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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Apr-27-2005

Reported in : (2005)279ITR20(Mum.)

Judge : O Narayanan

Appellant : Chandra Enterprise

Respondent : ito

Judgement :

1. This appeal is filed by the assessee. The relevant assessment year is 2002-03. The appeal is directed against the order of the CIT (A) - XXII at Mumbai on 19-08-2004 and arises out of the assessment completed Under Section 143(3) of the Income-tax Act, 1961.

2. The assessee in this case, a partnership is carrying on the business of trading in electrical switches, water motors, etc. In the original return filed by the assessee firm, there was a mistake of Rs. 61,568 relating to incentives and discounts. In the course of assessment proceedings, the assessee firm rectified the mistake and revised its profit & loss account and on the basis of the said revised profit & loss account filed revised return of income, enhancing the taxable income to that extent. Concurrent to the enhanced income disclosed in the revised return of income, the assessee firm claimed higher amount of remuneration to partners in terms of Section 40(b) of the Income-tax Act, 1961.

3. The assessing authority completed the assessment on the basis of the revised return of income filed by the assessee firm. But the claim of the assessee firm for the proportionate higher amount of partners' remuneration Under Section 40(b) was turned down by the assessing officer on the ground that the revised return of income was not filed by the assessee firm suo motu or voluntarily. In first appeal the CIT (A) held that the remuneration that could be claimed by a partnership firm in computing its taxable income is the remuneration debited in its books of account and nothing more. Therefore, he also confirmed the order of the assessing authority refraining to revise the remuneration attributable to the partners Under Section 40(b). It is against the above that the second appeal is filed before the Tribunal.

4. I heard Shri Reepal G Tralshawala, the counsel appearing for the assessee firm and Shri Sunil Kumar, the learned departmental representative appearing for the revenue. It is a fact that the assessee firm had filed a revised return increasing its taxable income.

The said revised return of income has been filed on the basis of the revised profit & loss account prepared by the assessee firm. The books of account or for that matter the book results of the assessee firm ultimately reflect in the profit & loss account prepared by it. As per the terms of the partnership added, the partners of the assessee firm are entitled for the maximum amount of remuneration permissible under law. Therefore, whenever the income assessed is higher than the income returned by the assessee firm or the assessment has been completed on higher amount of income on the basis of the revised return of income, the assessee firm is entitled for claiming the proportionate higher amount of remuneration payable to the partners. This is a natural consequence of assessing higher amount of income. The differential higher amount of remuneration to the partners in comparison with the higher amount of income assessed in the hands of the assessee firm could not be declined only on the ground that the amount of remuneration debited in the books of account of the assessee firm was less. In fact, the assessing officer should give the assessee firm an opportunity to pass rectification entries or adjusting entries in the books of account commensurate with the revised income of the assessee firm. This is because when the profit & loss

account was prepared originally and return was filed originally, the mistake was not brought out and the assessee firm had no occasion to work out the correct income and accordingly debit its books of account with the correct amount of remuneration attributable to the partners of the assessee firm. It is because of that inherent impossibility that the amount of remuneration debited in the books of account of the assessee firm was less than the amount attributable to the partners as remuneration on the basis of the revised return of income filed. The disparity in the remuneration attributable to partners as per the entries in the books of account and as per the assessed income is not because of the fault of the assessee firm; it was because of the inherent impossibility.

5. Therefore, I direct the assessing authority to allow remuneration to partners Under Section 40(b) of the Income-tax Act, 1961 to the maximum extent permissible in the light of the revised return filed by the assessee and as assessed by the assessing authority. The partners of the assessee firm are entitled for proportionate higher rate of remuneration. If the assessee firm has not already incorporated the adjusting entries in its books of account, the assessing authority may give an opportunity to the assessee firm to incorporate such adjusting entries.

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