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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
31.
\+ **ITA 50/2014**

COMMISSIONER OF INCOME TAX-XIII ..... Appellant
Through: Ms. Suruchi Aggarwal, Senior Standing counsel with Ms. Lakshmi Gurung, Advocate.

versus

VAISH ASSOCIATES ..... Respondent
Through: Ms. Kavita Jha, Advocate.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **11.08.2015**

1. This appeal under Section 260A of the Income Tax Act, 1961 ('Act') by the Revenue is directed against an order dated 5th July 2013 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1382/Del/2012 for the Assessment Year ('AY') 2009-10.

2. The first issue sought to be projected by the Revenue in this appeal is whether the ITAT was correct in law in deleting the addition of Rs.6,05,91,909 made by the Assessing Officer ('AO') to the income of the Respondent Assessee firm on the ground that the remuneration paid to the partners of the Respondent Assessee firm was not in accordance with the provision of Section 40(b)(v) of the Act.

3. The Respondent Assessee firm was initially constituted with Smt. Manju Vaish, Smt. Kali Vohra and Mr. Vinay Vaish and was carrying on the profession of law in New Delhi and Mumbai. With effect from 1st April 2006, Smt. Manju Vaish and Smt. Kali Vohra retired from the partnership and Mr. Ajay Vohra and Mr. Bomi F. Daruwala joined the partnership. A fresh retirement-cum-partnership deed was executed on 22nd June 2008 and made effective from 1st April 2006.

4. Clause 6(a) of the said deed read as under:

> "Each Partner shall be entitled to an annual salary equivalent to his percentage share of profits multiplied by 'Allocable Profits'. Allocable Profits shall be calculated as per the provisions of Section 40(b)(v)(1) of the Income-tax Act, 1961. The monthly salary of a Partner shall be equivalent to annual salary divided by 12. Such salary shall be deemed to accrue from day to day and may be drawn out in arrears and the salary so paid shall be treated as working expenses of the partnership before the profits thereof are ascertained."

5. To complete this narration it is required to be noticed that subsequently on 1st August 2009 a supplementary deed of partnership was executed between Mr. Ajay Vohra, Mr. Vinay Vaish and Mr. Bomi F. Daruwala whereby Clause 6 was substituted as follows:

> "AV, VV and BFD shall be paid with effect from 1st April, 2009 a monthly salary of Rs.26,50,000, Rs.10,00,000 and Rs.13,50,000 respectively. Such salary shall be deemed to accrue from day to day and may be drawn out in arrears and the salary so paid shall be treated as working expenses of the partnership before the profits thereof are ascertained."

6. It is seen in the assessment order dated 30th December 2011 for the AY 2009-10 that the AO took exception to Clause 6 of the partnership deed dated 22nd June 2008 as regards the formula for the computation of the salary of the partners. The Assessee explained to the AO that in terms of the Section 40(b)(v) of the Act, the Assessee had paid 40% of the net profits in the ratio of partners' share of profit to the partners respectively as salary. The AO concluded that since the partnership deed "neither specified the amount of salary to be paid to each of the working partners nor has laid down a specific method of computation thereof" and has only mentioned 'allocable profit' which has not been defined in the partnership deed, Section 40(b)(v) of the Act would not apply. Consequently, the remuneration to the partners, not being in terms of Section 40(b)(v) of the Act, was disallowed.

7. The CIT (A) by the order dated 4th January 2013 upheld the order of the AO. In the impugned order dated 5th July 2013, the ITAT came to the conclusion that the term 'allocable profit' should be understood by applying the common meaning which would be 'profits available for allocation'. Explanation 3 to Section 40(b)(v) of the Act defines the term 'book profit' as the 'net profit before remuneration'. The ITAT, therefore, concluded that "a plain reading of Clause 6(a) leads us to a conclusion that the term 'allocable profits' was used to mean 'book profits' as used in Section 40(b)(v) of the Act or otherwise the reference to the section in the Clause has no meaning. When the partners have understood and meant that the word 'allocable profits' to mean surplus/book profits, prior to calculation of partners remuneration, and when such an understanding is manifest in its

actions, we do not see any reason why the Revenue authorities should not understand this term in the same sense." Consequently, the disallowance was held to be bad in law.

8. Having heard the submissions of Ms. Suruchi Aggarwal, learned Senior Standing counsel for the Revenue and Ms. Kavita Jha, learned counsel for the Respondent Assessee, the Court finds no reason to take a view different from the one taken by the ITAT in the facts and circumstances of the case. Clause 6(a) of the partnership deed dated 20th June 2008 clearly indicates the methodology and the manner of computing the remuneration of partners. The remuneration of the partners has been computed in terms thereof. The Court additionally notes that under Section 28(v) of the Act, any salary or remuneration by whatever name called received by partners of a firm would be chargeable to tax under the head profits and gains of business or profession. The proviso to Section 28 (v) states that where such salary has been allowed to be deducted under Section 40(b)(v), the income shall be adjusted to the extent of the amount not so allowed to be deducted. Further Section 155 (1A) of the Act states that where in respect of a completed assessment of a partner in a firm, it is found on the assessment or reassessment of the firm that any remuneration to any partner is not deductible under Section 40(b), the AO may amend the order of the assessment of the partner with a view to adjusting the income of the partner to the extent of the amount not so deductible. A conspectus of these provisions makes the opinion the ITAT consistent with the legal position.

9. Consequently, the Court finds no legal infirmity in the interpretation

placed by the ITAT on Clause 6(a) of the partnership deed dated 22nd June 2008 to conclude that the salary paid to the partners was in accordance with Section 40(b)(v) of the Act and ought not to have been disallowed. Consequently, as regards this issue, no substantial question of law arises.

10. The second issue concerns the deletion of the addition of Rs. 9,50,000 made by the AO on account of payment made by the Assessee to the Indian Branch of the International Fiscal Association ('IFA'), on the ground that it was not relatable to the business purposes of the Assessee. The Assessee had agreed to contribute Rs. 50 lakhs to the Indian branch of the IFA on progressive basis towards the cost of constructing one of its meeting halls on the understanding that the hall would be named after the Assessee firm. The Assessee during the previous year under consideration paid Rs.25 lakhs towards first instalment. During the financial year 2008-09 it paid the second and final instalment of Rs. 19 lakhs as agreed contribution and debited the said sum in its profit and loss account.

11. The AO held the payment of Rs. 19 lakhs made by the Assessee as aforementioned was not for business purposes. However, since the payment was recognised under Section 80 G of the Act, 50% was allowed to be deducted and 50% was added back to the income of the Assessee. The CIT (A) upheld the order of the AO.

12. In the impugned order, the ITAT has accepted the explanation of the Assessee that the IFA was a professional body and a non-profit organisation engaged in the study of international tax laws and policies. It, *inter alia*,

undertakes research, holds conferences and publishes materials for the use of its members. Mr. Ajay Vohra, one of the partners of the Assessee firm, was also a member of the executive body of the IFA. In the facts and circumstances, the contribution made by the Assessee to the IFA was held to be for *inter alia* creating greater awareness of the Assessee firm's activities and therefore an expenditure incurred for the purposes of the profession of the Assessee. It was accordingly held to be allowable as a deduction under Section 37(1) of the Act. Further, since the Indian branch of IFA was a non-profit organisation registered under Section 12 AA of the Act, its income was not taxable and the question of deducting tax at source from the payment made to it in terms of Section 40 (a) (ia) did not arise.

13. On the second issue, the Court finds that the decision of the ITAT has turned on facts. That the contribution made by the Assessee to the Indian branch of the IFA, in the manner and in the circumstances noted hereinbefore, would create greater awareness of the Assessee firm and therefore for its business purposes was a possible view to take. No substantial question of law arises as regards this issue as well.

14. The appeal is accordingly dismissed.

S. MURALIDHAR, J

VIBHU BAKHRU, J

AUGUST 11, 2015/dn