

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : SMC-I : NEW DELHI
BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER

ITA Nos.1052 & 1053/Del/2015
Assessment Years : 2010-11 & 2011-12

Ganpati Enterprises,
842, South Civil Lines,
Muzaffarnagar.

Vs. DCIT,
Circle-1,
Muzaffarnagar.

PAN: AAFFG3043C

(Appellant)

(Respondent)

Assessee By : Shri Ankit Gupta, Advocate
Department By : None

Date of Hearing : 18.07.2016
Date of Pronouncement : 18.07.2016

ORDER

PER R.S. SYAL, AM:

These two appeals filed by the assessee are directed against the separate orders passed by the CIT(A) on 29.12.2014 in relation to the Assessment Years 2010-11 and 2011-12. Since some of the issues raised

in these appeals are common, I am proceeding to dispose them off by this consolidated order for the sake of convenience.

2. The Department has requested for adjournment in all the cases, including the present appeals, fixed today for hearing before the Bench by giving the reason that: “Sr. DR is not available.” There is neither any one from the side of the Revenue to represent the Revenue nor to explain the reasons as to why the Bench be allowed to crash. The Id. AR strongly opposed to the granting of adjournment. I am satisfied that the Revenue’s prayer for adjournment cannot be accepted. The same is, therefore, rejected and the appeals are being taken up for disposal on merits *ex parte qua* the Revenue.

Assessment Year 2010-11

3. The first issue raised in this appeal is against addition of Rs.10,16,428/- by disallowing salary and interest paid to partners after adopting the status of the assessee as an AOP.

4. Briefly stated, the facts of this ground are that the assessee filed its return in the status of a `firm’ by furnishing a copy of partnership deed.

The AO, relying on his view taken for earlier years, did not grant the status of 'firm' to the assessee and assessed it as an AOP. Resultantly, claim of salary and interest paid to partners was also denied. On page No.3 of the assessment order, the AO has recorded that for the assessment years 2004-05, 2005-06 and 2006-07, the status of the assessee was treated as AOP, which was confirmed by the Id.CIT(A), but, the assessee got relief from the Tribunal against which the Revenue was in appeal. The Id. CIT(A) upheld the assessment order.

5. After hearing the Id. AR and perusing the relevant material on record, I find that the issue of granting AOP status to the assessee and the consequential disallowance of interest and salary to partners is no more *res integra* in view of the order passed by the Tribunal for earlier years accepting the assessee's status as that of a 'firm' and accordingly allowing deduction on account of salary and interest to partners. Respectfully following the precedent, I overturn the impugned order on this issue and direct to grant the status of 'firm' to the assessee and also allow deduction on account of salary and interest to partners.

6. The only other issue which survives is against the confirmation of addition of Rs.1,44,367/- on account of disallowance out of interest on security/licence fee. The assessee debited a sum of Rs.1,44,367/- as interest on security/licence fee. On being called upon to justify the deduction, the assessee submitted that such interest was 'on delayed payment of security and licence fee.' The AO treated it as penal in nature and made disallowance for the same. The Id. CIT(A) echoed the assessment order on this issue.

7. After considering the submissions advanced by the Id. AR and perusing the relevant material on record, it is observed that the assessee paid interest due to delayed payment of security and licence fee. In fact, such licence fee and security were paid before the due date through account payee cheque, but, the Excise Department charged interest on the same because of some time taken by them in clearing/encashing of the demand draft/account payee cheque. This fact is evident from page 9, para 3.3 of the impugned order. Once the assessee has paid security and licence fee in time and the Excise Department has charged interest

because of time taken in clearing/encashing of the demand draft, etc., the payment of such interest amounting to Rs.1,44,367/- cannot be construed as penal in nature so as to attract disallowance in terms of Explanation 1 to section 37(1) of the Act. This expenditure incurred for the purpose of business deserves to be and is hereby allowed in full.

8. In the result, the appeal is allowed.

Assessment Year 2011-12.

9. The first two issues, namely Status of firm and allowing of deduction for salary and interest to partners and Interest on security/license fee are similar to those for the Assessment Year 2010-

11. Following the view taken hereinabove, these issues are decided in favour of the assessee.

10. The only other ground which survives for consideration is against the confirmation of disallowance of Rs.80,500/- out of 'Excise consumption money'.

11. Briefly stated, the facts of this ground are that the assessee debited Rs.80,500/- in its Profit & loss account. As the AO was not satisfied with the explanation given by the assessee in support of deduction for the sum, he made this disallowance. The Id. CIT(A) confirmed the same.

12. After hearing the Id. AR and perusing the relevant material on record, I find the detail of such payment amounting to Rs.80,500/- on page 19 of the paper book. This represents 13 separate payments made by the assessee by means of deposit in State Bank of India through challans issued by Excise Authorities. Copies of such challans are available from pages 20 onwards of the paper book. From these challans, it is clear that these amounts were charged because of certain irregularities found by the Inspector at the time of inspection of the shops. The Id. AR explained that the Inspector charged these amounts on account of petty issues, which are not of penal nature. In my considered opinion, these expenses are incidental to the carrying on of

the business and, hence, cannot be disallowed. I, therefore, grant deduction for this amount.

13. In the result, the appeal is allowed.

The order pronounced in the open court on 18.07.2016.

Sd/-

[R.S. SYAL]
ACCOUNTANT MEMBER

Dated, 18th July, 2016.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.