IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI

Before Sh. Satbeer Singh Godara, Judicial Member

ITA No. 2224/Del/2025 : Asstt. Year : 2018-19

Sh. Ranu Gupta, C-43, Ground Floor, Soami Nagar, New Delhi-110017	Vs	ACIT, National e-Assessment Centre, Mayur Bhawan, Connaught Lane, Barakhamba, New Delhi-110001
(APPELLANT)		(RESPONDENT)
PAN No. ARCPG2103M		

Assessee by: None
Revenue by : Sh. Akhilesh Kumar Yadav, Sr. DR

Date of Hearing: 02.06.2025		**Date of Pronouncement: 02.06.2025**

ORDER

This assessee's appeal for Assessment Year 2018-19, arises against the CIT(A)/NFAC, Delhi's DIN & order No. ITBA/NFAC/S/250/2024-25/1072970376(1) dated 06.02.2025, in proceedings u/s 143(3) of the Income Tax Act, 1961 (in short "the Act").

2. Case called twice. None appears at the assessee's behest. He is accordingly proceeded *ex-parte.*

3. It next emerges during the course of hearing that both the learned lower authorities have refused to accept the assessee's claim to be assessed u/s 44ADA of the Act, in the course of assessment framed on 29.04.2021 and upheld in the lower appellate discussion as under:

5. AO's Findings: In this case, the assessee received remuneration of Rs. 27,00,000/- as a partner of M/s SARC and Associates Chartered Accountants. 50% of the same was offered to taxation under provisions of section 44ADA of the Income Tax Act. It was claimed before the AO that he fulfills all conditions prescribed under provisions of section 44ADA. The remuneration is received by him since he is a Chartered Accountant and a member of Institute of Chartered Accountants and he is holding a certificate of practice to carry out his profession. He relied on decisions of the Hon'ble ITAT Kolkata in the case of Sagar Dutta (ITA no. 692/Kol/2012), decision of the Hon'ble Supreme Court in the case of Ramnik Lal Kothari (1969) 74 ITR 57 (SC) and decision of the Hon'ble ITAT Delhi in the case of Aman Tandon (ITA no. 3469/Del/2015).

5.1 The AO did not accept the claim of the appellant stating that the assessee has received remuneration as working partner of the firm and not as an individual carrying on the profession specified u/s 44AA(1). The expenses incurred by working partner for conducting affairs of the firm are liability of firm and as such it is legitimate for firm to claim such expenses. So if a firm is engaged in a specified profession, it can avail presumptive scheme u/s 44ADA.

The AO also has reproduced CBDT Circular no. 3 of 2017 dated 20.10.2017 on the subject of "Introduction of Preventive Taxation Scheme of persons having income from profession". As per the AO it is clear that section 44ADA was introduced to reduce compliance burden of small taxpayers having income from profession and to facilitate ease of doing business and a partners remuneration from firm cannot be treated as professional income for the purposes of section 44ADA. Referring to the provision 28(v) and section 40(b), the AO inferred that remuneration received by the assessee as a working partner from firm cannot be considered as gross receipts of a profession carried out by him for the purpose of section 44ADA.

5.2 The AO also noted that the appellant has declared entire remuneration as business income during AY 2016-2017 and 2017-18.

5.3 The AO also distinguished the decisions of the Hon'ble Kolkata ITAT in the case of Sagar Dutta and the decision of the Hon'ble Supreme Court in case of Ramnik Lal Kothari. The AO further placed reliance on decision of the Hon'ble Chennai ITAT Shri A. Anand Kumar (ITA no. 573/CHNY/2018) which was confirmed by the Hon'ble

Madras High Court in its decision dated 21.12.2023 (case appeal no. 388 of 2019) of Madras High Court. In the case of Shri A. Anand Kumar, the case was whether an assessee who received remuneration and interest from partnership firm was eligible for taxation u/s 44AD at the presumptive rate of 8%. It was held that remuneration and interest cannot be termed as turnover of the assessee nor does it qualify for gross receipts.

6. Decision: I have considered the submission of the appellant carefully. The issue involved in the case revolves around applicability of the provisions of section 44ADA to remuneration received by the assesse from a partnership firm. The contentions made in the submission are same as made before the AO. It is stated that the appellant fulfills all prescribed conditions u/s 44ADA. Being a member of ICAI, he can be a partner in a firm of Chartered Accountant. Having considered the submission of the appellant carefully, I am inclined to agree with the AO.

6.1 The appellant is a Chartered Accountant and a partner in M/s SARC and Associates. As a partner he is eligible for remuneration as well as share of profit from the firm. The share of profit from the firm is exempt from taxation while the remuneration is taxed as income from business or profession.

6.2 The appellant receives remuneration as a working partner of the firm. The contention of the AO that it is not received for carrying out or practicing profession is correct. The firm in which the appellant is a partner earns profit and appellant receives share of the profit as its partner. Therefore remuneration received by a partner is distinct and separate from income from profession. Therefore, I agree with the AO that provisions of section 44ADA are as such not applicable to remuneration received from a firm.

6.3 The AO has distinguished the case laws relied upon by the appellant. In the case of Ramnik Lal Kothari (supra), the Hon'ble Apex Court held that appropriate allowances u/s 10(2) of the Income Tax Act of 1922 were deductible in determining taxable income of partner out of the share of the profits received from the firm. This position is accepted by the AO. However, he has not allowed any expenditure as no details are furnished by the assessee inspite of the specific show cause. The AO has also noted that the appellant offered entire remuneration for taxation as profit and gains from profession in AY 2016-17 and AY 2017-18 and did not claim any expenses against the same. Decision of the

Hon'ble Kolkata ITAT in the case of Sagar Dutta is not applicable because the issue raised in the appeal was violation of provisions of section of 44AB. The remuneration was offered as income from business or profession. It was not a case of applicability of provision of presumptive taxation to compute taxable income out of income received from firm.

6.4 On the other hand, the decision relied by the AO in the case of Shri A Anand Kumar clearly address the issue of applicability of provision of presumptive taxation in respect of income from interest and remuneration received from partnership firm by a partner. It is clearly held that such remuneration and interest received don't qualify as gross receipts or turnover in terms of provisions of section 44AD. While coming to this conclusion, the Hon'ble Madras High Court has distinguished the decision of the Hon'ble Supreme Court in the case of Ramnik Lal Kothari by observing that section 23(5) of Income Tax Act of 1922 is not in pari materia with Section 44AD which is a special provision intended to help small businesses. It has further observed the following:

"11.As pointed out earlier, the assessee should be able to satisfy the four main criteria mentioned in sub-section (1) of Section 44AD r/w. explanation (a) and (b) in the said provision. Therefore, the assessee should establish that he is an eligible assessee engaged in an eligible business and such business should have a total turnover or a gross receipt. Admittedly, the assessee who is an individual in the instant case is not carrying on any business. Therefore, the remuneration and interest received by the assessee from the partnership firm cannot be termed to be a turnover of the assessee [individual]. Similarly, it will also not qualify for gross receipts."

The conclusion of the Hon'ble Court that remuneration and interest received from firm cannot be termed as turnover/gross receipts of the assessee, is very much relevant in the present case, even though it involves applicability of different section i.e. section 44ADA.

6.5 A few contentions made in the grounds of appeal need to be addressed specifically. It is contended in ground no. 3 that the AO erred in holding that the assessee is not engaged in practicing of profession in individual capacity. The argument of the AO is correct as appellant is part of a firm which earns professional income. Its profit is distributed amongst its partners who also get remuneration. It is therefore clear that the

assessee doesn't work in individual capacity. It is also contended (in ground no. 5) that the appellant holds certificate of practice as Chartered Accountant and as such his· income from partnership is receipt from profession. It is nowhere denied that remuneration is not a business income. The issue is about applicability of provisions of section 44ADA. As such this ground is also not sustainable.

6.6 In view of the above discussion, the finding of the AO that remuneration received by the appellant is not entitled to 50% deduction of gross receipts on presumptive basis as per the provisions of section 44ADA is confirmed. The grounds of appeal are dismissed."

4. Learned departmental representative vehemently argues during the course of hearing that neither the assessee has claimed any expenditure as per assessment findings nor he is entitled to claim section 44ADA presumptive benefit scheme of his impugned amount received as remuneration from the concerned partnership firm. This tribunal finds no merit in the Revenue's instant twin arguments as there is no such pre-condition in section 44ADA either to claim the corresponding expenditure (in light of sub-section (2) thereto) nor he is supposed to carry out his independent professional activities than as a partner in any establishment. I thus, invoke stricter interpretation as per Commissioner Vs. Dilip Kumar (2018) 9 SSC 1 (SC) to reject the Revenue's foregoing arguments. Learned assessing authority is accordingly directed to assess the assessee u/s 44ADA of the Act as per law.

5. This assessee's appeal is allowed.

Order Pronounced in the Open Court on 02/06/2025.

Sd/-
(Satbeer Singh Godara)
Judicial Member

Dated: 02/06/2025
Subodh Kumar, Sr. PS
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR