आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri K. Narasimha Chary, Judicial Member

आ.अपी.सं /**ITA No. 61/Hyd/2024**
(निर्धारण वर्ष/Assessment Year: 2018-19)

Pooja Crafted Homes (P) Ltd, Hyderabad PAN:AADCP2869A	Vs.	Asstt. C. I. T. Central Circle 1(2) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Advocate S K Gupta,	
राजस्व द्वारा/Revenue by::	Shri Shakeer Ahmed, DR	
सुनवाई की तारीख/Date of hearing:	04/03/2024	
घोषणा की तारीख/Pronouncement:	25/03/2024	

आदेश/ORDER

Per R.K. Panda, Vice-President.

This appeal filed by the assessee is directed against the order dated 26.09.2023 of the learned CIT (A)-11 Hyderabad, relating to A.Y.2018-19.

2. There is a delay of 61 days in filing of this appeal by the assessee for which the assessee has filed a condonation petition along with an affidavit explaining the reasons for such delay. After considering the contents of the condonation petition filed along with the affidavit of the assessee and after hearing

the learned DR, the delay in filing of this appeal is hereby condoned and the appeal is admitted for adjudication.

3. Facts of the case, in brief, are that the assessee company is engaged in the construction of commercial and residential apartments and development of open plots. The assessee company filed its return of income for the year under consideration on 30.10.2018 admitting total income of Rs.1,26,44,793/-. The case was selected for complete scrutiny through CASS on account of the following:

i) Income from Real Estate Business
ii) Sales Turnover/Receipts

4. Accordingly, statutory notices u/s 143(2) & 142(1) were issued and served on the assessee to which the AR of the assessee appeared before the Assessing Officer from time to time and submitted the requisite details.

5. During the course of assessement proceedings the Assessing Officer noted that the assessee has debited the following amount in the P&L Account:

i)	Income Tax	Rs. 50,000
ii)	Interest on Income Tax	Rs.2,03,804
iii)	Interest of TDS	Rs.18,43,742

6. Since the assessee has not disallowed these expenses which were completely contrary to the Income Tax provisions, the Assessing Officer made addition of Rs.20,97,546/- to the total income of the assessee.

6.1 The Assessing Officer further noted from the financial statements that the assessee had incurred 10,35,835/- but has deducted TDS for such services only on Rs.4,21,217/-. He therefore, asked the assessee to explain as to why the amount on which the TDS has not been deducted should not be disallowed. The assessee in response to the same replied as under:

> *"In respect of expenditure of software maintenance of Rs.10,13,835/- we have deducted TDS only on Rs.4,21,217/- and we missed TDS deduction on amount of Rs.3,00,000 and we are agreeing with non-deduction of TDS on Rs.3,00,000/- and balance amount of Rs.2,92,618/- deduction of TDS was not applicable since it was paid to different parties and payment was within the limits of respective TDS section u/s 194C and we hereby enclose all documentary evidences (Annexure-2)".*

6.2 However, the Assessing Officer was not satisfied with the arguments advanced by the assessee and made addition of Rs.90,000/- u/s 40(a)(ia) of the Act on the ground that the assessee had not filed the correct details in its return of income and the Auditor also did not disallow these expenses which were liable to deduct TDS. Thus, the Assessing Officer determined the total income of the assessee at Rs.1,48,32,339/.

6.3 In appeal, the learned CIT (A) dismissed the appeal filed by the assessee.

7. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal by raising the following grounds:

> *"1. In the facts and circumstance of the case, the order of Ld.CIT(A) is not sustainable in law or on facts.*
>
> *2. In the facts and circumstance of the case, the Ld. CIT(A) ought to have appreciated that the interest on TDS amounting to Rs.18,43,742/- is a business expenditure allowable u/s 37 of the IT Act.*
>
> *3. In the facts and circumstance of the case, the Ld.CIT(A) ought to have considered that there are many judgements which state that the interest on TDS is not penal but compensatory in nature and therefore, is not hit by the prohibition u/s 37 of the IT Act.*
>
> *4. In the facts and circumstance of the case, the Ld. CIT(A) ought to have considered that the interest on TDS fulfills the conditions necessary for claiming an expenditure u/s 37 of the IT Act.*
>
> *5.The principle laid in the judgement of the Hon'ble Supreme Court of in the case of M/s Checkmate Services Pvt. Ltd Vs CIT (2022) 143 taxmann.com 178 (SC) relied upon by the Ld. CIT(A) is distinguishable in the light of facts and circumstances of the Appellant's case.*
>
> *6. In the facts and circumstance of the case, the Ld.CIT(A) ought to have considered that the disallowance of Rs.90,000/- u/s 40a(ia) is not sustainable in view of the proviso u/s 201(1) of the Income Tax Act.*
>
> *7. The appellant may be permitted to add, delete, amend any ground with leave of the Hon'ble Tribunal."*

8. The learned Counsel for the assessee referring to the decision of the Mumbai Bench of the Tribunal in the case of Resolve Salvage & Free India (P) Ltd vs. DCIT (195 ITD 266

(Mum.) submitted that the interest paid on delayed payment of TDS u/s 37(1) would be compensatory in nature and thus was to be allowed as a deduction. He accordingly submitted that the interest on TDS amount of Rs. 18,43,742/- is a business expenditure allowable u/s 37 of the I.T. Act.

9. So far as the 2nd issue is concerned i.e. disallowance u/s 40(a)(ia) is concerned, the learned Counsel for the assessee submitted that since the payee has already declared the amount to tax, therefore, in view of provisions of 201(1) of the I.T. Act, no addition is called for.

10. The learned DR, on the other hand, referring to the decision of the Kolkata Bench of the Tribunal in the case of Premier Irrigation Adritec (P) Ltd vs. ACIT reported in 199 ITD 342 (Kolkata Trib.) submitted that the Tribunal in the said decision has held that the interest payment on delayed deposit of income-tax, whether TDS or otherwise, is not an allowable expenditure. Referring to the decision of the Coordinate Bench of the Tribunal in the case of ITA No.247/Hyd/2023 order dated 8.9.2023 he submitted that the Tribunal under identical circumstances has held that interest on TDS is not an allowable expenditure. He accordingly submitted that the order of the learned CIT (A) should be upheld and the grounds raised by the assessee should be dismissed.

11. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A)

and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. The first issue raised by the assessee in the grounds of appeal is regarding the order of the learned CIT (A) in confirming the addition of Rs.18,43,742/- made by the Assessing Officer by disallowing interest on TDS. It is an admitted fact that the assessee had debited an amount of Rs.18,43,742/- on account of interest on TDS which was disallowed by the Assessing Officer and confirmed the learned CIT (A). We find an identical issue had come up before the Coordinate Bench of the Tribunal in the case of M/s. Analogics Tech India Ltd vs. Dy. CIT in ITA No.247/Hyd/2023 order dated 8.9.2023 for the A.Y 2018-19 and the Tribunal has decided the issue against the assessee by holding and held that the interest payment on late payment of TDS is not compensatory in nature and is not allowable u/s 37(1) of the I.T. Act. The relevant portion of the decision of the Tribunal from para 15 to 17.1 reads as under:

> *"15. We have heard the rival submissions and perused the material on record. In the present case, we find that assessee paid an amount of Rs.12,19,936/- as interest on delayed payment of TDS and contended that the same may be allowed as an expenditure u/s 37(1) of the Income Tax Act. In his written statement, ld. AR for the assessee contended that the interest u/s 201(1A) cannot be compared with the interest paid u/s 220(2) of the Act. In fact, as per section 200 of the Act, there is a duty on the assessee to deduct any sum in accordance with the provisions of the Act and shall deposit the said amount after deducting it to the credit of the Government of India. In the present case, there is a failure on the part of the assessee to deduct TDS and deposit the same with the Government. The consequences for failure on the part of the assessee to deduct or pay the amount are provided in Section 201 of the Act and Section 201(1A) provides for the levy of interest on the assessee for such default.*
>
> *16. Now, the question before us is as to whether the interest paid on the failure of the assessee to pay or deposit the amount within the*

time is compensatory in nature or not is required to be determined. Undoubtedly, the deduction of the TDS amount is required to be statutorily done by the assessee as per Section 200 of the Act in case if any payment is made under the Act which attracts deduction at the time of payment. The failure, therefore, is statutory liability on the part of the assessee in deducting the payment, and the interest paid by the assessee on the said sum is nothing but in the nature of penal provision which, in any case said to be not compensatory in nature. Therefore, we do not find any merit in the submission of the assessee to treat the said interest paid as compensatory in nature.

17. Further, if we agree with the contention of the assessee that the interest should be allowed as allowable expenditure u/s 37(1) of the Act, then it will lead to unintentional consequences and unscrupulous persons will take the benefit of this provision and unnecessarily withhold the taxes and utilize the same for their own purposes and thereafter, claim the deduction u/s 37(1) of the Act. The same cannot be countenanced as against the spirt of the Act, as the Act contemplates that making of the payment within the time, and the consequences are provided under Sections 220 and 221 of the Act, which not only require the payment of interest but also, in case of failure to make or pay the amount, provide for declaring such a person as an assessee in default. In view of the above said reasoning, we do not find any reason to allow the ground of the assessee. Though, the assessee had relied upon various decisions of the Tribunal, however none of the case laws are applicable to the facts of the case. Further, the judgment in the case of M/s. Neelkamal Realtors Suburban Pvt. Ltd (supra) and the decision in the case of DCIT Vs. Maa Annapurna Transport Agency Ltd. (supra) are dealt with the issue of TDS receivable which has been taxed in the assessment year. However, the issue in the present ground is that the interest paid on delayed deposit of TDS is an allowable expenditure or not. The said two case laws are also not applicable to the facts of the present ground along with other case laws relied upon by the assessee.

17.1. We also find that identical issue has been decided by the co-ordinate Bench in case of Universal Energies Limited Vs. DCIT in ITA No.2761/Del/2018 dt.26.07.2022, wherein the coordinate Bench in Para 16 held that interest payment on late payment of TDS is not compensatory in nature and is not allowable as deduction u/s 37(1) of the Act. In view of the foregoing reasoning and in view of the decision in the case of Universal Energies Limited (supra), we confirm the disallowance made by the Assessing Officer. Thus, this ground of appeal is dismissed."

12. In view of the decision of the Coordinate Bench of the Tribunal to which one of us is a party, we hold that the learned CIT (A) is justified in sustaining the addition made by the Assessing Officer on account of interest on late payment of TDS. The first issue raised by the assessee in the grounds of appeal is accordingly dismissed.

13. So far as the 2nd issue is concerned, the same relates to the order of the learned CIT (A) in confirming the disallowance of Rs.90,000/- on account of non-deduction of TDS from software maintenance charges. A perusal of the assessment order shows that out of the total software maintenance charges of Rs.10,35,835/- the assessee has deducted TDS only on Rs.4,21,217/-. It was argued that the TDS was not deducted on Rs.3.00 lakhs and TDS is not applicable to the balance amount of Rs.2,92,618/-. Thus, as per the own admission of the assessee, it has missed out the TDS deduction on amount of Rs.3.00 lakhs for which it has agreed before the Assessing Officer. No argument was made before the learned CIT (A). Even nothing was argued before us on this issue. Since the assessee during the course of assessement proceedings itself has agreed for the mistake, therefore, we do not find any infirmity in the order of the learned CIT (A) in confirming the disallowance of Rs.90,000/- u/s 40(a)(ia) of the I.T. Act. Accordingly, the 2nd issue raised by the assessee is dismissed.

14. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the Open Court on 25th March, 2024.

Sd/-	**Sd/-**
(K. NARASIMHA CHARY) **JUDICIAL MEMBER**	**(R.K. PANDA)** **VICE-PRESIDENT**

Hyderabad, dated 25th March, 2024
Vinodan/sps

Copy to:

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3	Pr. CIT- Central, Hyderabad
4	DR, ITAT Hyderabad Benches
56	Guard File

By Order