



(Through Virtual hearing from ITAT, Pune)

**BEFORE HON'BLE SHRI S. S. GODARA, JUDICIAL MEMBER
AND**

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 372/PUN/2022

निर्धारण वर्ष / Assessment Year : 2019-20

Royal Drinks Pvt. Ltd.
254, Small Factory Area,
Wardhaman Nagar, Nagpur-440008
PAN: AAACR9486J

..... *अपीलार्थी / Appellant*

बनाम / V/s

Income Tax Officer
Ward-4(3), Nagpur.

..... *प्रत्यर्थी / Respondent*

द्वारा / Appearances

Assessee by : Mr Rajesh Loya ['Ld. AR']

Revenue by : Mr Abhay Marathe ['Ld. DR']

सुनवाई की तारीख / Date of conclusive Hearing : 21/03/2024

घोषणा की तारीख / Date of Pronouncement : 24/04/2024

आदेश / ORDER

PER G. D. PADMAHSHALI, AM;

The DIN & order No. ITBA/NFAC/S/250/2022-23/1045760461(1) dt. 21/09/2022 passed u/s 250 of the Income-tax Act, 1961 ['the Act' hereinafter] by the National Faceless Appellate Centre ['NFAC' hereinafter] for assessment year 2019-20 ['AY' hereinafter] is challenged by the assessee in the present appeal.

2. Briefly stated facts of the case are that;

2.1 The assessee company engaged in manufacturing and trading of country liquor. The return of income filed by it declaring total income of ₹32,03,310/- was processed summarily u/s 143(1) of the Act by determining total income at

₹35,65,320/-. The deviation arisen owing to disallowance of interest on Maharashtra Value Added Tax Act, 2002 ['MVAT' hereinafter] u/s 43B(a) of the Act made in view of clause 26(i)(B)(b) of Tax Audit Report['TAR' hereinafter].

2.2 Aggrieved assessee carried the matter in appeal before first appellate authority u/s 246A(1)(a) of the Act. While dealing with assessee's appeal on jurisdiction as well on merits the Ld. NFAC provided as much as four opportunities commencing from February 2021 to August, 2022. Except replying notice dt. 04/04/2022 the assessee failed to comply with other notices, in the event, after consideration assessee's reply dt. 18/05/2022 the Ld. NFAC adjudicated both the issues against assessee vide para 4.3.1 and 4.4.2 of the impugned order respectively which reads as under;

4.3.1 As per the provisions of section 143(1)(a)(iv), the following adjustment can be made:

"143. [(1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely: —

(a) the total income or loss shall be computed after making the following adjustments, namely: —

(i)....., (ii)....., (iii).....,

(iv) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return; "

*This shows that the **CPC is within its statutory power to make such adjustment** as the appellant's statutory auditor himself has disallowed the impugned amount, but the appellant has claimed it by way of deduction in its Return of Income against the Audit Report in the captioned assessment year.*

4.4.2 It is an established principle that any tax paid after the due date will carry interest. This is written in the statute. The appellant has relied on several decisions of various Courts and Tribunals in support of its contention. However, none of these



decisions pertain to late payment of VAT or Sales Tax and hence can be distinguished on facts. While late paid interest on corporation tax is tax deductible, interest on other taxes (income tax, VAT and capital gains tax to name just 3) is not. Accordingly, disallowance of Rs.3,62,008/- is confirmed and grounds of appeal 1 and 2 are dismissed.

3. Aggrieved assessee came in present appeal with following grounds;

(1) That the intimation order of the learned Asstt. Director of Income Tax CPC Bangalore passed u/s 143(1) is bad in law and wrong on facts. The learned CIT(A) erred in sustaining the same and in disregarding the fact that the intimation passed u/s 143(1) is illegal and issue involved is debatable one.

(2) That the learned AO erred in law and on facts in making addition of Rs.3,62,005/- u/s. 43B on account of Interest payable on VAT and the learned CIT(A) erred in confirming the action of the AO. On facts and circumstances of the case, interest on VAT does not come under the purview of section 43B. The learned AO as well as learned CIT(A) erred in not properly appreciating the legal position according to the several decisions of various Courts and making addition without considering the explanation given and case laws relied upon.

(3) That the learned AO erred in law and on facts in charging interest u/s 234A, 234B and 234C and the learned CIT(A) erred in confirming the action of the AO. On the facts and circumstances of the case, interest charged is improper and unjustified.

(4) That for any other ground with kind permission of your honour at the time of hearing of appeal.'

3. During the course of virtual hearing, the Ld. AR reiterated appellants all contentions as were taken before the Ld. NFAC and averred that, the appeal deserves to be allowed on both jurisdictional as well on merits. *Per contra*, the Ld. DR strongly relying on the orders of tax authorities below prayed for dismissal of appeal.



4. We have heard rival contentions, subject to rule 18 of ITAT-Rules 1963 perused the material placed on record and considered the facts of the case in the light of settled legal position which are forewarned to rival parties.

5. There is no dispute that the petitioner follows mercantile system of accounting and claims deductions on the basis of incurred liability or accrued as the case may be and not on actual receipt or payment i.e. not on cash basis. It is an admitted fact that the amount of interest payable on delayed MVAT liability is provided in books by debiting to profit & loss account ['P&L' hereinafter] thus claimed as deductible u/s 37(1) of the Act. Further it is also remained undisputed that such interest provided/debited to P&L is remain unpaid within the time limit prescribed u/s 139(1) of the Act for filing the return of income. Insofar as the deductibility of such unpaid interest u/s 37(1) of the Act is concerned there is much less dispute in view of '*Mahalakshmi Sugar Mills Co Vs CIT*' [1980, 123 ITR 429 (SC)] '*Prakash Cotton Mills Ltd. Vs CIT (Central)*' [1993, 201 ITR 684 (SC)] & '*Lachmandas Mathura Vs CIT*' reported in 254 ITR 799 (SC). However it is the case of the Revenue that, the interest on MVAT is in the form of sales tax/VAT which remained unpaid before the expiry of due date prescribed u/s 139(1) for filing return of income hence is subject matter of disallowance u/c (a) of section 43B of the Act. *Per contra* the appellant dismantles Revenue's proposition on twofold contentions that; (a) such unpaid interest is not a **tax**, hence provisions of section 43B(a) of the Act are inapplicable and (b) without prejudice to (a) the disallowance of such unpaid interest u/s 43B through summary processing u/s 143(1)(a) of the Act is impermissible.



6. This leaves with two moot questions as to; (i) Whether the Ld. AO/CPC has jurisdiction u/s 143(1) of the Act to carry out 43B(a) disallowance? And (ii) whether interest on sales-tax/MVAT is deductible as an expenditure only upon actual payment?

7. Insofar as the ground of jurisdiction of Ld. AO/CPC u/s 143(1)(a) of the Act to disallow certain expenses u/s 43B of the Act is concerned we are mindful to the ratio laid down by Jurisdictional Bombay High Court in '*Khatau Junkar Ltd. Vs DCIT*' [1992, 196 ITR 55 (Bom)], wherein their Hon'ble Lordships have that, the prima facie adjustment u/s 143(1) is permissible where on the face of the return and the documents/accounts accompanying it, the deduction claimed is found inadmissible. In the present case, from clause 26(i)(B)(b) of the TAR it was on face of the record before the Ld. AO/CPC that the appellant while computing its taxable income did fail to disallow the interest payable which remained unpaid by the expiry of time limit prescribed u/s 139(1) of the Act. Thus, impugned disallowance u/s 43B(a) of the Act carried out on the basis of return and accompany TAR finds support in '*Khatau Junkar*' (*supra*) which the appellant also relied in its written submission. Going a step further in '*Rohan Korgaonkar Vs DCIT*' [2024, 159 taxmann.com 321] their Hon'ble lordships have recently held that, once the principle involved in matter of disallowance is settled by binding judicial precedents, the circumstance that the disallowance is carried out u/s 143(1)(a) through *prima-facie* adjustment makes no difference. The principle that the item falling u/c (a) of section 43B of the Act is entitled for deduction on actual payment basis is settled by the catena of judicial precedents, therefore the



disallowance thereof carried out u/s 143(1)(a) of the Act in view of '*Rohan Korgaonkar*' (*supra*) cannot be faulted with. In view thereof we find no infirmity with the orders of tax authorities in carrying out the disallowance through prima-facie adjustment u/c (iv) of u/s 143(1)(a) of the Act. The ground therefore stands dismissed.

8. Now coming to sole & substantive ground of merit, without reproducing the provision in *verbatim* it shall purposive to state that, section 43B of the Act provides a list of expenses which are otherwise deductible while computing income under the head 'Income from business and profession' shall be deductible/allowed in the year of actual payment and not in the year in which liability to pay such expenses is incurred/provided. Clause (a) of section 43B of the Act lists out one of such expense payable by the assessee by way of '*tax, duty, cess or fee by whatever name called*', under any law for the time being in force. Apparently the word interest is not prescribed u/c (a) of section 43B of the Act. The Revenue treats interest payable on any item falling u/c (a) of 43B of the Act as an item by itself, *au contraire* the appellant disagrees by pressing into service the golden rule of interpretation.

9. The proposition that, the payment of interest takes colour from the nature of the levy with reference to which such interest is payable on the sum required to be but not paid in time, which renders the assessee liable for payment of interest. Therefore the word 'tax/duty etc.,' as appearing u/c (a) of section 43B of the Act can be treated as including within itself an element of 'interest' payable thereon account of delayed payment thereof. As a result, the interest payable on item



enumerated u/c (a) can said be taxes/duties etc., and attracts the application of provisions of section 43B(a) of the Act in view of judicial precedents including; '*Shree Pipes Vs DCIT*' [2007, Taxmann 442 (Raj)], '*CIT Vs Andhra Sugars*' [2014, 367 ITR 195 (AP&T)] '*Mewar Motors Vs CIT*' [2004, 260 ITR 218 (Raj)] wherein their Hon'ble lordships have upheld the applicability of section 43B of the Act in relation to unpaid interest on item falling u/c (a).

10. However, we are also mindful to divergent view taken by the Hon'ble Calcutta High Court in the year 1995 in case of '*Hindustan Motors Limited Vs CIT*' reported in 218 ITR 450 (Cal) wherein it was held that 'interest paid on duties are not part and parcel of duty payable, therefore such interest cannot be subjected to disallowance u/s 43B of the Act. Subsequently in the year 2001 their Hon'ble lordships while dealing with the matter of interest on municipal taxes reiterated the former ratio in '*CIT Vs Orient Beverage Ltd*' [2001, 117 Taxman 106 (Cal)] & '*CIT Vs E.L. Properties Pvt. Ltd.*' [2001, 248 ITR 14 (Cal)] where by it is held that '*interest payable could not be treated as an adjunct or part of Municipal taxes and, therefore, section 43B could not be invoked for disallowing outstanding interest*'. Similar proposition can also be traced in the decision of '*Shankar Trading Company Pvt. Ltd. Vs CIT*' [2012, 342 ITR 81 (Del)].

11. While adjudicating this issue of disallowance of interest on taxes/duties in favour of assessee, the Hon'ble courts have considered law settled by the Hon'ble Apex Court that, the interest payable on taxes/duties are not penalties but compensatory in nature for delayed payment/discharge of tax/duty liability under the respective legislations.



12. As a result we thought fit to vouch the nature of interest payable by the assessee under the provisions of MVAT Act, 2002 wherein we noted that, as per s/s (1) of section 30 of the MVAT Act, the interest is payable if any dealer fails to apply for registration or has failed to apply within the time period specified in rule 8 of the MVAT Rules. Such dealer is liable to pay interest in respect of all unregistered period(s). The said interest is calculated from the 1st April of the respective year till the date of payment. According to section 30(2) of the MVAT Act, a registered dealer who fails to pay the due taxes as per returns within the specified time, is liable to pay by way of simple interest, a sum calculated at the prescribed rate on the amount of such tax for each month or part thereof after the last date by which he should have paid such tax. According to section 30(3) of MVAT Act, if any tax remains unpaid up to one month after the end of the period of assessment, then the dealer is liable to pay simple interest at the rates as specified from time to time, on such tax for each month or part thereof from the date immediately following the last date of the period for which the dealer has been assessed till the date of the order of assessment. Thus s/s 30 of MVAT Act the assessee dealer is exposed to payment of interest in twin situation viz; (i) for delay in getting registered and (ii) for delay in discharging of sales tax liability incurred thereunder. The plain reading of aforestated provision amply clarify the nature of interest as compensatory for delayed compliance and in no manner capable of suggesting it to be in the nature of penalties for non-compliance.

13. Now coming to the provisions of section 43B of the Act we note that, the clause (a) does not explicitly provides for the term 'interest', so has to fall for



vanilla disallowance. On the other hand, the clause (a) is abundantly clear, plain, and unambiguous, prowess capable of giving flawless meanings to items specified therein. Therefore items specified therein should be given ordinary meaning without adding thereto or modifying them. The application of golden rule of interpretation requires the words of the statute must *prima-facie* being given their ordinary meaning. That is to say when the words of the statute are clear, plain and unambiguous, then it is to be given natural meaning, irrespective of its consequences. In view thereof, the Revenue's proposition to read clause (a) of section 43B of the Act the terms taxes/duties so as to include therein the term 'interest' therein would be ferocious and therefore impermissible in view of the decision of the Hon'ble Apex Court in '*Britania Industries Ltd. Vs CIT*' [2005, 278 ITR 546 (SC)] wherein the matter of interpretation of fiscal laws, their Hon'ble Lordships have categorically led that, when the language of a statute is clear and unambiguous, the courts are to interpret the same in its literal sense and not to give a meaning which would cause violence to the provisions of the statute.

14. Before coming to conclude the subject matter of disallowance, we note that, the Hon'ble Apex Court in '*Mahalakshmi Sugar Mills*' (*supra*) settled the issue of deductibility of interest on taxes/duties holding that, interest payable on unpaid or delayed liability is part and parcel of such liability and was in the nature of compensation to the government. The said decision rendered in context of deductibility cannot robotically be pressed for the purpose of provisions of section 43B(a) of the Act, when the legislature in its wisdom thought fit not to provide interest explicitly in clause (a) of section 43B of the Act.



15. In view of the aforestated discussion and judicial precedents laid by Hon'ble Calcutta High Court & Hon'ble Delhi High Court (supra), we hold that, in absence statutory provisions i.e. specific entry u/c (a), the interest liability incurred against delayed discharge of statutory liability is entitled for deduction u/s 37(1) of the Act without subjecting it disallowance u/s 43B(a) of the Act. The Revenue could hardly place on record any contrary decisions of Hon'ble Jurisdictional High Court thus warranting us to deviate from above. Consequently we set-aside the impugned order confirming the disallowance of interest payable on MVAT statutory liability u/s 43B (a) of the Act and direct the Ld. AO to delete the impugned disallowance being *contra-legem*. The ground number 2 stands accordingly allowed.

16. It shall be academic to state that, ground number 3 finds meritless in view of decision in '*Anjum H Ghaswala*' [2001, 252 ITR 449] and '*CIT Vs Hindustan Bulk Carriers*' [2002, 259 ITR 449] wherein the Hon'ble Apex Court settled the issue holding that levy of interest u/s 234A, 234B & 234C is mandatory and not at the discretionary of tax authorities. The ground stands accordingly adjudicated.

17. In result, the appeal of the assessee is PARTLY ALLOWED in above terms.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Wednesday, 24th day of April, 2024.

-S/d-

S. S. GODARA
JUDICIAL MEMBER

पुणे / PUNE ; दिनांक / Dated : 24th day of April, 2024.

आदेशकीप्रतिलिपिअप्रेषित / Copy of the Order forwarded to :

1.अपीलार्थी / The Appellant.
4. The NFAC Delhi

2. प्रत्यर्थी / The Respondent.
5. DR, ITAT, Nagpur Bench, Nagpur

-S/d-

G. D. PADMAHALI
ACCOUNTANT MEMBER

3. The Pr.CIT Concerned.
6.गार्डफाइल / Guard File.

आदेशानुसार / By Order
वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.