आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपीलसं./**I.T.A.No.1528/Chny/2018**
(निर्धारणवर्ष / Assessment Year: 2011-12)

M/s.Hyundai Steel India Pvt. Ltd. 49, Sengadu Village, Kanchipuram-602 002.	vs.	The Deputy Commissioner of Income Tax, Corporate Circle-2(2) Chennai.
PAN: AABCH 7074D		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Mr. K.Raju, General Manager Legal & Taxation
प्रत्यर्थीकी ओर से/Respondent by	:	Mr. G. Johnson, Addl.CIT

सुनवाईकीतारीख/Date of hearing	:	06.04.2022
घोषणाकीतारीख /Date of Pronouncement	:	12.04.2022

आदेश / O R D E R

PER G.MANJUNATHA, AM:

This appeal filed by the assessee is directed against order passed by the learned Commissioner of Income Tax (Appeals)-6, Chennai, dated 30.01.2018 and pertains to assessment year 2011-12.

2. At the outset, learned AR for the assessee submitted that the appeal filed by the assessee is time barred by 10 days for which necessary petition for condonation of delay along with affidavit explaining the reasons for the delay has been filed. The AR further submitted that the assessee could not

file appeal within the time allowed under the Act, due to the fact of non-availability of counsel which caused delay of 10 days. The delay in filing appeal is neither intentional nor willful, but for the unavoidable reasons, therefore, he prayed that delay may be condoned in the interest of advancement of substantial justice.

3. The learned DR, on the other hand, strongly opposing condonation of delay petition filed by the assessee submitted that the reasons given by the assessee do not come within the ambit of reasonable and bonafide reasons, which can be considered for condonation of delay and hence, appeal filed by the assessee may be dismissed as not maintainable.

4. Having heard both sides and considered the petition filed by the assessee for condonation of delay, we are of the considered view that reasons given by the assessee for not filing the appeal within the time allowed under the Act comes under reasonable cause as provided under the Act for condonation of delay and hence, delay in filing of appeal is condoned and appeals filed by the assessee is admitted for adjudication.

5. The assessee has raised following grounds of appeal:-

> *" 1. The order of the CIT (Appeals) is erroneous on the facts and in the law. On the facts and in the circumstances of the case he ought to have considered the appellant case on merit.*
>
> *2. The Learned CIT (Appeals) failed to consider the submission made by the appellant reason why the following expenses disallowed by the assessing officer:*
>
> *(a) Reversal of CENVAT credit on sale of scrap amounting to Rs.2,06,98,060/-.*
> *(b) Disallowance of withholding tax interest paid on borrowings of Rs.4,47,966/-.*
>
> *3. The learned CIT (Appeals) in his order pointed out that appellant's failure to submit supporting documents for reversal of CENVAT credit of Rs.2,06,98,060/- is not correct and proper. In fact, appellant had filed all the documents to the Respondent during the course of assessment proceedings as and when required.*
>
> *4. The learned CIT (Appeals) is relied heavily on the inputs made by the respondent and not considered the appellant submission as well assessment order for the AY 2012-13, in which, the same assessing officer has allowed the reversal of CENVAT credit on the similar issue. (Refer Annexure — 1).*
>
> *5. The learned CIT (Appeals) ought to have considered the fact that appellant submitted reply on 18/02/2015 with respect to reversal of CENVAT credit on scrap sales whereas respondent in his assessment order dated 21/03/2015 stated appellant not*

any produced supporting documents. It is clear that the respondent so as to complete assessment on or before 31/03/2015 did not raise any question instead squarely blaming appellant to complete the assessment.

6. The learned CIT (Appeals) ought to have considered the fact that the subsisting loan agreements (Refer Annexure -2) requires interest to be paid "net of tax" to the lenders for availing credit/term loan and hence withholding tax being paid by the appellant.

7. The learned appellate authority ought to have considered the fact that the appellant has never admitted any disallowance of expenses during the assessment proceedings and also never admitted or agreed the addition made by the respondent.

8. The learned appellate authority has failed to appreciate the circumstances of the case and passed order hastily.

9. The learned CIT (Appeals) erred in understand that the respondent have completed the assessment hastily due to these reasons only the assessment order read as " did not produced any supporting documents for reversal of CENVAT credit" and "assesses replied that it is an inadvertent mistake for withholding tax on interest paid".

10. The learned CIT (Appeals) ought to have considered the fact that appellant never replied to the respondent regarding withhold tax payment is an inadvertent mistake and accepted the addition."

6. Brief facts of the case are that the M/s. Hyundai Steel India Pvt.Ltd. is engaged in the business of processing, trading and supply of all types of automotive steel grades. The assessee had filed its return of income for the assessment year 2011-12 on 17.11.2011 admitting total income of Rs.62,76,80,047/-. The case was taken up for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that the assessee has claimed Rs.2,06,98,060/- towards reversal of excise duty on scrap written off and debited under the head 'rent, rates & taxes' in the profit & loss account. The assessee was called upon to explain reversal of CENVAT credit on scrap written off with necessary evidences. In response, the assessee submitted that as per CENVAT Credit Rules, CENVAT credit pertaining to scrap cannot be utilized and further, same needs to be reversed, therefore, the assessee has reversed CENVAT credit on scrap written off and debited into profit & loss account. The Assessing Officer, however, was not convinced with the explanation furnished by the assessee and according to A.O., the assessee did not produce any supporting documents and also explained how they have arrived at figure of Rs.2,06,98,060/-. Therefore,

disallowed claim of the assessee and added back to the total income of the assessee. Similarly, the Assessing Officer has made addition towards withholding tax debited to rates & taxes account u/s.40(a)(ii) of the Income Tax Act, 1961, on the ground that any tax, duty and cess is not allowable deduction. The assessee carried the matter in appeal before first appellate authority, but could not succeed. The learned CIT(A) for the reasons stated in his appellate order dated 30.01.2018 rejected arguments of the assessee and sustained additions made by the Assessing Officer. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

7. The first issue that came up for our consideration from ground nos.1 to 5 of assessee appeal is additions towards disallowance of rates & taxes being reversal of CENVAT credit on scrap written off amounting to Rs.2,06,98,060/-. The facts with regard to impugned dispute are that the assessee is in the business of processing and trading in steel has generated scrap. The assessee has made scrap sale of Rs.5,10,01,084/- . However, remaining amount of scrap has been written off and CENVAT credit related to said scrap written off has been

reversed as per CENVAT Credit Rues and debited to profit & loss account. The Assessing Officer disallowed reversal of CENVAT credit on scrap written off on the ground that the assessee could not file necessary evidences and also failed to explain how figure of Rs.2,06,98,060/- was arrived at.

8. The learned A.R for the assessee submitted that the learned CIT(A) erred in not appreciating fact that the assessee has reconciled reversal of CENVAT credit on scrap raw material with necessary details and also explained to the Assessing Officer with corresponding evidences, including CENVAT Credit Rules. The learned A.R for the assessee further submitted that the assessee in the process of manufacturing steel products has generated huge scraps which has been partially sold and partially written off in the books of account. Further, as per CENVAT Credit Rules, the assessee cannot avail input tax paid on purchase of raw materials, therefore, same has been reversed and treated as part of cost of goods and debited into profit & loss account. The Assessing Officer without appreciating facts has simply disallowed reversal of CENVAT credit.

9. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that the assessee did not file any evidence to prove reversal of CENVAT Credit. Therefore, the Assessing Officer as well as learned CIT(A) has rightly disallowed reversal of CENVAT credit and their orders should be upheld.

10. We have heard both the parties, perused material available on record and gone through orders of the authorities below. There is no dispute with regard to legal position that when unutilized CENVAT credit is available with the assessee for any reason, including restriction if any, imposed under CENVAT Credit Rules, same can be reversed and debited into profit & loss account, because CENVAT credit availed by the assessee on purchase of raw materials partakes nature of cost of materials purchased/consumed. Therefore, when the assessee has reversed CENVAT credit as per CENVAT Credit Rules, then it needs to be debited into expenses account. However, the assessee has to file necessary evidences to prove reversal of CENVAT credit and also to explain how such figure has been arrived. In this case, the Assessing Officer

claims that the assessee did not furnish necessary evidence, whereas, the assessee claims that it has filed reconciliation explaining reversal of CENVAT credit. The fact needs to be verified. Hence, we set aside this issue to the file of the Assessing Officer and direct the Assessing Officer to re-examine claim of the assessee in light of our findings given hereinabove. In case, the assessee is able to explain CENVAT credit with necessary details, then the Assessing Officer is directed to delete additions made towards disallowance of reversal of CENVAT credit on scrap written off.

11. The next issue that came up for our consideration from ground nos.6 to 10 of assessee appeal is disallowance of withholding tax debited into rates & taxes account. The Assessing Officer has disallowed withholding tax amounting to Rs.4,47,966/-, included in rates & taxes account on the ground that any tax, duty or cess is not allowable deduction u/s.40(a)(ii) of the Act. It was the explanation of the assessee before the Assessing Officer that the assessee had borrowed loan from Standard Chartered Bank, United Kingdom and Citi Bank, NA Bahrain and as per terms of loan agreement, the assessee is

required to pay interest to the lenders net of all applicable taxes in India. In other words, the assessee is required to gross up TDS applicable on interest payment to banks and remit to Government account, but net interest should be paid to bank without deduction of tax. The Assessing Officer has disallowed claim of the assessee on the ground that the assessee could not furnish necessary evidences.

12. We have heard both the parties, perused material available on record and gone through orders of the authorities below. It is an admitted fact that as per provisions of section 40(a)(ii) of the Act, that any tax, duty or cess paid by the assessee is not allowable deduction, because the statute restricts deduction for payment of taxes by the assessee. But, if the assessee makes tax payment on behalf of deductee, as per terms of agreement, and remit to Govt. account, then it partakes nature of expenses to the assessee, because the assessee needs to gross up payment made to the deductee towards TDS applicable on said payment and paid to Central Government account. In this case, as per terms of agreement with lenders, the assessee should make interest payment net

of all applicable taxes in India. In other words, as per terms of agreement between the parties, the assessee shall borne all applicable taxes on interest payment to the lenders. As per terms of agreement, the assessee has grossed up interest payment towards TDS paid on said interest and remitted into Govt. account and also debited withholding tax to the profit & loss account. In our considered view, withholding tax paid by the assessee to the Govt. account on behalf of the lenders in terms of agreement between the assessee is nothing, but cost of borrowings (interest to the assessee) and thus, the assessee is entitled to claim deduction for said withholding tax u/s.37(1) of the Income Tax Act, 1961. However, fact remains that although, the assessee claims to have filed all details, but the Assessing Officer observed that the assessee does not furnish any evidence to substantiate its claim. Hence, we set aside this issue also to the file of the Assessing Officer and direct the Assessing Officer to examine claim of the assessee in light of agreement between the parties. In case, claim of the assessee is correct, then the Assessing Officer is directed to delete addition made towards withholding tax u/s.40(a)(ii) of the Act.

13. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 12th April , 2022

Sd/-	Sd/-
(वी. दुर्गा राव)	**(जी. मंजुनाथ)**
(V. Durga Rao)	(G.Manjunatha)
न्यायिक सदस्य /Judicial Member	लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 12th April, 2022

DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant 2. Respondent 3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF.