

IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH : BANGALORE

BEFORE SHRI N.V VASUDEVAN, VICE PRESIDNET AND  
SHRI B.R BASKARAN, ACCOUNTANT MEMBER

ITA No.449/Bang/2018
Assessment year : 2014-15

M/s Fitwel Tools & Forgings Pvt. Ltd., No.5, KHT Complex, Antharasanahalli, Tumkur-572 106.  PAN – AAACF 2319 J	Vs.	The Asst. Commissioner of Income-tax, Circle-3(1)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Bharath L, C.A
Respondent by	:	Dr. P.V Pradeep Kumar, Addl. CIT

Date of hearing	:	03.09.2019
Date of Pronouncement	:	04.09.2019

**ORDER**

*Per B.R Baskaran, Accountant Member*

The assessee has filed this appeal challenging the order dated 18/12/2017 passed by 1d CIT(A)-III, Bangalore and it relates to asst. year 2014-15.

2. The assessee is aggrieved by the decision of the 1d CIT(A) rendered on the following two issues.

- a) Disallowance of Rs.2.65 lakhs relating to interest payable on service tax, excise duty and VAT
- b) Disallowance of term loan processing fee of Rs.5.02 lakhs.

3. We heard the parties and perused the record. The assessee is engaged in the business of sale of engineering goods. The first issue relates to disallowance of interest of Rs.2.65 lakhs paid along with service tax, excise duty, VAT etc. The AO took the view that the assessee has not claimed service tax, excise duty and VAT as part of its expenses in the profit and loss account. Further the AO took the view that the decision rendered by Hon'ble Supreme Court in the case of Bharat Industries Ltd., Vs. CIT 230 ITR 733, in which it was held that the interest paid for committing any fault in payment of advance tax is not permissible deduction u/s 37 of the Act, would apply to the interest expenditure claimed by the assessee. Accordingly he disallowed the interest amount of Rs.2.64 lakhs paid along with service tax, excise duty and VAT. The ld CIT(A) also confirmed the same.

4. At the time of hearing, the ld AR submitted that the service tax, excise duty and VAT, even though not routed through profit and loss account, are allowable as expenditure. He submitted that the decision rendered by Hon'ble Supreme Court in the case of Bharat Industries (Supra) was related to Income-tax payments and since income-tax payment was not allowable deduction, the Hon'ble Supreme Court held that the interest paid on income-tax shall not be allowable. On the contrary, the ld AR placed his reliance on the decision rendered by Hon'ble Supreme Court in the case of Mahalakshmi Sugar Mills Vs. CIT, 123 ITR 429, wherein it was held that the interest provided for u/s 3(3) of UP Sugar Cane CESS Act is in the nature of compensation paid to govt. for delay in payment of CESS and it would not be described as penalty for

infringement of law. The ld AR also placed his reliance on the decision rendered by co-ordinate bench in the case of Velankani Information systems Ltd., (2018) 97 Taxmann.com 599 [ITAT] wherein it was held that interest paid on delayed remittance of service tax was only compensatory in nature and would not be in the nature of penalty attracting the Explanation to sec. 37(1).

5. We heard the ld DR on this issue and perused the record. We noticed that this issue is squarely covered by the decision rendered by Hon'ble Supreme Court in the case of Mahalakshmi Sugar Mills Co. (Supra) and also by the decision rendered by co-ordinate bench in the case of Velankani Information Systems Ltd. (supra), wherein it has been held that the payment of interest for delayed remittance of service was only compensatory in nature. There is no dispute that the service tax, Excise duty and VAT payments are allowable as deduction, if it is claimed through the Profit and Loss account. Hence the interest paid for default in payment of above said items would only be compensatory in nature. In this view of the matter, the claim of the assessee could not be denied, merely for the reason that the Service tax, Excise Duty and VAT were not debited to the Profit and Loss account. Accordingly, following the above said decisions, we set aside the order passed by ld CIT(A) on this issue and direct the AO to allow the deduction.

6. The next issue relates to disallowance of term loan processing fees.

7. The AO noticed that the assessee has incurred term loan processing fee of Rs.5.91 lakhs and claimed the same as deduction. The AO asked the assessee to furnish the details relating to term loan borrowed by the assessee. However, the assessee did not furnish the details called for by the AO. The AO took the view that the term loan is always taken for the purpose of acquiring asset. Accordingly the AO took the view that the term loan processing charges paid by the assessee was related to the acquisition of assets and hence the same needs to be capitalized. Accordingly he disallowed the claim of term loan processing charges of Rs.5.91 lakhs. Since the AO held that the above said amount is to be capitalized, he allowed depreciation thereon. Accordingly the AO disallowed net amount of Rs.5.02 lakhs. The same was confirmed by the Id CIT(A).

8. The Id AR submitted that even though the assessee did not furnish the details before the AO, yet the assessee furnished all the details relating to term loan before Ld CIT(A). He submitted that the assessee had applied for term loan for the purpose of acquiring an asset. However, since the disbursement of term loan was getting delayed, the assessee purchased the asset by using other funds and also put it for business use. Subsequently the term loan was released by the bank and the proceeds were used by the assessee for general business purposes. Accordingly, the Id AR submitted that the term loan was not actually used for the purpose of acquiring the asset and further the processing fee was paid to the bank subsequent to the acquisition of asset. Accordingly he

contended that the processing fee cannot be considered as capital expenditure.

9. The ld AR further submitted that the assessee has furnished these explanations before the ld CIT(A). He submitted that the assessee also furnished a certificate obtained from a Chartered Accountant to support its claim of utilization of funds. However, the Ld CIT(A) did not consider and address these factual submissions. Accordingly, he prayed that the disallowance confirmed by ld CIT(A) may be deleted.

10. On the contrary, the Ld DR submitted that the intention of the assessee for taking term loan was to acquire an asset. However, the assessee has claimed to have acquired the asset by using other funds. He submitted that the use of "other funds" is only a temporary shifting of funds, since the assessee has ultimately availed the term loan. Thus, the term loan should be considered as the real source for acquiring the asset and hence, processing fee is related to the acquisition of asset and hence the same should be capitalized.

11. Having heard the rival submissions, we are of the view that this issue requires fresh examination at the end of the ld CIT(A), since the ld CIT(A) has not considered the explanations furnished by the assessee with regard to use of funds for the purchase of assets and utilization of term loan. Accordingly, without expressing any opinion on the contentions of the parties, we set aside the order passed by ld CIT(A) on this issue and restore the same to his file for

examining it afresh by duly considering the explanations furnished by the assessee. After affording adequate opportunity of being heard to the assessee, the Ld CIT(A) may take appropriate decision in accordance with law.

12. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court on **4<sup>th</sup> September, 2019.**

**Sd/-**  
**(N.V Vasudevan)**  
**Vice President**

**Sd/-**  
**(B.R Baskaran)**  
**Accountant Member**

Bangalore,  
Dated, 4<sup>th</sup> September, 2019.

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation .....
2. Date on which the typed draft is placed before the dictating Member .....
3. Date on which the approved draft comes to Sr.P.S .....
4. Date on which the fair order is placed before the dictating Member .....
5. Date on which the fair order comes back to the Sr. P.S. ....
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so .....
8. Date on which the file goes to the Bench Clerk .....
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk .....
11. The date on which the file goes to the Assistant Registrar for signature on the order .....
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order .....
13. Date of Despatch of Order. ....