

IN THE ITAT HYDERABAD BENCH 'A'

Sri Venkatesh Paper Agencies (Hyd.) (P.) Ltd.

v.

Deputy Commissioner of Income-tax, Circle-3(1), Hyderabad*

D. KARUNAKARA RAO, ACCOUNTANT MEMBER

AND SAKTIJIT DEY, JUDICIAL MEMBER

IT APPEAL NO. 636 (HYD.) OF 2011

[ASSESSMENT YEAR 2005-06]

JUNE 22, 2012

ORDER

Saktijit Dey, Judicial Member - In this appeal the assessee has challenged the order dated 31.1.2011 passed by the CIT(A)-IV, Hyderabad in appeal No. 449/ DCIT-3(2)/CIT(A)-IV/07-08 pertaining to assessment year 2005-06.

2. The assessee has raised the following grounds of appeal:

1. The order of the learned CIT(A) is against law and probabilities of case.
2. The learned CIT(A) erred in assuming that amount of Rs. 3,12,600 paid by the appellant was in the nature of interest to attract the provisions of section 40(a)(ia) of the I.T. Act whereas the same is paid on delayed payment of purchases amount.
3. The learned CIT(A) erred in confirming the order of the Assessing Officer, wherein a notional interest was charged basing on the assessment proceedings for the A.Y. 2001-02 which was reverted back to the Assessing Officer by the Hon'ble ITAT and the Assessing Officer accepted the contention of the appellant, for that year. Therefore, the learned CIT(A) ought to have deleted the addition of Rs. 1,85,982.
4. The appellant craves leave to add to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary.

3. Ground Nos. 1 and 4 are general in nature and need no adjudication.

4. Ground No. 2 relates to disallowance of Rs. 3,12,600 u/s. 40(a)(ia) of the Act.

5. Briefly, the facts of the issue are that the assessee is engaged in the business of paper and boards. For the assessment year under dispute the assessee filed return of income on 1.11.2005. Subsequently, a revised return was filed on 20.12.2005 claiming credit for enhanced TDS. In course of assessment proceedings, the **Assessing Officer on examination of books of account found that the assessee has claimed interest payment of Rs. 3,12,600 to M/s. Sinermas Pulp & Papers Ltd. without deducting tax at source. When asked to explain, the assessee contended that the amount of Rs. 3,12,600 was paid as interest on the overdue bills, therefore, no TDS was required to be deducted. The assessee contended that the payment of interest was not on a deposit or loan but on purchases. It is not required to deduct tax at source. The Assessing Officer, however, did not accept the explanation of the assessee and disallowed the sum of Rs. 3,12,600 u/s. 40(a)(ia) on the reasoning that whether the assessee paid the interest in respect of delayed payment of purchases or deposits or loans it has to deduct tax at source as per the provisions of the Act.** The assessee being aggrieved of such addition, filed an appeal before the CIT(A).

6. Before the CIT(A) it was contended on behalf of the assessee that the amount of Rs. 3,12,600 pertains to the payment made on account of overdue bills and, therefore, was not in the nature of interest envisaged under the TDS provisions of the Act. In this context, the assessee relied upon a decision of the ITAT Delhi Bench in the case of *Delhi Development Authority v. ITO* [1995] 52 TTJ 107/53 ITD 19 wherein the ITAT while considering the case of compensation paid to the allottees on account of delay in construction of dwelling units held that it is not within the nature of interest as defined u/s. 2(28A) of the Act. The CIT(A), however, came to held that the definition of the term interest as given in section 2(28A) of the Act would mean interest payable in any manner in respect of any monies borrowed or debt incurred including a deposit, claim or other similar right or obligation and includes any service fee and other charges in respect of the monies borrowed or debt incurred in respect of any credit facility which has not been utilised. The CIT(A) held that the definition of interest is wide enough to take within its ambit the debt owed by the assessee on account of overdue bills. On the aforesaid finding, the CIT(A) sustained the addition and dismissed the ground raised by the assessee.

7. The learned AR contended before us that the interest paid by the assessee is nothing but in the nature of a trade payment. He also contended that for delay in making payment to the sellers, the assessee has to pay interest on the overdue bills. Thus, it is a part of the trade payment constituting the sale price of the commodity purchased. In support of such contention, the learned AR relied upon the decision of ITAT Ahmedabad Bench in the case of *ITO v. Parag Mahasukhlal Shah* [2011] 46 SOT 302/12 taxmann.com 37. In the aforesaid decision the ITAT Ahmedabad Bench on considering the definition of the term interest as envisaged in section 2(28A) has held in the following manner:

"12. In the light of the overall discussion made hereinabove, we are of the view that the impugned payment had a direct link and immediate nexus with the Trade liability being connected with the delayed purchase payment, hence, did not fall within the category of "Interest" as defined in Sec. 2(28A) of the I.T. Act for the purpose of deduction of Tax at Source as prescribed u/s. 194A of the Act. Resultantly, this assessee cannot be held a defaulter of non-deduction of tax at source u/s. 194A of the Act. The Learned CIT(Appeals) has rightly reversed the findings of the Assessing Officer. Ground raised of the Revenue is, therefore, dismissed."

8. In the alternative, the learned AR contended that even if the amount paid is to be held as interest coming within the definition of section 2(28A), then also no disallowance could be made u/s. 40(a)(ia) in view of the ITAT Special Bench decision in the case of *Merilyn Shipping & Transports v. Addl. CIT* [2012] 136 ITD 23/20 taxmann.com 244 (Visakha.) since the entire amount was paid by the assessee within the relevant previous year.

9. The learned DR, on the other hand, supported the orders of the Revenue authorities.

10. We have heard rival contentions and perused the material on record. It is not disputed that **the interest paid of Rs. 3,12,600 is not for any loan or debt incurred by the assessee but for the delay in payment of bills for purchases effected from M/s. Sinermas Pulp & Papers Ltd.** Therefore, it has to be seen as to whether such payment is in the nature of interest as envisaged u/s. 2(28A) of the Act. **As seen from the order of the ITAT Ahmedabad Bench in the case of *Parag Mahasukhlal Shah (supra)* the Tribunal has held that a payment which has direct link and immediate nexus with the trading liability being connected with the delayed purchase payments will not fall within the category of interest as defined in section 2(28A) of the Act.** The payment made by the assessee in the present appeal being of similar nature also cannot be termed as interest as defined u/s. 2(28A) of the Act. Even without entering into the controversy as to whether the payment made on overdue bills will come within the ambit of interest as defined in section 2(28A), the assessee is also bound to succeed on its alternative argument that the entire payment having been made during the previous year relevant to the assessment year under dispute no disallowance could be made u/s. 40(a)(ia) in view of the ITAT Special Bench decision in the case of *Merilyn Shipping & Transports (supra)*. In the aforesaid view of the matter, the disallowance of an amount of Rs. 3,12,600 made u/s. 40(a)(ia) cannot be sustained. We, therefore, direct the Assessing Officer to delete the same. The ground raised by the assessee is allowed.

11. Ground No. 3 relates to an addition of Rs. 1,85,982. Brief facts of the case are that in course of scrutiny assessment proceedings, the Assessing Officer found that the assessee had given an interest free advance to M/s. Sri Sant Kripa Textiles Pvt. Ltd. Out of the said advance, an amount of Rs. 10,33,234 remained due from the said party. The assessee contended before the Assessing Officer that the interest free advance was made long back. The Assessing Officer found that the assessee has borrowed funds and was paying substantial amount towards interest. The Assessing Officer, therefore, disallowed the interest paid by the assessee on borrowals on proportionate basis by estimating the interest at 18% on Rs. 10,33,234 and disallowed an amount of Rs. 1,85,982. The assessee challenged the addition by filing an appeal before the CIT(A).

12. The CIT(A) came to a conclusion that the assessee was not able to produce any evidence to establish the fact that the recovery of the amount advanced to M/s. Sri Sant Kripa Textiles Pvt. Ltd. was in doubt. The CIT(A) observing that, had the assessee not advanced such amount to the sister-concern it would not have been required to pay interest on borrowings to that extent. He upheld the action of the Assessing Officer. He, however, directed the Assessing Officer to restrict the proportionate interest at the average rate of borrowings by the assessee for the year or maximum amount of debit of interest whichever is lower.

13. The learned AR contended before us that similar issue was subject matter of appeal before the ITAT in earlier assessment years i.e., A.Y. 2002-03 in ITA No. 917/Hyd/2006. The ITAT after considering all aspects in its order dated 29.2.2008 restored the matter back to the Assessing Officer to decide again after examining the contentions of the assessee. The Assessing Officer in the re-assessment order consequent to the order of the ITAT accepted the assessee's contentions and no addition of proportionate interest was made in respect of interest free advances made to M/s. Sri Sant Kripa Textiles Pvt. Ltd. Again for the A.Y. 2000-01 and 2001-02, the ITAT in ITA No. 921/Hyd/208 and ITA No. 955/Hyd/2008 dated 20.6.2009 restored the matter back to the Assessing Officer for re-examining the issue of addition of proportionate interest in respect of interest free advance to M/s. Sri Sant Kripa Textiles Pvt. Ltd. In the consequential order passed by the Assessing Officer, no addition of proportionate interest was made with regard to interest free loan of Rs. 10,39,328 on the interest free advance to M/s. Sri Sant Kripa Textiles Pvt. Ltd.

14. The learned DR relied on the orders passed by the Revenue authorities.

15. We have heard rival contentions and perused the material on record. It is seen from the earlier order passed by the ITAT that similar issue of addition of proportionate interest on interest free advance to M/s. Sri Sant Kripa Textiles Pvt. Ltd. cropped up for the A.Ys. 2000-01, 2001-02 and 2002-03. The ITAT for all the above assessment years restored the matter back to the Assessing Officer for re-examining the entire issue after considering the claim of the assessee. The orders of the Tribunal are at pages 5 and 17 of the Paper Book. It is seen from the order passed by the Assessing Officer consequent to the orders of the ITAT which are at pages 1 and 4 of the Paper Book, that the Assessing Officer has not made any addition of proportionate interest on the interest free advance to M/s. Sri Sant Kripa Textiles Pvt. Ltd. This being the position for the earlier assessment years, in our view no addition is called for on the self same interest free advance made to M/s. Sri Sant Kripa Textiles Pvt. Ltd. We, therefore, direct the Assessing Officer to delete the addition of Rs. 1,85,982. The ground raised by the assessee is allowed.

16. In the result, appeal of the assessee is allowed.