

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"B" JAIPUR

श्री एन.के.सैनी, उपाध्यक्ष एवं संदीप गोसाईं, न्यायिक सदस्य के समक्ष
BEFORE: SHRI N.K. SAINI, V.P. & SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ITA No. 02/JP/2020
निर्धारण वर्ष/Assessment Year : 2016-17

M/s. Gem Electro Mechanicals Pvt. Ltd. E-155, Road No. 11, VKI Area Jaipur	बनाम Vs.	The ACIT Circle-4 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACG 6256 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rohan Sogani, CA
राजस्व की ओर से / Revenue by: Smt. Runi Paul , Addl. CIT- DR

सुनवाई की तारीख / Date of Hearing : 15/09/2020
उद्घोषणा की तारीख / Date of Pronouncement: 15 /09/2020

आदेश / ORDER

PER SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order of ld.CIT (A)- 2, Jaipur dated 08.11.2019 for the Assessment Year 2016-17 passed under 143(3) of the Income Tax Act, 1961 on the grounds mentioned hereinbelow.

“1. In the circumstances of the case and in law the ld. CIT(A) has erred in confirming the action of the AO in not allowing the claim of the assessee company of Rs. 2,74,978/- incurred on delayed payment of certain Govt. dues. The action of the ld. CIT(A) is

illegal, unjustified and arbitrary and against the facts of the case. Relief may please be granted by quashing the disallowance of Rs. 2,74,978/-.

2. In the circumstances of the case and in law the Id. CIT(A) has erred in confirming the action of the AO in disallowing the claim of the assessee company of Rs. 1,82,756/- incurred on account of non-submission of certain forms. The action of the Id. CIT(A) is illegal, unjustified and arbitrary and against the facts of the case. Relief may please be granted by quashing the disallowance of Rs. 1,82,756/-.

Due to prevailing COVID-19 pandemic condition, the hearing of the appeals are concluded through video conference.

2.1 Brief facts of the case are that the assessee company filed its E-ITR for the Assessment Year 2016-17 on 27-09-2014 declaring total income of Rs. 85,37,500/-. The AO completed the assessment u/s 143(3) of the Act vide order dated 01-12-2018 at a total income of Rs. 1,08,80,140/- resulting into addition of Rs. 23,42,640/-.

2.2 Aggrieved by the order of the AO, the assessee carried the matter before the Id. CIT(A) who vide order dated 8-11-2019 has sustained the addition of Rs. 4,57,734/- by observing as under:-

“3.3 I have perused the facts of the case, the assessment order and the submissions of the appellant. Assessee claimed interest of Rs.2,74,978/- paid on various delay in payment which includes delayed payment of sales tax demand and interest, service tax and custom duty which are all Govt. dues. Similarly payment of Rs. 1,82,756/- is on account of non-submission of required forms. Assessee

claims that they are business expenditure incurred in course of business and allowable u/s 37. I find that interest on statutory dues is contravention of respective law. Similarly the sales tax demand raised is also for contravention. Therefore, they are not allowable under section 37(1) also. Accordingly, the same is confirmed. This ground of appeal is dismissed.’’

2.3 Now being aggrieved by the order of the Id. CIT(A), the assessee has filed the present appeal before us on the grounds mentioned hereinabove.

2.4 The grounds Nos. 1 and 2 raised by the assessee are interrelated and interconnected and relate to challenging the orders of the Id. CIT(A) in deleting the addition.

2.5 During the course of hearing, the Id.AR of the assessee reiterated the same arguments as were raised by him before the Id. CIT(A). He has also filed the following written submissions for our consideration.

‘‘1. BRIEF FACTS

1.1. The assessee company in the preceding years, had made certain inter-state sales, at concessional rate of Sales Tax, against certain forms prescribed under the Central Sales Tax Act, 1956. The assessee company, in such an arrangement, was required to collect the requisite forms from the buyer of the goods, situated in a different state, and thereafter deposit the same with the Sales Tax Authorities in the State of Rajasthan.

1.2 The concessional rate of tax was only applicable when the assessee company after selling the goods could deposit the requisite forms, as obtained from the buyers, with the Sales Tax Authorities. This was in accordance with Section 8(1) of Central Sales Tax Act, 1956..

1.3. However, for certain sale transactions undertaken by the assessee company, buyers did not provide the desired forms to the assessee company, resultantly, those forms could not ultimately be deposited, by the assessee company, with the Sales Tax Authorities.

1.4. During the relevant previous year, assessment was conducted by the Sales Tax Department on the transactions undertaken by the assessee company in the preceding years. During such assessment, it was found that for certain transactions, since, the assessee company had not deposited the requisite forms, it was not entitled to the Sales Tax at concessional rate and normal rate of tax was made applicable on such transactions.

1.5. Resultantly, pursuant to such Assessment, carried out during the relevant previous year, the assessee company was required to deposit the differential amount of Sales Tax on the transactions for which the requisite forms could not be submitted. Thereafter, the assessee company deposited Rs. 1,82,756 as part of the sales tax amount.

1.6. Since there was delay in deposition of the aforementioned amount of sales tax, the assessee company along with the tax, had to deposit interest, amounting to Rs. 2,71,826 on such delayed deposition of sales tax amount, in accordance with the Section 9 of Central Sales Tax Act, 1956 r.w. Section 55 of Rajasthan Value Added Tax Act, 2003. Also, Rs. 3,152 was deposited on account of interest due to delay in deposition of Custom Duty and Service Tax.

1.7. Thus, the total amount of Rs. 4,57,734 (Rs. 1,82,756 + Rs. 2,71,826 + Rs. 3,152), was claimed by the assessee company, during the relevant previous year, as part of the expenses incurred for the purpose of business, u/s 37(1) of the Income Tax Act, 1961 ("ITA").

2. ASSESSING OFFICER

2.1 Ld. AO, during the course of assessment proceedings, disallowed the aforementioned claim made by the assessee company, for the sole reason of the same having been incurred on account of violation of law for the time being in force.

2.2. Ld. AO held that interest, additional tax, etc. were surely due to the violation of due dates for deposit of the same under the respective act.

3. COMMISSIONER OF INCOME TAX (APPEALS)

3.1 Before the Id. CIT(A), submissions were made by the assessee company which has also been reproduced by Id. CIT(A) on **Page 15 and 16** of her order.

3.2. Ld. CIT(A), without any cogent basis, upheld the disallowances made by the Id. AO, by simply mentioning that they were on account of contravention of the respective law. Ld. CIT(A) did not appreciate the nature of the expenses incurred and the provisions of the relevant statute.

4. SUBMISSIONS

4.1 Following facts are undisputed —

4.1.i The liability on account of sales tax was due to the non-deposition of the requisite forms through which the assessee was entitled to collection of Sales Tax at concessional rate.

4.1.ii The liability on account of Interest was due to the reason of delay in deposition of the aforementioned Sales Tax and also custom duty and service tax.

4.2. Since the requisite forms could not be deposited by the assessee company with the Sales Tax Authorities, the assessee company was required to deposit the sales tax amount at normal rate, as against the concessional rates of tax.

4.3. Resultantly, the differential amount of tax (Normal Rate — Concessional Rate), of Rs. 1,82,756, was deposited by the assessee company.

4.4. Such amount of tax deposited by the assessee company is certainly not in the nature of penalty for contravention of any law. If the assessee company had not taken the route of concessional rate of tax, it was, even otherwise, required to pay such tax at normal rates only, being obligated to do so under the relevant act. In such a scenario the entire sales tax deposited by the assessee, at normal rate of tax would have been allowed u/s 37(1), as having been incurred for the purpose of business.

4.5. It is only a tax which was paid by the assessee company as the route of concessional rate of tax was blocked for the reason of assessee company having not been able to deposit the requisite form with the Sales Tax Authorities.

4.6. It is akin to a case, if the assessee company had not collected any Sales Tax amount from the buyer, in such a scenario, assessee company would have been responsible for payment of Sales Tax out of its own pocket and would have got deduction of entire such amount under section 37(1).

4.7. Hon'ble Supreme Court in Malwa Vanaspati & Chemical Co. [1997] 92 Taxman 537 (SC) (Enclosed Page 3), with reference to Madhya Pradesh General

Sales Tax Act, 1958, that, wherein, the assessee had to pay the amount of tax at actual rates and something more (up to 25% of the tax amount), instead of concessional rates, then, it comprises both the elements of compensation and penalty. Compensation insofar as payment of tax at the full rate is obligatory, and something more (i.e. up to 25 % of the tax amount), is in the character of a penalty. The assessee shall be entitled to the deduction under section 37(1) insofar as the payments partake the element of compensation, i.e. up to 100% of the sales tax rate actually payable.

4.8. Reliance is also placed on the decision of **Hon'ble MP High Court** in the case of **Simplex Structural Works [1983] 12 Taxman 176 (Enclosed Page 6-7)**, wherein, it has been held that the differential amount of tax (Normal Rate — Concessional Rate) subsequently deposited should be allowed under section 37(1).

4.9. Interest of Rs. 2,71,826 was paid by the assessee company, in accordance with Section 9 of Central Sales Tax Act, 1956 r.w. Section 55 of Rajasthan Value Added Tax Act, 2003, for delay in deposition of the Sales Tax amount as stated hereinbefore.

4.10. It is a trite law that interest on delay in deposition of sales tax is compensatory in nature and not penal.

4.11. Reliance is placed on the below mentioned judicial pronouncements: -

Supreme Court

4.11.i **Lachmandas Mathuradas [2002] 122 Taxman 828 (SC) Enclosed Page 8)**

4.11.ii **Mahalakshmi Sugar Mills Co. v. CIT [1980] 123 ITR 429 (SC)**

Jurisdictional High Court

4.11.iii **Udaipur Distillery [1986] 24 TAXMAN 282 (Raj — HC) (Enclosed Page 12)**

4.11.iv **Rajasthan Central Stores (P.) Ltd. [1984] 19 Taxman 163 (Rajasthan HC)**

4.11.v **C.G. Sanghi [1984] 18 Taxman 380 (Rajasthan HC)**

4.11.vi **Western Indian State Motors [1987] 163 ITR 194 (Rajasthan HC)**

4.12. **Hon'ble Jurisdictional High Court in Udaipur Distillery [1986] 24 TAXMAN 282** held that, *"The liability of interest on delayed payment of sales tax is a statutory obligation of the dealer and is automatic as no specific order is required. Thus, it is a part of sales tax and as the sales tax is paid by a dealer for the purpose of carrying on business, the amount of interest will for all purposes be considered to be an amount spent wholly and exclusively for the purpose of business. It may be stated that it is well settled that neither necessity nor motive nor reasonableness is the test for allowing deduction of expenditure spent wholly and*

exclusively for the purpose of business under section 37. It follows, therefore, that the amount of interest paid by the assessee on the sales tax is an allowable deduction under section 37."

4.13. Similarly interest of Rs. 3,152, deposited on account of interest due to delay in deposition of custom duty and service tax should be allowed as expenditure u/s 37(1).

In view of the above factual and legal position, additions made by the AO and sustained by the Id. CIT(A) deserves to be deleted.’’

2.6 During the course of hearing, the Id. DR supported the orders of the lower authorities and also relied on the following decisions.

1. Swadeshi Cotton Mills Ltd. vs CIT 233 ITR 199 (SC)
2. Bokaro Power Supply Co. vs DCIT , Circle 3(1), New Delhi (ITA No.3405/Del/2014 (assessee) and ITA No.3692/Del/2014 (Revenue) date of order 31-10-2017, ITAT Delhi Bench

2.7 We have heard the Id. counsels for both the parties and we have also perused the materials placed on record, deliberated upon judgements cited by the parties as well as the orders of the Revenue authorities. From the facts, we noticed that the assessee had made certain inter-state sales at concessional rates of Sales Tax, against ‘‘C’’ forms prescribed under the Central Sales Tax Act, 1956. The assessee company was required to collect requisite forms from the buyers of the goods situated in different States and thereafter deposit the same with the Sales Tax Authorities in the State of Rajasthan. However, for certain sales transactions, the

assessee company could not obtain the required forms from the buyers; resultantly, those forms could not ultimately be deposited with the Sales Tax Department. Therefore, in the above circumstances, the assessee was not found entitled to the sales tax at concessional rate and thus normal rate of tax was made applicable on such transactions. Hence, the assessee was required to deposit the differential amount of sales tax amounting to Rs. 1,82,756/- on the transactions for which requisite forms could not be submitted by the assessee company.

2.8 Since there was delay in depositing the aforesaid amount of sales tax, therefore, the assessee was made to deposit interest amounting to Rs. 2,71,826/- on such delayed payment of sales tax amount and Rs. 3,152/- on delayed payment of Excise/Custom Duty & Service Tax. The AO during the course of assessment proceeding disallowed the claim of the assessee for the sole reason that same had been incurred on account of violation of law.

2.9 After having heard the Id. counsels for both the parties at length and also appreciating the facts of the present case, we found that since the requisite forms could not be deposited by the assessee to the Sales Tax Department, therefore, the assessee company was required to deposit the sales tax amount at normal rate as against concessional rate of tax,

resultantly, the differential amount was deposited by the assessee company. In our view, such amount of tax deposited by the assessee company is certainly not in the nature of penalty for contravention of any law. It was only a tax which was paid by the assessee company as route of concessional rate of tax was blocked as the assessee was not able to deposit the requisite forms with the Sales Tax Department. On similar circumstances, the **Hon'ble Supreme Court in the case of Malwa Vanaspati & Chemicals Co. (1972) 92 Taxman 537 (SC)** had held that where the assessee had to pay the amount of tax at actual rates instead of concessional rates and something more, then it comprises both the elements of compensation and penalty. Therefore, compensation insofar as payment of tax at full rate is obligatory and something more, is in the character of a penalty. Hence, the assessee shall be entitled to the deduction u/s 37(1) of the Act insofar as the payments partake the element of compensation i.e. upto 100% of the sales tax rate actually payable. Similarly, the Hon'ble M.P. High Court in the case of **Simplex Structural Works [1983] 12 Taxman 176** had held that the differential amount of tax (Normal Rate — Concessional Rate) subsequently deposited should be allowed under section 37(1). The **Hon'ble Jurisdictional High Court in Udaipur Distillery [1986] 24 TAXMAN**

282 held that, *"The liability of interest on delayed payment of sales tax is a statutory obligation of the dealer and is automatic as no specific order is required. Thus, it is a part of sales tax and as the sales tax is paid by a dealer for the purpose of carrying on business, the amount of interest will for all purposes be considered to be an amount spent wholly and exclusively for the purpose of business. It may be stated that it is well settled that neither necessity nor motive nor reasonableness is the test for allowing deduction of expenditure spent wholly and exclusively for the purpose of business under section 37. It follows, therefore, that the amount of interest paid by the assessee on the sales tax is an allowable deduction under section 37.* The Bench has also taken into consideration the case laws relied on by the ld. DR but it did not find applicable in the present facts and circumstances of the case. Hence, taking into consideration the present facts, circumstances of the case and the case laws discussed hereinabove, we do not concur with the findings of the ld. CIT(A) and we are of the considered view that the differential amount of tax (Normal rate – Concessional Rate) amounting to Rs. 1,82,756/- and interest on delayed payment of Sales Tax amounting to Rs. 2,74,978/- (Rs. 2,71,826/- plus Rs. 3,152/-) deposited by the assessee is not in the nature of penalty for contravention of any law. Therefore, the assessee is

entitled for deduction of such amount u/s 37(1) of the Act. Thus the grounds of appeal of the assessee are allowed.

3.0 In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 15 /09/2020.

Sd/-

(एन.के.सैनी)

(N.K. Saini)

उपाध्यक्ष / Vice President

Sd/-

(संदीप गोसाईं)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 15 /09/2020.

*Mishra

आदेश की प्रतिलिपि अग्रोषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant-M/s. Gem Electro Mechanicals Pvt. Ltd., Jaipur

2. प्रत्यर्थी / The Respondent-The ACIT, Circle-4, Jaipur

3. आयकर आयुक्त / CIT

4. आयकर आयुक्त / CIT(A)

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.

6. गार्ड फाईल / Guard File {ITA No. 02/JP/2020}

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar