

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI
(Through Video Conferencing)**

**BEFORE,
SHRI R.K.PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**I.T.A No.7548/Del/2017
(ASSESSMENT YEAR-2014-15)**

Iris Associates Pvt. Ltd. 4-LSC Pocket, C, 6 & 7 Vasant Kunj, New Delhi-110 070 PAN-AAACI 7437G (Appellant)	Vs.	Add. CIT, Special Range-4, New Delhi. (Respondent)
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Appellant By	Sh. P.C. Yadav, Adv.
Respondent by	Ms. Nidhi Srivastava, CIT-DR
Date of Hearing	25.03.2021
Date of Pronouncement	21.06.2021

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

This appeal is preferred by the assessee against order dated 12.09.2017 passed by the Learned Commissioner of Income Tax (Appeals)-35, New Delhi {CIT(A)} for Assessment Year: 2014-15.

2.0 The brief facts of the case are that during the year under consideration, the assessee company was carrying on the business

of interior contractors. The case was selected for scrutiny and during the course of assessment proceeding, it was noticed that the assessee had debited an amount of Rs.1,78,707/- on account of interest on delayed deposits on tax deducted at source (TDS). The assessee was asked to substantiate its claim of allowability of this amount. It was the assessee submission before the Assessing Officer that the interest had been paid in-compliance with the provisions of Income Tax Act, 1961 (hereinafter called 'the Act) and that such interest was compensatory in nature and was not penal in nature and was, therefore, an allowable deduction. However, the Assessing Officer did not accept the contention of the assessee and added the amount of Rs.1,78,707/- to the income of the assessee, thereby completing the assessment at an income of Rs.1,99,72,840/-.

2.1 The assessee approached the Ld. First Appellant Authority against the addition. The Ld. CIT(A) upheld the action of the Assessing Officer and now the assessee has approached this

Tribunal challenging the addition by raising the following grounds of appeal:

- “1. That the order of the Learned Commissioner of Income-tax (Appeals) is against facts and law.
2. That the learned Commissioner of Income-tax (Appeals) is not justified in confirming the disallowance Rs.1,78,707/- being interest paid on delayed deposit of TDS.
3. That the Appellant may add, alter or withdraw any of the grounds at the time of the hearing.”

3.0 The Ld. Authorized Representative (AR) submitted that the issue was covered by order of ITAT in the case of *DCIT vs. Narayani Ispat Pvt. Ltd. reported in [2018] ITR (Tribunal) 371 (Kolkata)*. The Ld. Authorized Representative drew our attention to the relevant paragraphs of the order of the ITAT and submitted that, in view of the order of the Co-ordinate Bench as cited above, there was no doubt that the interest expenditure on delayed payment of Income Tax was also an allowable deduction. It was submitted that since the tax was deducted at source on expenditure

incurred on Revenue Account, the assessee's appeal should be allowed.

4.0 Per contra, the Ld. CIT-DR submitted that the interest was levied on unpaid TDS liability and, therefore, the same was not allowable for deduction from the income of the assessee. The Ld. CIT-DR also placed reliance on the judgment of the *Hon'ble Madras High Court in the case of CIT vs. Chennai Properties Ltd. reported in 239 ITR 435 (Madras)* and the case of *Ferro Alloys Corporation vs. CIT reported in [1992] 196 ITR 406 (Bombay)*. The Ld. CIT-DR emphasized that the default in payment of statutory liabilities always has penal consequences and not compensatory consequences and, therefore, the appeal of the assessee deserved to be dismissed.

5.0 We have heard the rival submissions and have also perused the material on record. It is seen that ITAT Kolkata Bench in the case of *DCIT vs. Narayani Ispat Pvt. Ltd. (supra)* has held that interest paid on late deposit of TDS is compensatory in nature and is, therefore, allowable as deduction. Further, the Kolkata

Bench came to the same conclusion in the case of M/s. Sai Food Products Pvt. Ltd. vs. DCIT in ITA No.1887/Kol/2016 vide order dated 06.04.2018 by following its earlier decision in DCIT vs. Narayani Ispat Pvt. Ltd. (supra). Similar decisions were given by the Kolkata Bench in the cases of DCIT vs. Rungta Mines Ltd. in ITA No.1531/Kol/2017 vide order dated 05.10.2018, DCIT vs. Bonai Industrial Company Ltd. in ITA No.1533/Kol/2017 vide order dated 10.10.2018, DCIT vs. V2 Retail Ltd. in ITA No.1794/Kol/2018 vide order date 28.06.2019 and DCIT vs. Ma Annapurna Transport in ITA No.822/Kol/2018 vide order dated 15.01.2020. In all these cases the Kolkata Bench allowed the interest paid on late payment of TDS as a deduction. Similar orders were passed by ITAT Mumbai Bench in the case of STUP Consultants Pvt. Ltd. vs. Add. C.I.T in ITA No. 5827/Mum/2012 vide order dated 11.12.2018 and ITAT Bangalore Bench in the case of M/s IDS Next Business Solutions vs. ACIT in ITA No.510/Bang/2018 vide order dated 15.06.2018.

5.1 However, the ITAT Bangalore Bench in the case of Velankani Information System Ltd. vs. DCIT in ITA No.218/Bang/2017

reported in [2018] 172 ITR 356 (Bangalore Tribunal) vide order dated 12.09.2018 disallowed the interest paid u/s 201(1A) of the Act for delay in depositing tax deducted at source and decided the issue against the assessee. The Bangalore Bench of the Tribunal, following the judgment of the Hon'ble Madras High Court in the case of Chennai Properties Investments Ltd. (supra) held that interest paid for delay in depositing tax deducted at source is in the nature of tax and the same cannot be allowed as deduction. While following the judgment of the Hon'ble Madras High Court in the case of Chennai Properties Investments (supra), the Bangalore Bench of ITAT also distinguished the order of the Kolkata Bench in the case of DCIT vs. Narayani Ispat Pvt. Ltd. in the following words:

“Though the decision of the Tribunal is later in point of time, judicial discipline demands that the decision of the Hon'ble Madras High Court is to be followed. It is also worthwhile to mention that the Kolkata Bench of Tribunal in the case of Narayani Ispat Pvt. Ltd. (supra), which was cited by the Ld. Counsel for the assessee, did not consider or did not have an occasion to consider the decision of the Hon'ble Madras High

Court in the case of Chennai Properties and Investments Ltd. (supra). Under these circumstances, we follow the decision of the Hon'ble Madras High Court and uphold the order of the Ld. CIT(A) in so far as on it relates to disallowance of interest on delayed remittance of tax deducted at source u/s 201(1A) of the Act.”

5.2 Similarly, the Ahmedabad Bench of the ITAT in the case of MMR Infra vs. DCIT in ITA No.1609/Ahd/2018 vide order dated 01.06.2020 did not agree with the order of the ITAT Kolkata Bench in the case of DCIT vs. Narayani Ispat Pvt. Ltd. (supra) and held that the issue is covered against the assessee by the Hon'ble Madras High Court in the case of Chennai Properties and Investments Ltd. (supra). The case of the Narayani Ispat Pvt. Ltd. was also distinguished by ITAT Delhi Bench in the case of DLF Ltd. vs. Addl. CIT in ITA No.2126/Del/2013 and 2749/Del/2013 vide order dated 27.05.2019 and the judgment of the Hon'ble Madras High Court in the case of Chennai Properties and Investments Ltd. (supra) was followed. The Delhi Bench of the ITAT in this case observed that even though, it is persuaded by the reasoning to the

ITAT Kolkata Bench, however, as a matter of judicial discipline, it is relying on the judgment of the Hon'ble Madras High Court in the case of Chennai Properties and Investments Ltd. (supra) as this was the only judgment of the Hon'ble High Court on the issue.

5.3 Thus, from the above matrix on the development of law on the issue, it emerges that interest is payable as consequence of failure to pay tax and the expenditure incurred for the purpose of payment of interest does not relate to the business of the assessee. Therefore, it is apparent that the payment of interest has nothing to do with the business of the assessee and, accordingly, payment of interest cannot be allowed as deduction under the provisions of the Act. While coming to this conclusion, we are guided by the ratio laid by the Hon'ble Madras High Court in the case of CIT vs. Chennai Properties and Investments Ltd. (supra) wherein the Hon'ble High Court of Madras has clarified that Income Tax is not allowable as business expenditure and the amount deducted as tax is not an item of expenditure. In the above said judgment, the Hon'ble Madras High Court also referred to the judgment of the Hon'ble Apex Court in the case of Bharat Commerce Industries Ltd.

vs. CIT reported in [1998] 230 ITR 733 wherein the Hon'ble Apex Court has rejected the arguments advanced by the assessee that retention of money payable to the State as tax or Income Tax would augment the capital of the assessee and the expenditure incurred towards the normal interest paid for the period of such retention would assume character of business expenditure. The Hon'ble Apex Court went on to hold that an assessee could not possibly claim that it was borrowing from the State, the amounts payable to it as Income Tax, and utilizing the same as capital in its business, to contend that the interest paid for the period of delay in payment of tax amounted to a business expenditure. The Hon'ble Madras High Court went on to decide the question in favour of the Revenue and against the assessee.

5.4 Therefore, in view of the above cited judicial precedents, we are not inclined to agree with the contentions of the Ld. Authorized Representative on the issue and we uphold the order passed by the Ld. CIT(A) in which she has confirmed the addition made on account of interest paid on late deposit of TDS.

6.0 In the final result, the appeal of the assessee stands dismissed.

Order pronounced on 21st June, 2021.

Sd/-

(R.K.PANDA)

ACCOUNTANT MEMBER

Dated: 21/06/2021

PK/Ps

Copy forwarded to:

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

Sd/-

(SUDHANSHU SRIVASTAVA)

JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI