INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI I.C.SUDHIR, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No.4711/Del/2014
(Assessment Year: 2010-11)

NR Sponge Pvt. Ltd, Village Bahesar Sitara Indl., Growth Centre, Ph.II, Sitara Raipur, PAN:AABCN7720L	Vs.	ACIT, Central Circle-16, New Delhi
(Appellant)		**(Respondent)**

Assessee by :	Sh. Rajiv Saxena, Adv Ms. Sumangla Saxena, Adv Sh. Syam Sunder, AR
Revenue by:	Sh. NK Choudhury, CIT DR
Date of Hearing	30/05/2017
Date of pronouncement	31/05/2017

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is preferred by assessee against the order of the Ld. CIT (A) –XXXII, New Delhi dated 16/06/2014 wherein certain disallowances made by the Ld. assistant Commissioner of income tax, Central circle – 16, New Delhi. vide order under section 143 (3) of the income tax act, 1961 dated 30/12/2011 were confirmed. The assessee is agitating the about disallowances by following the 3 grounds:-

"1. That the learned Commissioner of Income Tax (Appeals) XXXII, New Delhi has erred both in law and on facts in upholding disallowance of Rs. 70,6007- representing penalty paid on account of CST, sales tax. entry tax etc. and fees paid to ROC for increase in authorized capital, which was eligible as business expenditure and alternatively, eligible for deduction under section 35D of the Act.

2 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding disallowance of Rs. 1,82,973/- representing payments made to M/s. Hind Energy & Coal Benifiation (I) Pvt. Ltd. as coal washing charges and disallowed by incorrectly invoking section 40(a)(ia) of the Act.

3 That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in upholding disallowance of Rs. 4,24,200/- representing disallowances made by invoking section 43B of the Act which was not applicable on the facts of the appellant company.

It is therefore, prayed that the various disallowances sustained by the learned Commissioner of Income Tax (Appeals) be deleted and appeal of the appellant company may kindly be allowed."

2. The brief facts of the case are that assessee is a company who filed its return of income on 30 at September 2010 showing total income of Rs. 9 733200/–. Assessee is deriving income under the head business of profession. A search and seizure operation under section 132 of the income tax act was conducted on 26th of March 2010 at the business premises of the company. Consequently, this and assessment under section 143 (3) of the income tax act was framed on 30/12/2011 at Rs. 10410944/–. The Ld. assessing officer made for disallowances on various counts. Assessee contested the above appeal before the Ld. CIT appeal who confirmed all the disallowances and therefore assessee is in appeal before us.

3. The 1st ground of appeal is against the disallowance of Rs. 7600 on account of penalty paid on account of CST, sales tax, entry tax etc of Rs. 5600/– and fees paid to ROC for increasing authorised capital of Rs. 65,000/–. The Ld. assessing officer disallowed the above sum as per para No. 4 of its order holding that since the penalties are not liable under the income tax act as business expenditure. He disallowed a sum of Rs. 5600 on this count. Further fees paid for increasing authorised capital of Rs. 65,000 was also disallowed, as it is capital expenditure debited in profit and loss account. CIT (A) also confirmed the disallowance on the same count.

4. The Ld. authorized representative contested that the penalties are of a small amount and he agreed that that fees paid to ROC for increasing authorized capital is not allowable.

5. The Ld. departmental representative vehemently contested that the penalties cannot be allowed as it is paid for infraction of law, whatever may be the amount and further fees paid for increasing authorized capital of Rs. 65,000 is also not allowable as it is a capital expenditure.

6. We have carefully considered the rival contentions and also hold that penalties paid for infraction of law cannot be allowed as deduction under section 37 (1) of the income tax act irrespective of the amount paid. Before lower authorities, it cannot be shown that such sums are not penalties. Therefore, merely because the sum is of a small amount it cannot be said to be not penal in nature. In view of this, we confirm the disallowance of Rs. 5600/– on account of penalties paid by the assessee. Coming to the allowability of Rs. 65,000 paid as a fees for increasing authorized capital of the company, the above issue is squarely concluded against the assessee by the decision of the Hon’ble Supreme Court in case of Punjab industrial development Corporation versus CIT in 225 ITR 792 (SC). Therefore, this ground of

appeal of the assessee is dismissed. In the result ground No. 1 of the appeal of the assessee is dismissed.

7. 2nd ground of appeal of the assessee is regarding confirmation of disallowance of Rs. 1 827973/– regarding payments made to Hind Energy & Coal Beneficiation (I) private limited as washing charges and disallowed by the Ld. assessing officer, by invoking the provisions of section 40 (a) (ia) of the act. Admittedly, the above payment was mentioned in the tax audit report is non-deduction of tax thereon. However, in the computation of total income assessee did not disallowed the above sum. Therefore, the Ld. assessing officer disallowed. Before the Ld. CIT appeal, it was contested that the tax is been deducted on the above sum on 01/05/2010 and deposited in government account on 05/06/2010 i.e. In the financial year 2010 – 11 relevant to the assessment year 2011 – 12. However, the CIT appeal confirmed the disallowance.

8. Before us, the Ld. authorized representative submitted that the above sum as been paid before the due date of filing of the return of income and therefore same should be allowed as deduction. It was further submitted that as the tax has already been deducted in assessment year 2011 – 12, if it is not found to be liable in assessment year 2010 – 11, same may be allowed under section 2011-12.

9. The Ld. departmental representative vehemently contested that the above sum was not deducted during the course of the assessment year and therefore even if taxes paid in the subsequent year and it cannot be allowed as deduction in this year.

10. We have carefully considered the rival contentions. Admittedly, the tax was not deducted by the assessee during this year but deducted in subsequent year. Therefore, the provisions of section 40(a) (ia) are rightly applied by the lower authorities for making the disallowance. However, according to the 1st proviso to section 40 (a) (ia) if the assessee deducted the tax in subsequent year and has paid that tax due before the due date of filing of the returned that such sums LB allowed as deduction in computing the income of the assessee for previous year in which such tax has been paid. As it has been claimed by the assessee that such sum as been deducted on first may 2010 and deposited to the account of government of India on 05/06/2010. In view of this we set aside this ground to the file of the Ld. assessing officer to verify deduction as well as deposit of such tax and decide the issue in accordance with the law about allowability of the same. In the result ground No. 2 of the appeal of the assessee is allowed with above direction.

11. Ground No. 3 of the appeal of the assessee is regarding disallowance of Rs. 4 24200/– representing disallowance under section 43B of the act. The assessee as

shown that excise duty or closing stock of Rs. 5 4315/– VAT of Rs. 2 8283/– and VAT of Rs. 3 41602/– has not been deposited before the due date of the filing of the returned and therefore same were disallowed under section 43B of the income tax act. The Ld. CIT appeal also confirmed the about disallowance.

12. The Ld. authorized representative contested before us that the excise duty on closing stock of Rs. 5 4315 and VAT on closing stock is wrongly disallowed as it is paid at the time of excise duty clearance VAT for the month of April in the next year. However, with respect to the VAT he did not produce any challan or proof of any payment of excise duty in the month of April next year.

13. Ld. departmental representative vehemently contested that there is no proof adduced by the assessee of payment of such tax in the month of April and therefore the disallowance has rightly been made.

14. We have carefully considered the rival contentions. It was submitted by the assessee that excise duty does not apply to stock lying as closing stock, since goods have not yet been removed from the factory and subsequently the VAT is also not applicable in respect of closing stock because material have not been sold and these are the items of taxes and duties which are outstanding with respect to the closing stock as at the last day of the year. However, we agree with the contention of the assessee that excise duty on manufactured goods lying unsold in stock is required to be paid in the month of April, when goods are sold and subsequently the VAT on the closing stock faces the same treatment. Therefore, in the interest of Justice we set aside this issue to the file of the Ld. assessing officer with a direction to verify that excise duty on closing stock as well as VAT on closing stock has been deposited in the subsequent month, that is in the month of April 2010, and if the assessee produces the relevant details satisfying the assessing officer the about disallowance under section 43B may be deleted. In the result ground No. 3 of the appeal of the assessee is allowed with about direction.

15. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 31/05/2017.

-Sd/-	**-Sd/-**
(I.C.SUDHIR)	**(PRASHANT MAHARISHI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated:31/05/2017
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi