

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.50/PUN/2024 (E-Appeal)

निर्धारण वर्ष : Assessment Year : 2018-19

Epiroc Mining India Private Limited (Previously known as Epiroc Mining India Limited), 14 th Floor, Tower 1, Fountain Head, Nagar Road, Phoenix Market City, Viman Nagar, Pune 411 014 Maharashtra PAN : AAECE7216R	Vs.	ACIT, Circle-8, Pune
Appellant		Respondent

Assessee by : Shri Ketan Ved
Revenue by : Smt. Deepa Sanjay Hiray
Date of hearing : 14.05.2024
Date of pronouncement : 14.05.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of National Faceless Appeal Centre, Delhi (NFAC) dated 05.12.2023 for the assessment year 2018-19.

2. Briefly, the facts of the case are as under :

The appellant is a company incorporated under the provisions of Companies Act, 2013. It is engaged in the business of Mining, Infrastructure and Natural Resources Equipment and providing related

aftermarket services. The Return of Income for the A.Y. 2018-19 was filed on 29.11.2018 declaring total income of Rs.68,10,55,500/-. The same was revised on 28.02.2019 at a total income of Rs.68,24,09,370/-. The said return was processed u/s.143(1) on 02.10.2019 after making adjustment by disallowing the delayed payment of Employee's contribution to Provident Fund/Employees State Insurance Corporation (PF/ESIC) at Rs.35,71,289/- and also levying interest u/s.234C of the Income-tax Act, 1961 (hereinafter referred to as 'The Act').

3. Being aggrieved by the said intimation, appellant filed a rectification application on 17.12.2019. Subsequently, the assessment was completed u/s.143(3) of the Act vide order dated 28.09.2021 after making disallowance of Employees contribution to PF/ESIC and also levied interest u/s.234C of the Act.

4. Being aggrieved by the said assessment order, an appeal was filed before the CIT(A)/NFAC *inter alia* challenging the very levy of interest u/s.234C of the Act. The CIT(A)/NFAC dismissed the appeal by holding that interest was levied vide intimation u/s.143(1), the levy of interest levied u/s.234C is consequential in nature in the assessment order passed u/s.143(3) of the Act.

5. Before us, the Id. AR submits that the CIT(A)/NFAC order passed u/s.154 is merged with the order passed u/s.143(3), therefore, the issue of levy of interest can be raised in the present appeal.

6. On the other hand, the Id. Sr. DR while relying on the orders passed by the lower authorities opposed the submissions made by the Id. AR on behalf of the appellant company.

7. We heard the rival submissions and carefully perused the relevant material on record. The only issue that arises for our consideration in the present appeal is with regard to levy of interest u/s.234C of the Act. The assessee challenges the very levy of interest u/s.234C on the ground that the appellant company itself was incorporated on 20-07-2017. Therefore, the question of levy of interest prior to incorporation does not arise pursuant to amendment vide Finance Act, 2017 placing reliance on the proviso to section 234C of the Act. It is the contention of the Id. AR that though the interest was levied u/s.234C in the intimation passed u/s.143(1), the levy of interest can be challenged in appeal against the order passed u/s.143(3) of the Act. We had carefully considered the submissions made on behalf of the appellant company, we are of the considered opinion that the interest was levied in the intimation u/s.143(1). Thus, the cause of action had arisen in the proceedings u/s.143(1) of the Act and not in the proceedings u/s.143(3) of the Act. If the assessee is aggrieved by the action of the CPC in levying interest u/s.234C, the only remedy is to challenge the intimation u/s.143(1) by following the process known to the law. Such issues cannot be raised in the order passed us.143(3) of the Act as it is mere consequential to the

proceedings u/s.143(1). Therefore, the appeal is not maintainable, accordingly dismissed as not maintainable.

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

Order pronounced on this 14th day of May, 2024.

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 14th May, 2024

Satish

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr.CIT concerned
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच,
पुणे / DR, ITAT, A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune