

Interest and Salary paid to partners by firm correctly denied since the firm failed to comply with sec. 142(1) notice: ITAT

Summary – The Cuttack ITAT in a recent case of Eastern Engineering Venture., (the Assessee) held that Interest and Salary paid to partners by firm would need to be disallowed since the firm failed to comply with sec. 142(1) notice

Facts

- The assessee was a firm and derived income from contract works. Pursuant to completion of the assessment under section 144, the AO reopened the assessment under section 147 and issued notice under section 148 against which no return was furnished and the reopening was challenged by the assessee. Thereafter, , notice under section 142(1) were issued on two dates. On one date there was partial compliance while there was no compliance by the assessee on the second date. Therefore, the Assessing Officer passed order under section 147 read with section 144 disallowing claim for deduction in respect of payment by way of interest, salary, bonus, commission or remuneration by assessee firm to partners determining the total income.
- On appeal, the Commissioner (Appeals) also confirmed the action of the Assessing Officer.

Held

- The above facts were undisputed before the ITAT. The ITAT stated that on a plain reading of section 147 and 144 the disallowance under section 184(5) comes into play as a result of the lapses as mentioned in section 144. 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'.
- Clause (b) of sub-section (1) of section 144 provides that when the assessee fails to comply with all the terms of notice issued under section 142(1) or fails to comply with the direction issued under section 142(2A), then the Assessing Officer is empowered to frame the assessment order as per provisions of section 144 i.e. best judgment assessment.
- From of the assessment order, it is observed that the Assessing Officer has categorically noted that after several notices under section 142(1) a show cause notice along with another notice under section 142(1) was intimated/served on the assessee informing that failure to produce audit report and books of account, the case shall be disposed of by invoking the provisions of section 145(3). Thereafter, the Assessing Officer further noted that the assessee has also failed to comply with the

terms of notice under section 142(1). Hence, the assessment should be framed by invoking the provisions of section 144.

- The ITAT held that in the present case, there is a part non-compliance regarding first 142(1) notice and complete non-compliance regarding the second 142(1) notice. Therefore, the Assessing Officer was right in framing assessment order under section 144 and in denying allowance of interest and salary paid to the partners by taking support of provisions of section 184(5). Hence, the appeal of the assessee being devoid of merits is dismissed.