

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'C', KOLKATA
VIRTUAL HEARING**

[Before Shri J. Sudhakar Reddy, Hon'ble Accountant Member & Shri Sanjay Garg, Hon'ble Judicial Member]

**I.T.A. No. 2200/Kol/2019
Assessment Year: 2015-16**

**Asstt. Commissioner of Income Tax, CC-1(3), Kolkata.....Appellant
Vs.**

**M/s. Rungta Sons Pvt. Ltd.....Respondent
8A, Express Tower
42A, Shakespeare Sarani
Kolkata - 700 017
[PAN : AABCR 2356 N]**

Appearances by:

Shri Brijesh Kumar Singh, Advocate, appeared on behalf of the assessee.

Shri Supriyo Pal, Addl. CIT, D/R. appearing on behalf of the Revenue.

Date of concluding the hearing : April 27th, 2021

Date of pronouncing the order : June 23rd, 2021

ORDER

Per J. Sudhakar Reddy, AM:-

This appeal filed by the revenue is directed against the order of the Learned Commissioner of Income Tax (Appeals)- 20, Kolkata, (hereinafter the "Id. CIT(A)"), passed u/s. 250 of the Income Tax Act, 1961 (the 'Act'), dt. 04/12/2018, for the Assessment Year 2015-16.

2. After hearing rival contentions, we find that the Id. CIT(A) has deleted the addition by holding as follows-

"3.Ground No. 1 is regarding disallowance of Railway Punitive charges amounting to Rs. 1,48,77,990/- The AO has stated the following in support of the disallowance : -

*" The assessee has also cited case laws in support of his claim. The explanation given by the assessee company cannot be accepted on the strength of the following discussion. The dictionary meaning of 'punitive' is 'inflicting or intended as punishment etc.". Therefore prima-facie the punitive charges are penal in nature. Further, it is observed that the punitive charges are levied as per notification of Ministry of Railways for overloading in a wagon beyond the permissible carrying capacity of the wagon as exhibited under sub-section (2) or sub-section(3) or Sub-section 4 of section 72 of Railways Act, 1989. **These charges are levied in contravention of law and rules of the Railways specifying the permissible carrying capacity, with the intention to prevent the persons from overloading wagons by levying charges in excess of normal freight. Thus, punitive charges on overloading, paid to Railways are not compensatory but penal in nature. The provisions of Explanation to 37 of the IT Act,1.961 declares that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purposes of business and no deduction or allowance shall be made in respect of such expenditure. Thus, the punitive charges paid to the Indian Railway due to overloading being purely penal in nature and since the expenditure incurred by the assessee is an offence as per the Indian Railways Act, the same should not be allowed as a deduction.***

Furthermore, the assessee company has submitted that Ld. Income tax Appellate Tribunal, Kolkata had set aside the addition made on account of Railway Punitive charges for the A.Y. 2010-11,A.Y. 2011-12 & A.Y. 2012-13. However, the revenue is in appeal before Hon'ble Calcutta High Court for all the aforementioned assessment years on the issue."

3.1 The Ld. AR has given detailed write up in his defence. The A/R has contended that the charges have been paid for over loading of wagons and therefore, they are in the nature of normal business expenditure allowable u/s.37. The Ld. AR has relied on the following case laws

LDCIT Vs Bharat Gandhi (46 SOT 258) Mumbai IT AT' 2. Western Coalfields Ltd. Vs ACIT(124 TTJ 659) Nagpur ITAT, 3) Agrawal Roadlines P Ltd. Vs DCIT(129 TTJ 49) Ahd IT AT.

The Ld. AR has also submitted the following :

" It is to be noted that in the case of assessee itself, for the AY 2013-14 & 2014-15 the Ld. CIT(A) had set aside the additions made on account of Railway Punitive charges and the copy of order of AY 2014-15 is enclosed herewith as Annexure-6.

Also in the case of assessee itself the The Income Tax appellate Tribunal, Kolkata in its order the order dated 10.01.2018 for AY 2014-15 has uphold the above order of CIT(A) and allowed the Railway punitive charges which is enclosed herewith as Annexure-7".

3.2 I have perused the assessment order and the submission of the assessee, in view of the decision of Hon'ble Calcutta Tribunal, in the case of the assessee and also the decisions cited by ld AR above, I agree that Railway punitive charges are allowable expenditure u/s 37 and therefore the ground is decided in favour of the assessee and is allowed."

3. This Bench of the Tribunal in the assessee own case of the Assessment Year 2013-14 in ITA No. 1652/Kol/2016, order dt. 10/01/2018, has held as follows:-

"14. We have considered the rival submissions. This tribunal in the case of Feegrade & Company Pvt. Ltd on an identical issue has taken the following view :-

" 8. At the time of hearing of the appeal it was fairly accepted by the parties that the issue raised by the revenue in this appeal is squarely covered in favour of the assessee by the decision of ITAT Mumbai bench in the case of Taurian Iron & Steel Co.(P)Ltd (supra). In the aforesaid decision the Hon'ble ITAT after considering the decision of the Hon'ble Supreme Court in the case of Prakash Cotton Mills P.Ltd. 201 ITR 684 (SC) and also the nature of railway punitive charges held that the payments made to the railways for overloading of the wagons is compensatory in nature and cannot be disallowed under Explanation to [Section 37\(1\)](#) of the Act. The other decisions relied upon by the assessee supports the plea of the assessee and where the decisions rendered in the context of overloading charges paid to railways. In view of the above we do not find any merits in ground no.1 raised by the revenue. Consequently the same is dismissed."

15. In the case of M/s Taurian Iron & Steel Co (supra) ITAT Mumbai Bench dealt with an identical issue and came to the following conclusion :-

" The overloading charges paid by the appellant to the Railways are paid in the regular course of business in accordance with the notification issued by Ministry of Railways doted 23.12.2005. The notification of Ministry of Railways dated 23.12.2005 provides a Schedule in which 'Situation A' and Situation B provides that if the aggregated payload in a rake exceed the combined permissible carrying capacity of the rake, the punitive charges should be levied as per 'Part - I, 'Part-II, Part-III of Situations A & B" It provides that in case of overloading upto 1/2 tonnes, 'punitive charges eligible on the entire weight of loading beyond the permissible carrying capacity shall be nil (as per different tables of Situation A' and Situation B' and in case the weight of commodity exceeds the permissible carrying capacity . of the wagon by more than 1/2 tonnes, the punitive charges eligible on the entire weight loading beyond the permissible carrying capacity would be '2 times the freight rates applicable to that commodity in case of Situation A' and 3 times the freight rates applicable to the highest class in case of Situation B'.

Thus, it is obvious from the notification of Ministry of Railways dated 23.12.2005 that the railway authorities do allow overloading of its rake and it charges 2 or 3 times the freight rate applicable to that commodity as punitive charges'. Though the words used in the notification are 'punitive charges', the charges levied by the Indian Railways for carrying the goods in its rake .are permitted by Railway authorities itself and the punitive charges are computed as 2 times or 3 times of the freight rates. The punitive charges levied by Railways, in accordance with the notification of Ministry of Railways dated 23.12.2005, for carrying goods in its rakes are not 'for any purpose which is an offense or which is prohibited by law'. As a matter of fact, the Indian Railways itself permits carrying weight load beyond the permissible carrying capacity subject to payment of higher rate of freight by 2 times or 3 times.

Though the words are 'punitive charges', they are payment which are neither an offense nor is prohibited by the law rather the payment is in accordance with the law as provided in the notification of Ministry of Railways dated 23.12.2005. It is, therefore, held that Explanation to [Section 37](#) is not applicable and the payment of Rs.1,01,85,788/- is allowable. Hence, the addition is deleted and Ground No. 4 is allowed."

16. As far as the decision of the Hon'ble Delhi High Court in the case of Time Incorporated (supra) cited by the ld. DR before us is concerned that was the case of a suit for permanent injunction and damages, filed against the defendant for a passing off action and in the course of it's judgement the Hon'ble court made a reference regarding purpose of awarding punitive damages. The said decision is not of any application whatsoever be the present case. The decision of the Hon'ble Karnataka High Court in the case of Mamta Enterprises(supra) is again a case where the criminal offence was compounded and the compounding fees was claimed as deduction. In the present case there is no offence whatsoever and there is no compounding fee paid and claimed as deduction. As far as the decision of the Hon'ble Supreme Court in the case of Haji Aziz and Abdul Brothers (supra) is concerned it was again the case of breach of penal provisions of [Customs Act](#) for which fine was paid. Under these circumstances, the expenses were not allowed as deduction. We are of the view that in the facts and circumstances of the present case the claim of the assessee for deduction was rightly allowed by CIT(A). We therefore uphold the order of CIT(A) and dismiss ground no.1 raised by the revenue."

4. Consistent with the view taken therein, we uphold the finding of the ld. CIT(A) and dismiss this ground of the revenue.
5. In the result, appeal of the revenue is dismissed.

Kolkata, the 23rd day of June, 2021

Sd/-
[Sanjay Garg]
Judicial Member

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated : 23.06.2021
{SC SPS}

Copy of the order forwarded to:

1. M/s. Rungta Sons Pvt. Ltd
8A, Express Tower
42A, Shakespeare Sarani
Kolkata – 700 017

2. Asstt. Commissioner of Income Tax, CC-1(3), Kolkata

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy
By order

Assistant Registrar
ITAT, Kolkata Benches