

IN THE INCOME TAX APPELLATE TRIBUNAL, "G" BENCH
MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA. No. 2633/MUM/2024
(Assessment Year : 2015-16)

DCIT(OSD)(TDS)-2(3), 3 rd Floor, MTNL TE Building, Cumballa Hill, PedderRoad, DrGopalraoDeshmukhMarg, Mumbai-400026	Vs.	Wockhardt Ltd, Wockhardt Towers, Bandra Kurla Complex, Mumbai-400051.
PAN/GIR No. AAACW2472M		
(अपीलार्थी/Applicant)		(प्रत्यर्थी/Respondent)

Assessee by	Shri Piyush Chhajed.AR
Revenue by	Shri Dr. Kishore Dhule.CIT. DR

सुनवाई की तारीख/Date of Hearing	29.07.2024
घोषणा की तारीख/Date of Pronouncement	05.08.2024

ORDER

PER PAVAN KUMAR GADALE, JM:

The revenue has filed the appeal against the order of the Commissioner of Income Tax (Appeals)(CIT(A))-12, Pune passed u/sec 201(1)/201(1A) and u/sec250 of the Act. The revenue has raised the following grounds of appeal:

a) "On the facts and in the circumstances of the case and law, the ld. CIT(A) has erred in holding that the transaction of sale between the assessee company and stockiest was on principal to principal basis and therefore discount offered would not come under ambit of 194H, without appreciating the fact that the entire liability in goods had not been transferred to the

stockiest and that the company had to still carry liability in terms of expired goods and quality of goods etc. and therefore the stockiest were working as agents of assessee company, to promote and effect sales on behalf of assessee."

(b) "On the facts and circumstances of the case and in law, the ld. CIT(A) has erred in holding that bonus and incentive offered by the assessee company to stockiest were also in nature of discount and therefore not covered under Section 194H, without appreciating the fact that such bonus/incentive are offered subsequent to sales and therefore are essentially in nature of commission as envisaged u/s 194H"

(c) "On the facts and circumstances of the case and law, the ld. CIT(A) has erred in holding that provision of interest made was in nature of liquidation damages and therefore connected to sales or purchase without appreciating the fact that the assessee itself categorized this expenditure as interest and therefore the same is covered u/s 194A of the Act."

2. The brief facts of the case are that the assessee is a Listed Public limited company engaged in the business of manufacturing and trading of pharmaceutical products. In the survey operations u/sec 133A(2A) of the Act, the assessee was treated as "assessee in default " due certain discrepancies of non deduction and short deduction of TDS on expenses claimed and transactions between the assessee company and the stockiest vide order u/sec201(1)/201(1A) of the Act dated 24.03.2022 read as under:

"5.3 It is also worthwhile mentioning that the medium and small enterprises are accounted for as creditors (liabilities) in the books of accounts of the assessee and interest on delayed payment to them is clearly payment of interest within the meaning of section 2(28A) of the Act.

5.4 Hence, on the basis of the above discussion, the plea of the assessee that the interest paid to MSMEs is not liable for deduction of tax at source is hereby rejected. M/s. Wockhardt

Ltd is treated as defaulter within the meaning of section 201(1) for short fall in deduction of tax u/s. 194A on payment of interest to medium and small enterprises. The total amount of Short Deduction tax u/s 201 (1) and Simple Interest u/s 201 (1A) is worked out as under:

<i>Month of payment</i>	<i>Gross amount</i>	<i>TDS amount U/s 194A @ 10%</i>	<i>Delay in Month</i>	<i>Interest Payable</i>
<i>Mar 2015</i>	<i>1,07,51,114</i>	<i>10,75,111</i>	<i>85</i>	<i>9,123,844</i>
<i>Total</i>	<i>1,07,51,114</i>	<i>10,75,111</i>		<i>9,123,844</i>

6. The assessee is treated as "Assessee in Default" u/s, 201(1) and therefore directed to pay the following tax, being tax not deducted at source u/s. 194H and u/s 194A and interest charged for not deposited the same into the government treasury u/s 201(1A):

<i>Payment made</i>	<i>TDS amount u/s 201(1)</i>	<i>Interest u/s 201(1A)</i>	<i>Total (TDS+interest)</i>
<i>Discount paid to stockiest</i>	<i>24,19,72,722</i>	<i>21,86,09,960</i>	<i>46,05,82,682</i>
<i>Payment of bonus</i>	<i>4,12,827</i>	<i>3,71,340</i>	<i>7,84,167</i>
<i>Interest on delayed payment to MSMEs</i>	<i>10,75,111</i>	<i>9,13,844</i>	<i>19,88,955</i>
<i>Total tax payable</i>	<i>24,34,60,660</i>	<i>21,98,95,144</i>	<i>46,33,55,804</i>

7. The Penalty proceeding u/s 271C are also being initiated on the above discussed issues and necessary intimation in this regard is being sent to the Addl. Commissioner of Income Tax (TDS) Range 2(3), Mumbai.

8. The assessee is directed to pay the default amount mentioned above immediately after receipt of this order. In case of further delay in payment the assessee is requested to recalculate the interest under section 201(1A) and pay accordingly. If the assessee fails pay the amount within the period specified, proceedings for recovery of the demand can be taken in accordance with section 222 to 227, 229 and 232 of the Act without any further notice."

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee and findings of the AO and has relied on the coordinate Bench decisions in the assessee's own case of the earlier years and granted relief observing at Page 7 Para 3.1 to 5 of the order as under:

“Grounds no. I and III to VI:

“ 3.1 Vide these grounds of appeal, the appellant has submitted that on the facts and in the circumstances of the case and in law, the Ld. TDS Officer has erred in not applying the principles of res judicata, since during the survey initiated on 14 February 2017, the question of non-applicability of Tax Deductible at Source ("TDS") provisions had already been decided.

3.2 The Appellant submitted that it has already received favourable order dated 11 December 2020 from the Hon'ble Income tax Appellate Tribunal ("ITAT") for AY 2010-11 on similar grounds at the time of completion of the TDS proceedings for AY 2015-16.

3.3 Further, the Appellant explained that it has already received favourable order dated 9th March 2022 from the Commissioner of Income tax Appeals for AY 2011-12 and AY 2012-13 on similar grounds at the time of completion of the TDS proceedings for AY 2015-16.

3.4 Therefore, the Appellant submitted that since, there is no change in the facts and the law, the Rule of Consistency should be followed and the proceedings initiated to review the TDS applicability on discount offered to stockiest, payment of bonus and interest on delayed payment to MSMEs should be dropped.

3.5 I have gone through the order of the AO, the Statement of Facts and the submission made by the appellant. It is an undisputed fact that the impugned issue is already decided by the Hon'ble ITAT, Mumbai and the Ld. CIT(A) in favour of the appellant for the AYS 2010-11 and AYs 2011- 12, 12-13. The

same is also accepted by the AO in the para 1 of the order under consideration

3.6 Hence, respectfully following the decision of Hon'ble ITAT for AY 2010-11 and the Ld. CIT(A) for AY 2011-12 and 12-13, the Grounds of appeal No. I and III to VI of the appellant are hereby, ALLOWED.

Ground No. VII:

4. The Ld. CIT(A) while deciding an identical ground for the AYs. 2011- 12 and 2012-13 has held vide paras No. 7.1 of his orders as under.

7.1 The appellant placed reference on the case of Hindustan Coca Cola Beverage Pvt. Ltd v CIT [2017] 293 ITR 226 but has failed to submit Form 26A as per Rule 31ACB of IT Rules 1962. At the time of assessment this information was not supplied by the appellant and hence the TDS AO rejected the claim. Now there is a notification No. 11/2016 dated 02.12.2016 where the procedure for the purposes of furnishing and verification of Form 26A and for removing of default of short deduction and/or non deduction of tax at source has been notified by the CBDT. The appellant has liberty and opportunity both to make a further claim on these grounds of appeal before the AO with proper documents. Accordingly this ground of appeal is disposed."

Respectfully following the above precedent, the Appellant is directed to make the necessary submission before the AO with proper documents in this regard. Accordingly,

Ground No. VIII:

5. Also, respectfully following the decision of the Hon'ble ITAT, Mumbai and LD. CIT(A) for the AYs 2010-11 and AYs 2011-12 and 12-13, the appellant cannot be treated as an assessee in default and also charging of consequential interest u/s 201(1A) is not attracted in the case of the appellant. As the appellant has got relief under Grounds No. I to VII, the Ground No. VIII is also ALLOWED."

4. Aggrieved by the CIT (A)order, the revenue has filed an appeal before Hon'ble Tribunal.

5. At the time of hearing the Ld. DR submitted that the CIT(A) has erred in granting relief to the assessee and the revenue has not accepted the decision of the Hon'ble Tribunal in the earlier assessment years in the assessee's own case and filed an appeal before the Hon'ble High Court. Per Contra, the Ld.AR supported the CIT(A) order, and the Ld.AR substantiated the submissions with the judicial decisions of the Hon'ble Tribunal in the assessee's own case for A.Y.2010-11 to A.Y.2014-15 and prayed for dismissal of the revenue appeal.

6. We heard the rival submissions and perused the material on record. The sole matrix of the disputed issue envisaged by the Ld. DR that, the CIT(A) has granted the relief to the assessee overlooking the findings of the Assessing Officer (TDS). We find the Hon'ble Tribunal in the assessee's own case in ITA.NO.2131/Mum/2022 for A.Y 2014-15 has dealt on the disputed issues and dismissed the revenue appeal observing at Page 3 Para 2 to 6 of the order read as under:

"2.We have heard rival submission of the parties and perused the relevant material on record. The ground No. a of the appeal relates to deduction of tax at source u/s 194H on incentives offered to stockiest and liability raised by the Assessing Officer under 201(1) of 18,97,90,448/- and interest u/s 201(1A) of 17,19,02,545/-.

2.1 The assessee is in the business of manufacturing and trading of pharmaceutical products. During the year under consideration, the assessee has provided incentive to its stockiest in the nature of discount on maximum retail price. The contention of the assessee is that the discount was provided on principle to principle basis. However, the Assessing Officer

relying on clause 10 of agreement between the assessee and "Lotus Vaccine House" (one of the stockiest) wherein it has been provided that the assessee should give credit notes/replacement and settlement of all claims for date expired goods, to hold the relationship between the assessee and stockist in the nature, of principle and agent. Therefore, the incentives provided to the stockist under contract was laible for deduction of tax at source u/s 194H of the Act and due the failure on the part of the assessee in discharging its obligation, he held that the assessee in default and raised liability u/s 201(1) and 201(1a) of the Act. On further appeal, the Ld. CIT(A) deleted the levy of liability, against which the Revenue is in appeal raising the grounds as reproduced above. We find that identical issue has been allowed in favour of the assessee by the Co-ordinate Bench of the Tribunal in ITA No. 894/M/2022 for assessment year 2011-12 and ITA No. 893/M/2022 for assessment year 2012-13 in order dated 21.11.2022. The relevant finding of the Tribunal (supra) is reproduced as under:

"9. We have considered the rival submissions and perused the material available on record. We find that the Co-ordinate Bench of the Tribunal in assessee"s own case in DCIT v/s Wockhardt Ltd., in ITA no.6803/Mum./2018, vide order dated 11/12/2020, for the assessment year 2010-11, decided similar issue in favour of the assessee by observing as under-

"11. Considered the rival submissions and material placed on record. With the ground no. (a) and (b), we notice that the Coordinate Bench of ITAT in ITA No. 4592 & 4593/Mum/2014 in the case of ITO(TDS) urs. Unichem Laboratoreis Ltd. has already decided the similar issue on the grounds raised by the revenue in the present case. For the sake of clarity, which is reproduced below:-

"8. We have considered the rival contentions and perused the material on record, we have observed that the perusal of the clauses of the distributor agreement dated 01-07- 2001 entered into by the assessee company and the Rudra Pharma Distributors Ltd. which is placed in the paper book page No. 18

to 34 clearly reveals that the assessee company is selling goods/products ie. drugs-medicine to the distributor which is being paid by the distributor on principal to principal basis and property in goods with all risk and rewards passes to the distributor at the time of selling of the goods by the assessee company to the distributor when the goods are delivered by the carrier to the distributor. In-fact the distributors are the customers of the assessee company to whom the sales of the products ie. drugs-medicine were effected by the assessee company. It is pertinent to note that the assessee company is dealing in products/goods ie. drugs-medicine and not in the services. The distributors are required to notify any shortages during shipping or handling within 7 days of arrival of products at final destination to the assessee company along with endorsement on Lorry Receipt of the transporter along with shortage certificates by the transporter to claim loss from the assessee company, in other situations the loss or damage to products shall be borne by the distributor. The drugs being medicines contains certain restriction on the sale w.r.1. good governance and conduct by the distributors to follow first expiry and first out basis as the medicines having expiry could not be sold after the stipulated date of expiry, otherwise it will be health hazard to the consumers, the assessee company as normal market practice takes back the said expired drug medicines from distributors which has expired and pay back the distributors but that does not in our humble opinion is decisive or change the character of dealing between the assessee company and the distributor which primarily continues to be on principal to principal basis. Such exception of taking back the expired products has its genesis to the sensitivity of the product being drugs medicine handled by the assessee company otherwise it could have severe health hazard impacts on the consumer which is a normal market practice in the industry but the same is not decisive to conclude that the property in the goods with all risks and rewards have not passed to the distributor on sale of products by the assessee company to the distributor at the time of delivery by the carrier to the distributor as per stipulated terms of distribution agreement. We have also observed that the assessee company is raising sale invoice's on the distributor M/s Rudra Pharma Distributors Limited which are placed on the paper book filed by the assessee company at page 35 while the

ledger account showing invoices raised and payments received from distributor M/s Rudra Pharma Distributors Limited by the assessee company is also placed in the paper book filed by the assessee company at page 36 to 51. We have also observed that the said distributor M/s Rudra Pharma Distributors Limited is registered with VAT authorities and is raising its invoices (including VAT) to their customers, whereby all the above facts clearly reflects that the distributors is buying the products from the assessee company and then selling the same in its own right with all risks and rewards of ownership got vested in the said distributors on the delivery of goods by carrier to the said distributor which is also supported by the clause 5 of the distribution agreement dated 01-07-2001. Thus, we, therefore, hold that the assessee company has paid discount to MRP to the distributors at the time of sale of the said goods/products i.e. drugs-medicine which in our considered view is not covered u/s 194H of the Act and no tax was required to be deducted at source on these discount to MRP given by the assessee company to the distributors at the time of sale of drugs-medicine to the distributors. We hold accordingly."

12. Therefore, respectfully following the decision of Coordinate Bench of ITAT which is applicable mutatis mutandis in the present case, we are inclined to accept the submission of Ld. AR. Accordingly, the grounds (a) and (b) raised by the revenue are dismissed."

10. The learned D.R. could not show us any reason to deviate from the aforesaid decision and no change in facts and law was alleged in the relevant assessment year. Thus, respectfully following the decision of the Tribunal rendered in assessee's own case cited supra, we find no infirmity in the impugned order passed by the learned CIT(A) on this issue. As a result, grounds no. (a) and (b) raised in Revenues appeal are dismissed."

2.2 In view of identical facts and circumstances in the year under consideration as compared to the assessment year 2012-13, respectfully following the finding of the Tribunal (supra),

the liability u/s 201(1) and 201(1A) deleted by the Ld. CIT(A) is upheld.

3. The ground No. b relates to non-deduction of tax at source on the bonus and incentives offered by the assessee to stockist which according to the Assessing Officer are in the nature of the discount and therefore, covered u/s 194H and liable for deduction tax at source. We find that issue-in-dispute involved in this ground has also been covered by the decision of Tribunal (supra), which have reproduced above, while adjudicating ground No. (a) of the appeal. Thus, respectfully, the finding of the Ld. CIT(A) on the issue-in- dispute is upheld.

4. The ground No. c of the appeal relates to non-deduction of tax at source u/s 194A for provision of interest made for medium and small enterprises for which the Assessing Officer has raised liability u/s 201(1) for ₹8,16,270/- and interest u/s 201(1A) for 6,93,830/-.

4.1 The assessee made provision for the interest payable to purchase price of the goods of services. According to the assessee, payment was nothing but added price and therefore not in the nature of interest as defined u/s 2(28A) of the Act. However, the Assessing Officer rejected the contention of the assessee and held the assessee as in default and raised the corresponding liability.

4.2 Before us, the Ld. Counsel of the assessee submitted that amount for question does not fall in the definition of the interest, which covers interest payable on loans, deposits claims and other rights or obligation and the payment in question having no nexus with deposit not falling u/s 2(28A) of the Act. The Ld. Counsel further submitted that issue-in-dispute is covered in favour of the assessee by the order of the Tribunal in assessment year 2012-13 (supra). The relevant finding of the Tribunal is reproduced as under:

14. We have considered the rival submissions and perused the material available on record We find that the Co-ordinate Bench of the Tribunal in assessee's own case in DCIT v/s Wockhardt Ltd. (supra), for the assessment year 2010-11, decided similar issue in favour of the assessee by observing as under-

"13. With the ground no. (c), we notice that the Coordinate Bench of ITAT in the case of Income-tax Officer, Ward-2(2), Ahmedabad v Parag Mahasukhlal Shah [2011] 12 taxmann.com 37 (Ahmedabad) has already decided the similar issue raised by the revenue in the present case. For the sake of clarity, which is reproduced below:-

"5 We have heard both the sides at some length. Admitted factual position is that the assessee is having a dealership of FAG Bearing (India) Ltd. and, therefore, in the business of

sales of ball-bearings. This fact has also not been denied that there were certain terms and conditions agreed upon between the two parties in case of delay in payments. Whenever there was delay in payment or the payments got overdue, there was a condition to compensate the delay. Likewise, in case of prompt payment, the terms of payments have prescribed a facility of cash discount. Therefore, the fundamental and primarily argument from the side of the respondent-assessee was that the amount paid to compensate the delay in making the payment was nothing but the added sales price of the said commodity. Inter alia, it has also been argued that the impugned nature of payment was not within the definition of interest as prescribed under section 2(284) of the Income-tax Act. With this factual back ground, the case laws relied upon is Nirma Industries Ltd. (supra), which now stood upheld and SLP of revenue was dismissed as per the citation CIT v. Nirma Industries Ltd [2008] 166 Taxman 95 (SLP No. 28). In addition to this precedent, Learned Authorised Representative has also placed reliance on following decisions:

Sl. No(s). Decision in the case of... Reported in...

1. CIT v. Indo Matsushita Carbon Co. Ltd. [2006] 286 ITR 201/122 Taxman 516 (Mad.),
2. British Bank Middle East v. CIT [1998] 233 ITR 251 (Bom.);
3. CIT v. Jackson Engineers Ltd. [2010] 231 CTR 348 (Delhi);
4. CIT v. Advance Detergents Ltd. [2010] 228 CTR 356 (Delhi);
5. Phatela Cotgin Industries P. Ltd. v. CIT [2008] 303 ITR 411 / 166 Taxman 9 (Punj. & Har.);

6. *Tata Sponge Iron Ltd. v. CIT [2007] 292 ITR 175/165 Taxman 191 (Ori.).*

6. *We have carefully perused the decision of the Hon'ble Jurisdictional High Court, Nirma Industries Ltd. (supra) wherein observation in respect of the issue involved is as under :-*

"33. However, the parties having made elaborate submissions, the matter may be examined from a slightly different angle. When the assessee enters into a contract for sale of its products it could either stipulate (a) that interest at the specified rate would be charged on the unpaid sale price and added to the outstanding till the point of time of realisation, or (b) that in case of delay the payment for sale of products worth Rs. 100 to carry the sale price of Rs. 102 for first month's delay, Rs. 104 for second month's delay, Rs. 106 for third month's delay and so on. If the contention of revenue is accepted, merely because the assessee has described the additional sale proceeds as interest in case of contract as per illustration (a) above, such payment would not be profits derived from industrial undertaking, but in case of illustration

(b) above, if the payment is described as sale price it would be profits derived from the industrial undertaking. This can never be, because in sum and substance these are only two modes of realising sale consideration, the object being to realise sale proceeds at the earliest and without delay. Purchaser pays higher sale price if it delays payment of sale proceeds. In other words, this is a converse situation to offering of cash discount. Thus, in principle, in reality, the transaction remains the same and there is no distinction as to the source. It is incorrect to state that the source for interest is the outstanding sale proceeds. It is not the assessee's business to lend funds and earn interest. The distinction drawn by Revenue is artificial in nature and is neither in consonance with law nor commercial practice."

7. *In the light of the above precedent, we deem it proper to discuss the relevant provisions of Income-tax Act.*

7.1 *Section 2(28A) of the Income-tax Act has defined the term "interest" as follows: "Section 2(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."

7.2 The true character of the term interest has been defined, but the definition appears to be wide, inter alia, covers interest payable in any manner in respect of loans, debts, deposits, claims and other similar rights or obligation. This definition further includes service charges but those charges should be in respect of the money borrowed. By this definition, therefore, it is evident that if the charges are in respect of a debt or in respect of any credit facility then such charges are inclusive in the definition of "interest". Therefore, the interest is a payment of money in lieu of use of borrowings. It is payable by a debtor to the creditor. But it is also worth to note that the said definition is not wide enough to include other payments. There ought to be distinction between the payments not connected with any debt, with a payment having connection with the borrowings. A payment having no nexus with a deposit, loan or borrowings is out of the ambits of the definition of interest as per section 2(28A) of the Income-tax Act. While pondering upon the issue, we have come across a decision of Respected National Consumer Disputes Redressal Commission, wherein in the case of Ghaziabad Development Authority v. Dr. N.K. Gupta [2002] 258 ITR 337 (NCDRC), it was held as under :-

"Held, affirming the order of the State Commission, that section 194A of the Income-tax Act, 1961, did not apply to the payment made by the petitioner Authority.

The Authority was asked to pay interest on the amount refunded to the complainant because of its failure to construct the promised flat and to provide the necessary facilities. The amounts deposited by the respondent with the petitioner Authority were not paid by way of deposit, nor had the petitioner Authority borrowed those amounts. Interest payment in this case was by way of damages. Merely because the damages were described as by way of interest that did not convert them into interest under the Act. The word used in the order of the State Commission was not "interest" as defined in section 2(28A). Interest, in the order of the Commission, meant compensation or damages for delay in construction or handing over possession of the same causing consequential loss to the complainant by way of escalation in the price of the property and also on account of distress and disappointment faced by

him. Interest, in the order, had been used merely as a convenient method to calculate the amount of compensation in order to standardize it. Otherwise, each case of an allottee would have to be dealt with differently. Nomenclature did not decide the issue. In view of the definition of "interest" in section 2(28A), the provisions of section 194A were not applicable and the petitioner Authority was wrong in deducting tax at source from the interest payable to the respondent (complainant)."

7.3 This decision is very helpful to decide this appeal because it was held that if the nature of payment is to compensate an allottee, then the provisions of section 194A not to be applied as far as the question of deduction of TDS on interest is concerned. Though the said compensation was mentioned as "interest" but the Hon'ble Members have held that the word used "interest" did not fall within the definition as defined under section 2(28A) of the Income-tax Act.

8. The provisions of section 194A reads as follows :-

"194A. Interest other than "Interest on securities".-(1) Any persons. Not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income [by way of interest on securities), shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force."

8.1 If a person is responsible for paying any income by way of interest shall at the time of credit or at the time of payment is required to deduct income-tax. Vide an Explanation annexed to this section, it is clarified that where any income by way of interest is credited either under the "suspense account" or "interest payable account" or "by any other name", then also such person is liable to deduct tax. On plain reading of this section, it is apparent that the term "interest" used in this section relates to and in connection of a debt or a loan or a deposit. The circumstances under which the assessee is required to deduct the tax has also been narrated. Therefore, a conclusion can be drawn that if a payment is compensatory in nature and not related to any deposit/debt/loan, then such a payment is out of the ambits of the provisions of section 194A

of the Income-tax Act. To buttress this legal proposition, we hereby placed reliance on the decision of Hon'ble Gujarat High Court in the case of Nirma Industries Ltd. (supra), wherein the question was the admissibility of deduction under sections 80HH and 80-I of the Income-tax Act in respect of interest received from trade debtors. The observation was that when an assessee enters into a contract for sale of its product, it could either stipulate that interest at the specified rate would be charged on the unpaid sale price or it can be agreed upon that in case of delay the sale price shall escalate. As per the Hon'ble Court, the sum and substance of the discussion was that only two modes are plausible for realization of sale consideration. However, for a businessman the object is to realize the sale proceeds at the earliest and without any delay. When the purchaser pays a higher sale price on account of delay in payments of the sale proceeds, then the source being trade activity, therefore, held as eligible profit of the Industrial Undertaking for the purpose of computation of deduction.

8.2 Almost on identical situation in the case of Phatela Cotgin Industries (P.) Ltd. (supra), the Hon'ble Court has stated that the interest which was received on delayed payment on account of sale to customers has to be termed as income derived from the Industrial Undertaking and such an income was held as distinct from interest income which is received from Fixed Deposit. The Courts have delivered these judgements by taking into consideration the immediate source of said receipt. If the immediate source is a loan, deposit, etc., then the payment is in the nature of "interest" but if the immediate source of receipt of payment is trade activity, then the nature of receipt is not "interest payment" but in the nature of payment of compensation.

9. In the case of Indo Matsushita Carbon Co. Ltd. (supra), the question was that whether overdues from trade debtors is eligible for relief under section 80HHC/80-I of the Income-tax Act. In that context the Hon'ble Court has commented that it is settled that the interest earned on the belated payment would be directly relatable to the business of the assessee. If the purchaser did not make the payment in time and agreed to pay the interest on the belated payments, the said interest would have direct nexus with the business activity. The true test would be whether such interest would have been available to

the assessee otherwise also; and the answer to the question as per the Hon'ble Court was in negative. Hence, it was held that the interest being directly relatable only to the amounts receivable by the assessee during the course of its business on account of sale, the interest would have to be included as the profits and gains derived from the business of the assessee. An another decision cited therein was CIT v. Madras Motors Ltd. [2002] 257 ITR 60 / 122 Taxman 516 (Mad.).

10. In the case of Phatela Cotgin Industries (P.) Ltd. (supra) the verdict was that the interest being received on delayed payment on account of sale to customers could clearly be termed to be an income derived from Industrial Undertaking. It was observed that such an interest is distinct from interest income which is being received from Fixed Deposit. Case laws referred were CIT v. Paras Oil Extraction Ltd. [1998] 230 ITR 266/96 Taxman 234 (MP) and Pandian Chemicals Ltd. v. CIT [2003] 262 ITR 278/ 129 Taxman 539 (SC).

11. An another interesting feature involved to resolve this controversy is that the revenue otherwise cannot allow the claim of payment under section 36(1)(iii) of the Act because as per this section, the deduction is provided in respect of the amount of interest paid in respect of capital borrowed for the purpose of business. The only provision under the Act is section 37 under which this payment/expenditure is allowable being laid out wholly and exclusively for the purpose of the business. The nature of payment is such that it cannot be considered either under section 56 of the Act, i.e., "Income from other sources" or under section 57 of the Act prescribing deductions only in respect of "income from other sources". Inter alia, the conclusion is that since the nature of payment did not fall within the category of "income from other sources" as also cannot be allowed as payment of interest under section 36(1)(iii), therefore, it's true nature is nothing but added value of cost of purchase, hence no TDS was required to be deducted.

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 section 2(28A) of the Income-tax Act for the purpose of deduction of Tax at Source as prescribed under section 194A of the Act. Resultantly, this

assessee cannot be held a defaulter of non-deduction of tax at source under section 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."

14. We also notice that the Coordinate Bench of ITAT in the case of Sri Venkatesh Paper Agencies (Hyd.) (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-3(1), Hyderabad [2012] 24

taxmann.com 52 (Hyd.) has decided the similar issue. For the sake of clarity, which is reproduced below:-

Held

"It is not disputed that the interest paid is not for any loan or debt incurred by the assessee but for the delay in payment of bills for purchases effected from company. Therefore, it has to be seen as to whether such payment is in the nature of interest as envisaged under section 2(28A). As seen from the order of the ITAT Ahmedabad Bench in the case of ITO v. Parag Mahasukhlal Shah [2011] 46 SOT 302 / 12 taxmann.com 37 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). The payment made by the assessee in the present appeal being of similar nature also cannot be termed as interest as defined under section 2(28A). 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 Annexure 2 that the entire payment having been made during the previous year relevant to the assessment year under dispute no disallowance could be made under section 40(a)(ia) in view of the ITAT Special Bench decision in the case of Merylyn Shipping & Transports v. Addl. CIT [2012] 136 ITD 23/ 20 taxmann.com 244 (Visakha). In the afore said view of the matter, the disallowance made under section 40(a)(ia) cannot be sustained. Therefore, the Assessing Officer is to be directed to delete the same. The appeal is to be allowed. 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. Sinerma 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."

15. Therefore, respectfully following the decision of Coordinate Bench of ITAT which is applicable mutatis mutandis 24 I.T.A. No. 6803/Mum/2018 & CO 51/Mum/2020 M/s. Wockhardt Ltd. in the present case, we are inclined to accept the submission of Ld. AR. Accordingly, the grounds (c) raised by the revenue are dismissed."

15. The learned D.R. could not show us any reason to deviate from the aforesaid decision and no change in facts and law was alleged in the relevant assessment year. Thus, respectfully following the decision of the Tribunal rendered in assessee's own case cited supra, we find no infirmity in the impugned order passed by the learned CIT(A) on this issue. As a result, ground no. (c) raised in Revenue's appeal is dismissed."

5. Respectfully following the finding of the Tribunal (supra) the order of the Ld. CIT(A) on the issue in dispute is upheld. Accordingly, the ground No. (c) of the Revenue is dismissed.

6. In the result, the appeal filed by the Revenue is dismissed

7. We find the CIT(A) has dealt on the facts, provisions of law and judicial decisions. The Ld. DR could not controvert the findings of the CIT(A) with any new cogent material or information on the disputed issues to take a different view. We considered the facts, circumstances, submissions, ratio of judicial decisions and respectfully follow the judicial precedence as discussed above and are of the view that the

CIT(A) has passed a reasoned and conclusive order. Accordingly, we do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

8. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 05.08.2024.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: 05/08/2024

KRK

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER,
(Dy./Asstt. Registrar)ITAT,
Mumbai