

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “B”: NEW DELHI**

**BEFORE
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 9833/Del/2019
Asstt. Year: 2015-16

Delhi Cargo Service Center, Cargo Terminal 2, Gate No. 6, Air Cargo Complex, Indra Gandhi Int. Airport, New Delhi – 110 037. PAN AADCD2748N (Appellant)	Vs.	ACIT, Circle-7(1), New Delhi. (Respondent)
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Assessee by:	Shri Sarabjeet Singh, Employee
Department by :	Shri T. James Singson, CIT,DR
Date of Hearing :	16.03.2023
Date of pronouncement :	24.03.2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order of the Ld. Asstt. Commissioner of Income Tax, Circle 7(1), New Delhi (**“AO”**) dated 30.09.2019 passed under section 143(3) r.w. section 144C of the Income Tax Act, 1961 (**the “Act”**) pertaining to Assessment Year (**“AY”**) 2015-16.

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

“1. *The order of the Learned Assessing Officer (Ld. AO) passed u/s 143(3) read with section 144C(13) of the Income-tax Act, 1961 is bad in law to the extent of disallowance of Rs. 94,662 as it is in defiance of directions given by Hon’ble Dispute Resolution Panel vide its directions dated 20.09.2019*

2. *Without prejudice to ground 1 above, the Ld. AO grossly erred, in fact and in law, in making disallowance of Rs. 94,662 as the basis on which he has made such a disallowance is different from the basis on which the addition was made in the draft assessment order issued in pursuance of section 143(3) read with section 144C(1) of the Income Tax Act, 1961.*
3. *Without prejudice to ground 1 & 2 above, the Ld. AO grossly erred, in fact and in law, in making disallowance of Rs. 94,662 in respect of interest paid on delayed payment of TDS holding it to be a penalty for violation of law.*
4. *The Learned Assessing Officer grossly erred, in fact and in law, in disallowing of Rs. 94,662 in respect of interest paid on late payment of TDS on the ground that such interest relates to earlier year although the payment of such interest is allowable in the year of payment in terms of section 43B of Income-tax Act, 1961.*
5. *The Learned Assessing Officer grossly erred, in fact and in law, in disallowing of Rs 26,465 paid towards arrears for contribution to provident fund on the ground that the challans for payment was not produced although the payment is reflected in the bank statement.*
6. *The Learned Assessing Officer grossly erred, in fact and in law, in initiating penalty proceedings u/s 271 (1)(c) of the Income-tax Act, 1961.”*

3. Brief facts are that the assessee is a company engaged in cargo handling services at Cargo Terminal – 2 at Indra Gandhi International Airport. For AY 2015-16, it e-filed its return on 28.09.2015 declaring loss of Rs. 13,29,41,858/-. The case was selected for scrutiny under CASS. Accordingly, notices under section 143(2) and 142(1) were issued and served upon the assessee along with questionnaire. In response the assessee filed the requisite details. After hearing and discussion with the Representative of the assessee company, the Ld. AO passed draft assessment order on 18.12.2018 under section 143(3) r.w. section 92CA of the Act computing total income of Rs. 5,43,02,440/- including therein transfer pricing adjustment of Rs. 4,86,90,234/-; addition of Rs. 13,71,42,440/- under section 56(2)(viib) of the Act being share premium received by the assessee from domestic entities; disallowance of Rs. 12,83,016/- under section 37(1) of the Act being payment to PWC on behalf of IDFC Alternative Ltd. and disallowance of Rs. 1,28,605/- under section 43B being late payment towards statutory dues.

4. Aggrieved, the assessee preferred an application under section 144C(2) of the Act before the Dispute Resolution Panel (**"DRP"**) objecting to the aforesaid additions/disallowances made by the Ld. Transfer Pricing Officer (TPO)/AO. The DRP issued directions under section 144(C)(5) of the Act on 20.09.2019 wherein the DRP directed the Ld. AO to delete the addition of Rs. 4,86,90,234/-; Rs. 13,71,42,440/- and Rs. 12,83,016/-. Regarding disallowance of Rs. 1,28,605/- under section 43B, the DRP directed the Ld. AO to examine the evidence and allow to the extent supported by the evidence. The Ld. AO gave effect to the directions of the DRP and completed the assessment on total loss of Rs. 13,28,20,730/- on 30.10.2019 under section 143(3) r.w. section 144C of the Act. The Ld. AO, however maintained the disallowance of interest of Rs. 94,662/- paid on late payment of TDS and Rs. 26,465/- being PF arrear payments as challans in support were not filed. It is against the aforesaid disallowances maintained by the Ld. AO in his assessment order dated 30.10.2019 that the assessee is in appeal before the Tribunal and all the grounds relate thereto.

5. Ground No. 1, 2, 3 and 4 relate to disallowance of Rs. 94,662/- on account of interest payment on TDS deposited to the Income Tax Department. Before the DRP it was submitted by the assessee that the said payment of interest is evidenced by Bank Challan and the DRP directed the Ld. AO to allow the assessee's claim provided evidence of payment is produced before the Ld. AO. Vide notice dated 25.10.2019 under section 142(1) the Ld. AO required the assessee to furnish the evidence in support. The assessee submitted reply vide letter dated 28.10.2019 which was found to be not satisfactory by the Ld. AO. According to him, the entire amount pertained to different AY(s) other than AY 2015-16 and thus cannot be allowed. Liability for interest being in the nature of penalty, the Ld. AO made the impugned disallowance under section 37(1) of the Act.

6. The Ld. AR submitted that the liability for interest incurred by the assessee is compensatory in nature and thus is admissible as business expenditure. He relied on the decision of the Hon'ble Supreme Court in

Lachmandas Mathuradas vs. CIT 254 ITR 799 (SC), decision of Hon'ble Madras High Court in Chennai Properties and Investment Ltd. vs. CIT 239 ITR 435 (Mad) and the decisions of Mumbai, Calcutta and Jaipur Benches of the Tribunal.

7. The Ld. DR supported the order of the Ld. AO.

8. We have heard the Ld. Representative of the parties and perused the records. The Ld. AO had proposed the impugned disallowance under section 43B which allows deduction of statutory dues in the year of actual payment irrespective of the year in which the liability was incurred. The case of the assessee all along has been that the impugned interest has been paid in AY 2015-16 and therefore it is an allowable deduction. However, after receipt of the direction of the DRP to verify the evidence of payment and allow the same as deduction, the Ld. AO made the impugned disallowance under section 37(1) of the Act assigning the reason that impugned interest liability is penal in nature. Impugned disallowance for the reason assigned now is also not sustainable. Identical issue arose for consideration before Mumbai Bench of the Tribunal in M/s. M L Reality vs. ACIT in ITA No. 796/Mum/2019 and the Tribunal vide its order dated 24.03.2021 held that interest paid on late payment of TDS is compensatory in nature and is an allowable deduction under section 37(1) of the Act. The relevant portion of the ITAT order (supra) is reproduced below:

"2.1. We have heard the rival submissions and perused the materials available on record. We find that the assessee is a registered partnership firm engaged in the business of builders and contractors and had declared the income for the Asst Year 2013-14 at Rs 1,46,38,360/-. We find that the assessee had claimed the interest paid on late payment of TDS of Rs 1,87,125/- as deduction u/s 37(1) of the Act on the plea that the delay in remittance of TDS had suffered interest which is compensatory in nature. The Id AO however held to be penal in nature and by applying the Explanation to section 37(1) of the Act, disallowed the said sum of Rs 1,87,125/- in the assessment, which was also confirmed by the Id CITA. We find that the genuinity of the expenditure incurred is not in dispute. Admittedly the TDS was duly deducted and remitted with delay by the assessee and for the said delay

, the assessee had suffered interest. The expenditure incurred by the assessee for the purpose of business is not doubted by the revenue. The only dispute involved is whether the said payment of interest on late payment of TDS could be construed as compensatory in nature or penal in nature. We find that the payment of interest is provided separately in the statute which is a permissible payment and accordingly compensatory in nature. Apart from this, the statute also provides for payment of penalty which is penal in nature. Hence the legislature in its wisdom had enacted separate provisions for payment of interest and penalty separately. Hence payment of interest on delayed remittance of TDS could not be construed as penal in nature. We find that the reliance in this regard has been rightly placed on the co- ordinate bench decision of Kolkata Tribunal in the case of DCIT vs Rungta Mines Ltd in ITA No. 1531/Kol/2017 dated 5.10.2018 which dealt with the similar issue of punitive charges paid to Railways for overloading of wagons as an allowable expenditure being compensatory in nature. The operative portion of the said order is not reproduced herein for the sake of brevity.

2.2. Hence in view of our aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, we direct the Id AO to grant deduction for interest on delayed payment of TDS in the sum of Rs 1,87,125/-. Accordingly, the Ground No. 1 raised by the assessee is allowed."

9. We respectfully follow the decision in M L Reality (supra) and the ratio decidendi of the decisions (supra) relied upon by the assessee. For the reasons aforesaid we find substance in the grounds taken by the assessee and decide them in its favour. Consequently, the impugned disallowance is deleted.

10. Ground No. 5 relates to disallowance of Rs. 26,465/- paid towards arrears for contribution to provident fund. The Ld. AO made the impugned disallowance for the sole reason that challans evidencing payment were not submitted. The Ld. AR submitted that the assessee paid the arrears of provident fund on 26.12.2014 by issuing a demand draft in favour of EPF. The DRP had also accepted that the impugned payment is reflected in bank account statement. The Ld. DR had nothing to say.

11. After hearing the Ld. Representative of the parties and finding that the assessee has established that the payment was made for PF arrears and

documents were brought on record, we hold that the impugned disallowance is not sustainable. It is, therefore, deleted.

12. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 24th March, 2023.

sd/-

sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 24/03/2023

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Copy forwarded to -

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	