

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI A.K. GARODIA, ACCOUNTANT MEMBER

ITA Nos.361 & 362/Bang/2017
Assessment years: 2009-10 & 2010-11

Shri Mukesh Kumar, # 33/1 & 2, Padam Plaza, C.T. Street, Ganigarpet, Bengaluru – 560 002. PAN: ADKPK 5780C	Vs.	The Income Tax Officer, Ward 5(2), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri H.N. Khincha, CA
Respondent by	:	Shri A. Ramesh Kumar, Jt. CIT(DR)(ITAT)

Date of hearing	:	15.06.2017
Date of Pronouncement	:	23.06.2017

ORDER

Per Sunil Kumar Yadav, Judicial Member

These appeals are preferred by the assessee against the respective order of CIT(Appeals). Since certain grounds are common in these appeals, they were heard together and are being disposed of through this consolidated order.

2. The first issue in ITA No.361/Bang/2017 and the sole issue in ITA No.362/Bang/2017 relate to disallowance u/s 40(a)(ia) on the ground that

appellant had not deducted tax at source on the interest payments. The facts borne out from the record in this regard are that assessee has made the payment of interest to various depositors without deducting tax at source. The AO had disallowed payment of interest on account of non-deduction of tax and disallowance was also confirmed by the CIT(Appeals). Now the assessee is before us and during the course of hearing, it was contended that assessee has taken a plea before the lower authorities that recipient has offered the interest received to tax and paid taxes thereon. Therefore, assessee cannot be held to be in default. But this aspect was not examined by the lower authorities. Therefore, disallowance made by the AO on account of non-deduction of tax at source is not sustainable.

3. The Id. DR, on the other hand, has contended that in case the tax was not paid in time, assessee is liable to pay interest liability u/s. 201(1A) of the Act. It is for the assessee to file evidence before the lower authorities that recipient has paid the taxes on the receipts, but no evidence was filed by the assessee before the lower authorities during the course of hearings, as the said facts are not evident from the orders of lower authorities.

4. Having carefully examined the orders of lower authorities and documents placed on record, we find that the lower authorities have not discussed about the filing of evidence with regard to payment of taxes by the recipient, but from a careful perusal of written submissions filed by the

assessee before the CIT(Appeals), we find that assessee has taken a plea that recipient of interest has paid the taxes on receipt of interest and assessee has also filed evidence in support of his contentions, but this aspect was not examined by the CIT(Appeals). We are therefore of the view that the issue requires fresh adjudication by the CIT(Appeals) in the light of evidence filed by assessee with regard to payment of taxes by the recipient of interest. We also find force in the contentions of Id. DR that in case payment of taxes was not made in time, assessee is liable for interest liability u/s. 201(1A) of the Act. Since we are restoring the matter to the file of CIT(Appeals) for readjudication of the issue, the CIT(Appeals) may also examine the liability of interest on delayed payments u/s. 201(1A) of the Act. Accordingly, the order of CIT(Appeals) is set aside and the matter is restored to his file with a direction to readjudicate the issue afresh, after affording opportunity of being heard to the assessee in the terms indicated above.

5. The next ground relating to disallowance of bad debts written off amounting to Rs.38,39,978 is raised only in ITA No.361/Bang/2017 and the facts in this regard borne out from the record are that assessee has written off the said amount at the end of financial year in its books of account, but the lower authorities have disallowed the claim of writing off of bad debts on the ground that it was not written off in the books of account.

6. During the course of hearing, the Id. counsel for the assessee has filed a copy of balance sheet as well as ledger account to demonstrate that this amount was duly written off in the books of account, therefore no disallowance should be made.

7. The Id. DR placed heavy reliance upon the order of CIT(Appeals).

8. Having carefully examined the orders of lower authorities and documents placed on record in the light of rival submissions, we find that assessee has duly written off the bad debts in his books of account, but cognizance of these facts was not taken by the lower authorities. The AO and the CIT(Appeals) had disallowed the claim of bad debts on the sole ground that there is no writing off of this amount in the books of account, whereas the facts are otherwise. In these circumstances, we are of the view that let this matter be re-examined by the CIT(Appeals) and if he is satisfied that bad debt was duly written off in the books of account, no disallowance is permissible under law, as mere writing off of bad debt in the books of account is permissible. We are, however, of the view that if payment of tax was late, assessee may be liable for the interest liability u/s. 201(1A) of the Act. We therefore set aside the order of CIT(Appeals) and restore the matter to his file with a direction to readjudicate the issue afresh, after affording opportunity of being heard to the assessee.

9. In the result, both the appeals of the assessee are allowed for statistical purposes.

Pronounced in the open court on this 23rd day of June, 2017.

Sd/-

(A.K. GARODIA)
Accountant Member

Sd/-

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 23rd June, 2017.

/ Desai Smurthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Senior Private Secretary
ITAT, Bangalore.