

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI MANISH BORAD (ACCOUNTANT MEMBER)**

**ITA No. 3984/MUM/2019
Assessment Year: 2013-14**

M/s Tip Top Packaging,
D-02, Ansa Industrial Estate, Saki
Vihar Road, Andheri,
Mumbai-400072.

Vs. Income Tax Officer, Ward-
26(3)(5),
Kautilya Bldg Block G, BKC,
Bandra (East)
Mumbai-400051

PAN No. AACFT 0032 F
Appellant

Respondent

Assessee by : None
Revenue by : Ms. Smita Verma, DR

Date of Hearing : 11/08/2021
Date of pronouncement : 13/08/2021

ORDER

PER MANISH BORAD, A.M.

The present appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-38, Mumbai [in short 'CIT(A)'] for the assessment year 2013-14 dated 28.02.2019 and arises out of assessment completed u/s 143(3) of the Income Tax Act, 1961 (in short the Act).

Though the case was fixed for hearing on 02.12.2020, 12.04.2021, 21.06.2021 & 11.08.2021, neither the assessee nor his authorized representative appeared before the Bench on the above dates. As there is non-

compliance on the part of the assessee, we are proceeding to dispose off this appeal on merits, after examining the documents available on record.

2. The grounds of appeal filed by the revenue read as under :

1. The Ld. CIT(A) has erred in law and on facts in confirming the disallowance of interest on Partner's Capital Account of Rs.1,56,000/- and remuneration to the partner Rs.60,000/- made by the Assessing Officer is without property considering the facts and provision of section 40(b) of the Income Tax Act, and terms of Partnership Deed.
2. The Ld. CIT(A) has erred in law and on facts in confirming the commission income of Rs.13,480/- as income from other sources instead of business income without properly considering the facts and circumstances of the case.
3. The Ld. Income Tax Officer has erred in law and on facts in confirming the disallowance of depreciation amounting to Rs.74,395/- on motorcar without properly considering the facts and circumstances of the case.

3. The assessee is a partnership firm engaged in the business of trading in iron and steel. The return of income for AY 2013-14 declaring income of Rs.1,36,880/-. The case was selected for scrutiny followed by serving of notices u/s 143(2) and 142(1) of the Act. In the appeal records we find that the assessee has also submitted revised computation of income declaring income at Rs.26,438/- as against the income of Rs.1,36,880/- furnished in the original return. However, in the assessment order there is no reference to this revised computation of income.

4. During the course of assessment proceedings, the Ld. AO examined certain transactions and came to the conclusion that the interest that assessee is not entitled to claim the interest of Rs.1,56,000/- paid to partners as there was

negative balance in the partner's current capital account and also the loan taken from partner has not been used for business purposes. The Ld. AO also disallowed the claim of remuneration paid at Rs.60,000/- stating that no business was carried out during the year. Ld. AO also disallowed the society charges of Rs.49,576/-. The Ld. AO made disallowance u/s 14A at Rs.1008/- and denied the claim of depreciation of car at Rs.74,395/- and depreciation on building of Rs.33,562/-. The Ld. AO treated the commission income of Rs.13,480/- as income from other sources which was shown by the assessee as business income. Though the assessee filed revised computation of income but Ld. AO took the basis of income shown in the original return of income at Rs.1,36,876/- and after making necessary additions as discussed above assessed income at Rs.3,67,420/-.

5. Aggrieved the assessee preferred appeal before Ld. CIT(A) and partly succeeded as Ld. CIT(A) after appreciating the documentary evidence filed by the assessee as well as the revised computation of income gave part relief to the assessee.

6. Now the assessee is in appeal before this Tribunal against the additions sustained by Ld. CIT(A). Since none appeared on behalf of the assessee, only the arguments of Ld. Departmental Representative (DR) were noted who relied on the findings of both the lower authorities.

7. We have heard the rival contentions and perused the material placed on record. We note that the assessee is a partnership firm established for running the business of trading in iron and steel. There are two partners having fixed

capital and current capital account. The assessee has challenged various addition sustained by Ld. CIT(A) and same are dealt as follows.

8. As regards Ground No. 1 regarding disallowance of interest paid to partners at Rs.1,56,000/- and remuneration to the partners at Rs.60,000/-, we observed that the assessee is a partnership firm and partners are entitled to remuneration and interest on capital as per the conditions provided in the partnership deed. Both interest and remuneration are appropriation of profit. It is not in dispute that the amount paid to partners by the firm towards interest and remuneration has been duly reflected by them in their respective return of income. Both the lower authorities denied the claim of interest alleging that there was negative balance in current capital account and also denied remuneration alleging that no business was carried out during the year.

9. We however do not find any merit in the findings of both the lower authorities because the assessee is into business of trading in iron and steel. Maintaining two capital accounts i.e. fixed and current is not prohibited under the law. No other interest has been paid to other parties. The interest has been rightly calculated on the amount outstanding in the capital account and is not in excess of the limit provided under the Act. The same deserves to be disallowed as expenditure i.e. appropriation of profit. Similarly, the assessee has earned business income in the form of commission, which though small in terms of income but nevertheless it had earned business income. Earning more or less income depends on year to year working of the firm. The remuneration paid to partners is having a minimum limit which the firm has to pay the partners. This amount may increase depending of the profit but within the limits provided under the provisions of Income Tax Act. The alleged sum of remuneration is

minimum salary paid to partners for looking after the working of the partnership firm. We therefore, under the given facts and circumstances of the case are of the considered view that the assessee-firm is entitled to claim expenditure in the form of interest to partners at Rs.1,56,000/- and remuneration at Rs.60,000/- under the provision of Section 40(b) of the Act. Accordingly, ground No. 1 of the assessee's appeal is allowed.

10. As regards ground No. 2 challenging that both the lower authorities erred in treating the commission income as income from other sources, we find that assessee disclosed the commission income in the financial statements at Rs.13,480/-. The Ld. AO has given no reason for treating this sum as income from other sources. No efforts were made by the Ld. CIT(A) also to examine the commission income shown by assessee firm, he also did not gave any specific reason for treating it as income from other sources. Under these facts, we set aside the finding of Ld. CIT(A) and treat the income from commission at Rs.13,480/- as business income.

11. As regards Ground No. 3 challenging the action of both the lower authorities denying claim of depreciation of motor car at Rs.74,395/-, we find that the depreciation claim made on the motor car is not for the first time. Motor case was purchased in the earlier year. WDV as on 01.04.2012 was Rs.4,95,965/- . Assessee firm is mainly in business of trading iron and steel. It also earned commission income during the year. Just for the reason that it had majorly earned income from house properties cannot be a sound basis to deny the claim which is been regularly made by the assessee in the previous year. We thus find no merit in the disallowance made by the Assessing Officer and thus set aside

the finding of Ld. CIT(A) and delete the disallowance of depreciation of Rs.74,395/- and allow the ground No. 3.

12. In the result, all the grounds of appeal raised by the assessee are allowed.
In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 13/08/2021.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Mumbai;

Dated: 13/08/2021.

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)
ITAT, Mumbai