

IN THE INCOME TAX APPELLATE TRIBUNAL
“G” Bench, Mumbai
Before Shri Manoj Kumar Aggarwal, Accountant Member
and Shri Ravish Sood, Judicial Member

ITA No. 6196/Mum/2018
(Assessment Year: 2008-09)

M/s Shreeji Wire Industries
34, Kembros Indl. Estate,
Off LBS Marg, Bhandup West,
Mumbai – 400 078

ACIT Circle 29(3),
Mumbai
Vs.

PAN – AAASF6369J

(Appellant)

(Respondent)

Appellant by: Mr. Kunal Deepak Parik, C.A.
Respondent by: Shri N. Padmanaban, Sr. A.R

Date of Hearing: 08.01.2020
Date of Pronouncement: 10.01.2020

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-40, Mumbai, dated 26.06.2018 which in turn arises from the order passed by the A.O under Sec. 143(3) r.w.s 147 of the Income Tax Act, 1961 (for short 'Act'), dated 15.01.2016. The assessee has assailed the impugned order on the following grounds of appeal before us:

- “1. On facts, in circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in confirming addition by the learned A.O. of Rs. 2,58,048/- under the head Income from Business.
2. On facts, in circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in confirming the interest paid on loan account, treating the same as interest on delayed payment of TDS.
3. The appellant craves leave to add alter, modify or delete the above ground of appeal.”

2. Briefly stated, the assessee firm which is engaged in the business of manufacturing of wire drawing in high carbon steel wire had e-filed its return of income for A.Y. 2008-09 on 27.09.2008, declaring its total income at Rs.27,38,190/-. Original assessment under Sec. 143(3), dated 29.11.2010 was framed by the A.O and the returned income of the assessee was accepted as such.

3. After the culmination of the assessment proceedings the A.O issued a notice under Sec.154 to the assessee, wherein it was inter alia observed that the interest on delayed payment of TDS of Rs.2,58,048/- had inadvertently remained omitted to be added back at the time of framing of the assessment. In reply, the assessee submitted before the A.O that though the aforesaid amount of interest was in respect of the delayed payments made to Mathuradas K. Shah, HUF, however, the same was wrongly mentioned in the narration as "interest on delayed payment of TDS". As such, it was the claim of the assessee in its reply to the notice issued under Sec.154 that the interest of Rs.2,58,051/- was rightly claimed by the assessee and allowed as a deduction by the A.O while framing the assessment vide his order passed under Sec. 143(3), dated 29.11.2010. Although, the aforesaid proceedings were pending before the A.O, the case of the assessee for the said reason was reopened under Sec. 147 of the Act.

4. During the course of the re-assessment proceedings the A.O holding a conviction that the assessee had claimed interest on delayed payment of TDS of Rs.2,58,048/- as an expenditure while computing its income, which being in the nature of a penal interest was not allowable as a deduction, therefore, disallowed the said amount and added back the same to the total income of the assessee for the year under consideration.

5. Aggrieved, the assessee assailed the aforesaid assessment framed by the A.O under Sec.143(3) r.w.s 147, dated 15.01.2015 before the CIT(A). The assessee reiterated the aforesaid factual position before the first appellate authority. In order to drive home its aforesaid claim, the assessee by way of an additional evidence submitted a reconciliation regarding "interest paid on delayed payments" before the CIT(A). As the admission of the aforesaid additional evidence was objected by the A.O in his 'remand report', therefore, the CIT(A) declined to admit the same. Observing, that the assessee had come forth with different explanations as regards the nature of the interest payment of Rs.2,58,051/-, the CIT(A) declined to accept the claim of the assessee that the aforesaid payment was in the nature of interest that was paid on delayed payments to Mathuradas K. Shah, HUF. Also, it was observed by the CIT(A) that while for the disallowance made by the A.O was of an amount of Rs.2,58,048/-, however, the assessee had come forth with a reconciliation of an amount of Rs.2,58,051/-. As such, it was noticed by the CIT(A) that even the amount as regards which the reconciliation was filed by the assessee did not match with the quantum of the disallowance made by the A.O. On the basis of his aforesaid deliberations the CIT(A) upheld the disallowance of Rs.2,58,048/- made by the A.O.

6. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. At the very outset of the hearing of the appeal, it was submitted by the Id. A.R that there was a delay of 8 days in filing of the present appeal. It was submitted by the Id. A.R that the order of the CIT(A) was received by the assessee through email on 24.08.2018. The Id. A.R took us through the 'affidavit' of the partner of the assessee firm, wherein he had stated the reasons leading to delay in filing of the appeal. It was submitted by the Id. A.R that the assessee on being informed that its appeal was dismissed by the CIT(A) was called upon by the A.O to explain as to why penalty under Sec. 271(1)(c) may not be imposed on it. In the backdrop of the aforesaid facts, it was stated by the Id. A.R that the assessee had asked its Chartered accountant to file the appeal with the Tribunal. It is deposed by the partner of the assessee firm in his 'affidavit', that the aforesaid delay in filing of the appeal had occurred on the part of the Chartered accountant who took some time in collecting the requisite documents for filing the appeal.

7. We have given a thoughtful consideration and after considering the period of delay, reason leading to the delay and the fact that the Id. D.R had not objected to the seeking of condonation of the delay involved in filing of the present appeal by the assessee, are of the view that the request of the assessee for condonation of delay in merits acceptance. Accordingly, we condone the delay involved in filing of the present appeal by the assessee.

8. We shall now advert to the merits of the case. The solitary issue involved in the present case hinges around the disallowance of an amount of Rs.2,58,048/- by the A.O, which thereafter had been sustained by the CIT(A). On a perusal of the orders of the lower authorities, we find, that as per the records the assessee had stated to have paid "Interest on delayed payment of TDS" of Rs.2,58,048/-. On the basis of the aforesaid facts, the case of the assessee was reopened and the A.O being of the view that as the aforesaid payment made by the assessee was towards penal interest levied upon it, therefore, the same was not allowable as a deduction while computing its income. As such, on the basis of his aforesaid conviction the A.O had disallowed and added back the aforesaid amount of Rs.2,58,048/- to the returned income of the assessee for the year under consideration. On a perusal of the order of the CIT(A), we find, that it was the claim of the assessee that the aforesaid amount was the interest on delayed payment which was made to Mathuradas K. Shah, HUF. In fact, the assessee had submitted before the lower authorities that on account of an inadvertent mistake which had crept in its records because of a snag in the software, the interest on delayed payment to Mathuradas K. Shah, HUF was wrongly projected in its records as "Interest on delayed payment of TDS". On a perusal of the order of the CIT(A), we find that the assessee in order to substantiate its aforesaid claim that the aforesaid amount was paid towards interest on delayed payment to Mathuradas K. Shah, HUF, had

furnished a reconciliation statement with the CIT(A), which however was declined to be admitted by the appellate authority after considering the objection that was raised by the A.O in his 'remand report'.

9. In the course of the hearing before us, it was submitted by the Id. A.R that it had during the year under consideration paid an aggregate amount of interest on delayed payment of Rs.51,11,402/-, as under:

Sr. No.	Name of the Party to whom interest on Delayed payments made	Amount in Rs.
1.	Jiangsu Hongyang Steel Wire Products Co. Ltd.	351
2.	Indo Hardware Product	48,55,187
3.	Mathuradas K. Shah HUF	3,50,748
4.	Paid to Mathuradas K Shah HUF [but in detailed ledger wrongly shown as TDS on Interest 94A (07-08) due to Tally Software Output Error]	2,58,051
	Total Interest on Delayed Payments paid	54,64,336
Less:	Interest Received for Delayed payments from D.P Wire Products	47,563
Less:	Interest Received for Delayed Payments from Desh Wire Products Pvt. Ltd.	3,05,371
	Net Interest on Delayed Payments Debited	51,11,402

As such, it was reiterated by the Id. A.R. that though the payment of Rs.2,58,051/- was towards interest on the delayed payment for bill discounting to Mathuradas K. Shah, HUF, however, the same was wrongly mentioned as "TDS on interest 94A (07-08)" on account of a mistake that had crept in because of a snag in its 'Tally Software'. In order to fortify his aforesaid claim, the Id. A.R has placed on record the copy of the ledger account of "Mathuradas K. Shah, HUF (loan) account" as appearing in its books of accounts for the year under consideration. Also, the copy of the "Interest on delayed payments" as appearing in its accounts had also been furnished before us. As is discernible from the "Interest on delayed payments", we find that 5 transactions aggregating to an amount of Rs. 2,58,050.62 with a similar narration viz. "TDS on Interest 94A(07-08)" are therein found mentioned. It was submitted by the Id. A.R that the aforesaid amount of Rs. 2,58,051/- formed part of the total interest on delayed payment of Rs. 6,08,799/- that was paid by the assessee to Mathuradas K. Shah, HUF. It was further submitted by the Id. A.R that the assessee had deducted TDS of Rs. 62,706/- i.e @10.30% on the aforesaid interest on delayed payment of Rs. 6,08,799/- that was paid to Mathuradas K. Shah, HUF. Apart from that, in order to dispel any doubts as regards its aforesaid claim, it was submitted by the Id. A.R that Mathuradas K. Shah, HUF had paid tax on the aforesaid interest on delayed payment of Rs. 6,08,799/-.

10. On a prima facie perusal of the aforesaid details, we find substantial force in the claim of the Id. A.R that the amount of Rs.2,58,051/- was in the nature of interest that was paid by the assessee on the delayed payment to Mathuradas K. Shah, HUF and was not in the nature of interest on delayed deposit

of TDS. However, at the same time we cannot remain oblivious of the fact that the aforesaid claim of the assessee cannot be summarily accepted on the very face of it and would require verification. Accordingly, in all fairness we restore the matter to the file of the A.O for verifying the correct factual position. Needless to say, the assessee in the course of the 'set aside' proceedings shall remain at a liberty to furnish the requisite details before the A.O in order to substantiate its claim that the aforesaid amount of Rs.2,58,051/- was in the nature of interest on delayed payment made to Mathuradas K. Shah, HUF, and not in the nature of interest on delayed deposit of TDS. In case the aforesaid claim of the assessee is found to be in order, then the A.O shall vacate the aforesaid disallowance of Rs. 2,58,051/- that was made by him while framing the assessment vide his order passed under Sec.143(3) r.w.s 147, dated 15.01.2015.

11 On the basis of our aforesaid observations the matter is restored to the file of the A.O for fresh adjudication.

12. Resultantly, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 10.01.2020

Sd/-
(Manoj Kumar Aggarwal)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 10.01.2020
Ps. Rohit

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार

(Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai