

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

ITA NO. 4225/MUM/2018 : **A.Y : 2013-14**

M/s. Cineyug Worldwide
301, Rose Apartment, Juhu Church
Road, Juhu, Mumbai.
PAN : AAFFC3158G (Appellant)

Vs. DCIT, Central Range– 3(1),
Mumbai. (Respondent)

**Assessee by : Shri Shubham Rathi &
Ms. Dinkle Hariya**

Revenue by : Shri Kumar Padmapani Bora

Date of Hearing : 16/09/2019

Date of Pronouncement : 20/09/2019

ORDER

PER S. RIFAUH RAHMAN, A.M

The captioned appeal preferred by the assessee is directed against the order passed by the CIT(A)-51, Mumbai dated 24.04.2018, which in turn, arises out of an order passed by the Assessing Officer under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 28.03.2016 for assessment year 2013-14.

2. The brief facts of the case are that assessee filed its return of income declaring total income of Rs.3,05,24,590/- on 28.09.2013. The case was selected for scrutiny under CASS and notice under Section 143(2) and 142(1) of

the Act were issued and served on the assessee. In response thereto, the assessee filed the relevant information as called for.

3. The assessee-company is a company from Cineyug Group and engaged in the business of event management of various events. The assessment was completed under Section 143(3) of the Act and interest on late payment of TDS and Service tax were disallowed along with other expenses. Aggrieved with the above order, assessee preferred an appeal before the CIT(A) and submitted that interest of Rs.14,59,182/- was disallowed under Section 37 of the Act on the ground that payment of interest on statutory liability is penal in nature. After considering the submissions of the assessee, the Id. CIT(A) has allowed the interest on service tax to the extent of interest claimed by the assessee for the current assessment year and sustained the disallowance for assessment years 2008-09 to 2011-12 to the extent of Rs.11,66,207/-. Aggrieved with the above order, assessee is in appeal before us raising the following grounds of appeal :-

“1.1 On facts & in law, the Learned Commissioner of Income tax (Appeals) 51, Mumbai [the CIT(A)] erred in confirming the disallowance of interest paid of Rs.11,66,207/-.

1.2 While doing so, the Learned CIT(A) erred in holding that the interest paid was a prior period expenditure and thereby confirming the disallowance of interest paid of Rs.11,66,207/-.

1.3 On facts & in law, the Learned Commissioner of Income tax (Appeals) 51, Mumbai [the CIT(A)] failed to appreciate that interest expenses was paid in the relevant accounting year ended 31.03.2013 and therefore was allowable as a deduction under Section 43B of the Income Tax Act, 1961 and thereby erred in confirming the disallowance of interest paid of Rs.11,66,207/-.

The appellant therefore prays that the order of the CIT(A) be set aside and the Deputy Commissioner of Income Tax, Central Range 3(1), Mumbai be directed to delete the disallowance of interest paid of Rs.11,66,207/-."

4. Before us, the learned representative for the assessee submitted that the Id. CIT(A) has disallowed the interest on service tax treating it as interest pertaining to prior period expenditure. Further, he submitted that the interest on service tax relating to previous years, but claimed during this assessment year, were allowed in the decision of the Hon'ble Gujarat High Court in the case of *CIT vs Kaypee Mechanical India (P.) Ltd., 271 CTR 591 (Guj.)* and further he submitted that in the following cases also, interest on late payment of statutory dues were allowed by various courts :-

- i) Mahalakshmi Sugar Mills Co. vs CIT, 123 ITR 429 (SC)
- ii) Lachmandas Mathurdas vs CIT, 254 ITR 799 (SC)
- iii) CIT vs Ishwari Khetan Sugar Mills Pvt. Ltd., 272 ITR 224 (All)
- iv) CIT vs Delhi Automobiles, 272 ITR 381 (Delhi)
- v) Euro RSCG Advertising (P.) Ltd. vs ACIT, (2012) 53 SOT 90 (Mumbai)
- vi) Chander K. Raichandani vs ACIT, ITA No. 799/Mum/2012 dated 08.02.2013

5. On the other hand, the Id. DR supported the order of the Id. CIT(A).

6. Considering the rival submissions and the material on record, we notice that the Hon'ble Gujarat High Court allowed the interest on service tax under similar circumstances and the ratio of the above decision is given below :-

"5. The stand of the Revenue before us was that this amount having been expended by the assessee for infraction of law, deduction thereof was not available. We may notice that CIT [A] as well as the Tribunal accepted the claim of the assessee, though under a different provision than that claimed. The Tribunal, in particular, after referring to the decision of the CIT (A) at length, held and observed as under :—

"5. We have heard the rival contentions and perused the material on record. The appellant had not collected the service tax on mechanical erection and installation of plant and machinery, structure work, piping work and work contract works for the period from F.Y 2003-04 to 2006-07. There was an audit by the Service Tax Department and a demand of service tax was raised at Rs. 23,07,450/- and interest thereon at Rs.9,36,553/- which was paid on 16.04.2009 by the appellant. When there is no collection of the service tax, it is impossible to route through P&L account. As per Service Tax Act, the appellant is an agent of the Government of India, collecting the service tax and remitting it to the Government Exchequer. The appellant had debited these expenses which have nature of service tax and interest thereon as expenses in the P&L account not as service tax and interest thereon. The liability has been crystallized in the year under consideration. The learned A.O had not brought on record any material that this service tax including interest had been recovered from the parties for which it had rendered service. These expenses were incidental and arising out of the business of the appellant. The interest payment is compensatory in nature. The expenses have direct nexus with the business operation. Therefore, it is allowable u/s. 37 of the IT Act as incurred wholly and exclusively for business purposes. We, therefore, do not found any reason to intervene in the order of the CIT (A). Accordingly, the Revenue's appeal is dismissed."

6. We have no hesitation in upholding the view of the CIT (A), as confirmed by the Tribunal. The amount was expended by the assessee during the course of business, wholly and exclusively for the purpose of business. If the assessee had taken proper steps and charged service tax to the service recipients and deposited with the Government, there was no question of assessee expending such sum. It is only because the assessee failed to do so, that he had to expend the said amount, though it was not his primary liability. Be that as it may, this cannot be stated to be a penalty for infraction of law. Reference to the decision of Supreme Court in case of Haji Aziz & Abdul Shakoor Bros. v. CIT [1961] 41 ITR 350 therefore is not of any help to the Revenue. It was a case in which the assessee had imported dates from Iraq, at a time when such import was prohibited. Due to this, the dates imported by the assessee by steamers were confiscated by the customs

authorities. The assessee was given an option to pay redemption fine and have the dates released. The assessee having accepted such an option, claimed the redemption fine as a deduction in computing its profit as allowable expenditure. In this background, the Supreme Court held that no expenses which was paid by way of penalty for a breach of the law, even though it might involve no personal liability, could be said to be an amount wholly and exclusively laid for the purpose of the business of the assessee. In the present case, the amount involved is not by way of penalty. The decision in case of Haji Aziz & Abdul Shakoor Bros. (supra) is thus distinguishable.”

Respectfully following the above decision, we are inclined to allow the ground raised by the assessee and accordingly, interest on late payment of service tax dues is allowed as it is in the nature of compensation and is not penal. Accordingly, ground raised by the assessee is allowed.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 20th September, 2019.

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Mumbai, Date : 20th September, 2019

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, “C” Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai