
(1995) 07 GUJ CK 0027

In the Gujarat High Court

Case No : Special Civil Application No. 4235 of 1985

Alkapuri Investment Pvt. Ltd.

APPELLANT

Vs

D.S. Khoba and Others

RESPONDENT

Date of Decision : 12-07-1995

Acts Referred:

Income Tax Act, 1961 — Section 194A, 194A(1)

Citation : (1997) 226 ITR 506

Hon'ble Judges : Rajesh Balia, J;C.K.Thakker, J

Bench : Division Bench

Advocate : B.D. Karia and K.C. Patel, for the Appellant; M.J. Thakore for R.P. Bhatt and Co., for the Respondent

Judgement

Rajesh Balia, J.—The short question is regarding obligation to deduction of tax by the persons paying interest in terms of s. 194A, as it stood prior to its amendment w.e.f. 1st June, 1987 vide Finance Act, 1987, and consequence that follows as a result of failure to do so.

2. The petitioner company is carrying on a business of holding of investment, money lending and financial and industrial enterprises. The petition relates to asst. yr. 1982-83, the previous year of which ended on 30th Sept., 1981. The petitioner in the course of its business borrowed money from large number of persons. The petitioner has also issued secured 11% redeemable bonds on which interest @ 11% was payable to bondholders. At the end of accounting year the petitioner made a provision of estimated liability of the interest payable on all the loans outstanding and debentures and credited to the account of "interest payable". No amount of interest payable is credited to the individual accounts of persons to whom such interest was payable. These facts are not disputed. The petitioner did not deduct tax at source on the amount so credited to the account "interest payable". Respondent No. 1 who is the Assessing Officer (AO) of the petitioner issued notice dt. 25th June, 1985 under s. 201 r/w s. 221 and s. 201(1)(A) for the alleged default on the part of the petitioner in not deducting

tax at source on the amount credited to the interest payable account.

3. Relevant provision of s. 194A as stood during the asst. yr. 1982-83, reads as under :

"Section 194A(1) Any person, not being an individual or an HUF, who is responsible for paying to a resident any income by way of interest other than income chargeable under the head "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 rate in force.

4. On 25th Jan., 1979, the CBDT issued a circular clarifying that when interest is neither credited to the account of payee nor was paid to the creditor no tax need be deducted. Vide another circular dt. 22nd Dec., 1980, another instructions were issued by the Board stating that tax has to be deducted at source even in case the interest is credited to the "interest payable account". It is immaterial whether the amount of interest is credited to the payee's account or not.

5. Learned counsel for the petitioner contends that the language of the section itself is very clear and unambiguous to dispel any doubt about its interpretation. It says in unequivocal terms that tax is to be deducted by the present respondents for making payment of interest at the time of crediting of such income to the account of the payee or at the time of payment thereafter in cash or by issue of a cheque or draft or by any other mode whichever is earlier. Any other mode of dealing with the interest does not attract the provisions relating to deduction of tax at source and in that event the petitioner cannot be held responsible for committing any breach of the provisions so as to invite penal consequences.

6. On the other hand learned counsel for the Revenue urged that it is immaterial whether interest is credited to the account of the payee or the suspense account or a general interest payable account for the purpose of attracting the provisions of s. 194A. According to him once liability to pay interest has accrued and it has been credited to the interest payable account, it amounts to payment to a creditor or at any rate it amounts to the credit of such income to the account of payee. He relied on the Explanation which was inserted to s. 194A(1) vide the amendment which was brought into IT Act w.e.f. 1st June, 1987. The Explanation reads as under :

"Explanation. - For the purpose of this section where any income by way of interest as aforesaid is credited to any account, whether called "interest payable account" or "Suspense account" or by any other name in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly."

The contention is that the Explanation is only clarificatory in nature and the

meaning given in Explanation should always be deemed to have the meaning of s. 194A(1) even prior to amendment.

7. We have carefully considered the contentions put before us. We are of the opinion that the unamended provision is clear in its terms that amount of tax is to be deducted at source either at the time when such amount is credited to the account or by issuing of cheque or draft or of any other mode. Crediting a lump sum amount to interest payable account or suspense account was not the contingency envisaged under s. 194A as it stood during the relevant period for attracting the obligation to deduct tax at source. We are here concerned with first alternative only, viz., when the liability to deduct tax at source occurs in the case of book entry as distinct from actual payment.

The Explanation which was inserted w.e.f. 1st June, 1987 created additional obligation even in respect of sums credited to the "interest payable account" or "suspense account" for tax to be deducted at source. When the statute clearly envisaged the amount to be credited to the account of payee into books of account for the purpose of inviting obligation to deduct the tax at source by the person so crediting into books of account cannot be read to be creating the liability to pay interest on its accrual at the end of the year. Otherwise, specific reference of crediting the amount of interest to the account of payee would carry no meaning. Legislature cannot be imparted with the exercise of using words in futility or with no meaning. If the contention of Revenue were to be accepted, it will result that the provisions as originally enacted meant crediting the amount of interest liability accruing during the year in books of account sufficient to create the obligation of deduction at source, without segregating the amount and crediting to individual account of payee concern. Such an interpretation will leave the words "of payee" without any meaning. In this connection, it is to be noted that liability to tax is of the person who earns the income, in the present case, the creditor. Deduction of tax at source is only a convenient mode of recovery of tax from the amount of income payable to creditor by debtor. The crediting of interest in the account of payee in his books by debtor amounts to acknowledgement of such liability to pay on behalf of the debtor to specific creditor but a general credit of such liability in books of account do not amount to any such acknowledgement in favour of the creditor, that is to say, such an entry as envisaged in statute results in acknowledgement of accrual of specific liability by debtor corresponding to accrual of income by the creditor. Whereas, in the case of credit of a lump sum amount in interest payable account does not result in any such specific acknowledgement of liability to pay interest to specified creditor from where Income Tax is to be deducted and for whose benefit it is to be deposited in treasury.

8. But for the Explanation inserted w.e.f. 1st June, 1987, the provision cannot be extended to crediting of any sum to the interest payable account without reference to the payee to whom it is paid up. If that is not so, then the words, "to the account of the payee" will carry no meaning and it would suffice to state

that crediting of such income to the account or to the interest account, a meaning which the legislature clearly imported to the provision by inserting Explanation creating a legal fiction. Even the explanatory note appended to the amendment itself reveals that there was a lacuna in s. 194A, which resulted in liability related to deduction of tax at source in case the amount is debited to suspense account or interest payable account and not to the payee's account unprovided for. The amendment was intended to provide for deduction at source on accrual of the interest at the end of accounting year in addition to, at the time of credit into account of a payee or at the time of payment. That is to say the Explanation was clearly intended to enlarge the scope of existing s. 194A and not to clarify any ambiguity in the existing provision. We are therefore of the opinion that no assistance can be derived by the Revenue from the Explanation which was inserted w.e.f. 1st June, 1987 and not retrospective in operation to interpret the original provisions sans and the Explanation.

9. We are fortified in our aforesaid conclusion by the decision of Punjab & Haryana High Court and Rajasthan High Court. In the case of Punjab Business and Supply Co. Pvt. Ltd. and Another Vs. Income Tax Officer and Another, the Court has held as under :

"A perusal of s. 194A of the IT Act, 1961, prior to its amendment w.e.f. 1st June, 1987, shows that failure to deduct Income Tax from interest payable to different depositors is visited with penal consequences only if such deduction is not made at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or through cheque or draft or by any other mode. The term by any other mode pertains to the actual payment of interest to depositors and thus cannot be said to cover showing such interest in a general interest payable account. The explanatory note regarding the amendment states that s. 194A has been amended to provide that the tax will be deducted at source on accrual of interest at the end of the accounting year or at the time of crediting it to the account of the payee or at the time of payment whichever is earlier, and it further states that it was done with a view to prevent postponement of liability relating to such deduction of tax at source. Thus, the explanatory note itself reveals that there was a lacuna or loophole in the unamended provisions of s. 194A which enabled the concerned person to postpone the liability relating to such deduction of tax at source and thus resulting in dwindling of tax collection. There is absolutely no doubt that the Expln. to sub-s. (1) of s. 194A has created a fresh penal liability and it cannot be said to be simple explanation of the existing provisions of this section. If that was so, then this Explanation cannot have retrospective operation."

In other decision in the case of CIT vs. Oriental Power Cables Ltd. a Division Bench of Rajasthan High Court held as under :

"Learned counsel for the Revenue referred to Explanation added to s. 194A by the Amending Act, 1987, and urged that the same being clarificatory it has made clear what was implied in s. 194A. We are unable to accept the submission. The

explanatory note regarding the amendment states that s. 194A has been amended to provide that the tax will be deducted at source on accrual of interest at the end of the accounting year or at the time of crediting it to the account of the payee or at the time of payment, whichever is earlier, and it further states that it was done with a view to prevent postponement of liability relating to such deduction of tax at source. Thus the explanatory note itself reveals that there was a lacuna or loophole in the unamended provisions of s. 194A. This Explanation was prospective in operation. It did not, therefore apply to the present case."

Same view was reiterated by the Rajasthan High Court in the case of CIT vs. Zenith Commercial Agencies Ltd.

We are in respectful agreement with the ratio laid down in the aforesaid cases.

In view of our aforesaid conclusion we have no hesitation in saying that the Circular No. 288 dt. 22nd Dec., 1980 was not in consonance with the true import of s. 194A and cannot be given effect to. Accordingly we hold that prior to insertion of Expln. to s. 194A(1) w.e.f. 1st June, 1987, mere crediting the amount of interest to the "interest payable account" when the same was not credited to payee's account did not attract the obligation to deduct tax at source under s. 194A(1) the tax on the amounts so credited on the interest payable account or suspense account and consequently no proceedings for breach of such provisions can be taken against the petitioner on that count.

10. The petition is accordingly allowed and the notice dt. 25th June, 1985 issued by respondent No. 1 under s. 201(1) r/w ss. 225 and 201(1A) of the IT Act for the assessment year of 1982-83 (Exh. D) is quashed. Rule is made absolute. No order as to costs.