

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "A" CHANDIGARH**

**BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT
MEMBER & SHRI PARESH M. JOSHI, JUDICIAL MEMBER**

आयकर अपीलसं./ITA Nos.280 & 281/CHD/2000
निर्धारणवर्ष / Assessment Years : 1990-91 & 1991-92

M/s H.P. State Forest Corp. Ltd. Van Nigam Kasumpti Shimla	Vs	The JCIT, Shimla
स्थायीलेखासं./PAN No: AAACH4036L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे/Assessee by: Shri Y.K. Sud, CA
राजस्वकीओरसे/ Revenue by : Sh.Sarabjeet Singh, CIT-DR

सुनवाईकीतारीख/Date of Hearing : 28.05.2024
उद्घोषणाकीतारीख/Date of Pronouncement : 06.06.2024

HYBRID HEARING

आदेश/Order

PER PARESH M. JOSHI, JM:

Both the above appeals have been filed by the Assessee. Since the issues involved in both the above appeals are common and were heard together therefore they are being disposed off by this consolidated order for the sake of brevity. We shall take appeal of the Assessee in ITA No. 280/Chd/2000 as a lead case.

2. This is an Appeal filed by the Assessee u/s 253 being aggrieved by order dated 22.03.2000 passed by learned CIT(A) under section 250 of the Income Tax Act, 1961 which is

hereinafter referred to as the impugned order.

Factual Matrix

3. The Assessee Corporation is owned and controlled by Govt. of Himachal Pradesh.

4. The Assessee Corporation deals in Forest Produce like Timber etc. for and on behalf of Govt. of H.P and in return pays royalty to the state of Himachal Pradesh.

5. During the **Asst. Year 1990-91** Corresponding to previous year 1989-1990, the Assessee Corporation **had not filed a Return of income, by due date.**

6. Accordingly, a notice u/s 142(1) dated 21.02.1991 was issued requiring the Assessee to file the return of income, Audited Accounts and other relevant documents.

7. That in response to the above Notice dated 21.02.1991 a return of income of Rs.92,52,000/- which had been worked out on the basis of **Proforma Accounts** was filed on 30.03.1991.

8. That despite letter dated 26.07.1991 of the Revenue, the Assessee **failed to file Audit report as required u/s 44AB;** within stipulated time of 15 days.

9. In view of aforesaid the return of income was held to be

defective and invalid vide order u/s 139(9) dated 03.06.1992.

10. It is required to be noted that return of income for Assessment Years 1988-89, 89-90 and **1991-92** too were held to be invalid vide orders passed under section 139(9) **in the respective Assessment Years.**

11. Thereafter, the Assessee Corporation filed Writ Petitions in the High Court of Himachal Pradesh for Assessment Years 1988-89 to 1991-92 being (CWP Nos.590/92 to 593/92) against orders dated 03.06.1992 passed u/s 139(9) and the Hon'ble Court as per order dated **28/08/1992** directed as under:-

“Heard, the order dated 3rd June 1992 stayed. However, liberty was given to Revenue to take further steps assuming return was filed by the Assessee was a valid return, subject to final disposal of the Writ Petition (Supra).”

12. Thereafter, statutory notices under section 143(2) and 142(1) were issued to the Assessee from time to time and ultimately the Assessment was **completed u/s 144 of the IT Act, 1961 on 31/03/1994** at the Returned income of Rs.92,52,000/- for the reasons given in the Assessment Order. The assessment framed by the Assessing Officer was **confirmed by CIT(A)**, Shimla vide her order dated **21.08.1995**. The Assessee Corporation had filed another Writ Petition (CWP No.125/95) dated 14/03/1995 before

Hon'ble High Court of Himachal Pradesh on which the following orders dated **05.05.1997** came to be passed, the contents of which is reproduced hereunder in toto: -

“In view of the order passed in CWP Nos.590/91 to 593/92, this Writ Petition does not survive as the entire proceedings commenced from Invalid return. It is needless to say that subsequent orders of assessment passed by the Income Tax Officer and the appellate orders passed on the appeals filed against the said assessment orders are invalid consequentially. The Writ Petition dismissed with the above observations. Interim order is vacated.”

13. Since, the entire assessment proceedings completed in this case were held to be invalid and quashed as having been finalized on the basis of an invalid return by the Hon'ble High Court, a proposal dated 23.10.1997 for issuing notice u/s 148 for the Assessment Year 1990-1991 was submitted to the CIT, Sihmla and his approval as provided u/s 151(2) of the IT Act, 1961 was received in this office on 13.11.1997. Thereafter a notice u/s 148 dated 18.11.1997 was issued and served upon the Assessee but no return of income was filed in response thereto. A notice u/s 148(1) calling for the return of in come and audited accounts was issued on 08.01.1998. **Return declaring a loss of Rs.7,28,18,247/- was filed on 17.03.1998.** The same was processed u/s 143(1)(a) on 30.03.1999 at **loss of Rs.7,14,57,309/-**. In response to statutory notice issued u/s 142(1) and 143(2) CA & FA of AssesseeCorporation attended the assessment

proceedings from time to time and also filed the various details, particulars, evidences called for vide questionnaire dated 19.04.1999 as well as order sheet entries, books of account maintained by the assessee corporation were also produced which were test checked and the case was discussed with them.

14. The **Auditors of the Assessee Corporation in Note No.13 of their Audit Report had pointed out that a sum of Rs.12,19,000/-** sent by FWD Chopal had been deposited by the bankers of the Assessee Corporation in some other branch which was not having account of the corporation. Due to non-transfer of this amount to the Corporation's account there had been loss in interest earning of the Corporation's of the Corporation to the extend of Rs.8.30 lakhs (approx). Accordingly, vide questionnaire dated 19.04.1999 the Assessee Corporation was required to show cause as to why an addition of Rs.8.30 lakhs be not made but no reply/explanation with regard thereto has been furnished by the Assessee. **An addition of Rs.8.30 lakhs is therefore made.**

15. **From the Audited profit & loss account it has been noticed that the Assessee Corporation has debited interest of Rs.10,43,81,684/- out of which interest of**

Rs.8,88,52,910/- has been paid to the H.P. Government.

The Assessee Corporation has filed further details of the interest paid to the H.P. Government as per annexure A-1, A-2, A-3, according to which the amount of interest has been worked out as under:

Annexure	Description	Amount
A-1	Interest on interest for the year 1988-89 charged in the balance sheet for the year 1988-90.	Rs.3,13,55,157
A-2	Interest on interest.	Rs.3,86,14,986/-
A-3	Interest on royalty and Sales-tax	Rs.1,88,82,766/-

15.1 The Assessee-Corporation during the assessment proceedings was specifically requested to furnish the basis of calculation of interest year pertaining to which the interest is calculated division-wise and justification for claiming the deduction on account of interest. So far as calculation of interest is concerned, no such details have been filed by the assessee.

15.2 In justification for claiming the aforesaid interest as **deduction in the profit & loss account the Assessee-Corporation has submitted that when the installments of royalty payable by it to the Govt. are not paid by the**

stipulated dates it has to pay interest and in the Pricing Committee meeting held on 04.12.1988 the rate of interest on all belated payments made beyond 90 days of the default was fixed @ 15% p.a. It was further submitted that the Pricing Committee in its meeting held on 06.10.1990 decided that in view of continued default by the Assessee-Corporation in the payment of royalty and interest, **compounded interest had to be charged.**

15.3 From the details of interest paid to the H.P. Government which are given **Annexure A-1**, it is noticed that the Assessee-Corporation itself admits that **this interest on interest amounting to Rs.3,13,35,157/- relates to the financial year 1988-89 i.e. relevant to assessment year 1989-90. Since the assessee is maintaining its accounts on mercantile basis, this interest, if at all, should have been claimed by it in the assessment year 1989-90. Since the expenditure relates to the earlier year, the same is disallowed.** On the top of it, there is another aspect of this matter i.e., the amount in question represents interest charged on interest for the charging of which a decision was taken by the Pricing Committee in the financial year 1990-91. Since the decision was taken in a subsequent year, any liability arising therefrom pertaining to the earlier years, **crystalized in that year and could not be claimed in an**

earlier year.

15.4 **As regards interest on interest amounting to Rs.3,86,14,986/-** as per **annexure A-2**, since the decision regarding charging of compounded interest was taken by the Pricing Committee **on 06.10.1990** i.e. in the financial year 1990-91, this liability **crystalized** in that year and should have been claimed in that year only because the assessee is following mercantile system of accounting. Hence, assessee's claim with regard to this amount of **interest is also disallowed.**

15.5 So far as **interest on royalty and sales-tax amounting to Rs.1,82,82,766/- is concerned**, it may be pointed out that the decision regarding charging of interest @ 15% p.a. on belated payments of royalty beyond 90 days of the default, was taken by the Pricing Committee in the financial year 1986-87 and, as such, the liability of the assessee to pay this interest crystalised in the year 1986-87. Since, the Assessee is maintaining its accounts on mercantile basis, it should have charged this interest to the accounts of the year 1986-87. This very issue came up for consideration in the assessment year 1988-89 and from the details and calculations filed by the assessee it was noticed that out of the **total interest on royalty amounting to**

Rs.1,99,41,378/-, only interest of Rs. 13,89,762/- pertained to that year whereas the balance related to earlier years. Since, no calculations of interest claimed to have been paid to the H.P. Government have been filed on the basis of figures for the Asst. Years 1988-89, it is presumed that only an amount of **Rs.13,10,000/-** being interest on royalty and Sales-tax pertains to the year under consideration which is allowed and the **balance-interest of Rs.1,75,72,766/- is disallowed.**

15.6 In sum up, out of total interest of **Rs.8,88,52,910/-** paid to H.P. Govt. interest to the tune of **Rs.13,10000/-** only as allowable to the Assessee and the balance of Rs.8,75,42,910/- is disallowed.

16. The Assessee Corporation has debited a sum of Rs.32,210/- to the profit & loss account on account of loss on sales/destruction of fixed assets. Since as per law this amount should have been reduced from the block of assets. The same is disallowed and added back.

17. In final analysis with above observations, total income of the Assessee Corporation was computed by A.O. as under:-

1. Net loss as per (-) Rs.7,28,18,247/-
statement of total
income attached with
the return of income.

Add-	Loss of interest in	Rs.8,30,000/-
i)	respect of FWD Chopal, as discussed above	
ii)	Out of interest paid to H.P. Government	Rs.8,75,42,910/-
iii)	Disallowance as discussed in para No.5	Rs.32,210/-
		<u>Rs.8,84,05,120/-</u>

NETTAXABLE INCOME:- Rs.1,55,86,873/-
Rounded off u/s253A of Rs.1,55,86,870/-
the I.T. Act, 1961

Charge interest u/s
234A and 234B

Penalty proceedings
under sec.271-B &
271(1)(c) have been
initiated separately.

Assessed issue demand
notice & challan.

18. That order of A.O. is dated 31/12/1999.

19. Being Aggrieved by the order dated 31/12/1999 of Ld. A.O., the Assessee filed an appeal before the First Appellate Authority under the Act in term of Section 250. The said first appeal order of Ld. CIT(A) which is dated 22/03/2000 has held as under:-

“(1) The addition of Rs.57,235/- against ground No.1 of the Assessee was deleted.

(2) The addition of Rs.8,75,42,910/- which was challenged as ground No.2 on account of interest on royalty and interest on interest etc. just on the basis of the previous year without appreciating the facts that it is an allowable expense the Ld. CIT(A) held as under in para 3.1

“I have carefully considered the facts of the case and the rival submissions. The Assessing Officer, who was present during the course of the hearing, invited my attention to clause 19 of the standard lease deed/instrument of lease of

forests **for purposes of falling of marked trees**, their conversion and extraction of timber where the lessee does not make the payment of royalty payable to the Forest Department within the specified period then the department was at liberty to charge the penal interest at 15% per annum. He thus submitted that since this interest was calculated on deferred payment of royalty and was penal in nature, therefore, it was not allowable as a deduction. The perusal of the assessment order reveals that the appellant **had debited a sum of Rs.1,88,82,766/ as interest on royalty. Out of this amount, the Assessing officer has allowed the deduction of Rs.13,10,000/- as it pertained to this assessment year.** The remaining interest has been disallowed on the ground that the same pertain to the financial year 1984-85, 1985-86 and 1986-87. I have examined the calculation statement of the interest depotwise, summary of which was filed before the Assessing Officer himself. The calculation is based and has been made on the lots of timber on which the royalty remained unpaid. However, so far as the claim is concerned, the same pertains to the financial year relevant to the assessment year only. The Assessing Officer himself interpreted the statement and reached the conclusion that the interest pertained to the earlier financial years whereas the actual position was that the lots of timber on which the royalty remained unpaid pertain to different accounting periods and since royalty on these lots remained unpaid even during the accounting period, the interest was calculated and claimed as a deduction during the accounting period relevant to this assessment year. The Hon'ble Supreme Court of India in the case of Prakash Cotton Mill vs. CIT, 201 ITR 684 (SC) has held that, **"whenever any statutory impost** paid by an Assessee by way of damages or penalty or interest is claimed an allowable expenditure u/s 37(1) of Income-tax Act, 1961, the assessing authority is required to examine the scheme of the provisions of the relevant statute providing for payment of such impost notwithstanding the nomenclature of the impost as given by the statute, to find whether it is compensatory or penal in nature. The authority has to allow deduction u/s 37(1) wherever such examination reveals the concerned impost to be purely compensatory in nature. Wherever such impost is found to be of a composite nature, that is, partly of compensatory nature and partly of penal nature, the authorities have to bifurcate the two components of the impost and given deduction of that component which is compensatory in nature and refuse to give deductions of that component which is penal in nature. Similar view has been re-iterated by the apex court in the case of MalwaVanaspati and Chemical Co. vs. CIT, 225 ITR 383

(SC), the Hon'ble'ble Calcutta High Court in the case of Vishnu Sugar Mills Ltd. vs. CIT (1978) 113 ITR583 (Cal.). has also held that, "if a sum is paid by an assessee conducting his business, because in conducting it he has acted in manner which has rendered him liable to penalty, it cannot be claimed as a deductible expense. Thus, interest paid for delayed payment of cess to the Govt. by the assessee was not allowable as business expenditure as it was in the nature of penalty for breach of law." Thus, in view of the afore-mentioned decisions of the Apex Court and the Hon'ble High Court, the issue has to be decided whether interest payable on the delayed payment of royalty is penal in nature or compensatory in nature. In case, it is penal in nature then the entire interest claimed as a deduction is to be disallowed and if it is compensatory then it is to be allowed. In order to determine this, it is pertinent to examine the instruments of lease which the appellant corporation has entered into with the Conservator of Forests acting on behalf of the Govt. of Himachal Pradesh. The appellant had entered into one such agreement for lot No.15/1979-80 with the Conservator of Forests, Nahan. As per clause 19 of this agreement for payments beyond 90 days of the due date, the appellant is liable to pay penal interest at 15% per annum. Thus, it is evident that this is a penal interest for infraction of contractual obligations. The ratio laid down by the Hon'ble Supreme Court and the Calcutta High Court in the afore mentioned case laws squarely covers and applies to the facts of this case, Since, the interest on deferred payment of royalty is penal in nature the same cannot be allowed as a deduction u/s 36(3) of Income-tax Act, 1961 and 37(1) of Income-tax Act, 1961 and, **therefore, the entire interest claimed as interest payable of royalty amounting to Rs.1,88,82,766/- is to be disallowed in this assessment year. The action of the Assessing Officer in allowing the interest of Rs.13,10,000/- is, therefore, erroneous and cannot be upheld. The Assessing Officer is, therefore, required to make a further addition of Rs.13,10,000/- to the already added amount of Rs.1,75,72,766/-, Appellant's plea on this ground is, therefore, dismissed. Similarly, the amount of Rs.3,86,14,986/- being interest on interest I have already held in ground No.1 above, that the interest on deferred payment of royalty is penal in nature and therefore, not allowable as a deduction and, therefore, the interest on this interest also partakes the colour of a penal impost and therefore, is not allowable as a deduction for the reasons mentioned above. In view of these facts, the interest on interest amounting to Rs.3,86,14,986/- is not an allowable deduction for the**

assessment year 1990-91 as the liability has not crystallised during the accounting period relevant to this assessment year and moreover, the impost is penal in nature and therefore, not an allowable deduction. The appellant's plea on this ground is, therefore, not acceptable and is dismissed. During the course of hearing the appellant has raised an additional ground of appeal for the assessment year 1989-90 regarding the interest of Rs.3, 13,55, 157/- which was interest on interest and pertained to the accounting period relevant to the assessment year 1989-90 and they submitted that in case the additional ground of appeal is admitted then they were not contesting the addition made here. I have already admitted this ground of appeal in the assessment year 1989-90 and therefore, this ground of appeal pertaining to the addition of Rs.3,13,55,157/- is dismissed as not pressed.

[Emphasis supplied by us]

Note: This ground and issue is not raised in Form No. 36 and not pressed before us.

(3) In respect of ground No.3 which pertained to the addition of Rs.32210/- on ground of loss of on sale of assets. The Ld. CIT(A) has said and held that this ground of appeal has been withdrawn and is accordingly dismissed.

(3A) On Notice u/s 148 the ground was dismissed.

(4) The Appeal was partly allowed.

20. Being aggrieved by above order of ld. CIT(A) the Appellant/Assessee is before us and inter-alia has raised following grounds of appeal:-

"1) That the CIT (Appeal) was not justified in holding that the proceedings u/s 147 had been validly initiated vide notice u/s 148 dated 18.11.97. He has failed to appreciate that the proceedings initiated u/s 142(1) dated 21.2.91 were pending and had not been quashed by the Hon'ble High Court.

2) That the CIT(Appeal) was not justified in holding the interest of Rs.1,88,82,766/ was not allowable as a deduction as it was penal in nature. No such issue had been raised by the AO. while making the disallowance nor was any such objection raised or

argued at the time of hearing of appeal. Thus the finding of the CIT (Appeal) is illegal from this core itself.

3) That the CIT (Appeal) has failed to appreciate that the payment of interest was a contractual liability and did not involve any infraction of any statutory provision and as not in a nature of any damage or penalty. That at any rate the test for disallowability of any liability of interest as laid down by the Supreme Court and as noticed by the CIT (Appeal) himself the liability of Rs.1,88,82,766/- was clearly an admissible expenditure being totally compensatory in nature. The action of CIT (Appeal) in upholding the disallowance of Rs. 1,75,72,766/- and in ordering further enhancement of disallowance of Rs.13,10,000/- is therefore illegal and unwarranted.

4) That the CIT (Appeal) was not justified in disallowing the deduction of Rs.3,86,14,924/- on account of interest on interest on erroneous and insufficient grounds and without referring to the written submissions filed before him. His observation that the impost was penal in nature and therefore, not an allowable expense is also illegal as no such issue had been raised or discussed at the time of hearing of appeal.

5) That a deduction of Rs.48,23,305/- on account of liability of royalty and sales tax, extension fee and damage bills ought to have been allowed on the basis of the finding recorded in Assessment. Year 1995-96 when the same was disallowed on the ground that it pertained to the year under consideration.

6) That the order of the CIT(Appeal) is totally illegal and unwarranted being contrary to the principles of equity and natural justice.

Record of Hearing

21. The hearing took place on 28/5/2024 when both AR and DR were heard at length. The Ld. AR Shri Y.K. Sud brought to our notice back ground of the Assessee that it is a State Govt. undertaking of Govt of H.P. and is involved in several activities related to forest. **It picks up falling trees / or marked falling trees in entire state of Himachal Pradesh and in turn pays royalty to Govt. of H.P. Upon**

delay in payment; interest and interest on interest becomes payable to Govt. of Himanchal Pradesh. There is a **lease** contract interse between the Assessee Corporation and Govt. of Himachal Pradesh. He invited our attention to few specific clauses which are as under:-

Clause-19

“19. That if the Lessee fails to pay any instalment of purchase money or any part thereof on the due date he will be liable to pay interest at 10% per annum within the contract period after the lapse of three days grace which payment along with the royalty will be realizable from his security money and by seizure and retention of his timber extracted from the forest as may be lying in the forest, on the road side, afloat in river or lying in any other place. If such failure-extends to 90 days without written permission of the Conservator of Forests, Nahan, Circle, the Lessee shall be liable to lose all claims to the trees and timber and to the retention by the Forest Officer of all money already paid by the Lessor on his behalf under the terms of this indenture as liquidated damages and the Forest Officer subject to the approval of the Conservator of Forest, Nahan Circle may cancel this indenture. However, the Conservator of Forests, Nahan Circle, may for special reason condone the delay beyond 30 days but not exceeding 60 days on charging the penal interest at 15% per annum in case no written permission is sought within the said period of 30 days by the Lessee. It is however, understood that no rafting, removal/export of timber by road whatsoever will be permitted without payment of royalty dues as per clause 18 above.”

21.1 He then placed reliance on 95 of the Paper Book and inter alia contended that in their own case Chandigarh Bench of ITAT in ITA No.299/Chandigarh/2002 for **A.Y.1996-1997** in case of Haryana State Forest Corporation vs. DCIT, Circle Shimla with regard to disallowance of Rs.51,10,941/-

which was upheld by CIT(A) on account of interest on interest on the belated payment of royalty on the ground that the expense is penal in nature; the Hon'ble Tribunal has held as follows in para 4.2 page 105 of PB. *“that interest relates to previous years and hence not allowable is not maintainable. The Assessee also submitted before the CIT(A) that the contention of A.O. that this interest is penal in nature is also not correct as on one hand the A.O. is allowing the interest on belated payment of royalty holding it to be compensatory in nature, on the other hand he is holding that interest payable on non-payment of this interest is penal in nature.* It was argued that the A.O. has failed to understand what is meant by the term interest on interest. In simple words it is the compound interest which is charged by every lender from the borrower in case the borrower fails to pay the interest due on the principle amount. If the simple interest is compensatory in nature, the compound interest cannot be penal in nature. Hence, this amount is clearly allowable and the disallowance made by the AO deserves to be vacated.

21.2 He then invited our attention to page 109 para 4.6 of Paper Book which as under:

“4.6 Firstly, we do not agree with the observation of the tax authorities below that the payment of interest upon the interest on the belated payment of royalty can be termed as

penal in nature because it can simply be called an charging of compound interest from the assessee in order to curb the tendency of part payment of royalty and to ensure the speedy payment of interest to the forests department. Hence, we are of the opinion that on this basis, the tax authorities were not justified in disallowing the claim of the payment of interest upon the interest of delayed of royalty treating the same to be penal in nature.”

21.3 He subsequently placed reliance the order of the ITAT Ahmedabad Bench in case of *ACIT vs. Chittorgarh Kota Tollway (P) Ltd. reported in [2024] 204 ITD 223 / 2023] 156 taxmann.com 469 (Ahmedabad)* wherein para 8 it is held as under:-

“8. We have heard the rival contentions of both the parties and perused the materials available on record. The provision of Explanation 1 to section 37(1) of the Act, excludes allowing the deduction of the expenditure incurred for the purpose which is an offence or prohibited by law. However, in the given case, we note that the penalty has been paid by the assessee on account of breach of contract which cannot be equated with the offence, or something prohibited by law. As such, the assessee could not meet the deadline to fulfil the criteria laid down by the contractee being the NHAL and therefore the damages were levied by NHAL. The Hon'ble Gujarat High Court in the case of Pr. CIT v. Mazda Ltd. [2017] 86 taxmann.com 27/250 Taxman 510 has held that the deduction on account of liquidated damages cannot be disallowed under the provision of section 37(1) of the Act. The relevant extract of the order is reproduced as under:

"10. Section 37 of the Act is the residuary provision granting deduction of an expenditure not being expenditure of the nature of capital expenditure or personal expenses of the assessee, which is laid out or expended wholly and exclusively for the purposes of business or profession and not specified in the preceding sections 30 to 36 of the Act. Explanation to section 37(1) would clarify 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.

11. As noted, the expenditure in question was purely in relation to the assessee's normal business activity and was inherent part of its business transactions. The expenditure was certainly not incurred for any purpose which is an offence or which is prohibited by law. The Tribunal therefore was perfectly justified in granting such expenditure."

21.4 It was finally contended by Ld. AR that ground No.1 & 5 are not pressed.

22. The ground No.2 is on disallowance of Rs.1,88,82,756/- and Ground No.3 is related to ground No.2 i.e., not penal in nature.

23. The Ground No.4 is on disallowing the deduction of Rs.3,86,14,986/- on account of interest on interest.

24. The Ground No.6 is general.

25. Per contra, Ld. DR has supported the order of Ld. CIT(A) and has vehemently contended that there is no infirmity in law and same be upheld.

Findings and Conclusions

26. In the foregoing, we now examine the legality, validity and propriety of order of Ld. CIT(A) dated 22/03/2000.

26.1 We have noted the long history of the present case

carefully. Finally after several decades the case is at last reached before us as per direction of Hon'ble Supreme Court of India vide their order dated 14/01/2020 in Civil Appeal No. 6417 of 2010 wherein in it is held as follows:-

Heard learned counsel for the parties.

The issue raised in companion appeals (Civil Appeal Nos. 6418 and 6421 of 2010), does not arise in the present appeals. For, the appellant-assessee did not file any return accompanies by audit report pursuant to notice issued under Section 142 of the Income Tax Act. Hence, these appeals fail and are dismissed.

“However, dismissal of these appeals will not preclude the appellant to pursue the remedy before ITAT on merits.”

This Hon'ble Tribunal by it's order dated 19.10.2023 has recalled these appeals i.e. ITA Nos.280 & 281/Chd/2000. Hence, appeal on merits before us.

26.2 After hearing both the sides on merit and after perusing the records of the case, we find that there are broadly two issues which needs determination by us on merits. The first being whether Ld. CIT(A) is justified in holding the interest of Rs.1,88,82,766/- was not allowable as deduction as it was penal in nature for infraction of

contractual obligation. The second being whether the Ld. CIT(A) was not justified in disallowing the deduction of Rs.3,86,14,086/- on account of interest on interest i.e; compound interest. It partakes character of or colour of a penal impost.

26.3 We notice that before ITAT Chandigarh Bench in ITA No.299/Chandigarh/2002 for Assessment Year 1996-97 in respect of Assessee's own case, it is held as under in para 3.8 &4.2:-

"3.8 Accordingly the order of CIT(A) confirming the impugned addition of Rs. 14,43,501/- is set aside and the AO is directed to delete the impugned addition of Rs. 14,43,501/-.Accordingly the Ground No. 2 of the appeal filed by the assessee is allowed."

*"4.2 That interest relates to previous years and hence not allowable is not maintainable. The assessee also submitted before the CIT(A) that the contention of AO that this interest is penal in nature is also not correct as on one hand the AO is allowing the Interest on belated payment of royalty holding it to be compensatory in nature, on the other hand he is holding that interest payable on non-payment of this interest is penal in nature. It was argued that the AO has failed to understand what is meant by the term interest on interest. In simple words it is the compound interest which is charged by every lender from the borrower in case the borrower fails to pay the interest due on the principle amount. **If the simple interest is compensatory in nature, the compound interest cannot be penal in nature. Hence, this amount is clearly allowable and the disallowance made by the AO deserves to be vacated.**"*

The Hon'ble Tribunal has further held as under in Para 4.6

"4.6 Firstly, we do not agree with the observation of the tax authorities below that the payment of interest upon the interest on the belated payment of royalty can be termed as penal in nature because it can simply be called as charging of compound interest from the assessee in order to curb the tendency of part payment of royalty and to ensure the speedy payment of interest

to the forests department. Hence, we are of the opinion that on this basis, the tax authorities were not justified in disallowing the claim of the payment of interest upon the interest of delayed payment of royalty treating the same to be penal in nature."

26.4 The above finding of the Hon'ble Tribunal is in respect of following question which was as under:-

"4 Now we shall take up ground No.3 of the assessee's appeal relating to the payment of interest on belated payment of royalty.

4.1 The relevant and material facts for the disposal of this ground of appeal are that the assessee has claimed deduction of Rs.51,10,941 on account of payment of interest on the interest in respect of delayed payment of royalty. The AO asked the assessee to give the basis of claiming this amount in the year under consideration. In reply, the assessee contended that this amount has been claimed in view of the letter of the Principal Chief Conservator of Forests, dated 4.12.95. The AO disallowed this amount and added the same to the returned income of the assessee because according to him, the liability was not ascertained or crystalized in the year under consideration and secondly, this payment was treated as penal in nature."

We endorse above finding as facts are *parimateria* here and squarely covers the issues raised in the appeal before us.

26.5 Further, we also hold the finding of Hon'ble ITAT, Ahmedabad Bench in the case of *ACIT Circle (1)(1), Ahmedabad vs. Chittorgarh Kota Tollway (P.) Ltd. (supra)* as applicable to the facts of this case too in view of the observation and findings as recorded in para 8 of the order. We hold that interest expenditure are in relation to the assessee's normal business activities and was part of its business transactions as per bare reading of the lease deed i.e; interest of Rs. 1,88,82,766/- and the compound interest of Rs. 3,86,14,924/- (interest on interest). We also further

hold that such impost are not penal in nature. Be it noted that Rs. 3,13,55,157/-(supra) is not pressed before us nor before CIT(A).

27. Respectfully following above judgement, we set aside the order of CIT(A) dated. 22/03/2020 and allow this appeal.

28. In the result, the present appeal of Appellant/Assessee is allowed and impugned order of Ld. CIT(A) is set aside.

29. Now we shall deal with the appeal in ITA No. 281/Chd/2000, since the facts involved in the present case where initially stated to be similar and identical to the facts involved in ITA No. 280/Chd/2000, but during the course of the hearing held on 28/05/2024 after the hearing in ITA No. 280/Chd/2000 was over and when this matter was called the Ld. AR of the assessee informed the Tribunal that this appeal is required to be dismissed as the larger issue of return of income not filed with Audit Report pursuant to the notice of the Department already stands dismissed by virtue of the order of the Supreme Court of India (supra) and that no issues on merit has been raised by the assessee and therefore, nothing survives before us for adjudication and adjudgement. In view thereof we dismiss this appeal on merits in light of what is stated at Bar by the Ld. AR.

30. In the result, the appeal of the assessee bearing ITA No.

280/Chd/2000 for the A.Y 1990-91 is allowed whereas the appeal of the assessee bearing ITA No. 281/Chd/2000 for the A.Y. 1991-92 is dismissed.

Order pronounced on 06th June ,2024.

Sd/-

(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER

Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER

“PK/Sr.Ps”/AG

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar