

IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "A", HYDERABAD  
(Through Virtual Hearing)

BEFORE SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER  
AND  
SRI S.S. GODARA, JUDICIAL MEMBER

ITA No. 382/Hyd/2020		
A.Y. 2016-17		
KNR Constructions Limited, Hyderabad. PAN: AAACK 8316 L (Appellant)	VS.	DCIT, Circle-2(1), Hyderabad. (Respondent)
Assessee by	Sri S. Rama Rao	
Revenue by	Sri T. Sunil Goutam, Sr. AR	
Date of hearing:	02/12/2021	
Date of pronouncement:	31/01/2022	

ORDER

PER A. MOHAN ALANKAMONY, A.M:

This appeal is filed by the assessee against the order of the Ld. CIT(A)-12, Hyderabad in appeal No. 10288/2018-19, dated 12/02/2020 passed U/s. 143(3) r.w.s 250(6) of the Act for the A.Y. 2016-17.

2. The assessee has raised three grounds in its appeal, and they are extracted herein below for reference:

- "1. The order of the Ld. CIT(A) is erroneous to the extent it is prejudicial to the appellant.*
- 2. The Ld. CIT(A) erred in confirming addition of Rs. 4,92,622/- made by the Assessing Officer as interest on TDS delay payments.*

3. *Any other ground or grounds that may be urged at the time of hearing.”*

3. The brief facts of the case are that assessee is a limited company filed its return of income for the relevant assessment year 2016-17 on 26/11/2016. Thereafter the case of the assessee was selected for scrutiny and the assessment was completed U/s. 143(3) of the Act vide order dated 23/12/2018 wherein one of the additions made by the Ld. AO was towards disallowance of interest on late payment of TDS amounting to Rs. 4,92,622/-. On appeal, the Ld. CIT (A) confirmed the order of the Ld. AO by observing as follows:

*“6.3 Briefly the facts are that the appellant debited an amount of Rs. 4,92,622/- in the P&L account towards interest on TDS. The Assessing Officer disallowed the same holding that it is in the nature of penalty and therefore not allowable under Explanation 1 to section 37(1) of the Act. The AR contended that the said amount is neither penalty nor fine for violation of the Act and therefore pleaded that the same should be deleted. I have perused the rival contentions. In Form 3CD at item 34(c), the assessee has paid several amounts of interest u/s. 201(A) for default in TDS payments. The legal question which now arises is whether interest for delayed payment of TDS is an allowable deduction or not? This issue has come up in the Calcutta High Court in the case of Martin & Harris (P) Ltd. Vs. CIT 73 Taxman 555 (1994)(Cal.) wherein this question was answered after detailed discussion. The Hon'ble Calcutta High Court held that every person deducting tax in accordance with the provisions of the relevant section of the Act is required to furnish a certificate to the concerned person to the effect that tax has been deducted and specifying the amount so deducted, and the rate at which tax has been deducted at source. Therefore, what had been deducted was tax and it did not retain the character of any other income. It was held that the character and quality of interest payable for non-compliance with the provisions of the Act would be the same as the income tax itself which is not an allowable deduction. Therefore, it was held that interest on delay or default in TDS which is akin in nature to Income tax cannot be allowed as Income tax itself is not an allowable deduction. The relevant extract of the Hon'ble Calcutta High Court decision at para 11 of the order is reproduced below:*

*“In our view whenever interest is charged under the Act whether for delayed payment of tax or filing under estimate of tax or for non-submission of the estimate or return or for default in filing return within the time or delay in making payment of tax, it cannot be allowed as deduction in computing total income as essentially interest in such a case for non-compliance with the provisions of the Act is inextricably connected with the amount of income tax. Where income tax itself is not a deductible amount, be it compensation or be it penalty, payable in addition to the tax cannot be allowable as a deduction in computing total income.”*

6.3.1 *It is clear from the above ratio that when the income tax itself is not allowable as deduction, interest on delayed or deferred payment of tax (TDS) cannot also be allowable as a deduction. Therefore, there is no need to go into the aspect of whether the interest on TDS is compensatory or penal in nature as the same is not allowable.*

6.3.2 *The Hon'ble High Court of Madras in the case of CIT vs. Chennai Properties & Investment Ltd., 2.39 ITR 435 (1999)(Madras) has also examined this issue and has come to a similar conclusion. In this case, the Hon'ble High Court examined whether interest on delayed payment u/s. 201(LA) is an allowable business expenditure? It has held that the liability to pay interest on the amount not deducted or deducted but not paid, is directly related to the failure to deduct or remit the amount. The amount required to be deducted is the amount payable as income tax. The interest paid for the period of delay takes colour from the nature of the principal amount required to be paid but not paid within time. The principal amount here would be the income-tax and the interest payable for delayed payment is the consequence of failure to pay the tax and in the circumstances, is in the nature of penalty though not described as such in section 201(LA). It was held that as income tax is not an allowable business expenditure, the interest paid u/s. 201(LA) cannot be held as a business deduction. The relevant portion of the order of the Hon'ble Madras High Court is as under:*

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

6.3.3 *It is clear from the above ratio of the Hon'ble Madras High Court that the interest u/s. 201(A) paid by the assessee would not assume the character of business expenditure and cannot be regarded as compensatory payment as contended by the AR. In view of the clear decisions of Hon'ble High Courts cited above, with due respect, the addition made by the Assessing Officer is confirmed. Hence, the appeal on this ground is dismissed."*

4. Since the Ld. CIT (A) has confirmed the addition following the decisions of various High Courts we do not find it necessary to interfere with his order. It is pertinent to mention that in the case Bharat Commerce and Industries Limited vs. CIT reported in 230 ITR 730 the Hon'ble Apex Court has observed as under:

The Apex Court observed as under –

*"When interest is paid for committing a default in respect of a statutory liability to pay advance tax, the amount paid and the expenditure incurred in that connection is in no way connected with preserving or promoting the business of the assessee. This is not expenditure which is incurred and which has to be taken into account before the profits of the business are calculated. The liability in the case of payment of income-tax and interest for delayed payment of income-tax of advance tax arises on the computation of the profits and gains of business. The tax which is payable is on the assessee's income after the income is determined. This cannot, therefore, be considered as an expenditure for the purpose of earning any income or profits."*

4.1 Similar view was also held by the Hon'ble Apex Court in the case Bharat Commerce and Industries Ltd vs. CIT reported in 230 ITR 733.

5. It is also relevant to note that the provisions of section 201 of the Act stipulates consequence for failure to deduct tax or after deducting remit the same in the Government Treasury. Hence, it is obvious that the interest element merges with the tax and accordingly it partakes the

character of tax and not an expenditure incurred for earning income. Therefore, the decision rendered by the Hon'ble Apex Court cited supra will be relevant in the case of the assessee. For the above said reasons, we hereby confirm the orders of the Ld. Revenue Authorities on this issue.

6. In the result, appeal of the assessee is dismissed.

Pronounced in the open Court on the 31<sup>st</sup> January, 2022.

Sd/-  
(S.S. GODARA)  
JUDICIAL MEMBER

Sd/-  
(A. MOHAN ALANKAMONY)  
ACCOUNTANT MEMBER

Hyderabad, Dated: 31<sup>st</sup> January, 2022.

OKK

Copy to:-

- 1) KNR Constructions Limited, Plot No.113 & 114, Phase-1, KNR House, Kavuri Hills, Hyderabad.
- 2) Dy. Commissioner of Income Tax, Circle-2(1), Signature Towers, Kondapur, Hyderabad.
- 3) The Commissioner of Income Tax (Appeals)-12, Hyderabad.
- 4) The Pr. CIT (Central), Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File