

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE „SMC“ BENCHES :: PUNE

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER &  
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA No.934/PUN/2023  
(A.Y. 2015-16)

Kiran Vasant Pawar, Office No.118, Fortune Estate, Akashwani, Hadapsar, Pune-411028  PAN: AJMPP 9532 H	vs	ITO, Ward-14(4), Pune.
Appellant		Respondent

Assessee by	:	Shri Pramod Shingte, CA
Revenue by	:	Shri Ganesh Budruk, DR
Date of hearing	:	06/09/2023
Date of pronouncement	:	20/09/2023

ORDER

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of National Faceless Appeal Centre [NFAC], Delhi, dated 23.06.2023 for A.Y.2015-16 as per the grounds of appeal on record.

2. The grievance of the assessee is that the Revenue authority erred in computing the income u/sec. 44AD of the Income Tax Act, 1961 (for short, 'the Act') for the professional income and thereby making addition of Rs. 78,064/- without considering the fact that the assessee is a professional and maintained books of account and derived loss of Rs. 16,92,142/-.

3. The relevant facts of the case are that assessee is a consulting

engineer for builders and developers and also partner in various firms. During the year under consideration, assessee has shown income from partnership firms of Rs.32,33,288/- and after setting of loss of Rs.16,92,142/- and depreciation of Rs. 11,27,030/- declared income of Rs. 15,41,145/-. The Assessing Officer (AO) observed that assessee has not audited his books of account as per the provisions of sec.44AB of the Act. The AO was of the opinion that assessee was required to declare income @8% on the total turnover as per sec.44AD of the Act. However, assessee has declared loss of Rs.16,92,142/- and had claimed expenses of Rs. 26,67,942/-. Accordingly, a show-cause notice was issued to the assessee, for which he had submitted his response. After considering the submissions of the assessee, the AO observed that assessee is a partner in various firms and had earned income amounting to Rs. 32,33,288/-. The assessee has claimed various expenses in the profit & loss account which resulted into loss of Rs. 16,92,142/-. In the computation of income, the assessee has taken set off of business loss and depreciation against income from firms. As per sec.44AD(2), any deduction allowable under the provisions of sec. 30 to 38 shall, for the purposes of sub-section(1) be deemed to have been already given full effect to and no further deduction under those sections shall be allowed. Since, the books of the assessee have not been audited, the expenses incurred by the assessee will be deemed to have been given full effect and no further deduction is allowed. In view thereof, the AO disallowed the entire

amount received from the firms of Rs.32,33,288/- and added to the income of the assessee. Further, addition of Rs. 78,064/- was made u/sec. 44AD of the Act. This was upheld by the NFAC.

4. We have considered the facts and circumstances and have heard the submissions of the parties. We have also given considerable thought to those submissions placed on record.

5. In this case, the assessee is a classified professional, working as a consulting engineer. The assessee had set off of loss of professional income with the business profit i.e. the income earned from various partnership firms as remuneration to partners. The AO has denied such set off of loss of professional income with business profit and in addition, has applied presumptive taxation @8% u/sec. 44AD of the Act. Firstly, we observe that in a partnership firm, there is no employer and employee relation and, therefore, the remuneration given to a partner by the partnership firm cannot be termed as salary. Secondly, the assessee has not audited his books of account but that itself cannot be a ground for invoking presumptive taxation u/sec. 44AD of the Act. Neither the AO nor NFAC has given specific finding as to why the loss from profession cannot be set off from the business profit. First of all, at the threshold itself the revenue authorities have travelled on wrong footing by holding the remuneration of partners as salary income. This is evident at para 7.3 of the AO's order.

Considering these facts, the NFAC is directed to re-adjudicate the issue

as per law and come out with a speaking order. In view thereof, we set aside the order of NFAC and remand the matter back to its file. The NFAC shall comply with the principles of natural justice while adjudicating the matter. We order accordingly. The grounds of appeal of the assessee stands allowed for statistical purposes.

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

Order pronounced in open Court on 20<sup>th</sup> September, 2023.

Sd/-  
(G.D. PADMAHSHALI)  
ACCOUNTANT MEMBER

Sd/-  
(PARTHA SARATHI CHAUDHURY)  
JUDICIAL MEMBER

Dated : 20<sup>th</sup> September, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
  
5. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary  
ITAT, Pune.