

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH: COCHIN**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SMT. PADMAVATHY S., ACCOUNTANT MEMBER**

ITA No.622/Coch/2022
Assessment Year: 2018-19

M/s. Aiswarya Granites, EGPVII/70, Arkannor, Elavummoodu, Kollam 691 533. PAN NO : AAPFA5874K	Vs.	The Assistant Commissioner of Income Tax, National e- Assessment Centre, Delhi.
APPELLANT		RESPONDENT

Appellant by	:	Shri G. Surendranath Rao, A.R.
Respondent by	:	Smt. J.M. Jamuna Devi, Sr. DR

Date of Hearing	:	11.01.2023
Date of Pronouncement	:	30.03.2023

O R D E R

PER BEENA PILLAI, JUDICIAL MEMBER:

The preset appeal is filed by the assessee against order dated 25.3.2022 passed by NFAC Delhi for assessment year 2018-19 on following grounds:

- 1. The Order of the Commissioner (Appeals) of National Faceless Appeal Centre (NFAC) is against-facts and law.*
- 2. The Commissioner of Income Tax (Appeals), NFAC, is not justified in disallowing the payment of commercial tax. The Commissioner (Appeals) should have appreciated that the amount paid was a statutory levy payable by all crushers installed in stone quarries based on their installed capacity. The levy was to be remitted on quarterly basis. The Commissioner (Appeals) NFAC has erred in concluding that the amount paid is in the nature of a compounding fee for any offence or towards*

an infraction of any law. The interest on the commercial tax paid amounting to Rs.2864 is only a compensatory levy towards delay in remittance of tax during the year and the same cannot be taken to be a penalty. Thus the disallowance is wholly unwarranted.

3. The Commissioner (Appeals), NFAC, is not justified in confirming the disallowance of Rs.50, 000 legal charges by ignoring the fact that the payments were made to different persons and the individual payments were below the threshold limit to which the TDS provisions do not apply. The disallowance is thus based on mistaken understanding of facts and hence not sustainable.

2. The Brief facts of the case are that the assessee is a partnership firm and had filed its return of income on 31.10.2018 declaring total income of Rs.30,28,880/-. The case was selected for complete scrutiny for the reason that expenditure by way of penalty or fine was claimed wrongly by assessee. During the assessment proceedings, the ld. AO observed that assessee had paid normal tax under the head compounded tax under Kerala Value Added Tax, which was claimed u/s 37 of the Act. The ld. AO also noted that TDS was not deducted on certain legal charges as it was paid below the threshold limit of 4 different persons. The ld. AO also noted that the TDS on finance charges that was paid after deducting was charged in the P&L account and the net finance charges that was debited along with TDS. The ld. AO after considering various submissions of the assessee disallowed the following:

Expenditure u/s 37(1) of the Act	-	Rs.16,00,364/-
TDS claimed and disallowed	-	Rs. 68,198/-

Aggrieved by the order of the Ld.AO assessee preferred appeal before Ld.CIT(A).

3. The Ld.CIT(A) after considering the details filed by the assessee upheld the disallowance made u/s 37(1) of the Act and partly disallowed the TDS amount claimed by assessee.

Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before this *Tribunal*.

4. The Ld.AR submitted that **Ground no.1** is general in nature and therefore, do not require any adjudication.

5. In respect of **Ground no.2**, the Ld.AR submitted that, the interest on the commercial tax paid amounted to Rs.2,864/- only, which is compensatory levy towards delay in remittance of tax during the year. He submitted that, the Ld.AO disallowed the entire amount without verifying the facts. He also submitted that the assessee had *suo moto* disallowed late fees penalty amounting to Rs.6,500/- in the computation of income that was in the nature of penalty. He thus prayed for the issue to be remanded to the Ld.CIT(A) in the interest of justice.

5.1 The ld. D.R. on the contrary relied on the order passed by authorities below.

5.2 We have heard the rival submissions and perused the materials available on record. We note that assessee had paid interest of Rs.2,864/- relating to delay in remittance of taxes and has paid late fees of Rs.6,500/- towards the deposit of commercial tax interest and GST. It is submitted that sum of Rs.6,500/- has been *suo moto* disallowed by the assessee in computation of income and sum of Rs.2,864/- is merely compensatory in nature and therefore cannot be disallowed. On perusal of the orders passed by authorities below, we note that

the Ld.CIT(A) disallowed the entire commercial tax paid by the assessee, which is actually related to the business of the assessee.

In the interest of justice, we remit this issue to the Ld.CIT(A) to consider the claim in accordance with law based on the document filed by assessee. Needless to say that proper opportunity of being heard to the assessee.

Accordingly this ground raised by the assessee stands allowed for statistical purposes.

6. **Ground No.3** is in respect of TDS not deducted u/s 194J of the Act on the legal charges amounting to Rs.50,000/- paid by the assessee. It is submitted that the said amount is paid to 2 different persons and does not qualify for any TDS being deducted as it is below the threshold limit. The Ld.AR submitted that, all the payments were made through banking channels. The assessee has relied on the ledger accounts of the legal charges that is passed at page 31 of the paper book and the bank statement extract placed at pages 32 to 33, wherein the amount is Rs.25,000/- paid to 2 different persons on 2.11.2017 and 17.3.2018. It is submitted that u/s 40(a)(ia) of the Act, the disallowance could be made only if the payment is above the threshold limit. He thus prayed for the deletion of the addition made by the Ld.AO.

7. On the contrary, the ld. D.R. relied on the orders passed by the authorities below.

8. We have heard the rival submissions and perused the materials available on record.

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9. Admittedly the payment is made by the assessee to two different parties. Each payment is of Rs. 25,000/- and do not exceed the threshold limit of Rs. 30,000/- for year under consideration. In our view the liability to deduct TDS arises only when the payment exceeds the threshold limit as per the relevant TDS provision. In the present facts, the payment made by the assessee is towards legal charges and legal opinion. We therefore direct the Ld.AO allow the claim of the assessee.

Accordingly, this ground of appeal raised by the assessee stands allowed.

In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced in the open court on 30th Mar, 2023

**Sd/-
(Padmavathy S.)
Accountant Member**

**Sd/-
(Beena Pillai)
Judicial Member**

Bangalore,
Dated 30th Mar, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.