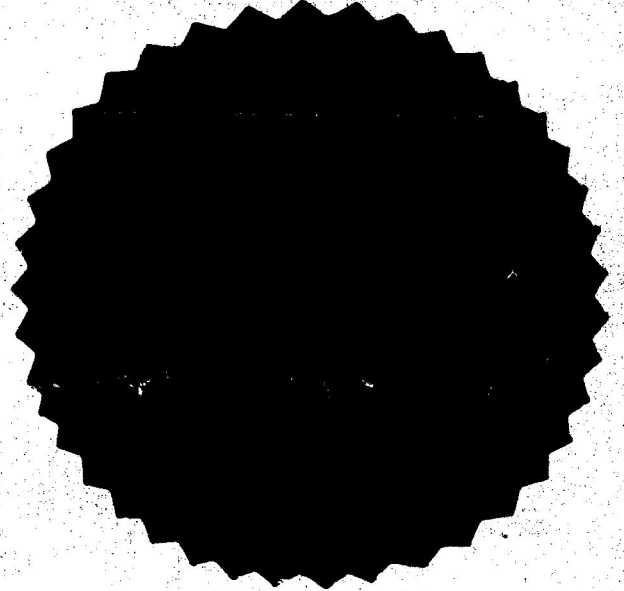




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
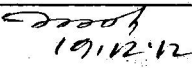
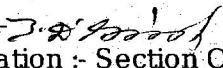


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Requisition Information								
Folio No.	Application Date	Case Type	Case No.	Year	Case filed at	Date of Judgment/Order	Court Fee	No.of Pages
264692 of 2012	19.12.2012	IAPL	461	2009	Allahabad	10.12.2012	15.0	5

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Case :- INCOME TAX APPEAL No. - 461 of 2009

Petitioner :- The Commissioner Of Income Tax And Another

Respondent :- M/S Great City Manufacturing Co.

Petitioner Counsel :- A.N.Mahajan

Respondent Counsel :- Piyush Kaushik

Hon'ble R.K. Agrawal,J.

Hon'ble Ram Surat Ram (Maurya),J.

The present appeal has been filed under Section 260-A of the Income Tax Act(hereinafter referred to as the Act) against the order dated 6.3.2009 passed by the Income Tax Appellate Tribunal, Delhi Bench 'C', New Delhi. The Commissioner of Income Tax had proposed the following substantial question of law said to be arising out of the order of the Income Tax Tribunal:

(1) " Whether remuneration to partners should be allowed u/s 40(b)(v) only on the basis of declaration made in the partnership deed declaring them as working partner and inserting a clause for payment of remuneration to them without requiring the firm to prove that these partners are actively engaged in conducting the affairs of the business of firm to justify their status as working partner as per explanation 4 below Section 40(b)(v)?

Briefly stated the facts giving rise to the present appeal are as follows:

The appeal relates to the Assessment Year 2005-2006. The assessee opp.party is a partnership firm. It is engaged in the business of manufacture and export/sale of brass art ware. During the assessment year in question, the assessee opp.party filed its return of Income on 31.10.2005 declaring a total income of Rs.57,68,627/- along with audited accounts and tax audit report required under Section 44AB of the Act . The return was processed under Section 143(1) of the Act. The case was selected under scrutiny and also a notice was sent under Section 143(2) of the Act. The assessment was finalized on 28.12.2007. During the course of assessment proceeding the Assessing Officer noticed that the assessee had paid remuneration to its partners to the tune of Rs.39,31,965/- whereas it has paid total salary to its employees only Rs.486918/-. The submission is that the partnership deed does not specify the

functions and duties in respect to working partners justifying the remuneration of Rs.13,10,665/- to each of its partners when barely a total salary of Rs. 486918/- was paid to all its employee. The remuneration paid to working partners was highly excessive and the clause 8 introduced in the partnership deed for payment of salary to the maximum extent permissible was only with a view to divert income. On this point the Assessing Officer allowed the remuneration of Rs.4,00,000/- per annum to each of the partners.

Feeling aggrieved the Assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who vide order dated 13.3.2008 had partly allowed the appeal accepting the plea raised by the assessee and deleted the addition. Feeling aggrieved, the Revenue preferred an appeal before the Tribunal. The Tribunal by impugned order dismissed the appeal with the following findings:

"We have heard the arguments of both the sides and also perused the relevant material on record. It is observed that all the three partners to whom the impugned remuneration was paid were its working partners and this position was accepted even by the AO while allowing remuneration paid to them to the extent of Rs.4 lakhs each. It is also not in dispute that there was a specific clause contained in the partnership deed of the assessee firm allowing payment of remuneration to the working partners and the quantum of such remuneration was agreed to be in accordance with the provisions of Section 40(b)(v). The remuneration paid by the assessee firm to its working partners for the year under consideration amounting to Rs.3931165/- was within the ceiling prescribed in the provisions of Section 40(b) and it is not the case of the department that the said remuneration was in excess of such ceiling. The only contention raised by the learned DR before us has been that the remuneration paid by the assessee firm to its working partners aggregating to Rs.3931165/- was highly excessive and unreasonable having regard to all the facts of the case as highlighted by the AO and such excessive portion of the said remuneration worked out by the AO at Rs.2731965/- was rightly disallowed by him invoking the provisions of Section 40A(2). In this regard, the learned counsel for the assessee has cited before us the decision of Ahmedabad Bench of ITAT in the case of Chhajed Steel Corporation Vs. ACIT-77 ITD 419 wherein it was held that the provisions of Section 40(b) and 40A(2) operate in different fields and the provisions of Section 40A have no application in the cases where Section 40(b) has been applied. It was held by the Tribunal that the AO

thus has no power to go into the question of reasonableness of remuneration paid by the firm to its partners and he can only examine whether the remuneration is not exceeding the prescribed limits as laid down in Section 40(b). To the similar effect is the decision of Hon'ble Karnataka High Court in the case of N.M. Anniah & Co. Vs. CIT-101 ITR 348 cited by the learned counsel for the assessee wherein it was held that Section 40A has no application to the matters contained in Section 40(b) and the overriding effect given to Section 40A is only in respect of matters not covered by Section 40(b). In our opinion, the ratio of these two judicial pronouncements cited by the learned counsel for the assessee is directly applicable to the issue involved in the present case and respectfully following the same, we hold that the dis-allowance made by the AO on account of partners' remuneration covered u/s 40(b) by invoking the provisions of Section 40A(2) was not sustainable. In that view of the matter, we uphold the impugned order of the learned CIT(A) deleting the said dis-allowance and dismiss this appeal filed by the Revenue."

We have heard Sri S.Chopra learned counsel for the appellant and Sri Piyush Kaushik, learned counsel on behalf of the respondent-assessee.

Sri Chopra submitted that in the partnership deed the terms and nature of the duties of each of the partners is not specified and therefore, if the Assessing Officer has found that they have been paid excessive remuneration even though the partnership deed provided such payment he could have disallowed the same. He placed reliance upon Section 40A(2)(a) of the Act. He submitted that when the total payment of salary to all its employee was only Rs.4,86,918/- then there was no justification for payment of Rs.39,31,165/- as remuneration to the partners. The submission is wholly misconceived. It is not in dispute that all the three partners are working partners in the assessee opp.party firm and the Assessing Officer has himself allowed the remuneration of Rs.4,00,000/- per annum to each of the partners. It is also not in dispute that the terms of the partnership deed specifically provided the payment of remuneration to the working partners. Section 40(b) (v) of the Act prescribed limit of remuneration which can be allowed to its partner as deduction while computing the business income. It is not in dispute that the remuneration paid to the working partners was within the provision of clause (v) of subsection (b) of Section 40 of the Act. The Parliament

in its wisdom had fixed a limit on allowing the remuneration to the working partners and if the remuneration are within the ceiling limit provided then recourse to provision of Section 40A(2)(a) of the Act cannot be taken. The assessing officer is only required to see as to whether the partners are the working partners mentioned in the partnership deed, the terms and conditions of the partnership deed provide for payment of remuneration to the working partners and whether the remuneration provided is within the limits prescribed under Section 40(b)(v) or not. If all the aforementioned conditions are fulfilled then he cannot disallow any part of the remuneration on the ground that it is excessive. Since in the present case, all the conditions required has been fulfilled the question of disallowance does not arise.

In the present case, we find that the Tribunal has found all the three conditions are fulfilled and we do not find any illegally in the impugned order. Thus the appeal fails and is dismissed.

Order date:10.12.2012

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