IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: "A", NEW DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA No.2106/Del/2015
Assessment Year: 2011-12

M/s. Time Equipment P. Ltd., C/o- M/s. RRA Tax India, D-28, South Extension, Part-I, New Delhi	**Vs.**	ACIT, Circle-II, Faridabad
PAN :AACCT8996K		
(Appellant)		**(Respondent)**

Appellant by	Shri Somil Aggarwal, CA & Dr. Rakesh Gupta, Adv.
Respondent by	Shri Praveen Kumar, Sr.DR

Date of hearing	17.01.2019
Date of pronouncement	05-02-2019

ORDER

PER O.P. KANT, A.M.:

This appeal by the assessee is directed against order dated 03/03/2015 passed by the Ld. Commissioner Income Tax(Appeals), Faridabad [in short 'the Ld. CIT(A)'] for assessment year 2011-12, raising following grounds:

1. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law in upholding the action of the Ld. A.O. in making disallowance of a sum of Rs. 9,02,309/- inter-alia on the ground that tax has not been deducted at source.*

2. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the disallowance of Rs. 9,02,309/- is bad in law and against the facts and circumstances of the case.*

3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law in upholding the action of the Ld. A.O. in making an addition of Rs. 19,50,000/- on account of machine supplied free of cost and in any case has erred in bringing to tax this amount even though the said amount has been offered to tax in next year.*

4. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the addition of Rs. 19,50,000/- is bad in law and against the facts and circumstances of the case.*

5. *That Ld. CIT(A) has erred in not directing Ld. A.O. to refund the tax paid twice in respect of the addition of Rs. 19,50,000/-.*

6. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned order without giving adequate opportunity of being heard.*

7. *That in any case and in any view of the matter action of Ld. CIT(A) in confirming the action of Ld. A.O in making the impugned addition/disallowance is bad in law and against the facts and circumstance of case.*
8. *That the appellant craves the leave to add, alter or amend the grounds of appeal at any stage and all the grounds are without prejudice to each other.*

2. Briefly stated facts of the case are that, the assessee filed return of income on 27/09/2011, declaring income of Rs.77,07,700/-. The case was selected for scrutiny and notice under section 143(2) of the Income-tax Act, 1961 (in short 'the Act') was issued by the Assessing Officer, which was complied by the assessee. In the assessment completed under section 143(3) of the Act on 28/02/2014, the Assessing Officer made certain additions/disallowances, including following disallowances:

(i) Disallowance under section 40(a)(ia) of the Act of Rs.9,02,309/- under the head "subvention charges" for non-deduction of tax at source;

(ii) Addition of Rs.19,50,000/- for sale of the machinery claimed to be said free of cost, however, same was compensated by M/s Tata Hitachi construction machinery company limited

2.1 On further appeal to the Ld. CIT(A), both issues have been decided against the assessee. Accordingly, the assessee filed appeal before the Tribunal and raised the grounds as reproduced above.

3. In grounds No. 1 and 2, the assessee has challenged disallowance of sum of Rs.9,02,309/- under section 40(a)(ia) of the Act.

3.1 The facts qua the issue-in-dispute are that the Assessing Officer observed expenses of Rs.9,02,309/-claimed by the assessee in the profit and loss account under the head "subvention charges". According to the Assessing Officer, the charges were in the nature of interest expenses and, therefore, liable for deduction of tax at source .

3.2 Before the Assessing Officer, the assessee submitted that it was engaged in sale of capital goods i.e. excavators and backhoe-loaders etc having sale price in the range of 18 lakhs to 55 lakhs. The buyers, who intend to purchase the equipment, had to approach to the financial institution for taking loans. The assessee used to provide details to the buyers of the financial institutions, where it was empanelled so that the buyers could avail finance from those financial institutions. The financial institution on completion of the formalities by the buyer used to

issue sanction and approval letter; both to the buyer and the seller, i.e., assesse company. The financial institution as per their policy used to release the payment of equipment between 45 days to 60 days. However, the seller, i.e., assessee asked for early payment say after 15 days, thus the financial institution after deducting certain charges issued the cheques to the seller company i.e. the assessee. It was submitted by the assessee, that such charges were termed as "subvention charges" or "bill discounting charges". It was contended by the assessee that there is no debtor/creditor or lender/ borrower relation between the financial institution and the seller company and thus it was not in the nature of "interest".

3.3 However, according to the Assessing Officer, the assessee incurred higher interest charges to release the amount earlier than the normal time taken for release of the loan and therefore the term "subvention charges" is nothing but "enhanced interest" rate paid for early of sanction of the loan. According to him, the charges claimed by the assessee fall within the meaning of the "interest" as defined under section 2(28A) of the Act. Accordingly, he disallowed the amount under section 40(a)(ia) of the Act for non-deduction of tax at source by the assessee. On further appeal, the Ld. CIT(A) observed that the terminology "subvention charges" was used by the assessee itself and not the "bill discounting" while claiming the expenses in the profit and loss account. According to the Ld. CIT(A) the very nature of the transaction indicates that it is not 'bill discounting' but payment of the interest. The Ld. CIT(A) rejected the case laws relied upon by the assessee in relation to the non-deductibility of tax on the bill discounting charges. The Ld. CIT(A) relied on the decision of

the Tribunal in the case of Mahindra and Mahindra Limited versus DCIT in MA No. 397/Mum/2012 arising out of ITA No. 7999/Mum./2011 and observed that subvention charges are liable for deduction of the tax at source and failure to do so the provisions of section 40(a)(ia) are attracted in the case of the assessee.

3.4 Before us, the Ld. counsel of the assessee filed a paper-book containing pages 1 to 234 and reiterated the submission made before the Ld. CIT(A) . He submitted that the payments made by the assessee to the banks and NBFCs are in the nature of bill discounting and therefore no tax was required to be deducted on payment.

3.5 The Ld. DR, on the other hand, relied on the finding of the lower authorities and submitted that payment made by the assessee was in the nature of the interest only and, thus, liable for the tax deduction at source.

3.6 We have heard the rival submissions and perused the relevant material on record including the paper book filed by the assessee. On perusal of page- 18 of the paper book, we find that the assessee debited amount of Rs.9,02,309/-with nomenclature of "subvention charges" under schedule P (office and administrative expenses) of profit and loss account. In the submission made before the Assessing Officer, a copy of which is available on page 26 to 28, also the assessee claimed the payment as subvention charges. A party wise detail of such charges paid to various financial institutions is available on page 128 of the paper book. Before the Ld. CIT(A), the assessee submitted that the nature of the payment was of "bill discounting" rather than subvention charges. The claim of the assessee of payment of bill

discounting has been rejected by the Ld. CIT(A) and affirmed the action of the AO of characterising the payment as interest. Thus, The issue in dispute in the instant case before us is regarding the nature of the payment made, whether it is "subvention charge" or "bill discounting charges" or it is "interest".

3.7 We find that the assessee before the Assessing Officer claimed that the sale price of different models of the machinery sold by it being in the range of 18 to 55 lakhs, the purchaser of the machines got finance from various financial institutions. The assessee further submitted that in normal circumstances those financial institutions makes payment to the assessee within 30 to 60 days of completion of the formalities by the buyer of the machine, but the assessee sought payment within 7 to 10 days, thus, those financial institution transferred the finance amount to the assessee after deducting certain charges, which has been termed as subvention charges or bill discounting charges. According to the assessee there is no debtor/creditor or lender/borrower relationship between the financial institution and the assessee company. The Ld. Assessing Officer referred to meaning of the interest as defined in section 2(28A) of the Act and observed that interest includes any service fee or other charges in respect of the money borrowed or debt incurred in respect of any credit facility which has been utilised. The contention of the Ld. Assessing Officer is that the assessee incurred higher interest charges to release the loan amount earlier than the normal time taken for sanction of the loan. Before the Ld. CIT(A), the assessee claimed that it was in the nature of a cash discount extended by the assessee being short realisation of the sale price or bill discounting and thus provisions of section 194A did not apply.

3.8 We find that the assessee has not produced any agreement between it and financial institution in claim of the support that it is bill discounting charges. In our opinion the claim of the assessee that amount was a bill discounting is not acceptable, because the assessee is making sales to customers and not to any financial institution and thus no discount can be claimed to have been allowed to the financial institution. The claim of cash discount or bill discount is not accepted in absence of the relationship of seller and buyer between the assessee and the financial institution. The amount of finance on behalf of the purchaser from the financial institution, which in normal course would have been received by the assessee company in 30 to 60 days, but the assessee by way of making this payment has received the said finance amount in 7 to 15 days, thus the charges or payment becomes in the nature of interest for availing the finance amount from the financial institution prior than the stipulated date, may be for a period of around one month. The amount paid for availing the finance for this short period from the financial institution that too on number days basis definitely falls under the definition of the "interest" under section 2(28A) of the Act which reads as under:

> *"**Definitions.***
>
> ***2.** In this Act, unless the context otherwise requires,—*
>
> *.....*
>
> *(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 utilised ;*

3.9 In view of above fact, as far as receiving of the finance amount from financial institution prior then the normal period of release of amount, the relationship of debtor and creditor or lender/borrower has come into existence.

3.10 On perusal of the detail of party-wise charges paid, which is available on page 128 of the paper book, we find that out of the sum of Rs.9,02,309/-, an aggregate amount of Rs.1,19,806/- has been paid in relation to HDFC bank, which is not covered under section 194A because of the exclusion given to banking company under section 194A(3)(iii)(a) of the Act.

3.11 Thus, assessee can be held liable for non-deduction of tax for the remaining charges of Rs.7,82,503/- (9,02,309 -1,19,806). We, accordingly, uphold the liability of non-deduction of tax at source to this extent and direct the Assessing Officer to restrict the disallowance under section 40(a)(ia) of Act, to this extent only. In the result, the ground numbers 1 and 2 of the appeal are partly allowed.

4. Grounds No. 3 to 5 of the appeal are related to addition of Rs.19,50,000/-on account of the machine supplied to M/s. Kazstray service infrastructure Private Limited is a free of cost.

4.1 From the schedule 'R' to the audit report, the Assessing Officer observed that the assessee, who is a dealer of Tata Hitachi Vehicles, on the instruction from Tata Hitachi Construction Machines Ltd. (Tata Hitachi), i.e., principal company, supplied a machine to M/s Kazstray service infrastructure India Private Limited against invoice of even number dated 07/03/2011 of Rs.16,15,464/-as a free of cost. The cost of the machine and profit thereon was to be compensated by M/s Tata Hitcahi as communicated to the assessee by way of letter from M/s Tata

Hitachi. The Contents of the said letter have been reproduced by the Assessing Officer in the assessment order. The cost of the machine of Rs.16,59,464/-and the profit element on the same of Rs.2,93,536/-, totalling to Rs. 19.50 Lacs was compensated to the assessee by 'Tata Hitachi' by way of two debit notes of Rs.9,00,000/- and Rs.10.50 lakhs. The assessee in its books of accounts for the year under consideration debited an amount of Rs.16,59,464/-as discount allowed, however, in the subsequent assessment year, the assessee shown the same as income on receipt basis. The claim of the assessee that the compensation did not come in the year under consideration and thus looking to uncertainty on the realisation of the compensation, it has been accounted for on the basis of the receipt.

4.2 The Ld. counsel referred to page 150 of the paper book, which is a copy of the scheduled to profit and loss account for year ending on 31/03/2013. The Ld. counsel submitted that the income of Rs.19.50 Lacs has been included in miscellaneous income of Rs.23,93,549 /-. The Ld. counsel also referred to ledger account of the miscellaneous income, available on page 158 of the paper book and submitted that income of Rs.19.50 lakhs has been entered by way of two debit notes of Rs. 9 lakh dated 20/07/2012 and Rs.10.50 lakh dated 22/12/2012 respectively. According to Ld. counsel, the income on sale of the machine accrued only in subsequent assessment year, and, therefore, the assessee is justified in showing the same in subsequent assessment year.

4.3 Alternatively, the Ld. counsel also submitted that there is no loss to revenue in considering the income in subsequent assessment year being the same rate of taxation; both the

assessment year under consideration and subsequent assessment year. The Ld. counsel relying on the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax versus Excel Industries Ltd., (2013) 358 ITR 295 (SC) submitted that tax rate of the assessment year under consideration and subsequent assessment year being same the revenue has not been deprived of any tax and it will remain an academic exercise in making addition in the year under consideration as against the income declared by the assessee in subsequent assessment year.

4.4 The Ld. DR, on the other hand, relied on the order of the lower authorities and submitted that in view of the letter from the company M/s Tata Hitachi, it is clear that the policy of the company of compensation was in existence and thus assessee is not justified in claiming that there was uncertainty of realisation. According to him, on supplying the machine, the sale was complete and in view of the policy of compensation, the assessee was required to credit the sale in the year under consideration only. On the issue of claim of the Ld. counsel that making addition in the year under consideration rather than income in the subsequent year is a revenue neutral exercise, he submitted that by postponing payment of taxes by one year, the assessee has got benefited whereas the revenue has lost interest component on payment of taxes corresponding to the said sale receipts.

4.5 We have heard the rival submissions and perused the relevant material on record. The issue in dispute in the case of the assessee is when the sale receipt should accrue to the assessee. The assessee is dealer of M/s Tata Hitachi and sold a

machine amounting to Rs.16,59,464/- to one of the purchaser as a free of cost on 07/03/2011 on the instruction of the M/s Tata Hitachi that same will be compensated to the assessee. The contention of the assessee that there was no certainty of compensation from M/s Tata Hitachi, therefore, it booked discount of the said amount in its books of accounts. This contention of the assessee is not acceptable, because when M/s Tata Hitachi directed the assessee to supply the machine to the particular purchaser and payment of which was to be made by M/s Tata Hitachi, we are not able to understand how there was uncertainty in realisation of the compensation particularly when the assessees is dealer of the said company. Thus, this contention of the assessee that sale got accrued in the subsequent assessment year is not acceptable. Accordingly, we reject this contention of the assessee. However, we have noted of the decision of the Hon'ble Supreme Court in the case of CIT Vs Excel industries Ltd (supra), that there is no substantial loss to the Revenue on tax amount, if the sale is declared on receipt basis . The relevant part of the decision of the Hon'ble Supreme Court is reproduced as under:

> *"32. Thirdly, the real question concerning us is the year in which the assessee is required to pay tax. There is no dispute that in the subsequent accounting year, the assessee did make imports and did derive benefits under the advance licence and the duty entitlement pass book and paid tax thereon. Therefore, it is not as if the Revenue has been deprived of any tax. We are told that the rate of tax remained the same in the present assessment year as well as in the subsequent assessment year. Therefore, the dispute raised by the Revenue is entirely academic or at best may have a minor tax effect. There was, therefore, no need for the Revenue to continue with this litigation when it was quite clear that not only was it fruitless (on merits) but also that it may not have added anything much to the public coffers. "*

4.6 Thus, respectfully following the finding of the Hon'ble Supreme Court in the case of Excel Industries Ltd(supra), we set aside the order of the lower authorities on the issue in dispute and direct the Assessing Officer to delete the addition made in the year under consideration of the amount of Rs.19.50 lakhs, which the assessee has already offered in the subsequent assessment year under the head miscellaneous income. Accordingly, the grounds of appeal No. 3 & 4 of the appeal are allowed. Since we have already allowed grounds No. 3 and 4, the ground No. 5 seeking refund in subsequent assessment year, in case addition is sustained, has been rendered infructuous.

5. In the result, the appeal of the assessee is partly allowed.

Order is pronounced in the open court on 5th February, 2019.

sd/-	sd/-
[AMIT SHUKLA] **JUDICIAL MEMBER**	**[O.P. KANT]** **ACCOUNTANT MEMBER**

Dated: 5th February, 2019.
RK/-[d.t.d.s]
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation (dictation through dragon software)	29.01.2019
2.	Date on which the draft of order is placed before the Dictating Member:	30.01.2019
3.	Date on which the draft of order is placed before the other Member:	
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	
6.	Date on which the final order received after having been singed/pronounced by the Members:	
7.	Date on which the final order is uploaded on the website of ITAT:	
8.	Date on which the file goes to the Bench Clerk	
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	