

(1998) 12 MAD CK 0020

In the Madras High Court

Case No : T.C. No's. 624 and 625 of 1994 (Reference No's. 244 and 245 of 1994) & Tax Case No's. 624 and 625 of 1994

Commissioner of Income Tax

APPELLANT

Vs

Ramesh Enterprises

RESPONDENT

Date of Decision : 15-12-1998

Acts Referred:

Income Tax Act, 1961 — Section 194A, 195, 201(1A)

Citation : (2001) 169 CTR 513

Hon'ble Judges : R. Jayasimha Babu, J; A. Subbulakshmy, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; P.P.S. Janarthana Raja, for the Respondent

Judgement

R. Jayasimha Babu, J.—The assessee is registered firm which had borrowed monies from two of its sister concerns, viz., Ramesh

Enterprises (P) Ltd., and Ramesh Exports (P) Ltd. For the assessment year 1983-84, interest paid to Ramesh Enterprises (P) Ltd., was Rs,

17,18,827. For the assessment year 1984-85, interest paid to Ramesh Exports (P) Ltd., was Rs. 4,88,479. Tax at source was not deducted on

these amounts. The penalty was, therefore, levied u/s 201(1A) of the Income Tax Act, 1961(hereinafter referred to as the Act) by the Income Tax

Officer in the sum of Rs. 1,71,500 for the assessment year 1983-84 and in the sum of Rs. 1,17,406 for the assessment year 1984-85.

2. The assessee unsuccessfully appealed to the Commissioner. On further appeal to the Tribunal, the Tribunal accepted the assessee's claim that it

had no liability to tax at source as the recipients had filed loss returns or had claimed refund of the tax on the ground that the advance tax paid was

in excess of the amount of tax due.

3. Aggrieved by that order, the revenue has secured these references following question of law :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that this was not a fit case for levy of interest u/s

201(1A) and in cancelling the same, especially when the provisions u/s 201(1A) do not contemplate any discretion in the matter of levy of interest

for failure to deduct tax at source?

4. At the time of hearing of these references, the counsel for the revenue produced a letter from the concerned Income Tax Officer, wherein it was

stated that for the assessment year 1983-84, Ramesh Enterprises (P) Ltd., had been assessed to Income Tax of Rs. 1,14,22,350 and that Ramesh

Exports (P) Ltd., had been assessed for the assessment year 1984-85 in the sum of Rs. 70,66,950. It was submitted by the counsel for the

assessee that the Ramesh Enterprises had filed an appeal against the order of assessment for the assessment year 1983-84 and in that appeal, the

extent of the taxable income was reduced and, consequently, the assessee was given a refund of a part of payment that had been paid by it as

advance tax.

5. The counsel for the assessee submitted that the assessee was not required to deduct tax on the interest payment as the recipients of the interest

or at least one of them Ramesh Enterprises (P) Ltd., had secured refund though in appeal. It was submitted that in equity penalty was not leviable

on the assessee for its failure to deduct tax on the interest paid by it to the sister concern.

6. The provision requiring deduction of tax on interest payment does not make the duty to effect deduction contingent upon the assessee's valuation

of the likely liability for tax of the recipients of interest payment. It is only in cases where the recipients of interest are in a position to file any

certificate or declaration to show that a person's total income is below the taxable limit that the tax on the interest payment made to such person is

not to be deducted. In all other cases, it must be deducted as required u/s 195 (sic-section 194A) of the Act.

7. It is not the convenience of the assessee, and its assessment of the likely extent of the liability for payment of interest of the recipients of the

interest, that determines the extent of the assessee's obligation to deduct tax at source on the interest paid by it. The provision requiring deduction

of tax at source on interest payment is applicable to all persons paying such interest and it is not left to the individual assessee to decide the extent

of compliance that it will make with regard to the obligation imposed by the statutory provision.

8. The obligation to deduct tax at source is imposed with a view to ensure that on an interest payment made in respect of which tax is required to

be deducted at source, the state promptly receives the amount so required to be deducted. The provision providing for penalty is to ensure that

persons who are required to deduct tax at source in fact comply with that provision and remit the amount of tax to the government. The person

who pays the interest at the time interest is paid is not in anyway concerned with the extent of the liability of tax of the recipients except in cases

where the recipients furnish the requisite declaration or certificate to show that the recipients income is below the taxable limit. No such declaration

was filed with the assessee by either of the two sister concerns.

They could not have filed any such declaration, having regard to the substantial amount received by them as income during these assessments

years on which they have been assessed to tax.

9. The fact that the recipients pay advance tax is not an excuse for not deducting the tax at source. It is for the recipients of the interest payment to

claim refund of the amount after such refund is found to be due after the assessment is made.

10. The Tribunal was clearly in error in accepting the case pleaded for the assessee that it had no duty to pay tax at source solely on the ground

that one of its sister concerns had filed such return and the other sister concern had claimed refund. The concern which had filed loss return was at

the time of assessment found liable to pay tax and the concern which had claimed refund at the time of original assessment was found not entitled to

the refund, though such refund was directed in appeal.

11. The assessee had a duty to deduct tax at source. It apparently did not do so as payments were made to its own sister concerns and it did not

wish to part with any part of that interest to the revenue at that point of time. That, however, cannot be an acceptable reason for its failure to

deduct tax at source and remit the same to the government.

12. The Tribunal was, therefore, in error in cancelling penalty that had been levied on the assessee u/s 201(1A) of the Act. The question referred

to us is, therefore, answered in favour of the revenue and against the assessee.

The revenue is entitled to costs in the sum of Rs. 2,000 (Rs. two

thousand) only.