

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA SMC BENCH, AGRA**

[Coram: Pramod Kumar AM]

I.T.A. No.: 227/Agra/14
Assessment year: 2005-06

M/s Vijay Veer Singh
Saiyan Road, Kheragarh
Agra [PAN:AAEFV6250G]

.....**Appellant**

Vs.

Income Tax Officer
Ward 4(4), Agra

.....**Respondent**

Appearances by:

Pankaj Mishra, for the appellant
S D Sharma, for the respondent

O R D E R

1. This is an appeal filed by the assessee and is directed against the order dated 28th February 2014 passed by the learned CIT(A) in the matter of assessment under section 144 of the Income Tax Act, 1961, for the assessment year 2005-06.

2. One important issue, which has come up for my adjudication in this case, is whether or not disallowances for payments in respect of remuneration and interest on capital paid to the partners, in computation of taxable income of the firm, can be made under section 184(5) when even though assessment is completed under section 144 but the assessee has not committed any such failure as is set out in section 144.

3. The issue in appeal lies in a very narrow compass of material facts. The assessee before me is a partnership firm. There is no dispute that the assessment was done under section 144 as the assessee had not complied to the hearing notices served upon the assessee even as the assessment was getting time barred. The adjournment petition moved by the assessee was rejected. In

the course of the assessment so framed, the Assessing Officer disallowed Rs 32,000 out of interest paid to the partners and Rs 40,000 out of salaries as paid to the partners. This disallowance was made on estimate basis and for want of details. The AO also added back, as unexplained credit, capital introduced by the partners. Aggrieved, inter alia, by these disallowances as also by the assessment being framed under section 144, assessee carried the matter in appeal before the CIT(A). Learned CIT(A) rejected the grievance against assessment under section 144, though for a different reason, by observing that **“learned AR has only produced TCS certificates and computerized cash book and ledger but these books of accounts being in the nature of secondary books are not supported by primary records such as sale register and sale bill book and therefore it has been found that the books of accounts are not maintained completely and accurately as per the provisions of section 145(3) and hence.....the decision of the AO to pass the assessment order under section 144.....has been found to be correct”**. Learned CIT(A), on verification of details, deleted the additions in respect of introduction of capital. Learned CIT(A) also held that the assessee was **“prevented by sufficient cause, during the assessment proceedings, to produce evidences..”** because of AO’s refusal to grant adjournment on 19.9.2007. When it came to disallowance of interest on capital of the partners, while learned CIT(A) agreed that “no disallowance of interest on such capital is required to be made”, he held the entire interest paid to the partners, as also salaries paid to the partners, to be disallowable under section 184(5). Similarly, on payments made to the partners, learned CIT(A) held that reasonableness of the salaries is not in doubt, yet it is to be disallowed under section 184(5). The assessee is aggrieved and is in appeal before me.

4. I have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

5. Section 184 and Section 144 and 145, which are relevant for the purposes of adjudicating on this question, are reproduced below for ready reference:

Section 184- Assessment as a firm

(1) A firm shall be assessed as a firm for the purposes of this Act, if—

- (i) the partnership is evidenced by an instrument; and
- (ii) the individual shares of the partners are specified in that instrument.

(2) A certified copy of the instrument of partnership referred to in sub-section (1) shall accompany the return of income of the firm of the previous year relevant to the assessment year commencing on or after the 1st day of April, 1993, in respect of which assessment as a firm is first sought.

Explanation: For the purposes of this sub-section, the copy of the instrument of partnership shall be certified in writing by all the partners (not being minors) or, where the return is made after the dissolution of the firm, by all persons (not being minors) who were partners in the firm immediately before its dissolution and by the legal representative of any such partner who is deceased.

(3) Where a firm is assessed as such for any assessment year, it shall be assessed in the same capacity for every subsequent year if there is no change in the constitution of the firm or the shares of the partners as evidenced by the instrument of partnership on the basis of which the assessment as a firm was first sought.

(4) Where any such change had taken place in the previous year, the firm shall furnish a certified copy of the revised instrument of partnership along with the return of income for the assessment year relevant to such previous year and all the provisions of this section shall apply accordingly.

(5) Notwithstanding anything contained in any other provision of this Act, where, in respect of any assessment year, there is on the part of a firm any such failure as is mentioned in section 144, the firm shall be so assessed that no deduction by way of any payment of interest, salary, bonus, commission or remuneration, by whatever name called, made by such firm to any partner of such firm shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession" and such interest, salary, bonus, commission or remuneration shall not be chargeable to income-tax under clause (v) of section 28.

Section 144- Best judgement assessment

(1) If any person—

(a) fails to make the return required under sub-section (1) of section 139] and has not made a return or a revised return under sub-section (4) or sub-section (5) of that section; or

(b) fails to comply with all the terms of a notice issued under sub-section (1) of section 142 ¹⁵⁰⁴ [or fails to comply with a direction issued under sub-section (2A) of that section], or

(c) having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of section 143, The Assessing Officer, after taking into account all relevant material which the Assessing Officer has gathered, shall, after giving the assessee an

opportunity of being heard, make the assessment] of the total income or loss to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment :

Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment :

Provided further that it shall not be necessary to give such opportunity in a case where a notice under sub-section (1) of section 142 has been issued prior to the making of an assessment under this section.

(2) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.

Section 145 - Method of accounting.

(1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(2) The Central Government may notify in the Official Gazette from time to time accounting standards to be followed by any class of assesseees or in respect of any class of income.

(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) or accounting standards as notified under sub-section (2), have not been regularly followed by the assessee, the Assessing Officer may make an assessment in the manner provided in section 144.

6. A plain look at these two legislative provisions shows that the disallowance under section 184(5) comes into play not as a result of the assessment under section 144 but as a result of the lapses as mentioned in section 144. In other words, the disallowance under section 184(5) does not have a cause and effect relationship with assessment being framed under section 144. In this regard, it is noteworthy that Section 184(5) categorically states that when "there is, on the part of a firm, **any such failure as is mentioned in section 144**, the firm shall be so assessed that no deduction by way of any payment of interest, salary, bonus, commission or remuneration, by whatever name called, made by such firm to any partner of such firm shall be allowed in computing the income". This disabling provision comes into play

only when the assessment is framed under section 144 only as a result of the assessee's committing any such failure as is contemplated under section 144. However, in a situation in which the assessment is completed in the manner as prescribed in section 144 but such a course of action has been adopted because of "the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee", referred to in section 145(3), clearly the disabling provisions of Section 184(5) do not come into play. On the facts of this case, as I have noted from the observations made by the CIT(A)- reproduced earlier in this order, the assessment under section 144 has been upheld on the basis of section 145(3) even as it is not disputed that the failures enumerated in section 144 itself were not committed. In these circumstances, and in the light of the discussions above, I am of the considered view that learned CIT(A) indeed erred in invoking disallowances under section 184(5) for interest and salaries paid to the partners. I, therefore, delete these disallowances of Rs 40,000 and Rs 32,000 respectively. The assessee will get the relief accordingly. No other grievance was pressed before me.

7. In the result, the appeal is allowed in the terms, and to the extent, indicated above. Pronounced in the open court today on 31st day of October, 2014.

Sd/-
Pramod Kumar
(Accountant Member)

Agra, the 31st day of October, 2014

Copies to: (1) The appellant (2) The respondent
(3) Commissioner (4) CIT(A)
(5) Departmental Representative (6) Guard File

By order etc

*Assistant Registrar
Income Tax Appellate Tribunal
Agra bench, Agra*