

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'G', New Delhi**

**Before : Shri Amit Shukla, Judicial Member And
Shri Prashant Maharishi, Accountant Member**

**ITA No. 5342/Del/2015
Assessment Year: 2012-13**

A.C.I.T., Central Circle-28, New Delhi (Appellant)	vs.	Triveni Ferrous Infrastructure Ltd., R-7, Near MCD School, M.G. Road, Ghitorni, New Delhi PAN- AACCT3615R (Respondent)
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Appellant by	Sh. N.K. Bansal, Sr. DR
Respondent by	Sh. Ved Jain, C.A.

Date of Hearing	25.09.2019
Date of Pronouncement	13.11.2019

ORDER

Per Amit Shukla, J.M.

The aforesaid appeal has been filed by the Revenue against impugned order dated 05.06.2015, passed by Ld. CIT (Appeals)-29 Delhi for the quantum of assessment passed u/s 143(3) for the A.Y. 2012-13. Following grounds has been taken by the revenue:-

“1. On facts and in the circumstances of the case the CIT (A) has erred in allowing the interest expenditure as revenue expenditure on the ground that the same was allowed as revenue expenditure by the department in earlier assessment year i.e. 2009-10, 2010-11 & 2011-12 ignoring to the fact that each assessment is independent and separate and the principle of res judicata is not applicable in the Income Tax proceedings.

2. *On facts and in the circumstances of the case the CIT(A) has erred in stating that assessee had claimed interest expenditure to the tune of Rs.1,64,56,688/- for A.Y. 2011-12 whereas no such interest expense was claimed by the assessee as per the assessment records.*

3. *On facts and circumstances of the case the CIT(A) has erred in holding that interest expenses on delayed payment of EDC is business expenditure without considering the fact that the EDC is payable by the developer to the Government Authority for works related to housing project and therefore it would constitute part of cost of such project.*

4. *That the grounds of appeal are without prejudice to each other.*

5. *That the appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”*

2. The facts in brief are that assessee company filed its return of income for the assessment year under consideration on 24.09.2010 declaring a loss of Rs. 2,89,14,506/-. The AO during the course of the assessment raised the issue of the deduction on account of interest of Rs. 2,46,24,237/- paid towards delayed payment of IDC/EDC charges to the Haryana Government. The Assessing Officer however was not satisfied with the reply of the assessee and disallowed the same holding that such payment of interest for delayed payment is penal in nature. Further, EDC charges is payable by the developer to the HUDA for works related to water supply, sewerage etc. which are integral part of a residential house project and hence the same will constitute part of the cost of such projects and recoverable from the buyers. The

AO further held that EDC charges paid by the assessee in respect of the housing project and hence would constitute stock of the assessment company. Accordingly, he disallowed the interest expense claimed by the assessee.

3. Aggrieved by the order of the AO assessee filed appeal before the CIT (A). The CIT (A) vide order dated 05.06.2015 deleted the disallowance holding that the payment of interest is not penal in nature. The CIT (A) further held that such payment of interest is revenue in nature and hence the same is eligible for deduction while computing business income.

4. Before us Ld. DR submitted that the assessee has made payment of interest as it has not paid the installment at a due time and the interest payment for delayed payment as such is penal in nature and hence not allowable in view of the explanation below section 37(1) of the Act. He further submitted that this payment being related to the housing project of the assessee, the same has to be considered as part of the cost of the project of the assessee and need to be carried forward as stock i.e. work-in-progress and the same will be recoverable from the buyers. The Ld. DR contended that the assessee is carrying on the business as developer and such expenses incurred though may be revenue in nature but the same need to be considered as part of the project and the entire cost of the project will be deductible against the sales.

5. In reply the Ld. Counsel for the assessee submitted that the interest payment is towards payment of EDC which the assessee company is required to pay to the HUDA. These payments are part of the business expenditure and interest on such is also business expenditure and cannot be considered to be penal in nature. This is just like goods or services availed on credit on which the buyer pays

interest to the supplier of such goods or services on the outstanding balance beyond the credit period allowed by the supplier. Thus, the same cannot be considered as penal in nature. As regards the contention that such interest should form part of the stock, i.e., work-in-progress, it was submitted by the Ld. Counsel that these payments are in relation to the project which have been sold in the earlier year as is evident from the profit and loss account and the balance sheet of the company. There are outstanding dues from the buyers as well as to the suppliers which include payment of outstanding EDC charges. Thus, payment of interest on such outstanding EDC charges cannot be added to any stock or work in progress. The interest paid pertains to the year under consideration and is revenue in nature and accordingly the CIT (A) has rightly deleted the addition. He further submitted that the similar issue has come up in the case of ACIT vs. Ferrous Township Pvt. Ltd. ITA No.5997/Del/2015 dated 05.04.2018 and M/s Ferrous Township Pvt. Ltd. vs.DCIT ITA No. 5812/Del/2015 dated 06.09.2017 and the issue was decided in favour of the assessee.

6. We have considered the rival submission and perused the order passed by the authorities below. On going through the orders and material referred to before us, we note that assessee during the year has incurred an expenditure of Rs.2,46,24,237/- on account of interest in respect of the EDC charges outstanding and payable to HUDA. The AO has disallowed the same considering it penal in nature and also on the reasoning that such expenditure should form part of the work-in-progress as assessee is a developer and deduction of same will be available against the sale of the project. The CIT (A) has held that such expenditure is not penal in nature and the interest expenditure pertains to the current year and is revenue in nature. As regards the first issue whether such expenditure is penal in nature, the same is covered in favour of the assessee by the judgment of the coordinate bench of the ITAT in the case of M/s Ferrous Township Pvt. Ltd. vs. DCIT ITA No. 5812/Del/2015 dated 06.09.2017, whereby it

was held that interest payable on EDC charges is not penal in nature. The relevant finding of the order reads as under:-

“7. We have heard both the parties and perused the records especially the impugned order as well as the case law cited by the Ld. Counsel of the assessee. For the sake of convenience, the observation of the Hon'ble High Court in the case of [CIT vs. Enchante Jewellery Ltd.](#) passed in IT Appeal No. 1006 of 2001 dated 20.11.2012 reported in [2013] 40 taxmann.com 216 (Delhi) [HEADS NOTES ONLY] are reproduced as under:-

“[Section 37\(1\)](#) of the Income Tax Act, 1961 -

Business expenditure - Allowability of [Penalty/ Illegal payments] - Assessee was engaged in manufacture and trade of gold jewellery - Assessee claimed that it used to import jewellery manufacturing machinery under Export Promotion Council Goods Scheme (EPCG Scheme) at a concessional rate with an export obligation which it could not fulfill and, thus, was required to pay interest to DGFT - Assessee's claim for deduction of interest was rejected on ground that said payment was penal in nature -

Commissioner (Appeals) as well as Tribunal held that amount paid was not penal in nature as much as it was as per declared policy of Government and occasioned by failure of assessee's conduct was an offence or that it did anything that was prohibited by law, payment in question did not fall within mischief of Explanation below [section 38\(12\)](#)

- Held, yes - whether, therefore, assessee's claim was to be allowed - Held, yes [para 5] [in favour of assessee]”

8. Keeping in view of the facts and circumstances of the case and respectfully following the precedent, as aforesaid, we are of the considered view that the facts and circumstances of the case of the

assessee's case is exactly the similar and identical to the decision of the Hon'ble High Court in the case of CIT vs. Enchante Jewellery Ltd. (Supra). Therefore, respectfully following the aforesaid decision of the Hon'ble Delhi High Court in the case of CIT vs. Enchante Jewellery Ltd. (Supra), the addition of Rs. 4,26,000/- confirmed by the Ld. CIT(A) out of interest payable in EDC charges terming the same as penal in nature is hereby deleted and the ground of appeal raised by the assessee is allowed.”

7. As regards the second contention that such expenditure should form part of the work-in-progress, it is seen that, this interest is in respect of outstanding EDC charges payable for a project the realization of which has already taken place in earlier years. Thus, interest is on an amount outstanding and payable for the services availed in respect of the project which stands already completed and sold in earlier years. Hence, such an interest cannot form part of the work-in-progress. The interest payment on the outstanding balance in respect of the trade creditors is revenue in nature and allowable expenditure while computing business income. Accordingly, we uphold the order of the CIT (A) deleting the above addition.

8. In the result appeal of the revenue is dismissed.

Order pronounced in the open court on 13/11/2019.

Sd/-

(Prashant Maharishi)
Accountant Member

Sd/-

(Amit Shukla)
Judicial member

Dated: 13th Nov., 2019

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