

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C”BENCH: BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1209/Bang/2024
Assessment Year: 2013-14

Mangalore chemicals & Fertilizers Ltd. Level 11, UB Tower, UB City 24, Vittal Mallya Road Bangalore 560 001 PAN NO :AABCM3599G	Vs.	ACIT Circle-4(1)(2) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Sri H.V. Gowthama, A.R.
Respondent by	:	Ms. Neera Malhotra, D.R.

Date of Hearing	:	01.08.2024
Date of Pronouncement	:	15.10.2024

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against order of Addl.JCIT(A), Thane dated 30.4.2024 vide DIN & Order No. ITBA/APL/S/250/2024-25/1064474836(1) for the AY 2013-14 passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”). The assessee has raised following grounds of appeal:

- 1. The Ld. Addl. Commissioner of Income Tax (Appeals) erred on facts & in law by confirming the order passed by the Ld. Assessing Officer, NFAC, Delhi, disallowing interest paid on delayed payment of additional Customs Duty paid, considering the same as in nature of penalty.*
- 2. The . Addl. Commissioner of Income Tax (Appeals) was wrong in stating that interest payment on delayed payment of additional Customs Duty is required to be considered as penalty, hence it is disallowable.*
- 3. The Ld. Addl. Commissioner of Income Tax (Appeals) wrongly construed that based on the decision of Hon'ble High Court of Mumbai*

in the case of PCIT Vs Sushil Gupta (2019) 102 Taxmann.com 409/262 Taxman 41 (Bom.) and CIT Vs Rane Brake Linings Ltd. (2001) 115 Taxman 367 (Mad.) CIT Vs Jayaram Metal Industries (2007) 158 Taxman 169 (Kar.) Based on the above 3 decisions, the Appeal has been held against the Appellant.

4. *The Appellant submits that all the above decisions are distinguishable and they are in respect of levy of penalty for violation of law and not relating to the interest payment.*
5. *The Appellant further states that based on the decision of Hon'ble Apex Court in the case of Mahalaxmi Sugar Mills Co.Ltd Vs CIT (1980) 3 Taxman 52(SC) and Lachmandas Mathuradas Vs CIT (2002) 122 Taxman 828(SC), the interest payment on late remittance of additional Customs Duty shall be considered as only compensatory in nature and is therefore allowable u/s.37 of Income tax Act, 1961.*
6. *Further, the penalty of Rs.9,00,000/-, which has been levied by the Central Excise Department during later Assessment Year. has been disallowed by the Appellant itself in the computation of income.*
7. *For the above and any other grounds that may be advanced at the time of hearing, the Appellant prays that the Appeal be allowed.*

2. Brief facts of the case are that the assessee is a company and is in the business of manufacture and sale of Fertilizers. The assessee company filed its ROI for AY 2013-14 on 27.11.2023 electronically declaring the total loss of Rs. 1,25,37,85,663/-. The same was processed u/s 143(1) of the Act. Thereafter, the case was selected for scrutiny under CASS and accordingly assessment order was passed u/s 143(3) of the Act on 30.03.2016 after making addition/ disallowance of Rs. 2,52,84,40,251/- and the income was assessed at Rs. 34,46,80,874/-. Subsequently, on the basis of information from Custom and Central excise Department regarding customs evasion of CVD amounting to Rs.1,40,87,305/- by the assessee company, the notice u/s 148 of the Act was issued on 25.03.2019 after obtaining the approval from the Pr.CIT-4, Bengaluru. In response to the same, the assessee filed the return of income again on 02.04.2019 declaring the loss of

Rs.1,25,37,85,663/- as declared in the original ROI. During the course of reassessment proceedings, it was noticed that for the purpose of manufacture of Fertilizers, the assessee company imports some of the raw materials, on which the assessee Company has to pay customs duty depending on the classification of the raw material. Based on the certain classification of the material, the assessee company had already paid customs duty, which was debited to purchase account in the normal course. There was notice from the Customs Authorities, stating that the payment of customs duty by the assessee was on wrong classification and accordingly the excess amount was claimed by the Customs Authorities. The matter was taken up to the Customs and Central Excise Settlement Commission. Based on reclassification, the settlement commission, Chennai bench vide order dated 19.03.2015 held that the Appellant company had misclassified the three imported consignments with an intention to evade payment of countervailing duty. Further, it was held that this act of the assessee exhibited certain amount of dishonesty and ordered the assessee to pay additional customs duty of Rs.1,40,87,305/- and interest of Rs. 1,25,46,377/-. Over and above, the additional Customs Duty and interest, the penalty of Rs.9,00,000/- was also levied by the Settlement Commission. The Assessing Officer though allowed the additional customs duty paid as business expenditure in the year of payment i.e. Asst. Year 2013-14, he has disallowed interest paid on additional customs duty of Rs.4,26,569 paid in the financial year relevant to Asst. Year 2013-14. The reason for disallowance in the opinion of the Assessing Officer was that the interest payment is in the nature of penalty and hence not an allowable expenditure as the interest liability occurred due to misclassification and suppression of facts by the assessee. Hence, it comes within the ambit of disallowance u/s 37 of the Act.

2.1 Aggrieved by the order dated 28.11.2019 passed u/s. 143(3) r.w.s 147 of The Act, the assessee filed an appeal before the then CIT(A)-4, Bengaluru on 20.12.2019. During the appellate proceedings, the assessee was given an opportunity of being heard vide notice dated 14.03.2020. In response to the same, the assessee vide letter dated 09.11.2020 filed its submissions. This appeal was later assigned to the National Faceless Assessment Centre on 20.11.2020. The assessee was given opportunities of being heard vide notices dated 24.12.2020 & 24.01.2023. In response to the same, the assessee vide letters dated 04.01.2021 & 30.01.2023 respectively, filed its submissions. This appeal was later assigned to the NFAC on 22.08.2023 under the E-appeals Scheme, 2023. The assessee was given opportunities of being heard vide notices dated 21.11.2023 & 10.04.2024. In response to the same, the assessee vide letters dated 24.11.2023 & 13.04.2024 filed its submissions again before NFAC.

2.2 The assessee in its submissions mainly contended that the interest paid was not penal in nature but was compensation for delay in payment of taxes and hence the same is allowable as revenue expenditure u/s 37 of the Act. Further, in support of its claim, the assessee has relied upon the decision of the Apex Court in the case of Mahalaxmi Sugar Mills Co. Ltd. Vs CIT and decision of Hon'ble Rajasthan High Court in the case C.G. Sanghi Vs CIT and also on the decision made by the Hon'ble Supreme Court in the case of Lachmandas Mathuradas Vs CIT, [2002] 122 Taxman 828 (SC).

3. The Id. D.R. submitted that the facts in the assessee's case are entirely different from the facts in the decisions relied upon by the assessee. In the case of Mahalaxmi Sugar Mills Co. Ltd. Vs. CIT (1980) 3 Taxman 52 (SC), the assessee claimed deduction of interest paid on arrears of cess under the UP Sugarcane Cess Act,

cannot be described as a penalty paid for an infringement of the law. In the case of Lachmandas Mathuradas V. CIT (2002) 122 Taxman 828 (SC), the Hon'ble Supreme Court held that interest on arrears or on outstanding balance of sales tax is compensatory in nature and would be allowable as deduction in computing profits of a business. In the case of C.G. Sanghi V. CIT (1985), 156 ITR 95 (Raj), the Hon'ble Rajasthan High Court held that the interest payable u/s 11B of the Rajasthan Sales Tax Act, is not a penalty but an expenditure which is revenue in nature and is an allowable deduction u/s 37(1) of the Act.

3.1 She further submitted that as can be seen from the assessment order and other details filed by the assessee, the assessee had imported 3 consignments of Bright Yellow Sulphur Crude and during the course of investigation carried by the DRI authorities, it was found that the assessee had misclassified these import consignments and paid the customs duty at a lower rate. The Hon'ble Custom and Central Excise Settlement Commission in its order dated 19.03.2015 had upheld the action of Customs and Central excise Authorities regarding various violations of the provisions of Customs Act, 1962, by the assessee and has stated that had it not been for the investigation conducted by the officers of Directorate of Revenue Intelligence, the loss of Revenue would have gone unnoticed. The Settlement Commission, Chennai bench vide order dated 19.03.2015 held that the Assessee company had misclassified the three imported consignments with an intention to evade payment of countervailing duty. This Act of the assessee exhibited certain amount of dishonesty and accordingly the Settlement Commission ordered the assessee to pay additional customs duty of Rs.1,40,87,305/- and interest of Rs. 1,25,46,377/- . Over and above, the additional Customs Duty and interest, penalty of Rs.9,00,000/- was also levied by the Settlement Commission. The learned Assessing Officer has disallowed interest

paid on additional customs duty of Rs.4,26,569/- in the Asst. Year 2013-14. This interest payment was due to misclassification and suppression of facts by the assessee. Hence, she submitted that the said interest payment of Rs. 4,26,569/- is an expenditure incurred by the assessee for a purpose which is an offence or which is prohibited by law and shall not be deemed to have been incurred for the purpose of business or profession of the assessee and no deduction or allowance of such expenditure can be made as per the Explanation to Section 37(1). Therefore, the AO's action of disallowing the amount of Rs.4,26,569/- being interest payment on Customs Duty is to be Upheld.

4. The Id. CIT(A) dismissed the appeal of the assessee by relying on the following decisions:

1. PCIT Vs. Sushil Gupta (2019) 102 taxmann.com 409/262 Taxman 41 (Bom.) wherein the Hon'ble court has held that the fine or penalty for redemption for goods for irregularities or illegalities committed in the process of imported goods is not an allowable deduction.
2. CIT Vs. Rane Brake Linings Ltd. (2001) 115 Taxman 367 (Mad.) CIT Vs. Jayaram Metal Industries (2007), 158 Taxman 169 (Kar.) wherein held that penalty and fine in lieu of confiscation of goods levied under rule 173Q of the Central Excise Rules for removal of goods without making entries in the register are not admissible deductions.
3. Swadeshi Cotton Mills Ltd. V. CIT(1998) 233 ITR 199 (SC), wherein held that where penalty was imposed not on account of any delayed payment of central sales tax but was for contravention of provisions of Central Sales Act, 1956, the penalty levied on assessee could not be allowed as deduction.

4.1 Aggrieved by the order of Id. CIT(A) the assessee is in appeal before us.

5. We have heard the rival submissions and perused the materials available on record. It is undisputed fact that company imports some of the raw materials on which custom duty is required to be paid. The assessee for the year under consideration had imported bright yellow sulphur crude for the purposes of manufacture of fertilizers and on certain classification of goods, the custom duty was paid at the time of import. Subsequently, the custom department had raised issues relating to classification of the imported goods and the matter was finally settled before the customs and Central Excise Settlement Commission. Based on the new classification, the assessee company had to pay Rs.1,40,87,305/- as a differential custom duty. On the above additional custom duty charged on the assessee company, a total of Rs.1,25,73,583/- was also charged as interest on delayed payment of custom duty. Out of total interest of Rs.1,25,73,583/- the assessee claimed Rs. 4,26,569/- paid on 18/03/2013 related to Asst. year 2013-14. Apart from this, a sum of Rs.9 lakhs was also levied as penalty which has been paid during the assessment year 2016-17 and in the computation of income for the assessment year 2016-17, the assessee company has Suo motu disallowed this sum, since it is in the nature of penalty (Pg. 44 of appeal bunch). The assessee company claimed interest as expenditure in the respective year of payment on the ground that it is compensatory in nature and the claim of interest is revenue expenses incurred wholly and exclusively for the purpose of business. Further, the assessee claimed that the interest payment is neither personal in nature nor for any infringement/violation of any law. We are also of the opinion that interest and penalty are two separate and distinct

levies. Interest cannot be considered as penalty at any point of time even by any stretch of imagination. At this juncture, it is worthwhile here to mention the relevant provisions of section 37(1), which is reproduced below for ease and reference and convenience:

37(1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 [* *] [Certain words omitted by Act 32 of 1985, Section 11 (w.e.f. 1.4.1986).] and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".*

Explanation 1.—For the removal of doubts, it is hereby declared 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.

Explanation 2.—For the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.

[Explanation 3.—For the removal of doubts, it is hereby clarified that the expression "expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law" under Explanation 1, shall include and shall be deemed to have always included the expenditure incurred by an assessee,—

(i) for any purpose which is an offence under, or which is prohibited by, any law for the time being in force, in India or outside India; or

(ii) to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person; or

(iii) to compound an offence under any law for the time being in force, in India or outside India.]”

5.1 From the plain reading of above section, it can be safely inferred that any expenditure not being expenditure of the nature described in section 30 to 36 of the Act can be allowed if the following conditions are satisfied:

- a) Expenses are in the nature of revenue.
- b) It is not personal expenses of the assessee.
- c) Laid out or expended wholly and exclusively for the purpose of business/profession.

5.2 Further, the explanation (1) uses the expression “expenditure incurred by an assessee for any purpose, which is an offence or which is prohibited by law”. Explanation (3) clarifies the expression “Expenditure incurred by an assessee for any purpose, which is an offence or which is prohibited by law used in explanation (1)”. In our view, assessee has claimed interest as an expenditure which is nothing but a compensation for delay in payment of taxes and thus, compensatory in nature. The claim of interest as revenue expenses is in accordance with provisions of section 37(1) of the Act since in our view the same is neither the capital expenditure nor personal in nature and it is incurred wholly and exclusively for the purpose of business. Further, we also note that for any infringement/violation of any law, penalty is levied separately as can be seen in the present case apart from interest of Rs.1,25,73,583/- on delayed payment of custom duty, the penalty of Rs.9 lakhs was also levied. The assessee company in his computation of income for the Asst. year 2016-17 has already disallowed the sum of penalty as it is in the infringement/violation of law. Therefore, in our opinion, interest paid for delayed payment of customs duty cannot be at par with the penalty paid for any infringement of law. There is no dispute that the payment of interest represents expenditure laid out wholly or exclusively for the purpose business. There is also no dispute that it is in the nature of revenue expenditure.

5.3 Further, ld. D.R. submitted the compilation of decisions relied upon by the revenue as detailed below-

- a) CIT Vs. Jayaram Metal Industries (2006) 286 ITR 403 (Kar.HC).

- b) Swadeshi Cotton Mills Ltd. Vs. CIT (1998) 233 ITR (SC)
- c) PCIT Vs. Sushil Gupta (2019) 411 ITR 678 (Bom.)
- d) CIT Vs. Rane Brake Linings Ltd. (2002) 255 ITR 218 (Mad.)

5.4 We have gone through all these decisions relied upon by the Id. DR. In our view all the above decisions are distinguishable on present facts and issues under consideration. In the case of CIT Vs. Jayaram Metal Industries cited (supra), the issue was in case the Central Excise authority raided business premises of the assessee and confiscated finished goods valued at 18200kgs. Brass etc. and had levied penalty upon assessee under Rule 173Q (1) of the Central Excise Rules, 1944 for contravention of relevant provisions of the law. Assessee however, opted for payment of redemption fine of Rs.2 lakhs and claimed the same as business expenditure.

5.5 Further, in the case of Swadeshi Cotton Mills Company Ltd. cited (supra), the issue was whether whenever payment of impost is found to be partly of compensatory in nature and partly of penal in nature, whether the authorities are obligated to bifurcate to components of impost and give deduction to that component which is compensatory in nature and refused to give deduction to that component which is penal in nature.

5.6 Further, in the case of PCIT Vs. Sushil Gupta cited (supra), the issue was whether fine or penalty for redemption of goods ordered to be confiscated for breach of import conditions is allowable as deduction or not?

5.7 In the case of CIT Vs. Rane Brake Linings Ltd. cited (supra), the issue was whether penalty paid for violating law in course of conduct of business can be regarded as deductible expenditure?

5.8 Thus, it can be seen that all the decisions relied upon by the Id. D.R. are distinguishable on present facts and issue under consideration in the present case. In fact, in the present case, the

sole consideration is whether payment of interest is compensatory in nature or is equal to penalty for breach or infringement of any law.

5.9 We are of opinion that on the similar issue, the Hon'ble Supreme Court in the case of Mahalakshmi Sugar Mills Company Ltd. Vs. CIT reported in (1980) 3 Taxman 52 (SC) dated 9.4.1980 held as under:

“10. In our opinion, the interest paid under section 3(3) of the Cess Act cannot be described as a penalty paid for an infringement of the law. As that is the only ground on which the revenue resists the claim of the assessee to a deduction of the interest under section 10(2)(xv) of the 1922 Act, the assessee is entitled to succeed. There is no dispute that the payment of interest represents expenditure laid out wholly or exclusively for the purpose of the business. There is also no dispute that it is in the nature of revenue expenditure.”

5.10 Further, Hon'ble Supreme Court in the case of Lachmandas Mathuradas Vs. CIT reported in 254 ITR 799 (2002) (SC) held as under:

3. While granting special leave to appeal, the appeal has been confined to question Nos. 1 and 2 only. The High Court has proceeded on the basis that the interest on arrears of sales tax is penal in nature and has rejected the contention of the assessee that it is compensatory in nature. In taking the said view the High Court has placed reliance on its Full Bench's decision in *Saraya Sugar Mills (P.) Ltd. v. CIT* [1979] 116 ITR 387 (All.) The learned counsel appearing for the appellant-assessee states that the said judgment of the Full Bench has been reversed by the larger Bench of the High Court in *Triveni Engg. Works Ltd. v. CIT* [1983] 144 ITR 732 (All.) (FB), wherein it has been held that interest on arrears of tax is compensatory in nature and not penal. This question has also been considered by this Court in Civil Appeal No. 830 of 1979 titled *Saraya Sugar Mills (P.) Ltd. v. CIT* decided on 29-2-1996. In that view of the matter, the appeal is allowed and question Nos. 1 and 2 are answered in favour of the assessee and against the revenue. No order as to costs.

5.11 Even the Jurisdictional Hon'ble Karnataka High Court in the case of CIT Vs. Mysore Electrical Industries Ltd. reported in 196 ITR 884 (1992) has held as under:

3. *The assessee in the instant case failed to pay the contribution under the provisions of the Employees' Provident Funds Act to the concerned trust. consequently, the company had to pay interest thereon. This interest is now claimed as a deduction by the assessee under section 37 of the Income Tax Act, 1961, as if it is an expenditure. The contention of the Revenue is that the payment of interest was actually a penalty not deductible and that the payment*

was to penalise the assessee for the delayed payment. This contention was not accepted by the Appellate Tribunal. Hence, this reference.

4. *There is no serious dispute that the payment in question by the assessee was interest. This payment was obviously under section 7-Q of the Employees' Funds and Miscellaneous Provisions Act, 1952, under which the to pay interest on the delayed payment fastens itself. The liability of the thereon is to pay simple interest as the very provision states. There provisions under the said Act to penalize the employer for the delayed payment. In such social welfare legislations, it is usual to find similar - one for the payment of interest for delayed payment and the other contributor for the delay. The latter is to enforce as a matter of frequent delays, while the former is to compensate the contribution of the payments in view of the involved. The concepts are distinct and separate. The compensatory payment has been •deductible, because it is an accretion to the main payment as observed by the Supreme Court in Mahalaxmi Sugar Mills Co. Vs. Commissioner Tax, Delhi, AIR 1980 SC 754. The above decision of the Supreme was followed by the Appellate Tribunal. In the said, case, there was certain delay in the payment of sugarcane cess. The payer had to pay interest delayed payment. This interest was held by the Supreme Court to be compensatory in nature and not a penalty and consequently deduction was permitted. We do not find any difference in principle between the said decision Supreme Court and the facts of the instant case.*

5. *The decision of this court in Commissioner of Income Tax, Karnataka-II Vs. Mandya National Paper Mills Ltd., ILR (1985) KAR 1298, again highlights these principles. Under section 13(2) of the Karnataka Sales Tax Act, delayed payment of sales tax, "penalty" is levied. This penalty under section 13(2). of the Sales tax Act was held to be interest payable for delayed payment consequently, this court held that the same was deductible under section Income Tax Act, 1961. We are of the view that this is a stronger case in the assessee, applying the principle stated by the Supreme Court in Sugar Mills Co. Vs. Commissioner of Income Tax, Delhi, AIR 1980 SC*

6. *Consequently, we are of the view that the questions referred to us are to be answered in the affirmative and against the Revenue. Reference is answered accordingly."*

5.12 We respectfully following the above decisions of Hon'ble Supreme Court as well as jurisdictional High Court, are of the opinion that since interest is paid on delayed payment of custom duty, which calculated at certain percentage and on time basis is nothing but compensation for delay in payment of taxes and accordingly compensatory in nature. Further, the interest expenses are incurred wholly and exclusively for the purpose of business and the same is neither personal in nature nor capital in nature and

therefore cannot be treated at par with the penalty at any point of time. The Interest due to delayed payment of custom duty is deductible u/s 37 of the Act as it is an accretion to the main payment and not a penalty and accordingly allowable as deduction.

6. In the result, appeal filed by the assessee is allowed.
Order pronounced in the open court on 15th Oct, 2024

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 15th Oct, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.