

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 403/Hyd/2021
(निर्धारण वर्ष / Assessment Year: 2017-18)

M/s. Trinity Infraventures Limited, New Delhi [PAN No. AABCG1937G]	Vs.	Asst. Commissioner of Income Tax, Central Circle-3(2), Hyderabad
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अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri P. Murali Mohan Rao, AR
राजस्व द्वारा/Revenue by: Ms. R. Helen Ruby Jesindha, DR

सुनवाई की तारीख/Date of hearing: 17/08/2022
घोषणा की तारीख/Pronouncement on: 25/08/2022

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 20/09/2021 passed by the learned Commissioner of Income Tax (Appeals)-11, Hyderabad ("Ld. CIT(A)"), in the case of Trinity Infraventures Limited ("the assessee") for the assessment year 2017-18, assessee preferred this appeal.

2. Brief facts of the case are that the assessee is a company engaged in the business of real estate and investment in various associated companies. They filed their return of income for the assessment year 2017-18 on 31/10/2017 declaring a loss of Rs. 6,59,366/- and claiming refund of Rs. 1,84,620/-. On 09/11/2017, there was a search and seizure operation under section 132 of the Income Tax Act, 1961 ("the Act"). Pursuant to the notice under section 153A of the Act, assessee filed the return of income on 11/07/2018 again declaring loss of Rs. 6,59,366/-. Assessment under section 143(3) read with section 153A of the Act was complete by order dated 28/12/2019 by making an addition of Rs. 25,05,255/- on account of disallowance of interest for late deposition of TDS, on the ground that such interest paid for committing default of law is not an allowable expenditure.

3. In appeal before the Ld. CIT(A), assessee pleaded that under section 37(1) of the Act, only such expenditure incurred in connection with an offence, for an illegal act, or breach of law or prohibited in law alone is not allowable and in other cases, the payment of interest, more particularly in respect of TDS is only compensatory in nature. Reliance was placed on the decisions reported in Mahalakshmi Sugar Mills Co. Vs. CIT 123 ITR 429 (SC) and CIT Vs. Oriental Insurance Company Ltd., (2009) 183 TAXMAN 186 (Kar). It was further pleaded that interest paid on TDS is not interest on income tax and further proposition, reliance was placed on decision in Taksheel Solutions Limited Vs. ACIT in ITA No. 1768/Hyd/2012.

4. Ld. CIT(A), however, did not agree with the submissions made by the assessee and placing reliance on the decision of the ITAT in the case of New Modern Bazaar in ITA No. 590/Del/2018 held that the assessee was withholding somebody's due tax credit by depositing the same late and

causing undue hardship to such third party, TDS is mere a part of that business expenditure debited, which was already allowed as deduction and, therefore, interest on delayed deposit of TDS is not an allowable deduction. He accordingly, upheld the findings of the learned Assessing Officer and dismissed the appeal of assessee.

5. Assessee is, therefore, aggrieved of such an action of the Ld. CIT(A) and filed this appeal before us stating that the expenditure is incurred wholly and exclusively for the purpose of business and therefore, allowable as business expenditure under section 37 of the Act. Learned AR further submitted that the interest paid for delay in making payment of TDS is not in the nature of penalty and does not tantamount to breach of law or an illegal act or prohibited act, and since the interest on TDS is compensatory in nature, but not penal, the same cannot be disallowable. Reliance is also placed on the decisions reported in Crustum Products P. Ltd., in ITA No. 946/Hyd/2019, Mercury Projects in ITA No. 440/Hyd/2018, Resolve Salvage & Fire India (P.) Ltd., Vs. DCIT, 139 taxmann.com 196 and M/s. Taksheel Solutions Limited Vs. ACIT, ITA No. 1768/Hyd/2012.

6. Per contra, learned DR submitted that in this case, the assessee withheld the TDS to the tune of Rs. 29,35,217/- and this is a clear breach of law which requires the TDS to be deposited within stipulated time and, therefore, it is not allowable under section 37 of the Act. He placed reliance on the orders of the authorities below.

7. We have gone through the record in the light of the submissions made on either side. There is no dispute as to the facts that the assessee failed to deposit the TDS amount within time and, therefore, deposited the

same with interest of Rs. 29,35,279/- which they claimed as deduction under section 37 of the Act stating that mere enlargement of the amount of TDS with the inclusion of interest, does not take away its character as being TDS to be allowed under section 37 of the Act. Only question therefore, that falls for our consideration is whether this interest partakes the character of a penalty or to be construed as payment for breach of law, so as to be disallowed under section 37 of the Act.

8. In Mahalakshmi Sugar Mills Co.(supra), while considering the nature of interest paid on the delayed payment of cess under the provisions of UP Sugarcane Cess Act, 1956, the Hon'ble Apex Court held that when there are provisions dealing with penalty specifically in the enactment, and the enlargement of any amount automatically, without the intervention of any order giving rise to the liability such enlargement, such additional amount will not be a penalty, but only compensatory in nature. In Oriental Insurance Company Ltd., (supra), the Hon'ble Karnataka High Court clearly held that section 201(1A) of the Act is a provision to levy interest for delayed remittance of TDS and it is the practice of the Revenue that for delayed payment of tax for any reasonable cause, the assessee is liable to pay interest at stipulated rate and also paying interest on the delayed payments to the assessee, and, therefore, interest paid for delayed deposit of TDS cannot be equated to penalty or breach of law.

9. In Crustum Products P. Ltd., (supra), a Co-ordinate Bench of this Tribunal held that the interest levied towards the late payment of TDS is only damages thrust on the assessee for late payments of dues to the Revenue. In Mercury Projects (supra), the Co-ordinate Bench held that the interest on TDS is not interest paid on per se and the same is in the nature

of compensation and not penal. In *Resolve Salvage & Fire India (P.) Ltd.*, (supra), the Tribunal after noticing the decisions in the case of *Ferro Alloys Corporation Ltd., Vs. CIT (1992) 196 ITR 406 (Bom)*, *Bharat Commerce Industries Ltd., Vs. CIT (1985) 20 Taxman 302* and *Setup Consultants Pvt. Ltd., Vs. ACIT in ITA No. 5827/Mum/2012* by order dated 11/12/2018 observed that the interest paid on delayed payments of TDS under section 201(1A) of the Act is an allowable deduction. Lastly, in the case of *M/s. Taksheel Solutions Limited (supra)*, it was held that the interest on TDS is not interest paid on income tax per se and the disallowance thereof, is unwarranted.

10. It is, therefore, clear that the sole issue for consideration in this appeal is no longer *res integra* and covered by the above decisions. Respectfully following the same, we hold the issue in favour of the assessee and direct the learned Assessing Officer to delete the disallowance made on account of interest on TDS.

11. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this the 25th day of August, 2022

Sd/-
(RAMA KANTA PANDA)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 25/08/2022

TNMM

Copy forwarded to:

1. M/s.Trinity Infraventures Limited, C/o. P. Murali & Co.,
Chartered Accountants, 6-3-655/2/3, 1st Floor, Somajiguda, Hyderabad.
2. Asst. Commissioner of Income Tax, Central Circle-3(2), Hyderabad.
3. CIT(Appeals)-11, Hyderabad.
4. Pr.CIT(Central)-Hyderabad.
5. DR, ITAT, Hyderabad.
6. GUARD FILE

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ITAT, HYDERABAD