

IN THE INCOME TAX APPELLATE TRIBUNAL ALLAHABAD "SMC"
BENCH, ALLAHABAD

BEFORE SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.55/Alld/2023
(निर्धारण वर्ष / Assessment Year: 2016-17)

Neeraj Gas Movers Through its Partner, 215/1, Chaukhandi, Kydganj, Allahabad-211003, Uttar Pradesh.	बनाम/ Vs.	ITO-1(3) Allahabad.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAKFN1654M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Tanmay Sadh	
Revenue by:	Shri A. K. Singh (Sr. DR)	

सुनवाई की तारीख / Date of Hearing: 05/09/2023
घोषणा की तारीख /Date of Pronouncement: 12/09/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. CIT(A)/NFAC, Delhi dated 11.03.2023 for AY. 2016-17.

2. The main grievance of the assessee/Firm is against the action of the Ld. CIT(A) confirming the action of AO disallowing the claim of salary & interest on capital for three (3) partners due to erroneous consideration of the partnership deed dated 01.02.2013, whereas according to the assessee, another deed/rectified partnership deed dated 13.05.2013 was executed by partners, and Income Tax Department issued PAN for the assessee/Firm on the basis of the very same deed dated 13.05.2013, which deed ought to have been considered by AO/Ld CIT(A) wherein there were specific provisions for the firm to give remuneration/salary as well as interest of 12% on the capital contribution of the partners.



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3. Brief facts as noted by the AO are that the assessee/firm is engaged in the business of plying of vehicles. The assessee firm e-filed its return of income on 22.12.2016 declaring Rs.2,30,000/- which was later selected for scrutiny. And the AO having taken note that the assessee has claimed expenditure on account of disbursement of salary as well as interest on capital (*given to partners*) to the tune of Rs.3,10,000/-, directed assessee to furnish evidence as well as requisitioned from the HDFC Bank where the assessee had bank account. Pursuant to the same, the bank (HDFC) forwarded to AO a copy of the partnership deed filed by the assessee firm which was dated 01.02.2013. The AO on perusal of the same, noted that there was no provision in the partnership deed dated 01.02.2013 for disbursement of salary as well as interest on capital. When confronted with this fact, the assessee filed copy of another partnership dated 13.05.2013, which assessee claimed to be the correct/rectified partnership deed. The AO did not accept the veracity of the said submission of the assessee on the ground that it was an afterthought and there was no mention of the earlier deed in the rectified deed; and rejected the partnership deed dated 13.05.2013. And thus disallowed the claim of salary as well as interest on capital amounting to Rs.3,10,000/- and added the same to the total income of the assessee firm. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who confirmed the action of AO. Aggrieved, the assessee is before this Tribunal.



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4. I have heard both the parties and perused the records. The assessee is a firm and has filed its return of income wherein it has claimed expenditure of salary as well as interest on capital contributed by the partners, which has been disallowed by the AO on the ground that there was no provision provided for in the partnership deed dated 01.02.2013. According to the assessee, initially the partnership deed dated 01.02.2013 was made hurriedly without any legal scrutiny. And when partners sought legal opinion about the validity of the deed dated 01.02.2013, they were informed that deed was not properly drafted, and in that process, a rectified partnership deed was later on executed on 13.05.2013, which assessee asserts as the valid partnership deed and on the basis of which document assessee sought registration of the firm with the Income-tax Department. And that income tax department on the basis of that application filed by the assessee firm for PAN, considered partnership deed dated 13.05.2013, and thereafter, issued the PAN which fact is discernable from perusal of the copy of PAN wherein the date endorsed on it is 13.05.2013 [*and not 01.02.2013*] and drew my attention to copy of PAN of assessee firm placed at page no. 18 of PB wherein I note from perusal of the copy of PAN reveals that it is the assessee's PAN and the date endorsed on it is 13.05.2013. According to the Ld. AR, this particular fact itself corroborates the fact that assessee has come into existence on 13.05.2013 and thus AO erred in ignoring the deed dated 13.05.2013 and instead considered the partnership deed filed initially on 01.02.2013 in order to open the bank account. Per-Contra, the Ld. DR pointed out that the second deed dated 13.05.2013 was an afterthought and drew my attention to both



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deeds placed in the paper book. Drawing my attention to the first partnership dated 01.02.2013 (*invalid partnership deed*) placed at page no. 14 to 18 of PB, the Ld. DR pointed out that stamp-paper is dated 29.01.2013, whereas the second partnership deed dated 13.05.2013 which is placed at page no. 6 to 13 of PB, the stamp-paper is dated 22.01.2013. Therefore, according to him, there is *per-se* contradictions and therefore the original deeds in question were summoned and examined. And on scrutiny of both the original deeds, I find there is no material contradiction to doubt the veracity of the contention of assessee about two deeds. It is found that the first deed [i.e, executed on 01.02.2013] the stamp-paper is dated 29.02.2013 and on perusal of the reverse page of ibid stamp-paper reveals that the stamp-paper has been issued to the assessee-Firm on 31.01.2013 ; whereas perusal of second partnership deed executed on 13.05.2013 reveals that the stamp-paper is dated 22.01.2013 and the reverse page of this deed shows that the stamp-vendor issued to partner of assessee-Firm the stamp-paper on 31.01.2013. Thus it is noted that assessee-Firm/partner had themselves got issued stamp-paper in the month of January 2013, and prepared first deed on 01 February 2013 and rectified deed was executed on 13 May 2013, which was the basis for registration of PAN wherein date endorsed is 13.05.2013. In the light of afore mentioned facts discussed, the action of AO to disbelieve the existence of the second/rectified deed dated 13.05.2013 as an afterthought is flawed. And likewise, the Ld. CIT(A)'s action of confirming the action of AO on the same reasoning is not accepted (*and further, he erred in mentioning the disallowance made by AO as Rs.4,34,361/- whereas AO has*



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disallowed only Rs.3,10,000/-). After considering the material on record, it is noted that the stamp-paper on which both the deeds were prepared (i.e. of 01.02.2013 & 13.05.2013) were issued to assessee/partner on the same day i.e. 31.01.2013. And partners were the same and was also for doing the business of plying LPG Carriage Containers in the name of *Neeraj Gas Movers*; and the contribution of capital made by the partners as per both the deeds are also identical. The second deed of Partnership has been executed on 13.05.2013 & the assessee applied for PAN from Income Tax Department along with the said deed and department issued PAN and the date endorsed on it shows 13.05.2013. This relevant fact corroborates assessee's claim that the valid deed was dated 13.05.2013 and cannot be termed it to be an after-thought as held by AO/Ld. CIT(A). In the light of the aforesaid relevant facts noted (supra), I do not countenance the action of the AO/Ld. CIT(A) on this issue and is of the opinion that the AO ought to have considered the partnership deed dated 13.05.2013 for adjudicating the claim of the assessee in respect of expenditure regarding (*salary as well as interest on capital which is provided for in clause 14 and 15 at page no. 9 to 10 as well as clause 11 of the ibid deed respectively*). However, since the AO has not verified the same, the matter is being set aside back to the file of the AO for *the limited purpose* of verification of deed dated 13.05.2013 with regard to claim of expenditure (i.e. salary and interest). And on verification, if the claim made by assessee/firm is found to be correct, then assessee be allowed the claim in respect of expenditure regarding salary and interest on capital.



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5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 12/09/2023.

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

Allahabad दिनांक Dated : 12/09/2023.
Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT(A) , Allahabad
4. CIT
5. DR -

By order
Assistant Registrar