

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 3251/Del/2016 : Asstt. Year : 2011-12

JCIT(OSD), Central Circle, Noida	Vs	M/s ATS Infrastructure Ltd., K-19, Sector-19, Noida
(APPELLANT)		(RESPONDENT)
PAN No. AADCA0609B		

Assessee by : Sh. Ved Jain, Adv.

Revenue by : Ms. Sunita Singh, CIT DR

Date of Hearing: 14.01.2021	Date of Pronouncement: 05.03.2021
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the revenue against the order of the Id. CIT(A), Kanpur dated 17.03.2016.

2. Following grounds have been raised by the revenue:

"1. That the Id. CIT(A) has erred in law and on facts in deleting the addition of Rs.12,44,02,301/- on account of disallowance of interest paid to M/s GNIDA as the grounds on the basis of which the AO has made the addition have not been adjudicated upon by the Id. CIT(A). The Id. CIT(A) has adjudicated this issue only on the ground that since the interest payment is not for violation of law or for the commission of an act purpose of which is an offence as contemplated in explanation 1 of Section 37(1) of the IT Act 1961.

2. That the Id. CIT(A) did not appreciate the facts and material on record."

3. Brief facts of the case are that, the AO disallowed the penal interest paid by the assessee on account of default in payment of installments to GNIDA. The AO disallowed the amount of the interest on three grounds.

- a. Interest was not allowable as it was not on borrowed fund.
- b. As per the agreement there was no requirement to pay interest.
- c. No interest payment was allowable on acquiring a capital asset i.e. the lease rights of the land.

4. Aggrieved the assessee went into the appeal before the Id. CIT (A). The assessee took up the following grounds at point no. 9, 10, 11 and 12 of the grounds filed:

"9. Because the AO has erroneously held that the interest paid to GNIDA is not allowable since the installments were not paid within the stipulated time and interest is in the nature of penal interest.

10. Because the AO could not appreciate that the interest as per the Rescheduled Payment Plan approved by GNIDA is nothing but a necessary business expenditure and the same is fully allowable.

11. Because the AO erroneously held that the interest payment for acquiring the leasehold rights of the land is capital assets and no payment is allowable on capital assets as per the Income Tax Act, 1961.

12. Because the AO did not appreciate the facts that the leasehold rights in land is stock-in-trade in the hand of assessee which is engaged in the business of real estate development."

5. The Id. CIT (A) deleted the addition holding that the payment of interest is not an offence as contemplated as per the Explanation to Section 37(1). While deleting the addition, the Id. CIT (A) held as under:

"I have carefully gone through the assessment order and written submissions filed by the assessee. I find force in the submissions and argument of the Id. AR. It may be seen from the facts of the case that the appellant could not pay the full value of installments to GNIDA and subsequently the authority allowed him to pay the installments but with some interest. These facts show that subsequent payment of interest is not for the infringement of law but it is only compensatory in nature. Reliance is also placed on the following case laws:

- *CIT Vs Dhampur Sugar Mills Ltd. (2005) 274 ITR 34 (All.)*
- *CIT Vs Kanpur Textiles Ltd. (2005) 143 Taxman 274 (All.)*
- *CIT Vs Swadeshi Mining & Mfg. Co. Ltd. (2005) 147 Taxman 614 (All.)*

Since, it is not for the violation of law or for the commission of an act purpose of which is an offence as contemplated explanation 1 to 37(1), therefore, interest expenses claimed by the appellant cannot be disallowed on this ground. Hence, the addition made by the AO is hereby deleted."

6. Having gone through the record, it is apparent that the Id. CIT (A) has not adjudicated on the ground nos. 9 to 12 in the appeal filed before him for which the revenue filed appeal before us. The main contention of the revenue is that the addition needs to be examined broadly in the light of allowability of the interest in acquiring the lease rights on the land but not narrowly on the issue, whether such interest is

penal in nature or not. Since, the Id. CIT (A) has not adjudicated on the core of the issue, we hold that the interest of justice would be well served by remanding the matter to the file of the Id. CIT (A) to adjudicate on the grounds unadjudicated.

7. In the result, the appeal of the revenue allowed for statistical purpose.

Order Pronounced in the Open Court on 05/03/2021.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 05/03/2021

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR