IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA

(Before Sri P.M. Jagtap, Vice President & Sri Sanjay Garg, Judicial Member)

I.T.A. No. 1448/Kol/2019
Assessment Year: 2013-14

Salarpuria Griha Nirman Pvt. Ltd...Appellant
[PAN: AAFCS 4767 E]

Vs.

DCIT, Circle-1(1), Kolkata..Respondent

Appearances by:

Sh. S. Jhajharia, A/R, appeared on behalf of the Assessee.

Smt. Ranu Biswas, Addl. CIT, Sr. D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : August 11th, 2021
Date of pronouncing the order : September 1st, 2021

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 25.04.2019 of the Commissioner of Income Tax (Appeals)-16, Kolkata [hereinafter referred to as 'CIT(A)'].

2. The assessee in this appeal has taken four grounds of appeal:

"1. That on the facts and in the circumstances of the case, the AO was wholly wrong and unjustified in disallowing Rs. 6,03,713/- being the amount of Municipal Corporation Tax actually paid during the year and in view of the facts and in the circumstances the Ld. CTT(A) had grossly erred in confirming the disallowance made by the AO in respect of the said sum of Rs.6,03,713/- being the amount of Municipal Corporation Taxes actually paid by the appellant during the year on the alleged ground that such payments are penal in nature.

2. That on the facts and in the circumstances of the case, the AO was wholly wrong and unjustified in disallowing Rs. 20,000/- and in view of the facts and in the circumstances the Ld. CIT(A) had grossly erred in confirming the said addition of Rs.20,000/- made by the AO on account of registration and renewal charges which was debited in the Profit & Loss Account of the appellant.

3. That on the facts and on the circumstances of the case, the AO was wholly wrong and unjustified in not allowing full and proper credit for TDS of Rs. 2,66,41,001/-as per Form 26AS produced before him and in view of the facts and in the circumstances the Ld. CIT(A) had grossly erred in not granting full and proper credit of TDS of Rs. 2,66,41,001/-, himself instead of directing the AO to verify and allow when full details of such TDS with Form 26AS were furnished before him also.

4. That the appellant craves leave to add, alter, amend, amplify or modify any or all of the above grounds of appeal at or before the time of hearing of the appeal."

3. **Ground No.-1**

The assessee vide ground no. 1 has agitated against the action of the ld. CIT(A) in confirming the disallowance made by the Assessing Officer (in short the 'AO') of ₹6,03,713/- being an amount of Municipal Corporation Tax and interest thereupon. The AO disallowed the said tax amount observing that the same was penal in nature and as such the same was not an allowable expenditure. On appeal, the ld. CIT(A) confirmed the addition so made by the AO.

3.1. Before us, the ld. Counsel for the assessee has relied upon the Municipal Corporation Tax receipt which shows that the total tax paid by the assessee was ₹56,35,015/- out of which the amount of ₹52,45,102/- was towards taxes and an amount of ₹3,88,138/- was towards interest on the delayed payment of tax. The ld. Counsel for the assessee has made the following further submissions in this respect:

"In this connection the sample notice is been enclosed from which the Learned CIT(A) will kindly appreciate the fact that such sums include the Municipal Tax and Interest thereon.

In the case of Pratibha Processors v. Union of India, , decided on 11/10/1996 [WITH CIVIL APPEAL NOS. 13097-13100 OF 1996 (Arising out of S.L.P.(Civil) Nos. 6015/9.3, 6016/93, 6017/93, 6018/93) AND Civil Appeal Nos. 2416-18/93, 2419/93, 2420-25/93, 2426-28/93, 2429-32/93, 2433-38/93] the Supreme Court has observed as follows:

"In fiscal statutes, the import of the words-'tax', 'interest1, 'penalty', etc., are well known. They are different concepts. 'Tax' is the amount payable as a result of the charging provision. It is a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. Penalty is ordinarily levied on an assessee for some contumacious conduct or for a deliberate violation of the provision of the particular statute. Interest is compensatory in character and is imposed on an assessee, who has withheld payment of any tax as and when it is due and payable, the levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on the due date. Essentially it is compensatory and different from penalty-which is penal in character."

As regards to allowability of Interest on Municipal Taxes-

The Issue is squarely covered in the case of the appellant by the decision of the Jurisdictional High Court at Kolkata rendered in the case of Commissioner Of Income-Tax vs Orient Beverages Ltd. reported in 247 ITR 230 Cal - the relevant observation is as follows-

"15. In view of our discussion made hereinabove, it is, therefore, clear that the interest payable for arrears of municipal taxes is really compensatory in nature and not a penalty/tax.

16. For the reasons aforesaid, we answer the question raised before us against the Revenue and in favour of the assessee.

17. There will be no order as to costs. ..."

Based on the aforesaid decisions of the Supreme Court and the Calcutta High Court it is prayed that the addition so made may kindly be deleted and Ground no. 2 may kindly be allowed."

3.2. Considering the above submissions of the assessee and also on perusal of the tax invoice, we hold that the action of the lower authorities in disallowing the amount of ₹3,88,138/- was not justified out of the total claim of ₹6,03,713/-. We accordingly, direct the AO to allow the sum of ₹3,88,138/- being towards interest on delayed payment. This ground is accordingly partly allowed.

4. **<u>Ground No.-2</u>**

The ld. Counsel for the assessee has stated at Bar that as per the instruction of his client, he does not press ground no. 2. So, ground no. 2 is dismissed as not pressed.

5. **<u>Ground No.-3</u>**

Ground no. 3 relates to the claim of grant of credit for TDS of ₹2,66,41,001/-. The assessee claimed that the aforesaid amount of TDS was deducted by the respective payers from the payment made to the assessee and that the said amount was reflected in the Form 26AS also. However, the AO has not granted the credit of the same to the assessee. On appeal, the ld. CIT(A) considered the submissions of the assessee and directed the AO to allow full and proper credit of TDS of ₹2,66,41,001/- after proper verification.

5.1. Now the ld. Counsel for the assessee contended that powers of the ld. CIT(A) are co-terminus with that of the AO. That as per the settled law, the ld. CIT(A) was supposed to himself verify the claim of the assessee instead of remanding the matter to the AO.

5.2. The ld. Counsel has further submitted that this is a technical ground because it has been held time and again that the ld. CIT(A) was not supposed to remand the matter to the AO. He has further submitted that the issue may be restored to the file of the AO for verification purposes.

6. The ld. D/R had not objected to the same.

7. In view of the above submissions, this issue is restored to the file of the AO with a direction to verify the claim of the assessee and allow the same as per law.

8. Ground no. 4 is general in nature.

9. In view of our observations made above, the appeal of the assessee is treated as partly allowed for statistical purposes.

Order is pronounced in the open court on 01.09.2021.

Sd/-	Sd/-
[P.M. Jagtap]	[Sanjay Garg]
Vice President	Judicial Member

Dated: 01.09.2021

Bidhan (P.S.)

Copy of the order forwarded to:

1. ***Salarpuria Griha Nirman Pvt. Ltd., C/o. M/s. Salarpuria Jajodia & Co., 7, C.R. Avenue, 3rd Floor, Kolkata-700 072.***
2. ***DCIT, Circle-1(1), Kolkata.***
3. CIT(A)-16, Kolkata. (sent through mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

True copy

By order

Assistant Registrar/DDO
ITAT, Kolkata Benches