

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 241/JP/2023  
निर्धारण वर्ष / Assessment Years : 2017-18

Deputy Commissioner of Income Tax, Jaipur	बनाम Vs.	K S Capital Services Private Limited, National Motors Building, M. I. Road, Near Govt. Hostel, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACK 7044 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. P. C. Parwal (CA)  
राजस्व की ओर से / Revenue by : Smt. Anuradha (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 01/06/2023  
उद्घोषणा की तारीख / Date of Pronouncement: 28/06/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by revenue and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 16/03/2023 [here in after (NFAC)] for assessment year 2017-18 which in turn arise from the order dated 04.03.2022 passed under section 154 r.w.s 143(3) of the Income Tax Act, by the ACIT, Circle-01, Jaipur.

2. In this appeal, the revenue has raised following grounds: -

*“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A), NFAC, Delhi was justified in deleting the additions of Rs. 2,18,089/- made on account of disallowance of interest paid on service tax of Rs. 2,18,089/- under section 37 of IT Act.”*

3. Succinctly, the fact as culled out from the records is that in this case, assessment was completed u/s 143(3) of the I.T. Act, 1961 on 30.12.2019 at the total income of Rs. 1,13,68,030/-. The assessee has debited interest on taxes amounting to Rs. 2,42,427/- in P/L account however the same has not been added back in the computation of total income. Thus interest paid on taxes of Rs. 2,42,427/- is not a permissible expense as per section 37 of the IT Act, 1961 and ought to be disallowed as per IT Act, 1961. Notice u/s 154 of the Income Tax Act was issued to the assessee on 25.02.2022. The assessee filed reply dated 1.03.2022 stating that the above mentioned amount includes interest on TDS of Rs. 24,338/- which has been disallowed and added back in computation by the assessee. Secondly it also includes interest on Service Tax of Rs. 2,18,089/- which is related to indirect taxes and is an allowable expense u/s 37 of IT Act, 1961 being compensatory in nature. Therefore, based on above facts interest payment on service tax amounting to Rs. 2,18,089/- disallowed u/s 37 of IT Act, 1961 and added to the total income of the assessee.

4. As the assessee is aggrieved with the above order of the Id. AO passed u/s 154 r.w.s 143(3) of the Act, has preferred an appeal before Id. CIT(A) and the same was partly allowed. The relevant finding of the Id. CIT(A) apropos to the grounds so raised by the assessee is reproduced here in below:-

*“6.1. Decision on Ground No. 1*

*The Grounds of Appeal, the statement of Fact, the submission filed by the appellant on various dates and the material available on record was examined. The fact of the case, as per the submission of the appellant, is that the appellant is an NBFC company engaged in the business of providing finance. It filed its Return of income on 14.10.2017 declaring Total Income of Rs. 75,97,350/- and the assessment u/s 143(3) of the Income Tax Act, 1961 was completed on 30/12/2019 at the Total Income of Rs. 1,13,68,030/- making addition of Rs. 37,70,676/- Subsequently, the Assessing Officer issued Notice u/s 154 of the Income Tax Act, 1961 dated 25.02.2022 for the reason that the appellant has debited interest on taxes amounting to Rs. 2,42,427/- in its Profit & Loss A/c which are not a permissible expense u/s 37 of the Income Tax Act, 1961 but the same has not been added back in the computation of income by the appellant. In response the appellant filed a submission on 01.03.2022. The Assessing Officer after considering the submission of the Appellant accepted the explanation of the appellant regarding allowability of interest on TDS of Rs. 24,338/- but did not agree on allowability of interest on Service Tax of Rs. 2,18,089/- and, therefore, he disallowed and added the same to the Total Income of the appellant u/s 37 of the Income Tax Act, 1961.*

*The first Ground of the appellant is that the order u/s 154 of the Income Tax Act, 1961 is illegal and bad in law. The appellant in its submission has contended that only prima facie mistakes apparent from the record can be rectified u/s 154 of the Income Tax Act, 1961. I agree with the contention of the appellant that prima facie mistakes apparent from the record can only be rectified u/s 154 of the Income Tax Act, 1961. In the instant case the Assessing Officer found from the record that the appellant has claimed certain expenses which are prima facie not allowable u/s 37 of the Income Tax Act, 1961 and, therefore, has issued Notice u/s 154 of the Income Tax Act, 1961 giving opportunity to the*

*appellant to explain as to why the disallowance of the same may not be made. Therefore, the contention of the appellant that the order passed u/s 154 is illegal and bad in law is found not justified and acceptable. Ground No. 1 of the appellant is, therefore, rejected.*

#### *6.2. Decision on Ground No. 2*

*The second Ground of the appellant is regarding disallowance of interest paid on service tax amounting to Rs. 2,18,089/- u/s 37 of the Income Tax Act, 1961. The Assessing Officer has disallowed the same in his order as under,*

*"However the assessee has paid interest on service tax of Rs 2,18,089/- which should have been disallowed and added back to the total income. Section 37 clearly states that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure. If the assessee had paid service tax in time no interest would have been levied. Interest is charged as per law to deter the assessee for not delaying the payment of taxes to Government of India. If the assessee is allowed to claim interest paid as expense it would defeat the purpose of law."*

*Whereas the appellant has submitted that the interest on Service Tax is compensatory in nature and not penal. The appellant has relied on some judicial decisions in its support which are mostly on the issue of interest on sales tax payment, I have gone through the submission of the appellant and the order u/s 154 of the Income Tax Act, 1961 of the Assessing Officer. I am of the view that the interest on late payment of Service Tax is not incurred for any purpose which is an offence or prohibited by law and, therefore, is an allowable expense u/s 37 (1) of the Income Tax Act, 1961. Various Courts/Tribunals have also held that the interest paid on late payment of service tax is compensatory in nature and therefore, an allowable expense u/s 37(1) of the Income Tax Act, 1961. Some of the decisions are as under,*

- i) Go Airlines (India) Ltd. Vs Deputy Commissioner of Income Tax- 5(1)(1), Mumbai [2021] 126 taxmann.com 152 (Mumbai - Trib.)*
- ii) Deputy Commissioner of Income-tax Vs Messee Dusseldorf India (P.) Ltd. [2010] 129 TTJ 81 (DELHI) (UO)*

*iii) Deputy Commissioner of Income Tax, Central Circle-4(2) Vs Sri Radhakrishna Shipping Ltd [2019] 110 taxmann.com 62 (Mumbai –*

*iv) Velankani Information Systems Ltd. Vs Deputy Commissioner of Income-tax, Circle- 7(1)(2), Bangalore [2018] 97 taxmann.com 599 (Bangalore - Trib.)*

*Therefore, the addition of Rs. 2,18,089/- made by the Assessing Officer u/s 37 of the Income Tax Act, 1961 on account on interest on late payment of Service Tax in his order u/s 154 of the Income Tax Act, 1961 dated 04-03-2022 is not found justified and the same is deleted.*

*Ground No. 2 of the appellant is, therefore, allowed.*

*6.3. Decision on Ground No. 3:- This Ground of Appeal is found general in nature and, therefore, need no adjudication.*

*In the result, the appeal of the appellant is partly allowed.”*

5. Before us, the Id. DR representing the revenue relied upon the order of the Id. AO and submitted that the assessee has not paid the service tax in time the interest paid thereupon is penal in nature the same is not allowable expenditure u/s. 37 of the Act. The Id. DR also placed on record the report of the Id. AO wherein he has stated that the order has been passed consequent upon the revenue audit objection and therefore, prayed to considered the said aspect.

6. Per contra, the Id. AR submitted that the Id. CIT(A) being in this case NFAC has passed a detailed order giving the reasoning on the issue that interest paid by the assessee is based on the various case rightly deleted.

The Id. AR of the assessee also placed reliance on the decision of the CIT Vs. Kaypee Mechanical India (P) Ltd. 223 Taxman 346 where in the Gujarat high court has held that payment of interest is compensatory in nature and would not partake the character of penalty.

7. We have heard the rival contentions, perused the material placed on record, order of the lower authorities and also gone through the judicial decision relied upon. The Id. CIT(A) while deciding on the issue has given detailed finding relying on the judgement in the case of :

*i) Go Airlines (India) Ltd. Vs Deputy Commissioner of Income Tax- 5(1)(1), Mumbai [2021] 126 taxmann.com 152 (Mumbai - Trib.)*

*ii) Deputy Commissioner of Income-tax Vs Messee Dusseldorf India (P.) Ltd. [2010] 129 TTJ 81 (DELHI) (UO)*

*iii) Deputy Commissioner of Income Tax, Central Circle-4(2) Vs Sri Radhakrishna Shipping Ltd [2019] 110 taxmann.com 62 (Mumbai –*

*iv) Velankani Information Systems Ltd. Vs Deputy Commissioner of Income-tax, Circle- 7(1)(2), Bangalore [2018] 97 taxmann.com 599 (Bangalore - Trib.)*

In addition the Id. AR also relied upon the decision of the Gujarat high court in the case of CIT Vs. Kaypee Mechanical India (P) Ltd. (Supra) and the revenue did not filed any contrary judgment to counter the submission of the assessee and the finding of the Id. CIT(A) which is well reasoned and has been passed after considering all the aspect of the case and we see no

reasons to deviate from the finding so recorded by the Id. CIT(A) and therefore, we do not find any merit in the case of the revenue and therefore, the same is dismissed.

In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 28/06/2023.

Sd/-

Sd/-

( संदीप गोसाई )

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

( राठौड कमलेश जयंतभाई )

(Rathod Kamlesh Jayantbhai)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 28/06/2023

\*Ganesh Kumar

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Deputy Commissioner of Income Tax, Jaipur
2. प्रत्यर्थी / The Respondent- K. S. Capital Services Private Limited, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 241/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar