

**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA 'DB' BENCH AT KOLKATA**

[Virtual Court]

Before

**SRI MANISH BORAD, ACCOUNTANT MEMBER
&
SRI SONJOY SARMA, JUDICIAL MEMBER**

**I.T.A. No.: 350/Pat/2018
Assessment Year: 2007-08**

M/s. Anil Kumar Singh.....Appellant
[PAN: AANFA 3876 H]

Vs.

ACIT, Circle-1, Muzaffarpur.....Respondent

Appearances by:

Sh. Ashish Maskara, CA, appeared on behalf of the Assessee.

Sh. Rupesh Agrawal, Sr. D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : July 20th, 2022

Date of pronouncing the order : September 19th, 2022

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2007-08 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by ld. Commissioner of Income-tax (Appeals), Muzaffarpur [in short ld. "CIT(A)"] dated 28.11.2018 which is arising out of the assessment order framed u/s 154 of the Act dated 30.11.2011.

2. The assessee is in appeal before this Tribunal raising the following grounds:

“1. For that the whole order passed ex-parte by Ld. CIT (Appeal) is wholly wrong, illegal & against the fact and circumstances of the case.

2. For that the Ld. CIT (A) & Ld. Assessing officer has erred in upholding the order passed U/s 154 of the I T Act in the eyes of law and against the facts & circumstances of the case.

3. For that the Ld. CIT (A) has erred in passing the order ex-parte on the alleged basis of non-appearance which is wholly wrong, illegal & against the fact and circumstances of the case.

4. For that the Ld. CIT (A) has erred in passing the order ex-parte on the alleged basis of non-appearance on 19.11.2018 where appellant has submitted his submission online which is evident from acknowledgment no 19111810748733 (Copy enclosed).

5. For that the Learned CIT (A) should have held that proceeding initiated u/s 154 of I.T. Act is void ab initio as there was nothing like any mistake apparent from record in the eyes of law and fact.

6. For that the Learned CIT (A) should have appreciated the fact that remuneration and bonus have been paid to the partners as per terms & condition of partnership deed which is given in clause 6.

7. For that the Learned CIT (A) & Ld. AO should have appreciated the fact that word ‘remuneration’ u/s 40(b) of the I. T. Act includes all the payments made to partners in name of Salary, bonus, commission or remuneration. The clause (i) of section 40(b) reads “any payment of salary, bonus, commission or remuneration, by whatever name called (hereinafter referred to as ‘remuneration’)”; as such any payments of bonus & remuneration to the partners comes under the head remuneration; as such any order passed u/s 154 is wholly wrong & fit to be quashed.

8. For that the Learned CIT (A) & Ld. Assessing Officer should have appreciated the fact that total claim of remuneration and bonus of Rs. 19,02,664.00 was shown under the head ‘Remuneration’ in schedule A Partners capital Account of Audit report & the Learned Assessing officer has also allowed the same under the head ‘remuneration’ in his original order of assessment dated 02.12.2009.

9. For that the Learned CIT (A) & Ld. Assessing Officer should have appreciated the fact that appellant has duly shown the amount of remuneration paid to the partner and remuneration allowable to the

partners u/s 40(b) of the I. T. Act in the computation of Firm income and annexure III of Form 3CD of Audit report, which was also discussed and allowed by the Learned Assessing Officer in the course of examination of books of accounts of firm.

10. For that the Learned CIT (A) & Ld. Assessing Officer should have appreciated the fact that all the partners in the firm are Income Tax assessee & have already filed their return and shown said remuneration and bonus under the head Income from business, which is evident from the I.T. return of partner; as such nothing is wrong & illegal in the eyes of law & justice.

11. For that the other ground if any may kindly be heard at the time of hearing.”

3. Brief facts of the case are that the assessee is an individual engaged in the business of contractor. Income of Rs. 27,22,745/- declared in the return of income filed on 04.01.2008. Case of the assessee selected for scrutiny and assessment u/s 143(3) of the Act was completed on 02.12.2009 at a total income of Rs. 55,35,590/-. The assessee preferred appeal before the ld. CIT(A) and got part relief. Later on ld. AO noticed that the assessee has claimed excess remuneration of Rs. 16,38,664/- and treating it as a mistake apparent from record, passed the order u/s 154 of the Act disallowing the said claim and assessed the income at Rs. 52,98,500/- (after giving effect to the order of ld. CIT(A) dated 08.02.2011).

4. Aggrieved, the assessee preferred appeal before the ld. CIT(A). But during the course of appellate proceedings, the assessee could not make proper representation and thus, failed to succeed.

5. Aggrieved, the assessee is now in appeal before this Tribunal. Ld. Counsel for the assessee submitted that as per the Partnership Deed dated 01.04.2006 partners are eligible for remuneration @

Rs. 24,000/- per month and over & above the monthly remuneration they are also eligible to claim bonus subject to the limits provided under the provisions of Section 40(b)(v) of the Act. Ld. Counsel for the assessee stated that the assessee made a correct claim but both the lower authorities erred in not accepting the same.

6. Per contra, ld. D/R vehemently argued supporting the orders of both the lower authorities and also submitted that the assessee did not file the relevant documents before the lower authorities for proper examination.

7. We have heard rival contentions and perused the records placed before us. In this appeal the assessee has raised ten grounds of which grounds no. 10 is general in nature and as per the remaining grounds are concerned, three issues have been raised:

i) Proceedings initiated u/s 154 of the Act are *void-ab-initio*.

ii) Ld. CIT(A) erred in passing the order *ex-parte*.

iii) The claim of remuneration or bonus was valid as per the provisions of Section 40(b)(v) of the Act and the valid Partnership Deed.

8. As far as the first contention, we find no merit in the contention of the ld. Counsel for the assessee since the claim of bonus of Rs. 16,38,664/- was part of the total remuneration of Rs. 19,02,664/-. As per ld. AO partners were entitled to remuneration of Rs. 24,000/- per month and no details were available on record

as the assessee did not furnish any proof during the course of assessment proceedings and no such claim was separately shown in the return of income and no proof of partners having disclosed the said bonus in the respective return was available on record. Therefore, ld. AO was well within his jurisdiction to rectify the assessment order u/s 154 of the Act.

9. As regards the second issue, that the order of the ld. CIT(A) was *ex-parte*, we find no merit as the assessee was provided many opportunities by ld. CIT(A) which are as many as on eight occasions. The assessee failed to appear in person nor through the Authorized Representative.

10. However, coming to the claim of the assessee that the remuneration including bonus was claimed in pursuance of Section 40(b)(v) of the Act duly supported by Partnership Deed, we, in the interest of justice and being fair to both the parties, are of the considered view that the issue needs to be restored to ld. CIT(A). The assessee has filed various documents before us in support of its claim of bonus of Rs. 16,38,664/-. We direct the assessee to place all these documents before ld. CIT(A) who shall adjudicate the issue in light of the same and pass a speaking order in accordance with law. Needless to mention that proper opportunity of being heard should be provided to the assessee.

The assessee is also directed not to take adjournment, unless otherwise required for reasonable cause. In case after providing sufficient opportunity to the assessee, there is no compliance before the ld. CIT(A), then ld. CIT(A) can pass the order in accordance with law.

11. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Kolkata, the 19th September, 2022.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Manish Borad]
Accountant Member

Dated: 19.09.2022

Bidhan (P.S.)

Copy of the order forwarded to:

1. ***M/s. Anil Kumar Singh, Krishnapuri, Bhagwanpur Chowk, Muzaffarpur.***
2. ***ACIT, Circle-1, Muzaffarpur.***
3. CIT(A), Muzaffarpur.
4. CIT-
5. CIT(DR), Patna Bench, Patna.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata