IN THE INCOME TAX APPELLATE TRIBUNAL
"B"BENCH: BANGALORE

BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.2633/Bang/2019
Assessment Year: 2016-17

TUV Rheinland NIFE Academy Private Limited No.27/B, 2nd Cross, 13, Konappan Agrahar Begur Hobli Electronic City Bangalore 560 100 **PAN NO : AAECT8703A**	**Vs.**	ACIT Circle-7(1)(1) Bangalore
APPELLANT		**RESPONDENT**

Appellant by	:	Smt. Kavitha Paramesh, A.R.
Respondent by	:	Shri Muzaffar Hussain & Shri Priyadarshi Mishra, D.Rs.

Date of Hearing	:	02.09.2021
Date of Pronouncement	:	01.11.2021

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 21.10.2019 passed by Ld. CIT(A)-7, Bengaluru and it relates to the assessment year 2016-17. The grounds of appeal urged by the assessee given rise to the following issues:-

a) Disallowance of depreciation on goodwill
b) Disallowance of interest paid u/s 201(1A) of the Income-tax Act,1961 ['the Act' for short].

c) Disallowance of interest on bank overdraft u/s 40(a)(ia) of the Act.

2. The assessee is a Private Limited company incorporated on 23.12.2013. It is a subsidiary of TUV Rheinland (India) Pvt. Ltd.. The ultimate parent company is TUV SUD Group, Germany. This group is providing technical services worldwide. The assessee company is engaged in the business of providing Vocational training to the students in the fields of fire safety, lift technology, fiber optics, etc.

3. The first issue relates to disallowance of depreciation claimed on goodwill. The A.O. noticed that the assessee has claimed depreciation on goodwill. The depreciation was claimed on the amount of Rs.25.38 crores @ full rate, since it was used for more than 180 days and on Rs.5.18 crores @ 50% of eligible amount of depreciation, since it was used for less than 180 days. The total amount of depreciation claimed on Good will was Rs.6,99,31,440/-. In this regard, the AO noticed that the assessee had acquired a vocational training institute giving training to the students from a person named Shri M.V. Thomas, who was running the said institution under the name and style “NIFE ACADEMY”. It was noticed that the holding company of the assessee has entered into a Business Transfer Agreement (BTA) on 4.12.2013 with Shri M.V. Thomas for acquiring the academy NIFE for a lumpsum amount of Rs.28.50 Crores plus some adjustment on slump sale basis. In pursuance of the above said agreement entered by holding company, the assessee had paid aggregate amount of Rs.30.56 crores (Rs.25.38 crores plus Rs.5.18 crores) and treated the same as “Good will” and claimed depreciation thereon.

4. The A.O. examined the financials of "NIFE Academy" as on 30.1.2014 and noticed that the total of assets/liabilities of the above said concern was Rs.7.46 crores only. The equity capital stood at Rs.1.05 crores and the fixed assets value stood at Rs.96.84 lakhs only. Accordingly, the AO took the view that the slump sale price of Rs.30.56 crores is higher than the value of assets. Further, the assessee had submitted before the AO that the purchase consideration paid over and above the value of tangible assets was treated as "Good Will". However, the AO noticed that the assessee has treated the entire consideration paid by it as Good Will.

5. The A.O. referred to 5th Proviso to section 32(1) of the Act, which states that the aggregate amount of depreciation allowable to a 'predecessor and a successor' in the case of succession referred to in certain clauses of Section 47 or Section 170 or to the 'amalgamating company and the amalgamated company' in the case of amalgamation or to the 'demerged company and resulting company' in the case of demerger, as the case may be shall not exceed in any previous year the amount of depreciation calculated at prescribed rates, as if the succession or amalgamation or demerger, as the case may be, had not taken place. In that case, the amount of depreciation shall be apportioned between the predecessor and successor etc., in the ratio of number of days for which the assets were used by them. The A.O. held that the spirit of above said proviso would suggest that the successor to an asset cannot get more depreciation than the depreciation which the predecessor would have got. The AO has noticed that the NIFE ACADEMY did not possess asset of "Good will" and accordingly held that when an asset does not exist in the depreciation chart of the seller, then it cannot have a place in depreciation chart of buyer

also. Accordingly, the A.O. held that the claim of depreciation of the assessee on goodwill cannot be allowed.

6. Without prejudice to the above, the A.O. also held that the assessee has not done any "valuation" for goodwill. In any case, there is huge variation between the value of asset and the consideration paid by the assessee. Accordingly, the A.O. took the view that the assessee has adopted a colourable device to reduce tax liability by claiming higher amount of depreciation and for the purpose, it has paid higher amount for purchasing assets on slump sale. The A.O. also took support of the decision rendered by Mumbai Bench of ITAT in the case of Deputy Commissioner of Income-tax Vs. Toyo Engineering India Ltd. (2013) 33 Taxmann.com 560, wherein it was held that no depreciation will be allowed on goodwill in a case where from purchase of goodwill was not proved by the assessee. Accordingly, the A.O. disallowed depreciation claimed by the assessee on goodwill.

7. The Ld. CIT(A) noticed that the assessee company was formed only on 23.12.2013 while the agreement had been entered by the holding company on 4.12.2013 i.e. prior to the incorporation of the assessee company. Accordingly, he took the view that any business of the parent company cannot automatically devolve to the assessee herein without following due legal and statutory procedures. He further noticed that the agreement has been entered during the financial year relevant to the assessment y ear 2014-15. However, the assessee has not claimed depreciation on Good will amount in assessment 2014-15 & 2015-16. Accordingly, the Ld. CIT(A) held that the assessee has not brought anything on record to explain as to under what circumstances the appellant

decided to claim depreciation on goodwill in assessment year 2016-17 for the first time after two years of purchasing NIFE business.

8. The assessee has claimed before the tax authorities that the purchase price paid over and above net-worth of the NIFE is treated as goodwill. However, since the assessee has not furnished any separate valuation report for goodwill, the Ld. CIT(A) rejected the above said submissions of the assessee. The Ld. CIT(A) also examined the relationship between the owner of NIFE ACADEMY, Shri M.V Thomas and the assessee group. Even though there was no relationship, yet Shri M.V. Thomas was employed as Management Executive/Director in the assessee company. Further, he was paid huge money as salary and also hefty fee of Rs.9.5 crores spread over next 3 years as non-compete and non-solicitation fee. Accordingly, the Ld. CIT(A) took the view that the payment made to Shri M.V. Thomas is nothing but payment of non-compete fee. Accordingly, the Ld. CIT(A) held that the excess sale consideration paid over and above the net-worth of NIFE Academy is consideration paid for non-competition and non-solicitation by M.V. Thomas.

9. Before Ld. CIT(A), the assessee had placed reliance on the decision rendered by Hon'ble Supreme Court in the case of Smifs Securities Ltd. 348 ITR 302 in order to contend that goodwill is eligible for depreciation. However, the Ld. CIT(A) observed that the tax authorities in the above said case has recorded a finding that difference between cost of an asset and the amount paid constituted goodwill. However, in the instant case, the A.O. has not accepted the similar claim made by the assessee on the reasoning that the assessee has not explained as to how the goodwill was valued and what the components of goodwill are.

10. The Ld CIT(A) also affirmed the view of the A.O. that the spirit of 5th Proviso (now it is 6th proviso) to section 32(1) of the Act would apply to case of slump sale, like that of assessee. Accordingly, the Ld. CIT(A) upheld the disallowance of depreciation claimed on goodwill.

11. The Ld. A.R. submitted that it is a settled principle that the consideration paid in excess of value tangible assets while acquiring a going concern on slump sale basis is to be classified as goodwill. This is in consonance with Accounting Standard-10 issued by Institute of Chartered Accountants of India. The Ld. A.R. submitted that this principle was appreciated by Hon'ble Delhi High Court in the case of Truine Energy Services Pvt. Ltd. Vs. Deputy Commissioner of Income-tax (2016) 65 Taxmann.com 288. The Ld. A.R. submitted that the A.O. had placed reliance on the decision rendered by Mumbai Bench of Tribunal in the case of Toyo Engineering India Pvt. Ltd. (supra). She submitted that the above said decision is distinguishable on facts. She submitted that the above said decision rendered by Mumbai Tribunal was distinguished by Chennai Bench of Tribunal in the case of ACIT Vs. M/s. Dorma India Pvt. Ltd. (ITA Nos.1666/CHNY/2019 dated 20.11.2019). The Chennai Bench of Tribunal noticed that the amount paid for acquisition of business by Toyo Engineering India Ltd consisted predominantly acquiring of land admeasuring 5559.90 Sq.mtrs. and a building thereon. In those facts, the Chennai bench of Tribunal observed that "non-allocation of fair market value on land and building weighed heavily on Tribunal in coming to conclusion that no payment of goodwill was made". She submitted that the facts of the present case are also different, i.e., the assessee has not purchased any land or building from NIFE

ACADEMY. Accordingly, the Ld. A.R. submitted that the tax authorities are not justified in not treating the excess amount paid over the value of net assets as goodwill.

12. The Ld. A.R. further submitted that the Ld. CIT(A) has taken the view that the impugned payment has been madefor"non-competition and non-solicitation" by Shri M V Thomas. She submitted that the Hon'ble jurisdictional High Court of Karnataka has held in the case of CIT Vs. Ingersoll Rand International India Pvt. Ltd. (2014) 48 Taxmann.com 349 that the payment for non-compete fee results in commercial right coming into existence and the same is an intangible asset eligible for depreciation u/s 32(1)(ii) of the Act. Accordingly, the Ld. A.R. submitted that even if the impugned payment is considered as non-compete fee, still the assessee is eligible for depreciation.

13. On the contrary, the Ld. D.R. submitted that the assessee has not entered into agreement with Shri M.V. Thomas for acquiring NIFE Academy. He submitted that holding company of the assessee company has entered into an agreement. Since the assessee and its holding company are two different entities, the agreement entered by the holding company is not binding upon the assessee. Further, the assessee has not provided any material to show that the right acquired by the holding company was transferred to the assessee in accordance with law. The Ld. D.R. further submitted that the assessee has shown entire consideration paid as goodwill, whereas the A.O. has recorded that M/s. NIFE Academy had fixed assets for Rs.96.84 lakhs. Thus, the assessee has not bifurcated the payment between assets acquired and excess amount paid. Further, the Ld CIT(A) has given a finding that the impugned payment is not for acquiring "good will", since the NIFE

ACADEMY did not possess any goodwill asset. The Ld. D.R. further submitted that the agreement was entered in 2013 by the holding company. Even if it is assumed that the assessee had acquired right from its holding company, yet there is no explanation from the assessee as to why it did not claim any depreciation in assessment years 2014-15 and 2015-16 and further, why depreciation has been claimed during the year under consideration. Accordingly, the Ld. D.R. submitted that the Ld. CIT(A) was justified in rejecting the claim of depreciation in view of the above said deficiencies.

14. In the rejoinder, the Ld. A.R. submitted that the agreement was entered by the holding company on behalf of the assessee company and the assessee company was formed to execute the above said agreement. She submitted that the assessee company only has paid the consideration for purchase of NIFE Academy and hence it is the assessee which has paid for "goodwill". Accordingly, she submitted that the assessee company is eligible for depreciation on goodwill payment.

15. The Ld. A.R. further submitted that though the agreement was entered for purchase of NIFE Academy in 2013, the deal was finally concluded in 2015 only and accordingly payment was made during the year under consideration. Accordingly, the Ld. A.R. submitted that the assessee has claimed depreciation from the current year onwards. She further submitted that the holding company entered into an amendment agreement with Shri M V Thomas on 30th January, 2014 and this fact shows that the deal was not concluded by that time. The Ld A.R also furnished a copy of amendment agreement as additional evidence.

16. We heard rival contentions and perused the record. The first question to be addressed on this issue is whether the payment made over and above the net asset value, while acquiring a business concern, shall constitute good will or not. We notice that this question has been answered by Hon'ble Delhi High Court in the case of Truine Energy Services Pvt. Ltd (supra). The relevant observations made by Hon'ble Delhi High Court are extracted below:-

> *"15. From an accounting perspective, it is well established that 'goodwill' is an intangible asset, which is required to be accounted for when a purchaser acquires a business as a going concern by paying more than the fair market value of the net tangible assets, that is, assets less liabilities. The difference in the purchase consideration and the net value of assets and liabilities is attributable to the commercial benefit that is acquired by the purchaser. Such goodwill is also commonly understood as the value of the whole undertaking less the sum total of its parts. The 'Financial Reporting Standard 10' issued by Accounting Standard Board which is applicable in United Kingdom and by Institute of Chartered Accountants of Ireland in respect of its application in the Republic of Ireland, explains that "the accounting requirements for goodwill reflect the view that goodwill arising on an acquisition is neither an asset like other assets nor an immediate loss in value. Rather, it forms the bridge between the cost of an investment shown as an asset in the acquirer's own financial statements and the values attributed to the acquired assets and liabilities in the consolidated financial statements".*
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> *16. The abovementioned Financial Reporting Standard 10 also provides for accounting of purchased goodwill as "the difference between the cost of an acquired entity and the aggregate of the fair values of that entity's identifiable assets and liabilities. Positive goodwill arises when the acquisition cost exceeds the aggregate fair values of the identifiable assets and liabilities. Negative goodwill arises when the aggregate fair values of the identifiable assets and liabilities of the entity exceed the acquisition cost."*
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> *17. At this stage, it is also relevant to refer to Accounting Standard 10 as issued by the Institute of Chartered Accountants of India. The relevant extract of which reads as under:-*
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> > *"16.1 Goodwill, in general, is recorded in the books only when some consideration in money or money's worth has been paid for it. Whenever a business id acquired for a price (payable either in cash*

or in shares or otherwise) which is in excess of the value of the net assets of the business taken over, the excess id termed as 'goodwill'. Goodwill arises from business connections, trade name or reputation of an enterprise or from other intangible benefits enjoyed by an enterprise."

18. It is also relevant to note that Smifs Securities Ltd. (supra) was a case where assets of company - YSN shares and Securities (P.) Ltd. were transferred to Smifs Securities Ltd. under a scheme of amalgamation. And, the excess consideration paid by the Assessee therein over the value of net assets of YSN Shares and Securities (P.) Ltd. acquired by the Assessee, was accounted as goodwill.

19. In view of the above, we are inclined to accept the contention advanced on behalf of the Assessee that the consideration paid by the Assessee in excess of its value of tangible assets was rightly classified as goodwill."

17. We have noticed that the Ld. CIT(A) has referred to the decision rendered by Mumbai Bench of Tribunal in the case of Toyo Engineering India Ltd. (supra). The Ld. A.R. pointed out that the above said decision was rendered for the facts prevailing in that case and said distinction was brought out by Chennai bench of Tribunal in the case of Dorma India Pvt. Ltd. (supra). We have discussed in the preceding paragraph about the observation made by Chennai bench in the above said case in respect of the decision rendered in the case of Toyo Engineering India P Ltd, i.e., the assets acquired by the above said assessee predominantly consisted of huge land and building. In the instant case, we notice that no land/building has been purchased and hence the facts prevailing in the Toyo Engineering India Pvt. Ltd. (supra) were different from the facts of the present case. Accordingly, we are of the view that the decision rendered in the case of Toyo Engineering India Pvt. Ltd. will not apply to the facts of the present case. Accordingly, following the decision rendered by Hon'ble Delhi High Court in the case of Truine Energy Services Pvt. Ltd. (supra), we hold that the

amount paid in excess of the net asset value for acquiring a business concern shall constitute goodwill.

18. The next question is whether the following proviso to sec.32 (1) shall apply to the facts of the present case?.

> ***"Provided also*** *that the aggregate deduction, in respect of depreciation of buildings, machinery, plant or furniture, being tangible assets or know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets allowable to the* ***predecessor and the successor in the case of succession*** *referred to in clause (xiii), clause (xiiib) and clause (xiv) of section 47 or section 170 or to* ***the amalgamating company and the amalgamated company in the case of amalgamation****, or to the* ***demerged company and the resulting company in the case of demerger,*** *as the case may be, shall not exceed in any previous year the deduction calculated at the prescribed rates as if the succession or the amalgamation or the demerger, as the case may be, had not taken place, and such deduction shall be apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the demerged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets were used by them."*

A careful perusal of the above said proviso would show that the same is applicable to the cases of "Succession", "Amalgamation" and "Demerger", i.e, transactions between related parties. In the instant cases NIFE academy has been acquired through Business Transfer Agreement by the holding company of the assessee from Shri M V Thomas. It is not the case of the revenue that this transaction is between two related parties. Hence this purchase would not fall under the categories of succession, amalgamation and demerger. We have noticed that the tax authorities have

observed that the spirit of the above said provisions should be applied to the present case. We are unable to agree. It is well settled proposition of law that the Income tax provisions should be construed strictly. Hence the scope of the above said proviso cannot be extended to the transaction of purchases between two unrelated parties.

19. The next question to be addressed is whether the assessee has acquired the good will, which is eligible for depreciation. In the instant case, the tax authorities have brought out following important points:-

a) The agreement with Shri M.V. Thomas has been entered by M/s. TUV Rheinland (India) Pvt. Ltd. and not by the assessee. The above said company is the holding company of the assessee. The Ld. CIT(A) has observed that the assessee company and holding company are two different entities in the eyes of law and hence, the right acquired by the holding company should have been transferred to the assessee company in accordance with the law. We also notice that the holding company has entered Business Transfer Agreement on 4th of December, 2013. Further, the holding company has entered into an amendment agreement with Shri M.V. Thomas on 30th day of January, 2014. Thus, both the agreements have been entered by the holding company only. In this kind of situation, it is imperative for the assessee to show that the rights proposed to be acquired through the above said agreements were made over to the assessee. In the instant case, we notice that the assessee has not furnished any explanation as to how it was done.

b) The tax authorities have pointed out that the assessee has shown the entire consideration paid by it as goodwill, while M/s. NIFE Academy had fixed assets for Rs.96.84 lakhs. It is not clear from the submissions made by the assessee as to what was the net asset value of NIFE Academy. We have noticed that the amount paid in excess of the net asset value shall constitute goodwill. Hence, there is some obscurity on this aspect.

c) The tax authorities have also pointed out that the assessee has not claimed depreciation in assessment years 2014-15 and 2015-16. The Ld. A.R. submitted in this regard that the payments were made during the year under consideration only and hence, the depreciation was claimed during the year. In this regard, the assessee is required to clarify on these points.

   i. The assessee has show as to how it got ownership of NIFE Academy, i.e., the assessee has to show as to how the rights proposed to be acquired by the holding company were made over to it.

   ii. Then the assessee has to furnish the details of the date from which it has started operating NIFE Academy.

   iii. The date of making payment for acquiring NIFE Academy and the details of authority under which the payment was made.

   iv. If the assessee has proved its ownership of the NIFE Academy and if it has also started operating NIFE Academy from any of the earlier years, then

the provisions of Explanation 5 to sec.32 shall apply. Accordingly, the depreciation shall be deemed to have been allowed in the earlier years. Accordingly, the depreciation is allowable in this year on WDV only. For this purpose, the actual payment is not relevant. These facts also require verification.

20. Accordingly, in our view, the eligibility of the assessee to claim depreciation on Goodwill cannot be decided unless the above said factual aspects are clarified. We have held, following the decision rendered by Hon'ble Delhi High Court, that the excess amount paid over and above the net asset value on acquiring a business concern shall constitute goodwill. However, the said legal principle can be applied only if the facts relating to the case are clear. We have noticed that the facts are not clear in the instant case. Accordingly, in the interest of natural justice, we are of the view that the assessee should be provided with an opportunity to present the relevant facts. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue and restore the same to the file of the A.O. for examining afresh in the light of observations made (supra). After considering the information and explanations furnished by the assessee and also after affording adequate opportunity of being heard, the A.O. may take appropriate decision in accordance with law.

21. The next issue relates to the disallowance of interest paid u/s 201(1A) of the Act. The assessee had paid interest of Rs.7,56,653/- u/s 201(1A) for the delay in payment of TDS. The assessee claimed the same as deduction. The AO disallowed the above said claim and the Ld CIT(A) also confirmed the same.

22. Before us, the Ld A.R contended that the interest payment is compensatory in nature and hence it is allowable. She also placed her reliance on the decision rendered by Hon'ble Kerala High Court in the case of CIT vs. Dhanalakshmy Weaving works (254 ITR 13)(Kerala).

23. We heard Ld D.R on this issue and perused the record. We notice that the issue considered by Hon'ble Kerala High Court in the case of Dhanalakshmy Weaving works (supra) is related to the very chargeability of interest u/s 201(1A). The issue here is whether such interest paid is allowable as business expense or not. We notice that an identical issue has been considered by Delhi bench of Tribunal in the case of New Modern Bazaar vs. ITO (ITA. No. 590/Del/2018 dated 08-04-2021) and it was decided against the assessee. For the sake of convenience, we extract below the relevant observations made by Delhi bench of Tribunal in the above said case:-

> *"7. We have carefully considered the rival contentions. The above issue has already been considered by Hon'ble Madras High Court in* ***CIT Vs. Chennai Properties & Investment Ltd.*** *(1999) 239 ITR 435 (Mad.) wherein it has been held that interest under Section 201(1A) of the Act paid by the assessee does not assume the character of business expenditure and also cannot be regarded as compensatory payment. The above decision of the Hon'ble Madras High Court has also been dealt with exclusively by the various benches of the ITAT , specifically in* ***Velankani Information Systems Ltd.*** *V DCIT [2018] 97 taxmann.com 599 (Bangalore – Trib.)/[2018] 173 ITD 19 (Bangalore – Trib.) wherein considering various decisions of the Tribunal had followed the decision of the Hon'ble Madras High Court in* ***CIT Vs. Chennai Properties & Investment Ltd.*** *(supra) as under :-*
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> > ***"21.*** *As far as delay in remittance of tax deducted at source u/s. 201(1A) of the Act is concerned, we find that the Hon'ble Madras High Court has taken a view that i nterest paid u/s. 201(1A) is also in the nature of tax and notwithstanding the fact that it is not the tax liability of the assessee, the same cannot be allowed as a deduction. The following were the relevant observations of the Hon'ble Madras High Court:—*

"14. As already noticed the p ayment of interest takes colour from the nature of the levy with reference to which such interest is paid and the tax required to be but not paid in time, which rendered the assessee liable for payment of i nterest was in the nature of a direct tax and similar to the income-tax payable under the Income-tax Act. The interest paid under Section 201(1A) of the Act, therefore, would not assume the character of business expenditure and cannot be regarded as a compensatory p ayment as contended by learned counsel for the assessee.

15. Counsel for the assessee in support of his submission that the i nterest paid by the assessee was merely compensatory in character besides relying on the case of Makalakshmi Sugar Mills Co. also relied on the decision of the apex court in the cases of Prakash Cotton Mills Pvt Ltd. CIT *[1993] 201 ITR 684;* Malwa Vanaspati and Chemical Co. *v.* CIT *[1997] 225 ITR 383 and* CIT *v.* Ahmedabad Cotton Manufacturing Co. Ltd*. [1994] 205 ITR 163. In all these cases, the court was concerned with an indirect tax payable by the assessee in the course of its business and admissible as business expenditure. Further liability for interest which had been incurred by the assessee therein was regarded as compensatory in nature and allowable as business expenditure.*

16. The ratio of those cases is not applicable here. Income-tax is not allowable as business expenditure. The amount deducted as tax is not an item of expenditure. The amount not deducted and remitted has the character of tax and has to be remitted to the State and cannot be utilised by the assessee for its own business. The Supreme Court in the case of Bharat Commerce and Industries [1998] 230 ITR 733, rejected the argument advanced by the assessee that retention of money payable to the State as tax or income- tax would augment the capital of the assessee and the expenditure incurred, namely, interest paid for the period of such retention would assume character of business expenditure. The court held that an assessee could not possibly claim that it was borrowing from the State, the amounts payable by it as income-tax, and utilising the same as capital in its business, to contend that the interest paid for the period of delay in payment of tax amounted to a business expenditure". (emphasis supplied)

22. The decision cited by the ld. counsel for the assessee of Kolkata Bench of the Tribunal on the issue is contrary to the decision of the Hon'ble Madras High Court. Though the decision of the Tribunal is later in point of time, judicial discipline demands that the decision of the Hon'ble Madras High Court is to be followed. It is also worthwhile to mention that the Kolkata Bench of Tribunal in the case of Narayani Ispat (P.) Ltd. (supra), *which was cited by the ld. counsel for the assessee, did not consider or did not have an occasion to consider the decision of the Hon'ble Madras High*

Court in the case of Chennai Properties and Investment Ltd. (supra). *In these circumstances, we follow the decision of the Hon'ble Madras High Court & uphold the order of the CIT(A) insofar as it relates to disallowance of interest on delayed remittance of tax deducted at source u/s. 201(1A) of the Act."*

8. In view of this, we do not find any merit in the appeal of the assessee and hold that interest payment on late payment of tax at source is not eligible business expenditure for deduction and it is not compensatory in nature."

24. Following the above said decision, we decide this issue against the assessee and accordingly uphold the decision rendered by Ld CIT(A) on this issue.

25. The last issue relates to the disallowance of interest payments u/s 40(a)(ia) of the Act for non-deduction of tax at source. The AO noticed that the assessee has not deducted tax at source from various payments, which included payment of interest on borrowings amounting to Rs.65,66,637/-. The AO disallowed 30% of the above said amount u/s 40(a)(ia) of the Act.

26. Before the AO, the assessee submitted that the above said interest amount of Rs.65,66,637/- consisted of interest payments made on bank loans amounting to Rs.52,56,362/- and interest payment to others amounting to Rs.13,10,274/-. The assessee submitted that interest paid to banks is not liable to TDS and it has voluntarily disallowed the remaining amount of Rs.13,10,274/-. The Ld CIT(A) accordingly deleted the disallowance of Rs.13,10,274/-. However, he confirmed the disallowance made out of Rs.52,56,362/- on the reasoning that the assessee did not support its claim with evidence.

27. We heard the parties on this issue and perused the record. Admittedly, the interest paid on bank loans is not liable to TDS

deduction and hence disallowance u/s 40(a)(ia) is not called for. However, we notice that the Ld CIT(A) has confirmed the disallowance only for want of evidence. Accordingly, in the interest of natural justice, we are of the view that the assessee should be provided with an opportunity to produce evidences in support of its claim. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of AO for examining it with the evidences that may be furnished by the assessee. After hearing the assessee, the AO may take appropriate decision in accordance with law.

28. In the result, the appeal of the assessee is treated as partly allowed.

Order pronounced in the open court on 1st Nov, 2021

Sd/-	**Sd/-**
(Beena Pillai)	**(B.R. Baskaran)**
Judicial Member	**Accountant Member**

Bangalore,
Dated 1st Nov, 2021.
VG/SPS
Copy to:
1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.