

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD 'B' BENCH, HYDERABAD.**

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER
AND
SHRI L. P. SAHU, ACCOUNTANT MEMBER
(Through Virtual Hearing)**

**ITA No. 615/Hyd/2019
Assessment Year : 2013-14**

Dy.CIT, Circle 16(2)
Hyderabad

vs. PLR Projects Private Limited
Hyderabad
[PAN: AADCP9069L]

[Appellant]

[Respondent]

Appellant By : Shri Rohit Mujumdar, DR
Respondent By : Shri Pawan Kumar Chakrapani, AR

Date of Hearing : 31.8.2021.
Date of Pronouncement : 21.09.2021.

O R D E R

Per Shri S.S. Godara, J.M. :

This Revenue's appeal for Asst. Year 2013-14 arises from the Commissioner of Income Tax (Appeals)-4, Hyderabad order dt. 22.02.2019 passed in case No.10056/2018-19 in proceedings under Section 154 of Income Tax Act, 1961 ('the Act').

Heard both the parties. Case file perused.

The Revenue proposed the following sole substantive grievance in the instant appeal.

“1. The Ld.CIT(A) erred in deleting the addition made by the AO in respect of ‘interest on Service Tax’ being penal in nature and therefore not allowable.”

2. We next advert to CIT(A)’s detailed discussion deciding the issue in assessee’s favour as under.

“6. I have considered the assessment order, grounds of appeal and the written submissions of the AR in this regard. The issue involved is with regard to AO’s action in disallowing of Rs. 44,68,422/- being the interest on delayed payments of service tax. The AR contended that the said payment is compensatory in nature and therefore allowable as deduction u/s 37 of the Act. However, the AO of the view that the said payment has not compensatory in nature but penal in nature. In this regard, I have perused the case laws relied upon by the AR. It can be seen from the provisions of the Service Tax Act that there are distinct provisions for compensating the loss on default in payment of tax and imposition of penalty for breach of the statutory provisions. While section 75 of the service tax law is a section for compensating the government of delayed payment of the service tax, there are separate provisions for penalizing the assessee for non-payment or delayed payment of service tax. Moreover, as held by the courts, the recovery of interest u/s 75 of the service tax law is automatic and does not require a separate proceeding by way of issuance of notice. Where there are separate sections governing the imposition of penalty under the service tax law, it cannot be the intent of the legislature to levy a penalty for u/s 75 of the Service Tax Law, as well, the above analysis thus leads to a conclusion that the imposition interest u/s 75 of the Service Tax Law, is not a penalty on account of breach of law and hence not disallowable under the provisions of section 37 of the Act.

6.1. *The issue of delay in the payments of service tax is directly covered by the judgment of Hon'ble Apex Court in the case of Lachmandas Mathura Vs. CIT 254 ITR 799 in favour of assessee. The relevant extract of the judgment is reproduced below:*

"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 5 decision in Saraya Sugar Mills (P) Ltd. Vs. CIT (1979) 116ITR 387 (All.). The ld. 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. Vs. 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. Vs. 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. " [Emphasis Supplied].

6.2 *After having gone through the above, it is clear from the facts that the appellant has not intentionally paid the interest on delayed payment on service tax during the year under appeal. Hence, the case laws relied upon by the AR are squarely applicable to the appellant's case. Respectfully following the above decisions, I am of the considered view, the said disallowance made by the AO towards interest on delayed payments of Rs. 44,68,422/- is not justified and hence, directed to be deleted. As a result, the grounds raised in this regard are allowed."*

3. It is therefore clear in view of rival pleadings as well as CIT(A)'s impugned conclusion taking note of hon'ble apex court's decision that an interest amount of arrears of service tax is not penal in nature (supra). We therefore adopt the very analogy herein as well to affirm the impugned findings under challenge.

No other ground or argument has been raised before us.

4. This Revenue's appeal is dismissed.

Order pronounced in the open court on 21st September, 2021.

Sd/-

(L.P. SAHU)
Accountant Member

Sd/-

(S.S. GODARA)
Judicial Member

Hyderabad, Dt. 21 .09.2021.

*gmv

Copy to :

1.	Dy.CIT, Circle 16(2), Hyderabad
2.	M/s PLR Projects Private Ltd, HNo. 502, 6-3-667/4, Sirimalle Towers, Punjagutta, Hyderabad
3.	CIT(A)-4, Hyderabad.
4.	Pr.CIT – 4, Hyderabad.
5.	DR, ITAT, Hyderabad.
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