

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "D", MUMBAI

BEFORE SHRI S.RIFAUR RAHMAN (ACCOUNTANT MEMBER)  
AND  
SHRI AMARJIT SINGH (JUDICIAL MEMBER)

I.T.A No.841 /Mum/2019  
(Assessment year : 2015-16)

|  |    |                       |
|--|----|-----------------------|
| M/s Resolve Salvage & Fire India Private Limited , 41/42, 4 <sup>th</sup> Floor<br>Kalpataru Court Co-op Soc. Ltd<br>Dr.C.G. Road, Chembur, Mumbai-400 074<br>PAN : AAFCR9586E | vs | DCIT 14(3)(1), Mumbai |
| <b>APPELLANT</b>   |    | <b>RESPONDENT</b>     |

|                           |                            |
|---------------------------|----------------------------|
| Assessee represented by   | Shri Devendra Jain         |
| Department represented by | Shri T. Sankar, Sr.Ar. CIT |

|                       |            |
|-----------------------|------------|
| Date of hearing       | 10/02/2022 |
| Date of pronouncement | 18/04/2022 |

O R D E R

Per: S.Rifaur Rahman (AM):

This appeal has been filed by the assessee against the order dated 26/11/2018 passed by the Commissioner of Income-tax (Appeals)-22, Mumbai for the assessment year 2015-16 raising the following grounds of appeal:-

"1. That the Learned CIT(Appeals)-22, Mumbai has grossly erred in facts and in law in rejecting the appellant-company bonafide claim of

allowing deduction of interest on late payment of TDS from Total Income. “

2. The relevant facts relevant to above addition are that during the assessment proceedings, the assessee vide letter dated 10/11/2017 made a fresh submission claiming that the assessee had paid interest of Rs.1,61,33,389/- on late payment of TDS, which has been added back in the computation of income. Assessee claimed that interest paid is compensatory in nature and interest paid on late payment of TDS should be allowed as a deduction. The Assessing Officer considered the submissions of the assessee and observed that the interest is not allowable as deduction since interest paid under section 201(1A) or under section 206C(7) is nothing but penal in nature. Further, he observed that based on the decision in the case of Goetze India Limited vs CIT 284 ITR 323 (SC), Hon'ble Apex Court has held that assessing officer cannot entertain the claim made by the assessee otherwise than by filing a revised return. Accordingly, he rejected the submissions made by the assessee. Aggrieved, assessee preferred appeal before the CIT(A) and Ld.CIT(A) allowed the fresh claim made by the assessee considering the same as legal in nature; however, disallowed the same on merits relying upon the decision of Ferro Alloys Corporation Ltd vs CIT (1992)196 ITR 406 (Bom) and CIT vs Chennai Properties and Investment Ltd (1999) 239 ITR 435 (Mad). Further aggrieved, assessee is in appeal before us.

3. The Ld.AR of the assessee submitted that the issue involved in this case is that the assessee has paid interest on late payment of TDS. He submitted that the amount of tax deduction at source represents the amount of income-tax of the third parties on whose behalf the payment was deducted by the assessee and

paid to the government account. Therefore, TDS amount do not represent the tax of the assessee but it is the tax of the party which has been paid by the assessee. Therefore, the same cannot be disallowed as held by the ITAT, Mumbai Bench in the case of STUP Consultants Pvt Ltd vs Addl.CIT in ITA No.5827/Mum/2012 and later, the Hon'ble Bombay High Court has decided the issue in CIT vs Jet Airways (India) Ltd (2016) SCC OnLine (Bom) 2112 and wherein allowability of such expenditure has been upheld by the Hon'ble Court. He submitted that the Ld.CIT(A) relied upon the decision of Alloys Corporation Ltd vs CIT (supra) and other decisions which held that interest paid on late payment of taxable income of the assessee under section 215 which are basically relating to remittance of advance payment of tax. Therefore, the case relied by the Ld.CIT(A) is not applicable to the facts of the present case. Further, he submitted that the Hon'ble Bombay High Court in Arthur Anderson & Co. vs ACIT (2010) 324 ITR 240 (Bom), relying on the decision of the Hon'ble Supreme Court in Harshad Shantilal Mehta vs Custodian (1998) 231 ITR 871 (SC) held that interest u/s 220(2) is not disallowable. The Ld.AR has also relied upon the following decisions:-

1. DCIT VS Narayani Ispat Pvt Ltd – ITA No.2127/Kol/2014
  2. Sai Food Products Pvt Ltd vs DCIT – ITA o.1887/Kol/2016
  3. IDS Next Business Solutions Pvt Ltd vs ACIT – ITA No.510/Bang/2018
  4. DCIT vs Rungta Mines Ltd – ITA 1531/Kol/2017
4. The Ld.DR, on the other hand, brought to our notice paragraph 6.2 of the assessment order and submitted that the issue involved in this appeal is whether the interest paid by the assessee is penal or compensatory in nature. In this

regard, he relied upon the case law relied on by the Ld.CIT(A) as well as the decision of the ITAT Delhi Bench in ITA No.590/Del/2018 in the case of M/s New Modern Bazaar Departmental Store Pvt Ltd vs ITO.

5. Considered the rival submissions and materials placed on record. We observe that assessee has paid interest on late payment of TDS. We observe from various decisions relied upon by both the parties and we observe that Ld.CIT(A) has relied upon the decision of Ferro Alloys Corporation vs CIT (supra) in which the Hon'ble High Court has not discussed anything on merit considering the fact that the case Bharat Commerce Industries Ltd. [1985] 153 ITR 275 was pending before Hon'ble Supreme Court and we observe that even in the case of Bharat Commerce Industries Ltd, the issue involved is relating to interest paid on late payment of advance-tax. Therefore, the issue involved in the present case is not relating to late remittance of advance-tax but late remittance of TDS. Therefore, the issue involved is whether the interest paid by the assessee to the government can be termed as compensatory or penal in nature. In our considered view, the assessee has deducted the tax on behalf of the third party and failed to remit the same within the due date and the interest charged on such amount is only compensatory in nature. Here we notice that the co-ordinate bench of this Tribunal has already held the same view in the case of STUP Consultants Pvt Ltd vs Addl.CIT (supra) by observing as under:-

*"7. We have heard the rival contentions of both the parties and perused the material available on record. In the instant case, AO has disallowed the interest expenses incurred by the assessee on account of late deposit of service tax and TDS after having reliance on the judgment of Hon'ble Supreme Court in the case of Bharat Commerce Industries Ltd. Vs. CIT (1998) (Supra). The relevant extract of the judgment reads as under:-*

**FACTS**

*During the year under consideration, the assessee failed to pay advance tax equivalent to 75 per cent of estimated tax. The Assessing Officer levied \ section 215 as well as under section 139. The assessee claimed that were payable were delayed, the assessee's financial resources increased available for business purposes. Hence, the interest which was paid Government was interest on capital that would be borrowed by the assessee otherwise. Hence, the amounts should be allowed as deduction. The allow such deduction. The High Court affirmed the view.*

*On appeal to the Supreme Court: HELD*

*When interest is paid for committing a default in respect of a statutory liability 10 advance tax, the amount paid and the expenditure incurred in that connection is in no way connected with preserving or promoting the business of the assessee. This is not expenditure which is incurred and which has to be taken into account before the profits of the business are calculated. The liability in the case of payment of income-tax and interest for delayed payment of income-tax or advance tax arises on the computation of the profits and gains of business. The tax which is payable is on the assessee's income after the income is determined. This cannot, therefore, be considered as an expenditure for the purpose of earning any income or profits. Interest which is paid for delayed payment of advance tax on such income cannot be considered as expenditure wholly and exclusively for the purpose of business. Under the Act, the payment of such interest is inextricably connected with the assessee's tax liability. If income-tax itself is not permissible deduction under section 37, any interest payable for default committed by the assessee in discharging his statutory objection under the Act, which is calculated with reference to the tax on income, cannot be allowed as a deduction.*

*Therefore, it was to be held that deduction of interest levied under sections 139 and 215 would not be allowable under section 37.*

*In the above judgment, the claim of the assessee for interest expenses was denied as it defaulted to make the payment of advance tax as per the provisions of the Act. The advance tax is nothing but income tax only which the assessee has to pay on his income. In the instant case the default relates to the delay in the payment of advance tax and consequently interest was charged on the delayed payment of advance tax. In the above judgment the Hon'ble Apex Court held that as Income Tax paid by the assessee is not allowable deduction and therefore interest emanating from the delayed payment of income tax (advance tax) is also not allowable deduction.*

*However the facts of the instant case before us are distinguishable as in the case before us the interest was paid for delayed payment of service tax & TDS. The*

*interest for the delay in making the payment of service tax & TDS is compensatory in nature. As such the interest on delayed payment is not in the nature of penalty in the instant case on hand.*

*The issue of delay in the payment of service tax is directly covered by the judgment of Hon'ble Apex Court in the case of Lachmandas Mathura Vs. CIT reported in 254 ITR 799 in favour of assessee. The relevant extract of the judgment is reproduced below :*

*"The High Court has proceeded on the basis that the interest on arrears of sales tax is penal in nature and has rejected the contention of the assessee that it is compensatory in nature. In taking the said view the High Court has placed reliance on its Full Bench's decision in Saraya Sugar Mills (P.) Ltd. v. CIT [1979] 116 TTR 387 (All.) The learned counsel appearing for the appellant-assessee states that the said judgment of the Full Bench has been reversed by the larger Bench of the High Court in Triveni Engg. Works Ltd. v. CIT [1983] 144 ITR 732 (All.) (FB) wherein it has been held that interest on arrears of tax is compensatory in nature and not penal. This question has also been considered by this Court in Civil Appeal No. 830 of 1979 titled Saraya Sugar Mills (P.) Ltd. v. CIT decided on 29-2-1996. In that view of the matter, the appeal is allowed and question Nos. 1 and 2 are answered in favour of the assessee and against the revenue."*

*In view of the above judgment, there remains no doubt that the interest expense on the delayed payment of service tax is allowable deduction.*

*The above principles can be applied to the interest expenses levied on account of delayed payment of TDS as it relates to the expenses claimed by the assessee which are subject to the TDS provisions. The assessee claims the specified expenses of certain amount in its profit & loss account and thereafter the assessee from the payment to the party deducts certain percentage as specified under the Act as TDS and pays to the Government Exchequer. The amount of TDS represents the amount of income tax of the party on whose behalf the payment was deducted & paid to the Government Exchequer. Thus the TDS amount does not represent the tax of the assessee but it is the tax of the party which has been paid by the assessee. Thus any delay in the payment of TDS by the assessee cannot be linked to the income tax of the assessee and consequently the principles laid down by the Hon'ble Apex Court in the case of Bharat Commerce Industries Ltd. Vs. CIT (1998) reported in 230 ITR 733 cannot be applied to the case on hand."*

6. Being consistent with the above decision of the co-ordinate bench, we hold that the interest paid on delayed payment of TDS u/s 201(1A) is an allowable deduction. We direct accordingly. Assessee succeeds in its appeal.

7. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 18<sup>th</sup> April, 2022.

Sd/-

(AMARJIT SINGH )  
JUDICIAL MEMBER

Mumbai, Dt : 18<sup>th</sup> April, 2022

Pavanan

sd/-

(S.RIFAUH RAHMAN)  
ACCOUNTANT MEMBER

**प्रतिलिपि अग्रेषित Copy 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.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**