

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Amarjit Singh, Accountant Member
And Ms. Madhumita Roy, Judicial Member**

**ITA No. 583/Ahd/2016
Assessment Year 2011-12**

M/s. Shreeji Corporation, Block No. 5, Sayona Heights, Near Swagat Flats, Gandhinagar-382009 PAN: ABPFS0696C (Appellant)	Vs	The JCIT, Gandhinagar Range, Block No.14, 5 th Floor, Udyog Bhavan, Gandhinagar-382011 (Respondent)
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**Revenue by: Shri Uma Shankar Prasad, Sr. D.R.
Assessee by: Ms. Urvashi Shodhan, A.R.**

Date of hearing : 21-11-2019
Date of pronouncement : 20-01-2020

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2011-12, arises from order of the CIT(A)-7, Ahmedabad dated 30-11-2015, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. The assessee has raised following grounds of appeal:-

"1. Ld. CIT (A) erred in law and on facts in confirming disallowance of Rs. 37, 28, 270/- to the extent of 25% of labour expenses incurred instead of 50% disallowed by AO. Ld. CIT (A) ought to have deleted disallowance in toto when discrepancies noted by AO are duly explained by the appellant. It be so held now.

2. Ld. CIT (A) erred in law and on facts in justifying disallowance of 25% of labour expenses since the appellant could not categorically prove that all expenses were wholly and exclusively incurred for the purpose of business. Ld. CIT (A) ought to have deleted disallowance of genuine business expenses duly supported by documentary evidence. It be so held now.

3. *Ld. CIT (A) erred in law and on facts in confirming disallowance of Rs. 4, 25, 000/- by AO out of total salary expenses claimed by the appellant. Ld. CIT (A) ought to have deleted disallowance appreciating the fact that salary to the staff recruited for timely completion of the project is incurred wholly and exclusively for the purpose of business. It be so held now.*
4. *CIT (A) erred in law and on facts in confirming disallowance by AO of supervision charges of Rs. 2, 22, 200/- (amount debited in Profit & Loss a/c Rs. 1,61, 600/-) paid for the purpose of construction work supervision. Ld. CIT (A) ought to have deleted disallowance of expenses incurred for the purpose of business.*
5. *Ld. CIT (A) erred in law and on facts in confirming addition by AO of Rs. 19, 40,000/- advance booking receipt by treating it as unexplained credits. Ld. CIT (A) ought to have deleted addition made by AO appreciating sale deed on record substantiating receipt of booking amount from the members that under no circumstances be treated as unexplained credits.*
6. *Ld. CIT (A) erred in law and on facts in confirming disallowance made by AO of Rs. 4,12,500/- on account of unexplained expenditure. Ld. CIT (A) ought to have deleted disallowance of expenses not debited to profit & loss account but given as advance towards work assigned for the business.*
7. *Ld. CIT (A) erred in law and on facts in confirming further disallowance of Rs. 3, 34, 874/- by AO on account of unexplained expenditure. Ld. CIT (A) ought to have deleted such unwarranted disallowance being difference in purchase register arising due to change in grouping of expenses.*
8. *CIT (A) erred in law and on facts in confirming disallowance by AO of Rs. 7, 50, 375/- remuneration to partner Dashrathbhai S. Chaudhary HUF. Ld. CIT (A) ought to have deleted disallowance of remuneration paid to the partner duly offered to tax in the hands of HUF. It be so held now.*
- 9 *Levy of interest u/s 234A/234B/234C & 234D of the Act is unjustified.*
- 10 *Initiation of penalty proceedings u/s 271(l)(c) of the Act is unjustified.”*

3. The fact in brief is that return of income declaring income of Rs. 21,24,554/- was filed on 30th Sep, 2011. The case was subject to scrutiny and notice u/s. 143(2) of the act was issued on 28th Sep, 2012. Assessment order u/s. 143(3) of the act was passed on 25th Jan, 2014 and total income was assessed at Rs. 1,36,92,398/- after making several additions under various heads mainly on account of disallowance of various expenses.

4. Aggrieved assessee has filed appeal before the Id. CIT(A) and the Id. CIT(A) has partly allowed the appeal of the assessee. The remaining facts of the case are discussed while adjudicating the various grounds of appeal filed by the assessee as under:-

Ground Nos. 1 & 2 are interconnected and pertained to mainly restricting the disallowance out of labour expenses at 25%

5. During the course of assessment, the assessing officer noticed that assessee had claimed Rs. 1,65,31,290/- as labour expenses incurred during

the year under consideration. On verification of the detail furnished, the assessing officer observed various discrepancies in the supporting material furnished by the assessee i.e. bills were undated, unsigned, no address, no serial no etc. Considering such discrepancies as elaborated at page no. 4 to 8 of the assessment order, the assessing officer has disallowed 50% of such labour expenses and added to the total income of the assessee.

6. Aggrieved assessee has filed appeal before the Id. CIT(A) on this issue and the Id. CIT(A) has partly allowed the appeal of the assessee by restricting the disallowance to 25% of the labour expenses as against disallowance 50% of labour expenses made by the assessing officer.

7. During the course of appellate proceedings before us, the Id. counsel has filed paper book comparing various detail and submission made before the assessing officer and Id. CIT(A) during the course of assessment and appellate proceedings. The Id. counsel has contended that disallowance of labour expenses is not correct as all the labour expenses were genuine and related to the business activity of the assessee. The Id. counsel has referred the copies of labour account pertaining to the labour expenses and other submission placed in the paper book. On the other hand, Id. departmental representative has supported the order of Id. CIT(A).

8. We have heard both the sides and perused the material on record. During the course of assessment, the assessing officer observed that assessee has not made proper quality of compliance during the course of assessment proceedings, therefore, the assessing officer has pointed out various

discrepancies in respect of supporting evidences furnished towards claim of labour expenses. The assessing officer pointed out that nature of work done was not described and there was no date, serial no., address etc. on the bills. It was also stated that assessee has not produced proper supporting documents therefore after observing various discrepancies the assessing officer has disallowed 50% of such labour expenses and added to the total income of the assessee. During the course of appellate proceedings, the Id. CIT(A) has noticed that gross profit of the assessee firm has gone up from 4.89% to 14.01% during the year under consideration. However, after considering the fact that assessee has failed to furnish the proper relevant detail in respect of claim of the expenditure, the disallowance was restricted to 25% of labour expenses. It is noticed that during the course of appellate proceedings before the Id. CIT(A), the assessee has clarified the various discrepancies observed by the assessing officer briefly as under:-

- (i) The nature of work was very transparent as per the copy of plant and permission obtained for construction.
- (ii) Advance used to be given on the basis of work in progress and the bills are raised at the end of the year.
- (iii) It is also explained that some payment remained outstanding due to some dispute in the bills
- (iv) The bill itself specifies the nature of work and the rate of work are varied from party to party.
- (v) Some of the contractors under group of contractors therefore the address and phone no. were the same.

The submission furnished by the assessee was reproduced at page no. 10 to 18 of the Id. CIT(A)'s order. The CIT(A) has stated that assessee has also

produced bills in respect of most of the discrepancies and the gross profit of the assessee firm has tremendously gone up from 4.89% to 14.01% in the earlier years. The Id. CIT(A) has held that many discrepancies noted by the assessing officer were explained by the assessee during the course of appellate proceedings but many have not been explained. Therefore, the Id. CIT(A) has restricted the disallowance to the extent of Rs. 25% to the amount of Rs. 37,28,270/-. In the light of the findings of the Id. CIT(A) and considering the there was tremendous jump in the gross profit from 4.89% to 14.01% in the year, we consider it will be reasonable to restrict the disallowance to the extent of 12.5% to meet the end of justice for want of verification on account of not providing proper supporting bill/vouchers. Therefore, addition to the extent of Rs. 18,64,135/- is confirmed. This ground of appeal is partly allowed.

Ground No. 3 (Disallowance of salary expenses of Rs. 4,25,000/-)

9. During the course of assessment, the assessing officer noticed that assessee has claimed salary expenses of Rs. 9,47,366/-. On verification, the assessing officer stated that assessee could not produce relevant evidences in support of claim of salary expenses to the amount of Rs. 4.25 lacs and the detail of such expenses reported in the assessment order were as under:-

<i>Party name</i>	<i>Brief remark</i>
<i>Shri BhikhabhaijivanbhaiChaudhary</i>	<i>Ledger payment of Rs. 10,10,000/-</i>
<i>ChaurdharyAmrutbhaiKodarbhai</i>	<i>Ledger payment of Rs. 1,10,000/-</i>
<i>Gaurang Patel</i>	<i>Ledger payment of Rs. 1,61,600/-</i>
<i>HardikAshwinbhai Patel</i>	<i>Ledger payment of Rs. 80,000/-</i>
<i>Kalpesh P Parikh</i>	<i>Ledger payment of Rs. 60,000/-</i>
<i>KiranbhaiBabubhaiChaudhary</i>	<i>Ledger payment of Rs. 1,25,000/-</i>

Consequently, the assessing officer has disallowed the salary expenses of Rs. 4.25 lacs as the assessee has failed to prove the genuineness of such salary expenses.

10. The assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee.

11. During the course of appellate proceedings before us, the assessee has reiterated the same submission which was furnished before the lower authorities. The assessee has only furnished the copies of ledger account but failed to demonstrate with relevant evidences, the nature of work done by the employees, copies of bank statement reflecting the payment made and other relevant evidences that the aforesaid employees have employed with assessee. Therefore, we do not find any reason to interfere in the finding of Id. CIT(A). Accordingly, this ground of appeal of the assessee is dismissed.

Ground No. 4 (Disallowance of supervision charges of Rs. 2,22,200/-)

12. During the course of assessment, the assessing officer has disallowed supervision charges of Rs. 2,22,200/- (Rs. 1,61,600+ Rs. 60,600/-) as the assessee has failed to substantiate the incurring of such expenses with relevant evidences.

13. The assessee has filed appeal before the Id. CIT(A) on this issue and the Id. CIT(A) has dismissed the appeal of the assessee.

14. We have heard both the sides on this issue and perused the material on record. It is noticed that assessee has claimed that such supervision charges paid to Shri Gaurang Patel, however, the assessee has failed to prove the genuineness of incurring of such expenditure with relevant supporting documentary evidences about the nature of work performed by him and details of payment etc., therefore, we do not find any reason to interfere in the finding of Id. CIT(A). Accordingly, this ground of appeal of assessee is dismissed.

Ground No. 5 (Addition of Rs. 19,40,000/- by treating advance booking as unexplained credit)

15. During the course of assessment, the assessing officer has treated the receipt of Rs. 6,50,000/- from Mehta Chhayaben Umeshbhai and Rs. 12,90,000/- received from Patel Bharatkumar as unexplained credit stating that identity of the payer, genuineness of the transaction and creditworthiness were not proved.

16. The assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee.

17. We have heard both the sides and perused the material on record. The assessing officer has treated Rs. 19,40,000/- as unexplained stating the identity and creditworthiness of the parties and the genuineness of the transaction were not proved.. The assessee has claimed that this amount was received from these persons on account of booking amount and produced copies of sale deed to establish genuineness of the transaction. In this

regard, we have gone through the page no. 212, 273 of the paper book no. 2 wherein the assessee has placed the copies of the documents demonstrating that there was sale deed made with the aforesaid parties along with the identity and address of the parties from whom booking amount received. The assessing officer has not made any inquiry/verification from the aforesaid parties to contradict the claim of the assessee that amount was received as booking amount. In the light of the above facts and circumstances, we consider that decision of Id. CIT(A) is not justified. Therefore, this ground of appeal of the assessee is allowed.

Ground No. 6 (Disallowance of Rs. 4,12,500 on account of unexplained expenditure)

18. During the course of assessment, the assessing officer noticed that assessee has claimed payment of Rs. 4,12,500/- to Shri Chaudharyshivabhai Keshavbhai. However, the assessee has failed to substantiate the genuineness of such payment with any relevant supporting evidences.

19. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee.

20. We have heard both the sides and perused the material on record. It is observed that before the lower authorities, the assessee has not submitted any evidences, detail and nature of expenditure incurred, therefore, the claim of the assessee was disallowed. Even during the course of appellate proceedings before us, the assessee has failed to furnish any relevant supporting evidences to demonstrate that the aforesaid expenditure was

incurred for the purpose of business, therefore, we do not find any merit in this ground of appeal of the assessee and the same is dismissed.

Ground No. 7 (Disallowance of Rs. 3,34,874/- on account unexplained expenditure)

21. During the course of assessment on perusal of the purchase register, the assessing officer noticed that total purchases was shown at Rs. 2,24,51,267/-, however in the P & L A/C the assessee has debited total purchases at Rs. 2,27,86,141/-. The assessee explained that the difference between the purchase register and the P & L A/c was due to grouping change in account. The assessee has mentioned entries of (i) audit fee Rs. 1,55,400/- (ii) land development Rs. 28,100 and (iii) tube well account Rs. 1,29,857/-. The assessee has failed to furnish any relevant supporting evidences regarding grouping change in account. Consequently, an amount of Rs. 3,34,874/- was added to the total income of the assessee as unexplained expenditure.

22. Aggrieved assessee has filed appeal before the Id. CIT(A) who has dismissed the appeal of the assessee.

23. We have heard the rival contentions and perused the material on record. It is clear from the facts stated above that assessee has not furnished any relevant supporting evidences to substantiate that differences in the purchases was assessed on account of grouping change in account. Further at the level of CIT(A) the assessee has failed to meet reconciliation in the aforesaid difference detected by the assessing officer. Even during the course of appellate proceedings before us, the assessee has failed to furnish supporting evidences to demonstrate that the differences in the purchase was

arsied on account of grouping change in account. Therefore, we do not find any reason to interfere in the finding of Id. CIT(A). Accordingly, this ground of appeal of the assessee is dismissed.

Ground No. 8 (Disallowance of Rs. 7,50,375/- as remuneration paid to partner Dashrathbhai S. Chaudhary, HUF)

24. At the time of assessment, the assessing officer noticed that assessee has claimed a sum of Rs. 7,50,735/- as remuneration paid to M/s. Dashrathbhai S. Chaudhary, HUF during financial year 2011-12. The assessing officer was of the view that as per explanation 4 to section 40(b) only working partner who is also an individual is entitled to remuneration and a partner acting in a representative capacity cannot claim deduction. Therefore, the claim of remuneration payment was disallowed.

25. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee reiterating the reason stated by the assessing officer.

26. During the course of appellate proceedings before us, the Id. counsel has contended that Id. CIT(A) is not justified in disallowing the remuneration paid to partner who was working in the firm in the HUF capacity. In this regard, the Id. counsel has made reliance on the decision of Co-ordinate Bench of the ITAT in the case of Hemtej Imprint Vs. Dy. CIT vide ITA No. 1520/Ahd/2010 dated 30-07-2010 and in the case of P Gautam & Co. Vs. JCIT Range-III Ahd (2011) 14 taxman.com 79 (Ahd) dated 26th

Aug, 2011. On the other hand, ld. departmental representative has supported the order of ld. CIT(A).

27. We have heard both the sides and perused the material on record and gone through the judicial pronouncement referred by the ld. counsel. In the case of P. Gautam & Co. supra, the ITAT has held as per head note as under:-

“Section 40(b) of the Income-tax Act, 1961 - Business disallowance - Interest salary, etc., paid by firm to partner - Assessment year 2007-08 - Whether a partner of a firm is an individual only even if he is partner as a representative of HUF - Held, yes - Whether, therefore, where assessee-firm paid salary to a partner who was actively engaged in conducting affairs of business of firm, it was to be held that requirement of Explanation 4 to section 40(b) stood complied with, and, thus, assessee-firm would be entitled to deduction in respect of salary paid to said partner even though he was a partner in representative capacity of HUF - Held, yes [In favour of assessee]”

Further in the case of Hemtej Imprint supra, it is held as under:-

“6. We have considered the rival submissions and perused the material on record. In our considered view the authorities below were not justified in not allowing remuneration to the HUF. It is undisputed fact that Shri Asit H. Shah was a partner in HUF capacity but in law only an individual can be a partner in the partnership firm. It has been held by the courts that an individual can represent any other entity while he is acting as a partner. In that case the profits given to the individual would be in fact the profits of the entity to whom such individual is representing. Whether such remuneration or salary paid to the individual is assessable in the hands of individual or in the hands of the concern to which such individual is representing in the firm, is not a deciding factor about the allowability of deduction from the computation of income of the firm. As per existing position of law, it is only the individual who can be a partner of the firm and, therefore, when remuneration is paid to such individual then there is no violation of section 40(b). The issue of allowability or otherwise of remuneration stops at that point. In this regard for the benefit we may refer to the decision of the Tribunal in the case of Krishna Ceramics vs. ITO (supra) as referred to in ACIT vs. Giriraj Mines 001 SOT 0279 (Ahd) (supra) as under:

“On a reading of this clause it is clear that the remuneration was paid to the partners for attending to the affairs of business- of the partnership firm as working partners. Therefore, the CIT(A) was not justified in holding that there was no evidence that they were working partners. In view of the Supreme Court decision in the case of Rashiklal and Co. 229 ITR 458 it is the individual who is partner in the firm and it is immaterial as to in what capacity he is the partner. His obligation may be towards others, but vis a vis the firm he is the partner in his individual capacity. Even otherwise, as held in the case of Kshetra Mohan Sannyasi Charan Sadhukhan vs. CEPT 4a Hindu undivided family is included in the expression 'person' as defined in the Indian

Income-tax Act as well as in the Excess Profits Tax Act, but it is not juristic person for all purposes. When two kartas of two Hindu undivided families enter into a partnership agreement the partnership is popularly described as one between the two Hindu undivided families but in the eye of law it is partnership between the two kartas and the other members of the families do not ipso facto become partners. There is, however, nothing to prevent the individual members or one Hindu undivided family from entering into a partnership with the individual members of another Hindu undivided family and in such a case it is a partnership between the individual members and it is wholly inappropriate to describe such a partnership as one between two Hindu undivided families. This decision has been noted in the case of Van-son Kids Suff 83 ITD 268 wherein also the partner representing in HUF capacity was held to be a working partner in his individual capacity and the remuneration was allowed within the meaning of section 40(b) read with Explanation thereto. We also find that the Ahmedahad Bench of the Tribunal in the case of Gandhi Babula Bhogilal and Co. in ITA No.2380/Ahd/1995

order dated 7-9-1999 has allowed a similar claim by referring to the section of the Supreme Court in the case of Rashik Lal and Co. (supra). There is yet another decision of the Ahmedabad Bench in the case of Sujat Enterprises in ITA No. 1083/Ahd./1996 reported in Ahmedabad Chartered Accountants Journal March, 2003 at page 637 wherein following the decision of the Mumbai Bench of the Tribunal in the case of Smruti Trading Co. 70 777 (Mum.) 114, it was held that salary paid to the partner who was partner in his representative capacity as karta of HUF cannot be considered to be payment to HUF but to karta as an individual. The karta of HUF is a working partner and, therefore, the remuneration paid to him is allowable. Respectfully following the aforesaid decisions, we are of the opinion that the revenue authorities were not justified in disavowing the-claim of the assessee. The two partners though they were representatives of their respective HUFs were partners in their individual capacity and, therefore, the remuneration paid to them would be an allowable deduction. We direct accordingly."

Respectfully following the above orders, we allow the claim of the assessee."

Vide the above cited decisions of the Co-ordinate Benches, the claim of remuneration paid to the partners as representative of HUF were allowed. Respectfully following the finding of the Co-ordinate Benches on the identical issue on similar fact, the appeal of the assessee is allowed.

28. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 20-01-2020

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER
Ahmedabad : Dated 20/01/2020

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश क०० तालम अ० षत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलालय अधकरण,
अहमदाबाद