

आयकर अपीलिय अधिकरण

मुंबई पीठ "सी" , मुंबई

IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCH "C", MUMBAI

श्री विकास अवस्थी, न्यायिक सदस्य एवं

श्री एम बालागनेश, लेखा सदस्य के समक्ष

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND

SHRI M. BALAGANESH, ACCOUNTANT MEMBER

आ.अ.सं. 7990/मुं/2019 (नि.व.2014-15)

ITA NO.7990/MUM/2019 (A.Y. 2014-15)

Clean Coats Pvt. Ltd.

K-30/1, Additional Ambarnath,
Industrial Area, MIDC Anand Nagar,
Ambarnath (East), Thane-421506.

PAN: AABCC2331C

..... अपीलार्थी /Appellant

बनाम Vs.

ITO- 14(1)(2),
Room No. 457, Aayakar Bhavan,
M.K. Road, Mumbai-400020.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Radha Halbe

प्रतिवादी द्वारा/Respondent by : Ms. Shreekala Pardeshi

सुनवाई की तिथि/ Date of hearing : 05/08/2021

घोषणा की तिथि/ Date of pronouncement : 30/08/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

This appeal by the assessee is directed against the ex-parte order of Commissioner of Income Tax (Appeals)-21, Mumbai [hereinafter referred to as the 'CIT(A)'] dated 28.06.2019 for the Assessment Year (AY) 2014-15.

2. Ms. Radha Halbe appearing on behalf of the assessee submitted that the solitary issue raised by the assessee in appeal is against disallowance of interest on delayed payment of taxes. The Id. Authorized Representative (AR) submitted that during the period relevant to AY under appeal, the assessee had paid interest of Rs. 1,52,676/- on delay in payment of sales tax. The assessee claimed the said amount as Business Expenditure under section 37(1) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'], however, the same was disallowed by the Assessing Officer (AO). The assessee carried the issue in appeal before the CIT(A). The CIT(A) upheld the assessment order and dismissed the appeal of assessee. The Id. AR for the assessee asserted that interest on outstanding balance of tax is not penal in nature. To support this contention, reliance was placed on the judgment of Hon'ble Supreme Court of India in the case of Laxhmandas Mathuradas v/s CIT [122 Taxman 828]. The Id. AR pointed that in the said case it has been held that interest on outstanding balance of sales tax is compensatory in nature and is allowable as deduction under section 37(1) of the Act. The Id. AR submitted that in the light of aforesaid judgment, the claim of assessee should be allowed.

3. Per contra, Ms. Shreekala Pardeshi representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee.

4. Both sides heard, orders of the authorities below examined. At the outset we may record that the Id. AR of the assessee has not made any submission assailing ex-parte proceedings before CIT(A) nor any ground has been raised in the grounds of appeal on this point. Therefore, it is deemed that the assessee is not aggrieved by the ex-parte proceedings before the CIT(A).

5. The short issue in present appeal is: Whether the interest on delayed payment of taxes is allowable as Business Expenditure? The assessee has debited Rs. 1,52,676/- as 'interest on delayed payment of tax' to the Profit & Loss account. The AO disallowed assessee's claim holding that the said interest is penal in nature. The CIT(A) has concurred with the view taken by the AO. The Hon'ble Supreme Court of India in the case of Laxhmandas Mathuradas (supra) has held that interest on arrears on sales tax is compensatory in nature and not penal. Hence, the same is allowable as deduction in computing business profits.

6. It is not the case of Revenue that the interest on delayed payment of tax which is subject matter of dispute is expressly not allowable under the provisions of Act. The case of AO is that being penal in nature it is not allowable. In the light of law expounded by Hon'ble Apex Court and facts of the case, we hold interest on delayed payment of tax being compensatory is allowable u/s. 37 of the Act. The impugned order is set-aside and appeal of the assessee is allowed.

Order pronounced in the open court on **Monday**, the **30th** day of August, 2021.

Sd/-

(M. BALAGANESH)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/Mumbai, दिनांक/Dated: 30/08/2021

SK, PS

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai