

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"D" BENCH, MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.761/Mum./2023**

**(Assessment Year : 2011-12)**

D M Sons Metal Pvt. Ltd.  
502, Peninsula Heights, Juhu Lane  
Andheri (West), Mumbai 400 058  
PAN – AACCD6037D

..... Appellant

v/s

Asstt. Commissioner of Income Tax  
Range-6(2), Mumbai

..... Respondent

Assessee by : Shri Prateek Jha  
Revenue by : Smt. Mahita Nair

Date of Hearing – 02/08/2023

Date of Order – 08/08/2023

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 16/02/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals),52, Mumbai, [*"learned CIT(A)"*], for the assessment year 2011-12.

2. In its appeal, the assessee has raised the following grounds:-

*"1. The Ld CIT(A) erred in not appreciating that the assessee had written off the amount of Rs.58,104/- as bad debt in the books of account and it was allowable as deduction.*

*2. Without prejudice to Ground No. 1, the Ld CIT(A) erred in not appreciating the amount of Rs.58,014/- was incurred wholly and exclusively for the purpose of business and was allowable as deduction under section 37(1) of the IT Act.*

*3. The CIT(A) erred in upholding the disallowance of Rs.8.48.605/- being LC Discounting Charges without appreciating that this amount was credited to the suppliers account against purchases and was a business liability.*

*4. The CIT(A) erred in upholding this disallowance ignoring the fact that this expense was incurred wholly and exclusively for the purpose of business and was admissible under section 37(1) of the IT Act.*

*5. The appellant craves leave to amend or alter any of the above Grounds of Appeal or to add new Grounds of Appeal during the course of appeal proceedings.”*

3. The issue arising in grounds No.1 and 2, raised in assessee's appeal, are pertaining to the disallowance of Rs.58,014.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is engaged in the business of wholesale trade of ferrous and non-ferrous metals and metallic scrap. For the year under consideration, the assessee filed its return of income on 30/08/2011, declaring the total income of Rs.10,76,11,520. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. From the perusal of the profit and loss account for the relevant previous year, it was observed that the assessee has claimed the bad debt of Rs.2,26,046, during the year, which includes TDS of Rs.58,014, made on interest credited to import credit availed from Steelco Pacific Trading Ltd. The assessee was asked to explain as to why the said claim be not disallowed. In response thereto, the assessee submitted that the TDS on interest credited to parties account is not recoverable and therefore the same was claimed as bad debt. The Assessing

Officer ("AO") vide order dated 28/03/2014, passed under section 143(3) of the Act did not agree with the submissions of the assessee and held that the amount in question is not in the nature of revenue receipt in any earlier year nor it was offered to tax at any point of time since it does not represent any revenue receipt. The AO further held that the TDS is the tax liability of the deductee and hence the same cannot be said to partake the character of income in the hands of the assessee at the time of deduction. The AO also held that the payment towards TDS cannot now be claimed as expenditure by simply reversing the entries and by crediting the deductee's account. Accordingly, the AO disallowed the claim of bad debts of Rs.58,014, and added the same to the total income of the assessee.

5. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue. Being aggrieved, the assessee is in appeal before us.

6. We have considered the submissions of both sides and perused the material available on record. The assessee paid an interest of Rs.2,90,070, on the late payment of purchase cost to Steelco Pacific Trading Ltd against the purchases made from this party. Subsequently, the assessee deducted income tax at the rate of 20% and deposited this amount as per law and also informed Steelco Pacific Trading Ltd. The supplier party informed the assessee that it would not get the credit for the TDS because the same was not appearing in Form 26AS and accordingly refused to reimburse the amount of Rs.58,014, being 20% of Rs.2,90,070, to the assessee. Since this amount was not reimbursed by the supplier party, the assessee wrote off this amount in its

account as bad debt. Alternatively, the assessee claimed this amount as a business expenditure since payment was made to the supplier party as interest on the late payment of purchase cost.

7. We are of the considered view that this amount cannot be claimed as a bad debt, as rightly been held by the AO, since the amount in question was not taken into account in computing the income of the assessee in any previous year as required under section 36(2) of the Act. Nor this amount is in the nature of revenue receipt in any earlier year. Rather the amount in question is excess payment made by the assessee. Further, as rightly been held by the learned CIT(A), this amount cannot also be claimed as business expenditure since the liability of the assessee to make payment of interest on late payment of purchase cost was only limited to Rs.2,90,070. The assessee being the payer was required to deduct tax as per law. Thus any excess payment made by the assessee over the amount net of TDS cannot be said to be an expenditure incurred wholly and exclusively for the purpose of the business under section 37(1) of the Act. Accordingly, the impugned order passed by the learned CIT(A) on this issue is upheld and grounds no.1 and 2, raised by the assessee are dismissed.

8. The issue arising in grounds no.3 and 4, raised in assessee's appeal, is pertaining to the disallowance of LC Discounting Charges paid by the assessee.

9. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, from the perusal of expenditure claimed by the assessee it was observed that a sum of Rs.

8,48,605, was claimed as LC Discounting Charges and the same was found to be credited to the account of Delta Iron and Steel Company Private Limited. On being asked to furnish the details of the claim, the assessee submitted that it had purchased goods from the said party and since they were in need of money, they insisted on immediate payment thereof. It was further submitted that the assessee advised them to discount the bills with their bankers and the discounting charges were borne by the assessee. The AO noted that as per the terms of the invoice, the assessee was given 30 days payment period free of interest, and beyond that interest is chargeable @24% for delay in payment. It was not established by the assessee that any of its purchase invoices was so pending beyond 30 days, which will justify the liability to bear the interest expenses. In the absence of any proof regarding the expenditure incurred wholly and exclusively for the purpose of business, the AO disallowed the LC Discounting Charges of Rs. 8,48,605 and added the same to the total income of the assessee.

10. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue by observing as under:-

*"6.2 I have considered the facts of the case and submissions of the appellant. The appellant had to make the payment of Rs.3,75,06,653/- on account of purchases made from Delta Iron & Steel Co. Pvt. Ltd. The Letter of Credit (LC) was opened for 90 days. Since the supplier wanted immediate payment, it got its invoices discounted from its bank which charged the interest of Rs.8,48,605/- for a period of 90 days. This amount of Rs.8,48,605/- was paid by the appellant (by way of book entry) to the other party and business expense has been claimed.*

*6.3 I am not in agreement with the appellant that this is an allowable business expense. It is the fact that the appellant was liable to make the payment only after the 90 days. No evidence to the contrary in the form of any correspondence, bills, invoices, agreement has been produced before the AO or the undersigned. The other party was entitled to receive proceedings after 90*

*days i.e. 26.06.2011. It is the choice of the other party to get it discounted and receive the funds much earlier. Thus, the interest liability is of the other party and not that of the appellant. Why should the appellant bear the interest expense of the other party? Clearly, this is not incurred for the appellant's business.*

*6.4 The issue can also be looked at from the another angle. If the appellant were to make early payment, it was entitled to cash discount. However, in this case, it is the claim of the appellant that the other party chose to discount those invoices and such interest expenses are reimbursed by the appellant. This cannot be stated to relate to cost of purchases. Ideally when the appellant makes early payment, lower consideration should be booked as expense and not the other way around as has happened here. Hence, I am unable to agree with the contention of the appellant that this expenditure is incurred for the purpose of appellant's business. Therefore, these grounds stands dismissed."*

Being aggrieved, the assessee is in appeal before us.

11. We have considered the submissions of both sides and perused the material available on record. The assessee made the purchases from Delta Iron and Steel Company Private Limited, which insisted on early payment. As per the assessee, it agreed to the terms of the seller that the bill discounting charges would be borne by the assessee if the seller gets its invoices discounted by the assessee's banker. At the end of March 2011, when the supplier insisted on payment, the total value of purchases made by the assessee was Rs.3,75,06,653. The assessee opened the letter of credit account in Standard Chartered Bank on 28/03/2011, for a period of 90 days. Since the supplier, i.e Delta Iron and Steel Company Private Limited, got their invoices discounted, the bank charged interest of Rs.8,40,605, being at the rate of 9.18% on the sum of Rs.3,75,06,653, for a period of 90 days and the assessee agreed to the condition of early payment to the supplier. The interest expenses of Rs.8,40,605, were accounted by the assessee in its books of accounts as LC Discounting Charges.

12. In the present case, it cannot be doubted that the interest of the supplier was sufficiently protected as the assessee had opened the letter of credit account and it is only because the supplier insisted on early payment the invoices were discounted by the assessee's bank. Thus any liability to pay the interest cost is only of the supplier. However, the assessee has claimed that the interest cost has been borne by it towards purchases and therefore it is a business expenditure. However, no documentation has been brought on record to show that it was the assessee's liability to bear the LC Discounting Charges in case the supplier insists on early payment. Therefore, in the interest of justice, we deem it appropriate to grant one more opportunity to the assessee to submit necessary evidence/documentation to support its claim that it was assessee's liability to bear the LC Discounting Charges in case of early payment to the supplier. Accordingly, we restore this issue to the file of the AO for *de novo* adjudication. Needless to mention that no order shall be passed without affording reasonable opportunity of being heard to the assessee. Accordingly, the impugned order passed by the learned CIT(A) on this issue is set aside and grounds no.3 and 4, raised by the assessee are allowed for statistical purpose.

13. In the result, the appeal by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 08/08/2023

**Sd/-**  
**B.R. BASKARAN**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 08/08/2023**

*Copy of the order forwarded to:*

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The PCIT / CIT (Judicial);*
- (4) The DR, ITAT, Mumbai; and*
- (5) Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai