Income Tax Appellate Tribunal - Delhi
Income Tax Officer vs Kanha Vanaspati Ltd. on 31 January, 2007
Equivalent citations: (2007) 108 TTJ Delhi 816
Bench: V Gandhi, R Sharma
ORDER R.C. Sharma, A.M.

1. These are cross-appeals filed by the Revenue and the assessee against the separate orders of the learned CIT(A) dt. 5th Jan., 2004 and 15th Dec, 2003 for the asst. yrs. 2000-01 and 2001-02, in the matter of order passed under Sections 250/201(1) and 201(1A) of the IT Act, 1961.

Common grounds in Revenue's appeals:

1. On the facts and in the circumstances of the case as well as in law, the learned CIT(A) has erred in directing the AO to charge interest under Section 201(1A) from the date of deductibility of tax till the payment by the deductee as Explanation to Section 191 inserted by Finance Act,. 2003 w.e.f. 1st June, 2003 is not applicable to the default committed by the assessee for earlier years.

2. The appellant craves leave to add, alter or amend any of the grounds of appeal at the time of hearing.

Grounds in assessee's appeal TDSA No. 75/Del/2004:

1. That on the facts and circumstances of the case, the learned CIT(A) has erred in treating the discounting charges amounting to Rs. 45,96,349 as interest within the definition of Section 2(28A) and accordingly in attracting the provisions of Section 194A of the Act.

2. That assessee company prays for leave to add, alter, amend or vary on the grounds imposed either before or at the time of hearing.

Grounds in assessee's TDSA No. 90/Del/2004:

1. That on the facts and circumstances of the case, the learned CIT(A) has erred in treating the discounting charges amounting to Rs. 49,40,717 as interest within the definition of Section 2(28A) and accordingly in attracting the provisions of Section 194A of the Act.

2. That assessee company prays for leave to add, alter, amend or vary on the grounds imposed either before or at the time of hearing.

2. Rival contentions have been heard and record perused. Brief facts of the case are that a survey operation was conducted on 24th Feb., 2003 at the assessee's premises wherein some trial balances were obtained and it was found that the assessee had debited discounting charges under the head financial charges for the financial years under consideration. The AO was of the view that these charges were in respect of debts incurred by the assessee with regard to various parties and the amounts paid were covered within the definition of 'Interest' under Section 2(28A) of the Act and

attracted the provisions of Section 194A of the Act. The AO found that the financiers were maintaining running account with the assessee and lent funds whenever there was need to make payment to the suppliers in the normal course of business. The AO concluded that these were short-term finances in the nature of loan. He also noted that Shri Amitabh Aggarwal, director of assessee company in the course of its statement recorded during the course of survey under Section 133A of the Act admitted that these payments were in the nature of interest which attracted the provisions of Section 194A of the Act and claimed that non-deduction was because of ignorance without intention to evade tax. The AO ascertained the total amount of discounting charges paid to corporate the non-corporate assessee on the basis of details filed by the assessee and worked out liability of the assessee under Section 2O1(1)/2O1(1A) of the IT Act on discounting charges to corporate and noncorporate separately.

3. By the impugned order, CIT(A) confirmed the action of the AO with regard to liability of the assessee to deduct tax at source on the amount of discounting charges under Section 194A of the Act, by observing that even though payment so made was debited under the head of "discount charges", it was in the nature of interest under Section 2(28A) of the Act. For arriving at a conclusion that discounting charges were interest as defined under Section 2(28A), he relied on the order of the Hon'ble Madras High Court in case of Vishwapnya Financial Services & Securities Ltd. v. CIT . CIT(A) also found that such discount charges/interest has been incorporated by the payees in their respective income and the tax has also been paid on the income so declared by them. He, therefore, directed the AO to make the assessee liable only for the amount of interest payable under Section 201(1A) of the Act till the date of payment of taxes by the deductees.

4. Aggrieved by the above order of CIT(A), both the assessee and Revenue are in appeal before us. The assessee is aggrieved for treating the discount charges as interest and thereby making the assessee liable for deduction of tax under Section 194A, whereas the Revenue is aggrieved for directing the AO to charge interest under Section 201(1 A) of the Act from the date of deductibility of tax till the payment by the deductee.

5. It was argued by the learned Authorised Representative, Shri K. Sampath that discounting of bills was a common business practice wherein funds could be arranged against a particular bill before the due date, and the amount so paid is technically known as discounting charges. Such discounting charges is not interest within the definition of Section 2(28A) of the IT Act, 1961. He further submitted that all the payees of the discounting charges have already paid taxes on their respective incomes, after incorporating such discounting charges in their taxable incomes, therefore, deduction of tax at source from the assessee will amount to double taxation on the very same amount. He contended that even if tax was not deducted in view of Section 11 (sic-191), tax shall be payable by the payee and not by the payer.

6. It was stressed that if the Department was allowed to recover tax from the payer of income then an absurd situation of having collected tax twice on the very same income would arise as the parties to whom discounting charges were paid had accounted for the same in their income and had also paid tax on their respective taxable incomes. He further contended that before coming of decision of Hon'ble Madras High Court in case of Viswapriya Financing Services & Securities Ltd. (supra), the

assessee was not in a knowledge of extended definition of interest, therefore, it should be considered as a reasonable cause for not deducting the tax at source on the discounting charges so paid. He relied on the decision of Tribunal, co-ordinate Bench in case of Delhi Development Authority v. ITO (1995) 52 TTJ (Del) 107 : (1995) 53 ITD 19 (Del) in support of the proposition that discount compensation paid for discounting of bills not in the nature of interest liable for deduction of tax at source under Section 194A of the Act. He also relied on the decision of Hon'ble Delhi High Court in case of CTT v. Nestle India Ltd. in support of the proposition that assessee had good and sufficient reason for not deducting tax at source on the amount of discounting charges as it was under a bona fide belief that such payment was not in the nature of interest under Section 2(28A) of the Act.

7. With regard to direction of the CIT(A) for computing interest under Section 201(1A) of the Act from the date of deductibility of tax till the payment by the deductee, he supported the order of the CIT(A) by relying on the CBDT Instruction No. 275/201/1995-IT(B), dt. 29th Jan., 1997 and Instruction No. 275/20l/2002-II(B), dt. 20th Jan., 2003.

8. On the other hand, learned senior Departmental Representative, Shri R.A. Gupta submitted that discounting charges was actually interest, which was paid on the amount of loan enjoyed by the assessee in respect of the bill discounted. Learned Departmental Representative, Shri R.A. Gupta referred to the CBDT. Circular No. 202, dt. 5th July, 1976 which clarified that Section 2(28A) of the Act was inserted to remove doubt about the true character of fees or other charges paid in respect of moneys borrowed which included any service fees or other charges in respect of loans, debts, etc. As regards the contention of the taxes already paid by the payees, it was submitted that no such claim was made during the verification proceedings. He accordingly supported the action of the CIT(A) for treating such discounting charges as interest under Section 2(28A) of the Act. He further contended that CIT(A) was not justified in directing the AO for computing the interest under Section 201(1A) of the Act till the date of payment of taxes by the deductee. As per learned Departmental Representative, the interest should be computed till the date of actual payment of taxes which are liable to be deducted at source.

9. We have considered the rival contentions, carefully gone through the orders of the authorities below and also deliberated on the case laws referred to by the lower authorities in their respective orders, and the case laws cited at Bar, in the context of factual matrix of the case. From the record, we found that during the course of survey, the Department found that the assessee has debited discounting charges under the head "Financial charges" which was in respect of debts incurred by the assessee with regard to various parties and the amounts paid were covered within the definition of interest under Section 2(28A) of the IT Act, 1961. A categorical finding has been recorded by the lower authorities to the effect that these financiers were maintaining running account with the assessee and lent funds whenever there was need to make payment to the suppliers in the normal course of business. These were short-term finances in the nature of loans and the assessee has paid amount to the financiers for the moneys so advanced to it. Even though in the books of account, the expenditure was debited under the head "Discounting charges", but it was actually in the nature of interest being paid in respect of bills discounted computed with reference to the period for which loan was availed against these bills. Mere nomenclature in the books of account will not change the character of actual payment which was precisely in the nature of interest as defined under Section

2(28A) of the Act which reads as under:

(28A) 'Interest' 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.

10. It is crystal clear from the plain reading of Section 2(28A) of the Act that money paid in respect of amount borrowed or debt incurred, is interest payable in any manner. The definition of interest in Section 2(28A) after referring to the interest payable in any manner in respect of any moneys borrowed or debt incurred proceeds to include in the terms money borrowed or that incurred, deposits, claims and "other similar rights or obligations" and further includes any service fees or other charges in respect of the money borrowed or debt incurred which would include deposit, claim or other similar rights or obligations as also in respect of any credit facility which has not been utilized. Thus, the statutory definition given under Section 2(28A) of the Act regards amounts which may not otherwise be regarded as interest, as interest for the purpose of statute. The definition of interest has been carried to the extent that even the amounts payable in transactions where money has not been borrowed and that has not been incurred, are brought within the scope of its definition, as in the case of service fees paid in respect of a credit facility which has not been utilized. Undisputedly, in the instant case, the discounting charges were paid in respect of an obligation incurred in relation to the money borrowed through bills, therefore, no fault can be found on the part of the lower authorities for treating these charges as interest and liable for TDS under Section 194A of the Act. The mere fact that the assessee did not choose to characterise such payment as interest, will not take such payment out of the ambit of the definition of "interest", insofar as payment made by the assessee was in respect of an obligation incurred under the terms of bill so discounted. The assessee has essentially taken a financial help against the bills and the amount of charges paid was with respect to the amount of bill and the period for which money was so utilized.

11. Let us now examine the case laws relied on by the learned Authorised Representative in case of DDA (supra), wherein assessee, Government authorities constructed and sold houses to public on payment of instalments under certain terms and conditions. As there was delay in construction of the houses within the stipulated period, interest was paid. The Hon'ble Delhi Tribunal held that the interest was paid for delay in construction of the houses within the stipulated period and was not in the nature of interest within the meaning of Section 2(28A) of the Act and not liable for deduction of tax at source under Section 194A of the Act. A careful reading of the decision makes it clear that amount was credited by the DDA in the account of the depositors for delay in construction of the houses within the stipulated period, and it was not in the nature of interest on the amount so deposited for booking of houses. Thus, this case law is of no help to the assessee.

12. In the case of Nestle India Ltd. (supra) as relied on by the learned Authorised Representative, we found that a reference made to the Hon'ble High Court under Section 256(2) of the Act was declined where the assessee while computing income of employees chargeable under the head "Salary" did not include the conveyance allowance/reimbursement granted to them in their taxable salaries. The Hon'ble High Court observed that findings of the Tribunal, that assessee had a good and sufficient

reason for not deducting tax at source on the said amount as it was under a bona fide belief that conveyance allowance was not to be included in the salary was a pure finding of fact which do not give rise to any question of law. Thus, the facts of this case are also distinguishable and are of no help to the assessee.

13. In view of the above discussion, we do not find any infirmity in the order of the CIT(A) for bringing the discounting charges within the definition of Section 2(28A) of the Act and thereby making the assessee liable for deduction of tax at source under Section 194A of the Act.

14. In the result, assessee's appeals in all the years are dismissed.

15. With regard to the Revenue's appeals, we found that CIT(A) has categorically noted a finding that tax has been paid by the recipient of such income and, therefore, it cannot be recovered from the assessee. However, the CIT(A) has directed the AO to charge interest on the amounts so defaulted under Section 201(1A) of the Act from the date of deductibility of tax till the payment by the deductee. In view of the CBDT circulars as referred hereinabove, as discussed by the learned CIT(A) in their respective appellate orders, as also keeping in view the decision of the jurisdictional High Court, in case of CFT v. Majestic Hotel Ltd. (2006) 204 CTR (Del) 330 : (2006) 155 Taxman 447 (Del) wherein following was the observation of the Hon'ble Delhi High Court:

There is, in our opinion, no escape from the liability arising from Section 201(1A) in case where the assessee does not deduct or does not pay after deduction the amount deducted. Interest at the stipulated rate is inevitable and can be legitimately recovered from the assessee in default. Mr. Jolly's submission, that the expression date on which such tax was actually paid must relate to the date when tax is paid by the assessee, needs notice only to be rejected. If tax has been paid by the deductee as is the position in the instant case, there is no question of the assessee paying the same over again either in full or part. Tax could be recovered from the assessee only once. If that be so, interest must stop accruing, the moment, the amount of tax is paid to the Revenue. It is immaterial whether the tax is paid by the deductee or the assessee who had made the deduction. What is significant is that the interest which is compensatory in character is paid to the Revenue till the date the amount of tax is actually deposited. That is precisely what has been done in the instant case. The question framed earlier is answered accordingly.

16. In view of the above, we do not find any infirmity in the order of the CIT(A) for directing the AO to levy interest under Section 201(1A) of the Act from the date of deducibility of tax till the payment by the deductees.

17. In the result, both the appeals of the assessee and Revenue are dismissed.