

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' NEW DELHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 5458/Del/2017
Assessment Year: 2014-15**

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| Ferrous Township Pvt. Ltd., Khasra No. 41, 42, 44, 45, Seth Farms, MG Road, Ghitorni, New Delhi. PAN : AAACM2207Q (Appellant) | vs. | ACIT, Central Circle-28, New Delhi. (Respondent) |
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| Appellant by : | None |
| Respondent by: | Sh. Jagdish Singh, Sr. DR |

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| Date of hearing: | 22.01.2020 |
| Date of order : | 19.02.2020 |

ORDER

PER K. NARASIMHA CHARY, J.M.

Challenging the order dated 01.08.2017 in appeal No. 374/16-17 passed by the learned Commissioner of Income Tax (Appeals)-29, New Delhi ("Ld. CIT(A)"), for assessment year 2014-15, M/s Ferrous Township P. Ltd. ("the assessee") preferred this appeal.

2. Brief facts of the case are that the assessee filed their return of income on 26.09.2014 declaring loss of Rs.22,43,34,901/-. During the assessment proceedings, Id. Assessing Officer noticed that the assessee company debited interest expense amounting to Rs.5,91,32,000/-

towards delayed payment of EDC charges to Haryana Government. The assessee explained that as per agreement dated 24.01.2012, the assessee had to pay proportionate EDC charges at the tentative rate of Rs.70.43 lacs per gross acre for plotted area and Rs.328.93 lacs per acre for commercial area and those charges were payable to Haryana Urban Development Authority (HUDA) through director General, Town and Country Planning, Haryana either in lump sum within 30 days from the date of grant of License or in ten equal six monthly instalment of 10% each ; i.e., (a) first instalment of 10% of the amount of EDC shall be payable within 30 days from the date of grant of license; (b) balance 90% in Nine equal six monthly instalments along with interest at the rate of 12% per annum on the unpaid portion of the amount; and (b)(iv) the unpaid amount of EDC would carry an interest of 12% per annum and in case of any delay in the payment of instalments on the due date an additional penal interest of 3% per annum (making the total payable interest 15% per annum) would be chargeable upto a period of three months and for additional three months with the permission of DGTCP. According to the assessee such interest on EDC payable in instalments is not recoverable from the prospective buyers nor it has to be capitalized as it does not add anything to the physical development of the project and it being the normal business expenditure is fully allowable u/s. 37 of the Act. Ld. Assessing Officer did not agree with the contentions of the assessee but opined that the interest on delayed payment of EDC is an expenditure of penal nature and same cannot be allowed as business expenditure and on that premise, brought a sum of Rs.5,92,32,000/- to tax by disallowing the same and determined total loss of Rs.16,52,02,901/-.

3. Aggrieved by the action of the Assessing Officer, the assessee preferred appeal before the CIT(A) and contended that the developer has an option of paying the EDC charges over a period in instalments with interest at the rate of 12% per annum and additional interest of 3% per annum in case of overdue and the company availed the facility of payment of EDC charges in instalments with interest and paid a sum of Rs.5,31,80,000/- towards interest at 12% and further sum of Rs.59,52,000/- towards additional interest and such a payment of interest is Revenue in nature and allowable u/s. 37(1) of the Act.

4. Learned CIT(A), however, placed reliance on the orders of his predecessor for the assessment year 2012-13 and held that normal interest paid at 12% would be Revenue expenditure and allowable u/s. 37 of the Act whereas additional interest paid at 3% is penal in nature and, therefore, confirmed the addition to the extent of Rs.59,52,000/-. Learned CIT(A), therefore, gave partial relief to the assessee. Assessee is, therefore, before us in this appeal challenging the addition of Rs.59,52,000/- out of interest paid on EDC charges confirmed by the CIT(A).

5. When the matter is called, however, neither the assessee nor any authorised representative entered appearance. It could be seen from the record that the notice was sent to the address given in form No. 36. If the assessee is available in such address, such notice should have been served on the assessee. If for any reason, the assessee is not available there, it is for the assessee to make arrangements for service of such notice by furnishing the address where the assessee would be available, or to deliver it to some authorised person, or by making request to the

postal department to detain the mail till the assessee claims the same. Since the assessee does not seem to have adopted any of these methods, we are the considered opinion that no time could be granted. Basing on the record we shall proceed to hear the Id. DR and decide the matter on merits.

6. It is the submission of the Id. DR that the Id. CIT(A) was right in confirming the addition of Rs.59,52,000/- attributable to 3% additional interest paid on the delayed payments, inasmuch as such levy of 3% of interest is penalty on the delayed payments. He, therefore, submits that the appeal is devoid of merits and has to be dismissed.

7. Having gone through the record, it is seen that there is no denial of the fact that the agreement dated 24.01.2012 under which the EDC charges were payable to HUDA, permits the payment either in lump sum or in instalments with interest. It is also not in dispute that it is also part of the terms that the instalments of EDC charges would carry an additional interest of 3% per annum in respect of the instalments paid beyond due dates. When agreement permits both the interest and additional interest for the delayed payments and there is no infraction of any law or agreement committed by the assessee, we are unable to understand how the additional interest assumes the character of penal interest. The agreement contemplates delayed payments by way of instalments and also the payment of instalments beyond the due dates. 3% additional interest is pursuant to the agreement, but not in violation of any clause of the agreement.

8. Since there is no infraction of any provision of law or agreement in this matter, we do not find any rational basis for the first appellate

authority to bifurcate and characterize the total interest into normal interest and penal interest and to disallow the same. With this view of the matter, we find that the total interest is compensatory in nature and no part of it assumes the character of penal interest. We accordingly allow the grounds of appeal and direct the Assessing Officer to delete the addition of Rs.59,52,000/- confirmed by the Id. CIT(A).

9. In the result, the appeal is allowed.

Order pronounced in the open court on 19th February, 2020.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 19/02/2020

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