

**आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.87/Ind/2018**  
**Assessment Year: 2009-10**

ACIT-5(1), Bhopal	<b><u>बनाम/</u></b> Vs.	Mohd. Tahir Khan, kk Plot No.12, Seema Enterprises, Industrial Aria, Govindpura  Bhopal
(Revenue)		(Respondent)
PAN:ABLPK3457H		
Revenue by	Shri V.J. Boricha Sr. DR	
Respondent by	Shri Yashwant Sharma, CA	
<b>Date of Hearing:</b>	<b>01.05.2019</b>	
<b>Date of Pronouncement:</b>	<b>07.05.2019</b>	

**आदेश / O R D E R**

**PER MANISH BORAD, A.M:**

This appeal at the instance of revenue pertaining to A.Y. 2009-10 is directed against the order of Ld. Commissioner of Income Tax(Appeals)-2,Bhopal, (in short 'CIT(A)'), dated 29.11.2017 which is arising out of the order u/s 147 r.w.s 143(3)of the Income Tax Act 1961(hereinafter

called as the 'Act') framed on 28.06.2016 by DCIT,5(1) Bhopal. The revenue has raised following grounds of appeal:

*“On the facts and in the circumstances of the case, the commissioner of Income Tax (Appeal-II), has erred in:-*

- i. Deleting the addition made on account of disallowance of expenditure u/s 37 of the Income Tax Act, 1961.*
- ii. Law and on facts the relevant expenditure in this case is incurred in contravention of contractual agreement.*
- iii. The demurrage so paid comes under the category of penalty u/s 37 of the I.T. Act, 1961 and penalty cannot be allowed as an expense under Section.37.”*

2. The Revenue has raised three grounds but the sole grievance is against the finding of Ld. CIT(A) deleting the disallowance of Rs. 38,75,145/- made u/s 37 of the Act by the Learned Assessing Officer (in short 'Ld. AO') denying deduction for penalty paid for late delivery of consignment to Bharat Heavy Electricals Limited (in short BHEL) and Indian Railways.

3. Brief facts of the case pertaining to the issue raised before us are that the assessee is an individual engaged in manufacturing of steel fabrication. He filed return of income for A.Y. 2009-10 on 30.09.2009 declaring total income of Rs.40,15,150/-. Case was processed u/s 143(1)(a) of the Act. Subsequently, case was reopened u/s 148 of the Act and reassessment proceeding was carried

out after duly serving notice to the assessee. Reasons were recorded for reopening of the case which was with regard to the deduction claimed u/s 37 of the Act at Rs.38,75,145/-. During the course of hearing assessee filed various details including financial statement, copy of agreement but failed to satisfy Ld. AO. Ld. AO completed assessment u/s 143(3) r.w.s 148 of the Act, assessing income of Rs.78,90,295/- after disallowing the expenditure u/s 37 of the Act claimed for penalty paid to BHEL and Indian Railways for late delivery of consignment of goods.

4. Aggrieved assessee preferred an appeal before the ld. CIT(A) and succeeded. As Ld. CIT(A) relying on the various judgments of Hon'ble Courts gave a finding that the alleged penalty was not in violation of any law or an offence prohibited by any law.

5. Now the revenue is in appeal before the Tribunal against the deletion of disallowance of expenditure of Rs.38,75,145/- given by the assessee towards penalty/demurrage for late delivery of books.

6. Per contra Ld. DR vehemently argued supporting the order of Ld. Assessing Officer and Ld. Counsel for the assessee supported the finding of the Ld. CIT(A).

7. We have heard rival contentions and perused the record placed before us. The revenue's sole grievance is against the finding of the Ld. CIT(A) deleting the disallowance of penalty/demurrage of Rs.38,75,145/- made by the Ld. AO. The alleged penalty of Rs. 38,75,145/- was paid by the assessee to BHEL and Indian Railways for late delivery of consignment of goods for making contraventions of contractual agreement with these two parties. It is not the case of Revenue authorities that the penalty has been paid for any offence by the assessee which is prohibited by any law.

8. Hon'ble Delhi High Court in the case of Mahalakshmi Sugar Mills Co. Ltd. vs. CIT (1984) 19 Taxman 447(Delhi) has held "*that payment of demurrage is not in the nature of damage or penalty and it is merely a charge made by the railway administration to compensate itself for keeping the goods of the assessee in its custody beyond a particular time. Payment of demurrage is incidental to business and its impact is to increase the cost to the assessee of the goods transported. Therefore, the expenditure on this account can be said to be laid out wholly and exclusively for the assessee's business.*"

9. Hon'ble Punjab & Haryana High Court in the case of Jamuna Auto Industries v. CIT (2008) 167 Taxman 192 was also held that “*whenever certain damages are to be paid by an assessee for the breach of a contract, such damages are treated to be normal incidences of business*”.

10. We therefore, respectfully following above judgments and in the given facts and circumstances of the case, find no reason to interfere in the finding of the ld. CIT(A) deleting the disallowance of Rs.38,75,145/- claimed by the assessee u/s 37 of the Act, as the alleged amount is not a penalty for any offence prohibited by law but it is merely normal business expenditure which was incurred by the assessee for non-fulfillment of the contractual agreement with the parties for not delivering goods on time.

11. In the result, appeal of the Revenue stands dismissed.

*Order was pronounced in the open court on 07.05.2019.*

Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 07/05/2019

*Patel, P.S./नि.स.*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard  
file.

By order  
**Assistant Registrar**