

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

श्री संजय शर्मा, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष

**Before Dr. Manish Borad, Accountant Member
and Shri Sonjoy Sarma, Judicial Member**

I.T.A. No.655/Kol/2022
Assessment Year: 2020-21

Durrung Tea Estate Ltd.....Appellant

C/o. Jain Vinod K & Associates,
41A, A.J.C. Bose Road,
Suite No.613, 6th Floor,
Kolkata-700017.
[PAN: AAEC52666P]

vs.

DCIT, Circle-4(1), Kolkata.....Respondent

Appearances by:

Shri Vinod Jain, FCA, appeared on behalf of the appellant.

Shri P.P. Barman, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : February 27, 2023

Date of pronouncing the order : March 13, 2023

ORDER

Per Manish Borad, Accountant Member:

This appeal at the instance of the assessee pertaining to the Assessment Year (in short "AY") 2020-21 is directed against the order of the National Faceless Appeal Centre [in short ld. "CIT(A)"] dated 23.09.2022.

2. The assessee in this appeal has taken the following grounds of appeal:

"1. The Ld. Commissioner of Income Tax (Appeal) NFAC erred on facts in confirming the entire addition of Rs.55,91,927 disallowed by CPC, Bangalore u/s. 143(1)(a)(iv) without considering the details and records.

2. The Ld. Commissioner of Income Tax (Appeal) NFAC erred in law in confirming the computation of assessed income by CPC, Bangalore, adding the entire amount of Rs.55,91,927 u/s.36(1)(va) to Business income without applying the provision of rule 8 as applicable in case of

appellant thereby instead of allocating 40% thereof as business income and rest as Agriculture income.

3. The Ld. Commissioner of Income Tax (Appeal) NFAC erred in law is confirming the disallowance made of Rs. 62,151 u/s.37 by CPC, Bangalore, being interest for late payment of statutory dues, not in nature of penal interest or interest for late payment of Income Tax.

4. That the appellant craves leave to add, alter, modify or omit any of the grounds at the time or prior to the date of hearing.

3. The first issue for consideration is disallowance u/s 36(1)(va) of the Act towards employees contribution to PF & ESI at Rs.55,91,927/-.

4. The grievance of the assessee is that since the assessee company is engaged in tea plantation business, the disallowance u/s 36(1)(va) should be restricted to 40% only in view of Rule 8 of the Income Tax Rules.

5. On the other hand, the ld. Departmental Representative objected to the request made by the assessee and relied on the orders of the lower authorities.

6. We have heard rival contentions and perused the records before us. Undisputedly, there is a delay on the part of the assessee in depositing employees' contribution towards PF & ESI which has been paid after the due date prescribed under the relevant Act governing PF & ESI Act. The assessee is in the business of tea plantation. Under the similar set of facts and circumstances, this Tribunal in the case of *Madoorie Tea Estate Pvt. Limited vs. ACIT in ITA No.760/Kol/2022 dated 28.02.23* has decided the issue taking note of the judgment of the Hon'ble Supreme Court in the case of *Checkmate Services Pvt. Limited -vs.- CIT reported in 43 taxmann.com 178* and also considering the provisions of Rule 8. Respectfully following the same, we direct to restrict the disallowance u/s 36(1)(va) of the Act only @40% of Rs.55,91,927/-. Accordingly, the

disallowance sustained in the hands of the assessee amount to Rs.22,36,771/-. Ground No.1 and 2 raised by the assessee is partly allowed.

7. The second issue for our consideration is the disallowance made u/s 37 of the Act at Rs.62,151/- raised by the assessee vide Ground No.3.

8. The Id. Counsel for the assessee has filed details of the alleged sum and also referred to the decision in support of the contention that interest of late deposits of sales tax allowable as deduction u/s 37(1) of the Act.

9. On the other hand, the Departmental Representative vehemently relied on the decision of the lower authorities.

10. We have heard the rival contention and perused the records. The disallowance at Rs.62,151/- made by the Assessing Officer u/s 37 of the Act comprising of the following:

<i>1. Interest</i>	
<i>Interest on delayed payment of GST:</i>	<i>Rs. 35,595</i>
<i>Interest on delayed payment of P Tax</i>	<i>Rs. 10</i>
<i>Interest on TDS payment</i>	<i>Rs. 1,296</i>
<i>Total</i>	<i>Rs. 36,901</i>
<i>2. Late filing Fees</i>	
<i>For filing of GST returns</i>	<i>Rs.22,350</i>
<i>For filing of FSSAI License</i>	<i>Rs. 2,800</i>
<i>Total</i>	<i>Rs.25,150</i>
<i>Grand Total</i>	<i>Rs.62,051</i>

11. On perusal of the above details, we find that so far as interest on delayed payment of GST at Rs.35,595/- is concerned, there is a direct decision of this Tribunal referred by the assessee in the case of ACIT vs. M/s Naaraayani Sons Pvt. Ltd. in ITA Nos.1796 to 1798/Kol/2017 dated 21.08.2018 in which the Tribunal after considering the judicial

precedents held that the interest expenses claimed by the assessee on account of delayed deposit of service tax are allowable expenses u/s 37(1) of the Act. In this decision, reliance was placed on the judgment of Hon'ble Apex Court in the case of Lachmandas Mathura vs. CIT reported in 254 ITR 799, wherein, the Hon'ble Apex Court held that the interest on arrears of tax is compensatory in nature and not penal. We, therefore respectfully following the decision of this Tribunal hold that the assessee is eligible to claim interest on GST at Rs. 35,595/- as an expenditure u/s 37(1) of the Act and thus the said disallowance is deleted. So far as the remaining disallowance are concerned, which mainly includes late filing of fees in delay in filing GST returns and FSSAI License, the same, in our view, are penal in nature and similarly interest on TDS payment of Rs.1296/- has also been held to be not allowable expenditure u/s 37 in the case of *M/s Premier Irrigation Adritec (P) Ltd vs. ACIT in I.T.A. No.387/Kol/2021 dated 20.01.23*. Following the same analogy, the interest on delayed payment of professional tax at Rs.1296/- is also not allowed. Thus, out of the total disallowance of Rs.62,051/-, the assessee gets relief at Rs.35,595/- and the remaining disallowance of Rs.26,456/- is confirmed. Thus, Ground No.3 is partly allowed.

12. In the result, the appeal of the assessee is partly allowed.

Kolkata, the 13th March, 2023.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Manish Borad]
Accountant Member

Dated: 13.03.2023.

RS

Copy of the order forwarded to:

- 1.Durrung Tea Estate Ltd
2. DCIT, Circle-4(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches