

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'B', NEW DELHI**

Before Sh. A. D. Jain, Vice President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 2761/Del/2018 : Asstt. Year : 2012-13

Universal Energies Ltd., 607, Somdutta Chamber-2, Bhikaji Cama Place, New Delhi-110066 (APPELLANT)	Vs	DCIT, Circle-27(1), New Delhi (RESPONDENT)
PAN No. AAACU9022F		

**Assessee by: Sh. Sudesh Garg, Adv. &
Sh. Sahil Aggarwal, CA
Revenue by: Sh. K. A. Manu, Sr. DR**

Date of Hearing: 11.05.2022	Date of Pronouncement: 26.07.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-16, New Delhi dated 29.12.2017.

2. Ground No. 2 is relates to disallowance of an addition of Rs.9,70,248/- on account of disallowance of interest on TDS payments.

3. Facts mentioned by the AO are that the assessee vide its letter dated 12.03.2015 submitted copy of ledger account of interest on TDS. The assessee itself agreed that interest on TDS amounting to Rs. 9,70,248/- has not been added back in the computation of Income. Interest on TDS is not allowable as per provision of Income Tax Act, 1961. Accordingly, expenses of Rs. 9,70,248/- were disallowed and added back to the income of the assessee.

4. We have considered the order of the AO and facts on records and find that the assessee has submitted copy of ledger account of interest on TDS is not allowable expenses as per IT Act, 1961. The assessee itself also agreed that interest on TDS is not allowable expenses, therefore, the AO disallowed the expenses of interest on TDS of Rs.9,70,248/-. Interest on TDS is not an allowable expenditure. In this case the assessee itself agreed for the assessment before the AO and this fact is not disputed by the Id. AR in the appellate proceeding. It is undisputed law that income tax inputs interest, penalty also and the same is not allowable as per provisions of Section 40(a)(ii) of the Act. Notwithstanding the contentions of the assessee before the revenue authorities, we have examined the issue of allowability as per the provisions of Income Tax Act and in the background of the various judicial pronouncements.

5. Sec. 201(1A) of the Income-tax Act mandates Assessee to pay simple interest @ 1.5% per month or part of the month in case of delay in remittance of TDS amount deducted, to the treasury of the Central Government. The pertinent question arises in the instant appeal is whether the interest paid on late payment of TDS after deduction can be claimed as expenditure for determining the taxable income.

6. For claiming an expenditure and arriving at the taxable income, the I.T. Act, 1961 fundamentally stipulates twin conditions viz. allowance of expenditure as per Sec.30 to 37 of the Act and non-allowable expenditure as per section 40, 43B. The same are applicable for claiming the interest paid on late remittance of TDS.

7. Interest as defined in section 2(28A) of the Act means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized. Hence, Section 36(1)(iii) of the Act allows a deduction for interest paid on capital borrowed while computing the business income of the taxpayer. It provides deduction of the interest paid in respect of capital borrowed for the purpose of the business or profession.

8. In the case of K.M.S. Lakshmanier And Sons vs. CIT 1953 AIR 145:1953 SCR 1057 (SC) it was held that the expression "borrowed money" means real borrowing or real lending. It must be construed in its natural and ordinary meaning and implies a real borrowing and real lending. It requires the existence of a borrower and a lender and accordingly there must be a real borrowing.

9. Unlike section 2(28A), clause (iii) of section 36(1) does not use the term 'debt incurred'. Hence, section 2(28A) defines 'interest' in a wider sense whereas Section 36(1)(iii) has used it in a restrictive manner. Therefore, it may be concluded that there must be a loan on which interest is paid for claiming allowance u/s 36(1)(iii) of the Act. Existence of lender and borrower are must in case of a loan transaction. Hence, it can be safely concluded that non-payment of taxes does not amount to the borrowing of capital from the Government and hence interest paid for delayed deposit of taxes is not covered under section 36(1)(iii) of the Act. Section 37 is a residuary section which allows business expenditure in computing the

taxable business income of an Assessee. Expenses allowed as deductions against Profits and Gains of Business or Profession are covered from Section 30 to 36 of the Act. Section 37(1) provides that any expenditure incurred (except expenditure described in sections 30 to 36, capital expenditure or personal expenses of the assessee), 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". Interest on late payment of TDS is not covered under Section 30-36 of the Act and thus qualifies for consideration u/s 37. It is neither capital expenditure nor personal expenditure of the Assessee. Further, Courts have time and again held that interest expenses on late payment of taxes which are compensatory in nature should be treated as expended wholly and exclusively for the purposes of the business or profession since responsibility of payment of taxes including deduction and remittance of TDS is part and parcel of the business operations and the assessee has no right to utilize such monies collected from others on behalf of the government.

10. We have also gone through the Apex Court observations in this regard in the case of Lachmandas Mathura Vs. CIT reported in 254 ITR 799 are as follows:

"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."

11. The payment of interest takes colour from the nature of the levy with reference to which such interest is paid and the tax required to be but not paid in time, which rendered the assessee liable for payment of interest was in the nature of a direct tax and similar to the income-tax payable under the Income-tax Act. The interest paid under Section 201(1A) of the Act, therefore, would not assume the character of business expenditure and cannot be regarded as a compensatory payment.

12. The Income Tax Appellate Tribunal (ITAT), Delhi Bench in the case of M/s. New Modern Bazaar Departmental Store Pvt. Ltd. is a Pvt. Ltd. held that the interest on Late Payment of TDS does not constitute Business Expenditure. In this case the assessee argued before the Id. CIT(A) that interest on late deposit of TDS is compensatory and not penal in nature. The Id. CIT(A) held that interest paid under the provisions of the Act is not a deductible expenditure, not compensatory in nature. Thus, he confirmed the action of the Assessing Officer. The assessee submitted that the interest is compensatory in nature and a part of business operations of the assessee. Had the same amount has been taken as loan from a bank, the interest

paid on the same anyway would have been allowed as deduction u/s 36. The Revenue submitted that interest on late deposit of TDS is neither an expenditure wholly and exclusively incurred for the purpose of business and further it is a payment, which is in the form of tax so it is not an allowable expenditure. The ITAT dismissed the appeal of the assessee.

13. The Hon'ble Madras High Court in CIT Vs. Chennai Properties & Investment Ltd. (1999) 239 ITR 435 (Mad.) has held that interest under section 201(1A) paid by the assessee does not assume the character of business expenditure and also cannot be regarded as compensatory payment.

14. This decision of Hon'ble Madras High Court has also been followed by various benches of ITAT, specifically in Velankani Information Systems Limited Vs. DCIT [2018] taxmann.com 599 (Bangalore- Trib.) as under: -

"As far as delay in remittance of TDS u/s 201(1A) of the Act is concerned, we find that the Hon'ble Madras High Court has taken a view that interest u/s 201(1A) is also in the nature of tax and notwithstanding the fact that is not the tax liability of the assessee, the same cannot be allowed as deduction. The following were the relevant observations of the Hon'ble Madras High Court: -

- 1. As already noticed the payment of interest takes colour from the nature of the levy with reference to which such interest is paid and the tax required to be but not paid in time, which rendered the assessee liable for payment of interest was in the nature of a direct tax and similar to the income-tax payable under the Income Tax Act. The interest paid u/s 201(1A) of the Act, therefore, would not*

assume the character of business expenditure and cannot be regarded as a compensatory payment.

2. *Counsel for the assessee in support of his submission that the interest paid by the assessee was merely compensatory in character besides relying on the case of Makalakshmi Sugar Mills Co. also relied on the decision of the apex court in the cases of Prakash Cotton Mills Pvt. Ltd. V. CIT [1993] 201 ITR 684; Malwa Vansapati and Chemical Co. v. CIT [1997] 225 ITR 383 and CIT vs. Ahmedabad Cotton Manufacturing Co. Ltd. [1994] 205 ITR 163. In all these cases, the court was concerned with an indirect tax payable by the assessee in the course of its business and admissible as business expenditure.*
3. *The ratio of those cases is not applicable here. Income-tax is not allowable as business expenditure. The amount of tax deducted is not an item of expenditure.*
4. *We therefore, follow the decision of Hon'ble Madras High Court and uphold the order of CIT(A) in so far as it relates to disallowance of interest on delayed payment of TDS u/s 201(1A) of the Act."*

15. Further, the Co-ordinate Bench of ITAT Bangalore in the case of Jindal Aluminium Limited ITA No. 31/Bang/2019 having similar facts where interest on TDS is held as ineligible business expenditure.

16. Hence, we have no hesitation to hold that interest payment on late payment of TDS is not eligible business expenditure for deduction and it is not compensatory in nature. Payment of interest on late deposit of TDS levied u/s 201(1A) is neither an expenditure only and exclusively incurred for the

purpose of the business and therefore the same is not allowable as deduction u/s 37(1) of the Act.

17. Therefore, the disallowance made by the AO is hereby confirmed. The ground of appeal is dismissed.

Addition of Rs.1,00,000/-:

18. This addition was made on account of travelling and conveyance expenses. The facts mentioned by the AO are as under:

"As per P&L account the assessee has claimed Travelling & Conveyance expenses of Rs.45,35,803/- and depreciation on vehicles & insurance expenses. The expenses claimed consist of small/petty cash amounts and self made vouchers are not fully verifiable and the personal element of expenses by use of vehicles by directors and staff members cannot be ruled out. Accordingly, on adhoc basis expenses of Rs.1,00,000/- is being disallowed and added back to the income of the assessee."

19. We have considered the order of the AO and facts on records and find that the AO has made adhoc disallowance of Rs.1,00,000/- by stating that vouchers of expenses are not fully verifiable and the personal elements of expenses by use of vehicles by Directors and staff members cannot be ruled out. In the appellate proceedings the assessee has not produced any evidences to rebut the finding of the AO. The expenses are incurred in cash which are not fully verifiable and probability of personal nature in these expenses cannot be ruled out. The A.O. has made a reasonable disallowance of Rs. 1,00,000/- out of the total claim of Rs. 45,35,803/- by the appellant.

20. Therefore, the disallowance made by the AO is hereby confirmed. Hence, the ground of appeal is dismissed.

21. In the result, the appeal of the assessee is dismissed.

Order Pronounced in the Open Court on 26/07/2022.

Sd/-

(A. D. Jain)
Vice President

Dated: 26/07/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR