IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI

BEFORE SHRI P. M. JAGTAP, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 5571/DEL/2015 (A.Y 2011-12)

JRA & Associates B-15, Lower Ground Floor, Greater Kailash Enclave-II New Delhi AAAFJ4662K **(APPELLANT)**	Vs	ACIT Circle-37(1), Civic Centre New Delhi **(RESPONDENT)**

Appellant by	**Sh. Gaurav Jain, Adv, Ms. Deepika Agarwal, Adv**
Respondent by	**Sh. Arun Kumar Yadav, Sr. DR**

Date of Hearing	**11.07.2018**
Date of Pronouncement	**11.07.2018**

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 22/07/2015 passed by CIT (A)-20, New Delhi for Assessment Year 2011-12.

2. The concise grounds of appeal are as under:-

"1. During the relevant assessment year partnership firm had paid the remuneration of Rs.57,63,506/- to its partners. The Ld.CIT(A) confirmed the disallowance made by A.O of Rs.57,63,506/- stating that remuneration is not allowable."

3. The assessee is a Chartered Accountant Firm by profession and derived income from business or profession. Return of income declaring at Rs.36,92,340/- was filed on 30/09/2011 and the same was processed u/s 143(1) of the Income Tax Act, 1961. The case was selected for scrutiny. Notice u/s 143(2) of the Act was issued and served upon the assessee. In response to the notice, the Chartered Accountant of the assessee attended the proceedings from time to time and field the necessary details information/documents is required. Books of accounts and vouchers were produced during the course of assessment proceedings which we have heard both the parties and perused the material available on record examined by the Assessing Officer. The Assessing Officer observed that during the year under consideration, the assessee firm has paid remuneration of Rs.57,63,506/- to the partners. From the perusal of the partnership deal dated 11/12/2009 it was observed that the partnership deed neither specified the quantum of salary/remuneration payable to the partners nor provided method of their computation. Therefore, the assessee was asked to submit partnership deed along with the note on why the remuneration paid to the partners may not be disallowed as per provisions on Section 40(b) of the Act and judgment of Hon'ble Delhi High Court in case of Sood Brij & Associates (2011) 203 Taxman 188 (Del). The assessee submitted the reply after considering the reply of the assessee. The Assessing Officer observed that Section 40(b) (iv) is not relevant here as it deals with payment of interest and Section 40(b) (v) deals with maximum permissible remuneration i.e. allowable as a deduction under the head profit and gains from business or profession. The Assessing Officer further observed that the Section know where provides for any calculation/quantification of partners remunerations. It is open to the partnership firm to decide the remuneration which is not in excess of the maximum permissible as per Section 40(b) (v). The Assessing Officer observed that Circular No. 739 dated 25/3/1996 made it clear that either the amount of remuneration has to be specified or the manner of quantifying such remuneration has to be specified if it is not so remuneration cannot be allowed as deduction u/s 40(b) (v). Relying on the decision and the

Hon'ble Delhi High Court the Assessing Officer held that partnership deed in the present case does not defined the quantum of remuneration nor the method of computation of remuneration paid to the partners for the previous year 2010-11 relevant to the Assessment Year 2011-12. Therefore, the Assessing Officer disallowed Rs.57,63,506/- as regards remuneration paid to the partners.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee by confirming the order of the Assessing Officer .

5. The Ld. AR submitted that the Assessing Officer as well as CIT(A) has not taken the cognizance of the correct interpretation of the Clauses mentioned in the partnership dated 1st December 2009 wherein Clause 6 it has mentioned the method of quantification about remuneration which is given u/s 40(b) (iv & v) of the Income Tax Act. The Clauses of partnership deed which are relevant are as under:-

"*6. That all the FIVE partners shall be eligible to a share in partners' remuneration, including interest. on capital, if any, which will be calculated as per the provisions under section 40(b) (iv & v) of the Income Tax Act. 1961. For this purpose the meaning of "Book Profit" shall be. as defined so in the said section of the Income Tax Act, 1961 and accordingly it shall be calculated.*

7. That the share and distribution of partners', remuneration, as in clause 6 above, amongst the partners shall be, as per the partnership deed.

8. That the yearly remuneration payable to the eligible partners, as above, shall be due to and credited to their respective capital accounts at the close of an accounting year when the final accounts of the partnership are drawn up. However, the remuneration so determined shall be deemed to have accrued evenly during the year on a month-to-month basis.

9. That the partners hereto shall withdraw from time to time amount from the partnership, as per amount available and determined for distribution; such withdrawals, shall be debited to their respective current / capital accounts arid the same shall be adjusted against their salary and other amounts due to them from the firm and credited to their respective current / capital accounts at the end of the year.

10. That the Net Profit / Loss of the partnership business, as per the accounts maintained by the firm, after deducting all expenses relating to the business of the partnership including rent, salaries and other establishment Expenses, as well as interest arid remuneration payable to the partner/s in. accordance with this deed of partnership or any supplementary deed, as may be executed by the partners, shall be divided and distributed amongst the partners in the manner as explained and detailed out hereunder:-

S. No.	*Name*	*Share in profit/(loss)*
1	*J. S. Jassal*	*45.00%*
2	*Satbir Singh*	*10.00%*
3	*Bharti Prabhakar Negi*	*5.00%*
4	*Tarun Kher*	*19.00%*
5	*Sandeep Nagi*	*21.00%*

6. The Ld. AR submitted that the decision of the Hon'ble Delhi High Court in case of Sood Brij & Associates is not applicable in the assessee's case as in the said case, there was no method prescribed for quantification as per the Income Tax Act provisions pertaining to Section 40(b) (v) of the Act. The Ld. AR relied upon the following decisions:-

- Vaish Associates and ANR vs ACIT (WP(C) No. 2209/2013 order dated 08.04.2013 passed by Hon'ble Delhi High Court).

- CIT vs Vaish Associates (ITA 50/2014 order dated 11.08.2015 passed by Hon'ble Delhi High Court)
- Vaish Associates vs ACIT (ITA 1382/Del/2012 order dated 05.07.2013 passed by Delhi Tribunal)
- Durga Dass Devki Nandan vs ITO (342 ITR 17)
- CIT vs Asian Marketing (254 CTR 453)
- ACIT vs DCS International Trading (ITA 98 and 694/Del/2012 order dated 22.11.2013 passed by Delhi Tribunal)
- ITO vs Pulimoottil Silk House (19 SOT 4) Cochin Tri.
- Eqbal Ahmed & Co. vs ITO (1 SOT 202) Kolkata Tri.
- ACIT vs Ravi Bros (3 SOT 533) Gauhati Tri.
- ACIT vs Associated Engineers & Allied products (ITA 680/JP/2014 order dated 31.05.2015 passed by Jaipur Tribunal)

7. The Ld. DR relied upon the order of the Assessing Officer and order of CIT(A). The Ld. DR further submitted that the quantification of the remuneration has not been clearly set out in Clause 6 as well as in Clause 10 of the partnership deed. Therefore, the CIT(A) as well as the Assessing Officer by following the ratio of the Hon'ble Delhi High Court in case of Sood Brij & Associates has rightly disallowed the claim of remuneration.

8. We have heard both the parties and perused the material available on record. After perusal of the partnership deed in the assessee's case it can be seen that the CBDT Circular in Clause 4 has categorically mentioned that even the method of quantification can be accepted as per the provisions of Section 40(b) (v) of the Act. Besides that the Hon'ble Delhi High Court in case of CIT Vs. Vaish Associates has also given the finding that when the remuneration is quantified through method of prescribed under the Provisions of Section 40(b) (v) then the remuneration has to be allowed by the Assessing Officer. The assessee also relied upon the decision of the Delhi Tribunal in case of ACIT Vs. M/s DCS International Trading wherein the similar clause which is

incorporated in a present partnership deed has been discussed and taken into consideration. The Tribunal has also considered the decision of the Hon'ble Delhi High Court in case of Sood Brij & Associates. In-fact, in the present case also, this decision will not be applicable as in that case. In Sood Brij & Associates though the partners were equally distributing the remuneration yet it was on the terms of mutual agreement of the partners which might have element of uncertainty of the remuneration. There was no method given in the partnership deed in that particular case. Therefore, the Hon'ble Delhi High Court decision in case of Sood Brij & Associated will not be applicable in the present case. In the present case, the Hon'ble Delhi High Court's decision dated 11.08.2015 in case of Vaish Associates will be applicable. The Clause mentioned in Vaish Associates case is in toto similar in the present case for partnership deed relating to remuneration of the partners. Therefore, in light of this the CIT(A) as well as the Assessing Officer has not taken a proper cognizance of the Clauses given under the partnership deed in consonance with the provisions of Section 40(b) (v) of the Act. Therefore, we set aside the order of the CIT(A). The appeal of the assessee is allowed.

9. In result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 11th JULY, 2018.

Sd/-	Sd/-
(P. M. JAGTAP)	**(SUCHITRA KAMBLE)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 11 /07/2018
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	11.07.2018
Date on which the typed draft is placed before the dictating Member	11.07.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	11.07.2018
Date on which the final order is uploaded on the website of ITAT	11 .07.2018
Date on which the file goes to the Bench Clerk	11.07.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	