

आयकर अपील अाधिकरण, अहमदाबाद ँयायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
"A" BENCH, AHMEDABAD

BEFORE, SHRI WASEEM AHMED, ACCOUNTANT MEMBER

And

Ms MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos.512-513/AHD/2018

अाधरण वष/Asstt. Years: 2013-2014 & 2014-15

Kakhani Metal Pvt. Ltd., 304, Nilkanth Plaza, Opp. Police Commissioner Office, Shahibaug, Ahmedabad. PAN: AADCK4610N	Vs.	A.C.I.T, Circle 2(1)(2), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri Suresh R. Shah, A.R
Revenue by :	Shri S.K. Dev, Sr.DR

सुनवाई का ताराख/Date of Hearing : 22/08/2019

घोषणा का ताराख /Date of Pronouncement: 16/10/2019

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeals have been filed at the instance of the Assessee against the orders of the Learned Commissioner of Income Tax (Appeals)-2, Ahmedabad [Ld.CIT(A) in short], dated 18/04/2016 and 05/01/2018 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 24/02/2016 & 20/12/2016 relevant to Assessment Year (A.Ys) 2013-14 & 2014-15 respectively.

First, we take ITA No. 512/Ahd/2018 for A.Y. 2013-14. The assessee has raised the following grounds of appeal:

The order passed by learned A.O. u/s. 143(3) dated 24-02-2016 and confirmed by learned Contrary, unwarranted and bad in law and both the orders should be cancelled.

Without prejudice to above your appellant submits that the learned A.O. is not justified in disallowing the interest of Rs. 41,55,600/- by invoking the provision of section 40(a)(ia) that no T.D.S. u/s. 194A was made from interest charged by the supplier on overdue payment of purchases made by the appellant and learned C.I.T.(A) confirmed the same. Your appellant submit that on the facts of the case as well as the provision of section 40(a)(ia) the learned A.O. and learned C.I.T.(A) are not justified .in not accepting the submissions and explanations submitted before them. Your appellant submits there is no justification in disallowing a sum of Rs. 41,55,600/- u/s. 40(a)(ia) and confirmed by learned C.I.T.(A), the same should be deleted. Your appellant submits that it so held now.

Without prejudice to above, your appellant submits that interest charged of Rs. 41.55.600/- by supplier on overdue purchases bills is not the interest payment, which have direct link and immediate nexus with the trading liabilities connected with the delayed purchases payments and thus not fall in category of interest as defined in section 2(28A) of I.T.Act and therefore the appellant was not required to make IDS from such interest payment on overdue of purchase price to suppliers. Your appellant therefore submits that the learned A.O. is not justified in disallowing the same u/s. 40(a)(ia) and learned C.I.T.(A) erred in confirming the same. Your appellant submits that it be so held now.

Without prejudice to above, your appellant submits that the interest of Rs. 41.55.600/- charged by supplier on overdue purchase price had been shown and credited in the books of suppliers and the supplier had also paid the tax on such income in their IT. Return. Your appellant therefore submits that on the facts of the case, there is no justification in disallowing a sum of Rs. 41,55,600/-. Your appellant submits that it be so allowed now.

Your appellant craves, leaves, add or to alter any of the ground on or before the final date of hearing.

The only issue raised by the assessee is that the "Ld.CIT (A)" erred in confirming the order of the AO on account of non deduction of TDS u/s 194A r.w.s. 40(a)(ia) of the Act.

2. Briefly stated facts are that the assessee is a private limited company and engaged in the business of trading of ferrous and non-ferrous Metals. The assessee in the year under consideration has paid interest to one of its trade creditors namely Hindalco Industries Limited amounting to Rs. 41,55,596/- only without deducting the TDS u/s.194 A of the Act. Accordingly the AO disallowed the same on account of non deduction of tax u/s.194A r.w.s. 40(a)(ia) of the Act and added to the total income of the assessee.

Aggrieved assessee preferred an appeal to the "Ld.CIT (A)".

3. The assessee before the ld. CIT-A contended that the interest paid is part and parcel of purchase price as it was incurred due to the late payment to the supplier.

4. However, the "Ld.CIT (A)" disregarded the contention of the assessee by observing that the assessee failed to establish the nexus between purchase and interest expenses i.e. the interest was paid on account of delayed payment to the trade creditors for the purchases.

Being aggrieved by the order of the "Ld.CIT (A)" the assessee is in appeal before us.

5. The Ld.AR, before us submitted that the assessee has paid interest on account of delayed payment to the creditors for the purchases. Therefore the same cannot be categorized as interest expenses rather the interest expenses is part and parcel of purchases. Therefore, there is no question of deducting the TDS u/s 194(A) of the Act.

6. On the other hand, the learned DR vehemently supported the order of the "Ld.CIT (A)".

7. We have heard the rival contentions and perused the relevant materials available on record. The issue in the instant case relates to the interest on the delayed payment to the trade creditors which partakes the character of purchase expenses as held by the ITAT Ahmedabad in the case of ITO Vs. Parag Mahasukhlal Shah reported in 46 SOT 302 wherein it was held as under:

In the light of aforesaid, it was opined that the impugned payment had a direct link and immediate nexus with the trade liability being connected with the delayed purchase payment, hence, it did not fall within the category of 'interest' as defined in section 2(28A) for the purpose of deduction of tax at source as prescribed under section 194A. Resultantly, the assessee could not be held a defaulter of non-deduction of tax at source under section 194A. The Commissioner (Appeals) had rightly reversed the findings of the Assessing Officer.

7.1 Thus there remains no ambiguity that the interest paid on account of delayed payment to the trade creditors in connection with the purchases is part and parcel of the purchase. Therefore, the same cannot be categorized as interest expenses as defined u/s 2(28A) of the Act.

7.2 Now, coming to the fact of the present case we note that the AO in his order has given very clear cut findings that the interest paid to Hindalco Industries Limited is in relation to the purchases. The relevant portion of the assessment order stands as under:

(a) As per section 2(28A), debt incurred includes any claim or obligation. In this case, the assessee was under obligation to pay the principal amount to Hindalco and by virtue of this obligation only, that the assessee has been charged interest by Hindalco which also has been shown as finance cost by the assessee. The interest paid to Hindalco out of obligation of payment of principal amount of purchase. Hence, this interest is very well covered by section 2(28A) of the Act, as opposed to the contention of the assessee.

In view of the above, we hold that the impugned interest expenses is in the nature of purchases and therefore the same is outside the purview of TDS as envisaged u/s 194A of the Act. Hence, we do not want to uphold the order of the authorities below and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

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

Coming to ITA No.513/AHD/2018 for A.Y. 2014-15. The assessee has raised the following ground of appeal.

The order passed by learned A.O. u/s. 143(3) dated 20-12-2016 and confirmed by learned C.I.T.(A) are Arbitrary, unwarranted and bad in law and both the orders should be cancelled.

Without prejudice to above your appellant submits that the learned A.O. is not justified in disallowing the interest of Rs. 38.82.421/- by invoking the provision of section 40(a)(ia) that no T.D.S. u/s. 194A was made from interest charged by the supplier on overdue payment of purchases made by the appellant and learned C.I.T.(A) confirmed the same. Your appellant submit that on the facts of the case as well as the provision of section 40(a)(ia) the learned A.O. and learned C.I.T.(A) are not justified in not accepting the submissions and explanations submitted before them. Your appellant submits there is no justification in disallowing a sum of Rs. 38.82.421/- u/s. 40(a)(ia) and confirmed by learned C.I.T.(A), the same should be deleted. Your appellant submits that it so held now-.

Without prejudice to above, your appellant submits that interest charged of Rs. 38,82,421/- by supplier on overdue purchases bills is not the interest payment, which have direct link and immediate nexus with the trading liabilities connected with the delayed purchases payments and thus not fall in category of interest as defined in section 2(28A) of I.T.Act and therefore the appellant was not required to make TDS from such interest payment on overdue of purchase price to suppliers. Your appellant therefore submits that the teamed A.O. is not justified in disallowing the same u/s. 40(a)(ia) and learned C.I.T.(A) erred in confirming the same. Your appellant submits that it be so held now.

Without prejudice to above, your appellant submits that the interest of Rs. 38.82.421/- charged by supplier on overdue purchase price had been shown and credited in the books of suppliers and the supplier had also paid the tax on such income in their I.T.Return. Your appellant therefore submits that on the facts of the case, there is no justification in disallowing a sum of Rs. 38.82.421/-. Your appellant submits that it be so allowed now.

Your appellant craves, leaves, add or to alter any of the ground on or before the final date of hearing.

8. At the outset, we note that the identical issue raised by the assessee has already been adjudicated in ITA No.512/AHD/2018 for A.Y. 2013-14 in the preceding paragraph bearing number 6 of this order wherein the ground of appeal of the assessee has been allowed. For a detailed discussion, please refer the relevant paragraph. Accordingly, respectfully following the same, we allow the ground of appeal raised by the assessee.

9. In the combined result, both the appeals of the assessee are allowed.

Order pronounced in the Court on 16/10/2019 at Ahmedabad.

**-Sd-
(Ms MADHUMITA ROY)
JUDICIAL MEMBER**

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

(True Copy)
Ahmedabad; Dated 16/10/2019
Manish