

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI  
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 1423/Del/2024  
(Assessment Year: 2017-18)**

SA Buildwell, H No. 412, Block B, Pathwari Colony, Faridabad, Haryana (Appellant) <b>PAN:ABLFS6074N</b>	Vs. ACIT, Ward-2(1), Faridabad  (Respondent)
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Assessee by :	Shri Arvind Soni, Adv
Revenue by:	Shri V. K. Dubey, Sr. DR

Date of Hearing	01/08/2024
Date of pronouncement	28/08/2024

O R D E R

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No.1423/Del/2024 for AY 2017-18, arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Ld. CIT(A)', in short] in Appeal No. ITBA/NFAC/S/250/2023-24/1060511989(1) dated 05.02.2024 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 26.12.20197 by the Assessing Officer, ACIT, Circle-2 (1), Faridabad (hereinafter referred to as 'Ld. AO').

2. The assessee has raised the following grounds of appeal :-

*"1. That on the Facts and Circumstances of the case and in law, the order passed by the Ld. Assessing Officer (hereinafter referred to as Ld. AO) is bad in law and the appellant denies its liability to be assessed at income of Rs 1,64,20,457/- as against the returned income of Rs 1,31,54,360/-*

*2. Because the action is under challenge on facts & law since the findings recorded qua appeal dismissal of appeal is in violation to the principles of natural & substantial justice for a decision in accordance with law.*

*3. Because the action is under challenge on facts & law for making addition of Rs. 5,56,625/- on account of disallowance of employee contribution to ESI & PF deposited by assessee beyond due date*

*4. Because the action is under challenge on facts & law for making addition of Rs. 12,72,065/- on account of disallowance of penalty on service tax is unjustified as the same has not been debited to Profit and loss account. Assessee has debited penalty directly to partner capital account. As expense has not been claimed in the profit and loss account, addition of this amount is without any base or logic.*

*5. Because the action is under challenge on facts & law for making addition of Rs. 14,30,672/- on account of disallowance of interest on service tax is unjustified as amount paid as interest is business expense which has been delayed because of funds not being released by the customers.*

*6. Because the action is under challenge on facts & law for making addition of Rs. 6,735/- on account of disallowance of interest on TDS is unjustified as amount paid as interest is business expense which has been delayed because of funds not being released by the customers.*

*7. That on the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax Appeals (hereinafter referred to as 'CIT (A)'), grossly erred in Dismissed the appeal, which is uncalled for, based on surmises and conjectures and bad in law.*

*8. Because on the Facts and Circumstances of the case order passed by Ld. A.O. is arbitrary in nature, against the principle of natural justice & equity and also without giving proper opportunity of being heard."*

3. Ground Nos. 1 and 2 raised by the assessee are general in nature and does not require any specific adjudication.

4. Ground No. 3 raised by the assessee with regard to late deposit of employees contribution towards PF and ESI was stated to be not pressed by the Id AR at the time of hearing. The same is reckoned as a statement

made from the Bar and accordingly Ground No. 3 is hereby dismissed as not pressed.

5. Ground No. 6 raised by the assessee with regard to disallowance of interest on late deposit of TDS was stated to be not pressed by the Id AR at the time of hearing due to smallness of the amount. The same is reckoned as a statement made from the Bar. Accordingly, Ground No. 6 is hereby dismissed as not pressed.

6. Ground No. 4 raised by the assessee is challenging the disallowance of penalty paid on service tax amounting to ₹12,72,065/-.

7. We have heard the rival submissions and perused the material available on record. During the year, the assessee has paid penalty on late deposit of service tax amounting to ₹12,72,065/-. It is pertinent to note that the said payment of penalty was not debited by the assessee in the profit and loss account and accordingly not claimed as deduction at all in the computation of income. This aspect was completely ignored by the lower authorities and the same stood disallowed by the Id AO and confirmed by the Id CIT(A). On perusal of the ledger account enclosed in page numbers 42 & 43 of the paper book of penalty on service tax and the partners capital account, which was placed on record, we find that the assessee had debited the penalty paid on service tax to the partners' capital account and had not claimed any deduction for the same. Hence, there is no question of making any disallowance thereon. Accordingly, Ground No. 4 raised by assessee is allowed.

8. Ground No. 5 raised by the assessee is challenging the disallowance of interest on late deposit of service tax amounting to ₹14,30,672/-.

9. We have heard the rival submissions and perused the material available on record. The Id AO in the assessment order without giving any reason directly proceeded to disallow this interest on service tax of ₹14,30,672, which stood confirmed by the Id CIT(A) just by reproducing the assessment order. Admittedly, the payment of service tax is not capital in nature and not personal in nature. The same is clearly a business expenditure for the assessee company. Hence, interest paid on late deposit of service tax is purely compensatory in nature and accordingly allowable as deduction u/s 37(1) of the Act. We place reliance on the decision of the Hon'ble Supreme Court in the case of Lachmandas Mathuradas Vs. CIT reported in 254 ITR 799 (SC), wherein, the interest paid on arrears of sales tax was held to be compensatory in nature. Both sales tax and service tax, being an indirect tax, the analogy that could be drawn for sales tax could be clearly applied for service tax also. The Id AR before us further submitted that as per Service Tax law which is codified under Finance Act, 1994, interest is levied u/s 75 of Finance Act in respect of delay in deposit of tax, whereas penalty for failure to pay service tax is governed u/s 76 of the Finance Act. A plain reading of both the sections 75 and 76 of the Finance Act clearly demonstrate that as far as interest is concerned, it is purely compensatory in nature and hence should be allowed as such. Such payment of interest cannot be included in the ambit of fines and penalties specified in Explanation (1) to section 37 of the Act. The levy of interest under Service Tax is different from penalties.

10. In view of the above, we have no hesitation to delete the disallowance of interest on late deposit of service tax and direct the Id AO to allow deduction for this. Accordingly, Ground No. 5 raised by the assessee is allowed.

11. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 28/08/2024.

-Sd/-  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

-Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 28/08/2024  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi