the method of assessing the income of the assessee firm which either has to be done by accepting the voluntary return filed under [Section 139\(1\)](#) or it has to be regularly assessed under [Section 143\(3\)](#) or best judgment assessment is to be made under [Section 144](#). The final outcome of the assessment of the income of the assessee firm calls for consequential imposition of tax and realisation thereof. The statutory deductions thus which are available to the assessee firm cannot be taken away or snatched away from the firm merely because their books of account have been rejected and best judgment assessment has been made.

Salary and interest, which is given to the partners in terms of the partnership deed, the tax liability of the said amount shifts upon the partners and cannot be taken as tax liability of the firm. The applicability of [Section 28\(v\)](#) cannot be excluded in the matter of best judgment assessment in respect of an assessee firm. It was the specific case of the assessee before the assessing authority that they were registered partnership firm and were having registered partnership deed. It was also the specific case that these partners were working partners and they were entitled to salary and interest, as per terms of the deed in accordance with [Section 40\(b\)](#) of the Act. In the absence of any material having brought by the revenue in rebuttal and more so when no such plea was ever taken or raised in the appeal, as also no substantial question of law has been framed in this regard, the aforesaid plea is bound to fail."

14. The co-ordinate bench in the case of M/s B. Durga Reddy & Co. in ITA Nos. 713 to 715/VIZ/2013 also had the occasion to consider similar issue. The relevant findings of the co-ordinate bench read as under:

"12. The next issue emanated from the revenue appeal is deductions towards interest on capital and remuneration to partners. The A.O. did not allow the deductions towards

remuneration to partners and interest on partner's capital accounts. The Ld. D.R. submitted that once net profit is estimated, no separate deductions towards interest on partner's capital and remuneration to partners is allowable as a deduction. The Ld. D.R. further submitted that the CIT(A) ought to have appreciated the fact that the interest on capital and remuneration to partners are not allowable in a case, where the books of accounts are rejected and profit is estimated. It was the contention of the assessee that even net profit is estimated from contract receipts, in the case of partnership firms, deduction towards remuneration to partners and interest on capital is to be allowed. The Ld. A.R. further submitted that the issue of interest on capital and remuneration to partners is squarely covered by the decision of coordinate bench decision of ITAT, Visakhapatnam in the case of M/s. K. Venkata Raju, Rajahmundry in ITA Nos.370 & 409/Vizag/2012 and also in the case of Srivalli Shipping & Transports in ITA Nos.79 to 95/Vizag/2013. Therefore, requested to uphold the order of the CIT(A).

13. We have heard both the parties and perused the materials available on record. The A.O. has not allowed separate deductions towards interest on partner's capital account and remuneration to partners. The A.O. was of the opinion that when net profit is estimated by rejecting books of accounts, separate deductions towards interest on partner's capital

account and remuneration to partners cannot be allowed. It was the contention of the assessee that when profit is estimated, separate deductions should be allowed in the case of partnership firm, towards 'interest and remuneration' to partners. We find force in the arguments of the assessee for the reason that the statute itself u/s 44AD of the Act, provides for separate deductions towards interest on partner's capital account and remuneration to partners, when net profit is estimated from the contract receipts.

14. We further noticed that the coordinate bench of this Tribunal, in the case of Srivalli Shipping & Transports in ITA Nos.79 to 95/Vizag/2013 held that separate deductions towards interest on partner's capital account and remuneration to partner should be allowed when net profit is estimated. The relevant portion of the order is reproduced hereunder:

"24. On consideration of rival contentions, we find merit in the submissions made by the assessee. The capital expenditure incurred is not allowed as deduction, but the deterioration in their value is allowed as deduction with the name "depreciation". Hence, it is called non-cash expenditure and also called statutory deduction. While estimating the income, the trading 17 I.T.A. Nos.79 to 85/Viz/2013 I.T.A. Nos.89 to 95/Viz/2013

Assessment Years : 2004- 05 to 2010-2011 Srivalli Shipping Transport results only are estimated on the basis of sales/gross receipts, meaning thereby, what is estimated is only the net profit before allowing any non-cash expenditure/statutory deductions. Further, the quantum of depreciation would also depend upon the value of assets. For example, a business man having lower version of Car or Air conditioner would be entitled to claim lower amount of depreciation, since the cost of the lower version of car and Air conditioner will be less. Whereas another business man having higher version of Car and Air conditioner would get higher amount of depreciation, since the cost of those assets shall be higher. Hence, even if the level of operations and other things are equal between the two, the depreciation amount will be different due to the difference in the value of assets. Hence the total income shall also result in different figures between the two business men. The above said illustration would support the contentions of the assessee that the depreciation should be allowed separately. Accordingly, we direct the AO to allow the depreciation admissible to the assessee against the income estimated by us in the preceding paragraphs."

15. The assessee relied upon the coordinate bench decision of ITAT, Visakhapatnam in the case of M/s. K. Venkata Raju, Rajahmundry in ITA Nos.370 & 409/Vizag/2012. The coordinate bench of this Tribunal, under similar circumstances held that interest on partner's capital account and remuneration to partners is allowable deductions when net profit is estimated. The relevant portion is reproduced hereunder: TAXPUNDIT.ORG ITA Nos.713 to 715 & 721 to 723/Vizag/2013 M/s. B. Durga Reddy & Co., Visakhapatnam 17

17. Therefore, respectfully following the view expressed by the Hon'ble jurisdictional High Court and also considering the coordinate bench decision of this Tribunal, we are of the opinion that depreciation is a allowable deduction, even after estimation of net profit from the contract receipts. Therefore, we direct the assessing officer to allow the depreciation against the income estimated from the contract receipts. As far as the disallowance of remuneration to partners and interest on partner's capital account is concerned, the statute itself in section 44AD of the Act, allowed separate deductions towards interest on capital accounts and remuneration to partner's, after estimation of net profit from the gross receipts. The CIT (A) after considering the facts and circumstances of the case, has rightly directed the A.O. to allow

remuneration to partners and interest on partner's capital account from the net profit estimated. Therefore, we find no error or infirmity in the order of the CIT (A), hence, we inclined to upheld the order of the CIT (A).

16. Considering the facts and circumstances of the case and also respectfully following the coordinate bench decision in the case of Srivalli Shipping & Transports (Supra), we are of the opinion that interest on partner's capital account and remuneration to partners is allowable deductions even after estimation of net profit from the contract receipts. The CIT(A) after considering the facts and circumstances of the case, has rightly directed the A.O. to allow remuneration to partners and interest on partner's capital account. We do not see any error in the CIT(A) order, hence, we inclined to uphold the order of the CIT(A) and reject the ground raised by the revenue."

15. Respectfully following the decision of the Hon'ble Jurisdictional High Court of Allahabad [supra] and that of the co-ordinate bench, we direct the Assessing Officer to allow remuneration to the partners and interest on capital as per provisions of law.

16. In the result, the appeal of the assessee in ITA No. 3695/DEL/2016 is allowed.

The order is pronounced in the open court on 23.12.2019.

Sd/-

[SUSHMA CHOWLA]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 23rd December, 2019

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
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	
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