

<b>IN THE INCOME TAX APPELLATE TRIBUNAL</b>
<b>COCHIN BENCH, COCHIN</b>
<b>BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER</b>

I.T.A. No.155/Coch/2020
Assessment Year : 2007-08

Sangeeth Nursing Home, 5/1496, South Cherlai, Kochi-682 002. [PAN: AAKFS 8278G]	<b>Vs.</b>	The Assistant Commissioner of Income-tax, Non Corporate, Kochi.
<b>(Assessee-Appellant)</b>		<b>(Revenue-Respondent)</b>

<b>Assessee by</b>	Shri Vedanga R. Prabhu, CA
<b>Revenue by</b>	Shri B. Sajjive, Sr. DR

<b>Date of hearing</b>	10/06/2020
<b>Date of pronouncement</b>	11 <sup>th</sup> /06/2020

## **ORDER**

Per GEORGE GEORGE K., JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of the CIT(A)-2, dated 24/01/2020. The relevant assessment year is 2007-08.

2. The grounds raised read as follows:

1) Disallowance of interest on capital

2) The Learned CIT has directed to rectify the assessment of Partners, by taxing interest allowed for the firm only in the hands of partners. But the partners are assessed by different officers and it will be difficult to rectify the assessments as the matter relates to AY 2007-08.

3) Revenue Neutral. Both the Firm and Partners are assessed at same rate which is maximum rate.

3. The brief facts of the case are as follows:

The assessee is a firm, deriving income from house property and other sources. For the assessment year 2007-08, the assessee filed return of income on 31/10/2007 declaring income of Rs. 21,00,590/-. The assessment was completed u/s. 143(3) of the I.T. Act vide order dated 04/12/2009 at Rs.25,44,668/-. In the said assessment order completed u/s. 143(3) of the I.T. Act, the Assessing Officer had disallowed Rs.2,89,957/- out of the interest paid to the partners of the assessee firm. The relevant findings of the Assessing Officer with regard to disallowance of interest payment to partners read as follows:

*"The assessee had claimed an amount of Rs.3,78,042 as interest on capital to partners. At the time of hearing it was requested to explain the calculation of interest, the assessee stated that interest is calculated on the balance as on 01.04.2006 at the rate of 12%. But on perusal of the capital account it is seen that Dr. Sarangh R. Prabhu and Dr. Geetha S. Prabhu had withdrawn an amount of Rs.14,03,398 and Rs.10,12,898 during the year respectively. The opening capital of the partners is worked out as under:*

<i>Fixed Capital</i>	<i>Rs.20,00,000</i>
<i>Current A/c. Balance</i>	<i>Rs.11,50,343</i>
<i>Total</i>	<i>Rs.31,50,343</i>

*The total income withdrawn by the two partners Dr. Sarangh R. Prabhu and Dr. Geetha S. Prabhu is Rs.24,16,296. There is no credit during the AY 2007-08 other than the income earned through the firm of Rs.32,27,636.*

*Therefore, the interest on capital is recomputed as under:*

<i>Opening capital of the partners</i>	<i>Rs.31,50,343</i>
<i>Less: withdrawal during the year</i>	<i>Rs.24,16,296</i>
<i>Balance</i>	<i>Rs. 7,34,047</i>
<i>Interest thereon</i>	<i>Rs. 88,085</i>
<i>Interest disallowed</i>	<i>Rs. 2,89,957"</i>

4. Aggrieved by the order of the Assessing Officer, the assessee filed appeal before the first appellate authority. The CIT(A) dismissed the appeal of the assessee on this issue. However, the CIT(A) directed the Assessing Officer to allow corresponding relief to the partners in the returns filed by them as per law.

The relevant finding of the CIT(A) reads as follows:

*"The arguments of the learned AR are considered. On perusal of the Partnership Deed, it is observed that there is no clause for payment of interest to partners on the basis of opening balance of the capital. Therefore, the Assessing Officer is right in computing the interest allowable to partners based on continuing balance of the capital. Hence, the disallowance of Rs.2,89,957 is confirmed and the ground raised on this issue is dismissed. However, the Assessing Officer is directed to allow corresponding relief to the partners in the returns filed (If filed as per law) by them as per law."*

5. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The Ld. Counsel for the assessee submitted that since the partners of the assessee firm are assessed by different officers, it is not practicable to file rectification applications in the case of the partners and get corresponding relief in the hands of the partners. It was submitted that the firm and the partners are assessed at the maximum rate, as such the action would be revenue neutral. Further, the Ld. Counsel for the assessee has submitted

details of capital/current accounts and interest paid for the AY 2003-04 to AY 2009-10. It was submitted by the Ld. AR that interest was calculated in the respective assessment years AY 2003-04 to AY 2009-10 on opening balances of each year. Therefore, it was submitted that it is revenue neutral and the entire exercise of the Assessing Officer would be fruitless.

6. The Ld. DR strongly supported the orders passed by the Assessing Officer and the CIT(A).

7. I have heard the rival submissions. I have gone through the details of capital and current accounts, additions/withdrawals, interest on capital, remuneration and share of surplus from AY 2003-04 to AY 2009-10. From the details furnished, it is clear that the assessee has been consistently calculating interest at the rate of 12% on the opening balances of each of the above mentioned assessment years. Therefore, the entire exercise of the Assessing Officer would be revenue neutral when the Assessing Officer calculated the interest at the rate of 12% only for the assessment year 2007-08 for the balance outstanding as on 31/03/2007. Moreover, I notice that the partners of the assessee firm had declared interest received from the assessee firm in the return's of incomes filed and accordingly, the assessments were completed in the hands of the partners. This tantamounts to double taxation of the same income both in the hands of the partners as well as in the hands of the assessee firm. Though the CIT(A)

has directed the Assessing Officer to rectify the assessments in the hands of the partners, this exercise may not be practical since the assessment order concerned is pertaining to assessment year 2007-08. Since the entire exercise done by the Assessing Officer in the facts and circumstances of the case is revenue neutral, I am of the view that interest paid to the partners based on the opening balances is to be granted deduction. It is ordered accordingly.

8. In the result, the appeal of the assessee is allowed.

Pronounced in the open court on 11<sup>th</sup> June, 2020

sd/-  
(GEORGE GEORGE K.)  
JUDICIAL MEMBER

Place: Kochi

Dated: 11<sup>th</sup> June, 2020

GJ

Copy to:

1. Sangeeth Nursing Home, 5/1496, South Cherlai, Kochi-682 002.
2. The Assistant Commissioner of Income-tax, Non-Corporate, Kochi.
3. The Commissioner of Income-tax(Appeals)-2, Kochi.
4. The Pr. Commissioner of Income-tax, Kochi.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)  
I.T.A.T., Cochin

		Date	
1.	Draft Order dictated on	10/06/2020	Sr.PS
2.	Draft Order placed before author	/06/2020	AM
3.	Approved draft comes back		Sr. PS
4.	Fair order placed before the author.		AM
5.	Fair order placed before the Second Member for signature		JM
6.	Pronouncement on		
7.	File sent to the Bench Clerk		
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		