

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "H" MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 2068/MUM/2017  
Assessment Year: 2013-14**

HTA Marketing Services  
Pvt. Ltd. 3<sup>rd</sup> floor, Peninsula  
Chambers, G.K. Marg,  
Lower Parel, Mumbai-  
400013.

**PAN No. AAACF0692A**

**Appellant**

DCIT-2(1)(2), Aayakar  
Bhavan, M.K. Marg,  
Mumbai-400020.

Vs.

**Respondent**

Assessee by : Mr. Ajit C. Shah, AR  
Revenue by : Mr. Sachchidanand Dube, DR

Date of Hearing : 04/09/2018  
Date of pronouncement : 12/09/2018

**ORDER**

**PER N.K. PRADHAN, AM**

This is an appeal filed by the assessee. The relevant assessment year is 2013-14. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-6 [in short 'CIT(A)'], Mumbai and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The ground of appeal reads as under:

“The CIT(A) erred in holding that the Deputy Commissioner of Income Tax-2(1)(2), Mumbai was right in disallowing interest on late deposit of TDS. The Appellants submit that interest on late deposit of TDS is not

akin to interest on tax levied on the profits and gains of any business or profession and therefore is not covered u/s 40(a)(ia) of the Act.”

3. During the course of assessment proceedings, the AO noticed that the assessee had claimed an additional sum of Rs.10,31,303/- being interest on late deduction and deposit of TDS. The issue here relates to the disallowance of Rs.10,31,303/- made by the AO in respect of interest on late deposit of TDS.

In appeal, the Ld. CIT(A) confirmed the above disallowance made by the AO.

4. Before us, the Ld. counsel of the assessee submits that the issue in the instant case has been decided against the assessee by the High Court in *Martin & Harris (P.) Ltd. v. CIT* (1994) 73 Taxman 555 (Cal), *Ferro Alloys Corpn. Ltd. v. CIT* (1992) 196 ITR 406 (Bom) and *CIT v. Chennai Properties & Investment Ltd.* (1999) 105 Taxman 346 (Mad).

The Ld. DR agrees with the above submission of the Ld. counsel.

5. We have heard the rival submissions and perused the relevant materials on record. In the case of *Martin & Harris (P.) Ltd.* (supra), the Hon'ble Calcutta High Court has held that “whenever interest is charged under the Act, whether for delayed payment of tax or filing underestimate of tax or for non-submission of the estimate or return or for default in filing return within the time or delay in making payment of tax, it cannot be allowed as deduction in computing total income as essentially interest in such a case for non-compliance with the provisions of the Act is inextricably connected with the amount of income tax. Where Income-

tax itself is not a deductible amount, be it compensation or be it penalty, payable in addition to the tax cannot be allowed as a deduction in computing total income.”

In *Ferro Alloys Corpn. Ltd.* (supra), the Hon’ble Bombay High Court has held that the claim for deduction of interest levied u/s 220(2) u/s 215 and u/s 201(1A) was rightly rejected as not allowable u/s 37 of the Act.

In *Chennai Properties & Investment Ltd.* (supra), the Hon’ble Madras High Court has held :

“Income-tax is not allowable as business expenditure. The amount deducted as tax is not an item of expenditure. The amount not deducted and remitted has the character of tax and has to be remitted to the State and cannot be utilised by the assessee for its own business. The Supreme Court in the case of *Bharat Commerce & Industries Ltd. v. CIT* [1998] 230 ITR 733/98 Taxman 151 rejected the argument that retention of money payable to the State as tax or income-tax would augment the capital of the assessee and the expenditure incurred, namely, interest paid for the period of such retention, would assume the character of business expenditure. It held that an assessee could not possibly claim that it was borrowing from the State the amounts payable by it as income-tax, and utilising the same as capitalisation in its business, to contend that the interest paid for the period of delay in payment of tax amounted to a business expenditure. Therefore, the interest paid under section 201(1A) could not be allowed as business deduction.”

6. Facts being identical, we uphold the order of the Ld. CIT(A) and dismiss the appeal.

**Order pronounced in the open Court on 12/09/2018.**

Sd/-  
(SANDEEP GOSAIN)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 12/09/2018

*Rahul Sharma, Sr. P.S.*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)  
**ITAT, Mumbai**