

Cit and anr. Vs. Century Building Industries P. Ltd.

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Court : Karnataka

Decided On : Mar-11-2004

Reported in : [2007]293ITR80(KAR); [2007]293ITR80(Karn)

Judge : R.V. Raveendran and ;H. Billappa, JJ.

Appellant : Cit and anr.

Respondent : Century Building Industries P. Ltd.

Disposition : Appeal dismissed

Judgement :

1. These appeals under Section 260A of the Income Tax Act, 1961 ('the Act' hereinafter referred to as), are filed against the common order dated December 31, 2001, passed by the Income Tax Appellate Tribunal, Bangalore Bench, in three batches of appeals relating to orders under Sections 201(1), 201(1A) and 271C relating to the assessment years 1992-93 to 1996-97.

2. The respondent-assesses is a company incorporated under the Companies Act, 1956, engaged in the business of real estate and construction. A survey was conducted under Section 133A of the Act and certain cheque receipts registers and cheque payment registers were found in the business premises of the company. Examination of those books disclosed that loans were taken by the directors and managing director in their individual capacities from private lenders in the name of the assesses-company. The loan amounts received by way of

cheques in the name of the assessee were deposited in the bank account of the assessee and immediately transferred to the accounts of directors/managing director on the same day, by issuing corresponding cheques. When the directors/managing director repaid the loan amount or paid interest, such payments were also routed through the assessee. The director/managing director would issue cheques in favour of the assessee and the assessee in turn would issue cheques to the lenders/ creditors of the director/managing director. Receipt of loan amounts by the directors/managing director, as also repayment of loans and payment of interest amount by the directors/managing director were all reflected as such in the books of account of the respective director/managing director. Further the receipts and outgoings were shown in the respective of account of the directors/managing director with the assessee-company. The books of account of the company did not reflect any of these amounts as loans borrowed by the assessee-company. Nor were they shown as amounts due or outstanding by the company. When interest was paid, the payments were not shown as interest paid by the assessee-company. When the loans were repaid, they were not shown as repayments by the assessee-company. In short, neither the borrowing, nor repayment thereof, nor payment of interest on the borrowing, were reflected as transactions of the assessee-company in its books of account, but were only reflected in the accounts of the actual borrowers (directors/managing director).)

3. The assessing officer found that when the interest was paid by cheques issued by the company to the creditor/lender, tax was not deducted at source by the assessee-company on the interest payments, as required under Sub-section (1) of Section 194A of the Act. As a consequence, the provisions of Sections 201(1) and 201(1A) of the Act were applied. The assessing officer passed five orders in regard to the five assessment years under Section 201(1) of the Act, deeming the company to be an assessee in default in respect of the tax and claiming the tax from the assessee. Five orders were also passed by the assessing officer under Section 201(1A) of the Act making the assessee liable for payment of simple interest as specified (on the ground that tax which ought to have been deducted was not deducted) from the date on which such tax was actually paid. Five orders were also passed by the assessing officer under Section 271C of the Act levying

penalty in a sum equal to the amount of tax which the assessee had failed to deduct while paying interest to the creditors.

4. The said orders passed under Sections 201(1), 201(1A) and 271C of the 4 Act were challenged by the assessee in appeals filed before the Commissioner (Appeals)-III, Bangalore. The appellate authority by a common order dated March 26, 1996, dismissed the ten appeals against the orders under Sections 201(1) and 201 (1A) of the Act. By another order dated May 20, 1998, the appellate authority also dismissed the five appeals relating to levy of penalty. Feeling aggrieved, the assessee filed fifteen appeals before the Income Tax Appellate Tribunal, Bangalore Bench, challenging the said orders of the first appellate authority. The Tribunal, by common order dated December 31, 2001, allowed the said appeals and set aside the orders of the first appellate authority.

5. The said common order of the Tribunal is challenged in these appeals. We have given below the particulars of the appeals, for purposes of convenience:

Sl.No.

Appealnumber

(beforeHigh Court) (ITA No.)

Appealnumber (before the ITAT) (ITA No.)

Assessmentyear

Appealfiled under Section

Amount(in Rs.)

1.

204/02

617/Bang/1996

1992-93

201(1)

23,134

2.

202/02

619/Bang/1996

1993-94

201(1)

68,384

3.

201/02

621/Bang/1996

1994-95

201(1)

19,467

4.

203/02

623/Bang/1996

1995-96

201(1)

70,071

5.

205/02

625/Bang/1996

1996-97

201(1)

63,215

6.

197/02

618/Bang/1996

1992-93

201(1A)

14,285

7.

196/02

620/Bang/1996

1993-94

201(1A)

32,747

8.

198/02

622/Bang/1996

1994-95

201(1A)

7,130

9.

199/02

624/Bang/1996

1995-96

201(1A)

14,332

10.

200/02

626/Bang/1996

1996-97

201(1A)

4,344

11.

195/02

588/Bang/1996

1992-93

271C

23,134

12.

194/02

589/Bang/1996

1993-94

271C

68,384

13.

193/02

590/Bang/1996

1994-95

271C

19,467

14.

191/02

591/Bang/1996

1995-96

271C

70,071

15.

192/02

592/Bang/1996

1996-97

271C

63,215

6. The questions that can be said to arise for consideration in these appeals are:

(i) When the directors of a company route their borrowings through the company and repay the loans also with interest through the company, without the loans and interest being reflected in the books of account of the company as borrowings of the company, whether the company is bound to deduct income-tax on the interest, as required under Section 194A of the Act.

(ii) Where both the borrowing of the loan and repayment of the loan with interest is through the company, whether the Tribunal was not justified in holding that Section 194A was not attracted because the loans were availed by the directors and repaid by the directors through the company.

7. The order of the assessing officer and the appellate authority make it clear that borrowings were not by the company. It was found that loans were taken by the directors and the managing director in their individual capacities. However, the loans were taken in the name of the company. As a result, as and when a director or managing director took a loan through the company, loan amount received was immediately transferred to the respective account of the director/managing director. Similarly when the director or managing director repaid their loans, they used to issue cheques in favour of the company and the company in turn issued cheques to the creditors of directors/managing director. Even in regard to interest payable on such loans, the same procedure was followed. The books of account of the assessee-company did not reflect any of these transactions, as loans obtained by it or repaid by it. On the other hand, directors/managing director

showed the respective loans as their loan transactions in their accounts. Even payment of interest on these loans were reflected only in the books of account of the directors/managing director and not in the books of account of the assessee-company. It was also found that interest amount that was received by the assessee-company from its directors/managing director was exactly same as the interest that was paid by the assessee-company to the respective creditors.

8. The assessing officer and the appellate authority held that once the interest was paid to the lenders, by cheques issued by the assessee-company, the obligation to deduct income-tax on such interest under Section 194A of the Act arose on the part of the assessee irrespective of whether the loans were used by the assessee or its directors and the failure to deduct tax on the interest in accordance with Section 194A of the Act resulted in the consequences provided for in Sections 201(1) and 201 (1A) and 271C. On the other hand, the Tribunal has held that the loans were not taken by the assessee-company and interest was not paid by the assessee-company and payments of interest were not debited in the books of account of the assessee-company. Therefore, the Tribunal held that even though borrowings and repayment with interest were routed through the assessee-company, it was not liable to deduct tax on interest as required by Section 194A of the Act.

9. The facts are not disputed. The findings of fact recorded by the Tribunal are the same as those recorded by the appellate authority. Only the inference is different. We are of the view that Section 194A is not attracted, as held by the Tribunal. Section 194A of the Act requires any person (not being an individual or HUF) who is responsible for paying to a resident any income by way of interest, to deduct income-tax thereon at the rates in force, at the time of payment (either by crediting such interest income to the account of the payee or at the time of payment of any such interest or cash or by cheque/draft or any other mode). What is significant is, Section 194A requires only a 'person who is responsible for paying interest', to deduct income-tax at the rates in force, when paying the interest. The finding of fact recorded by the appellate authority and the Tribunal makes it clear that the assessee-company was not responsible for paying interest as the borrowing was not by it, nor had the assessee-company paid interest from its funds. It merely

acted as an agent of its directors/managing director in receiving the loan amount from the lender and forwarding it to the director/managing director and similarly where the loan was repaid, it received the amount from the director/managing director and paid it to the lender. The amounts repaid by the directors including interest, were not reflected in its books of account as loans or borrowings of the assessee-company. It cannot therefore be stated that the company is a person / responsible for paying interest to the lenders of the directors. Therefore the Tribunal was justified in its view that the assessee-company had no obligation to deduct tax on the interest paid, as required by Section 194A of the Act. We hasten to add that our observations above are only with reference to the provisions of Section 194A of the Act. If the assessee-company had committed any irregularity in permitting itself to be used as a tool or conduit for its directors/managing director to receive and repay loans, or if the managing director or directors have committed any irregularity in using the company for receiving the loans and repaying the loans, it is always open to the concerned authority under the Companies Act or other enactments to take action. What is relevant for the purpose of Sections 194A and 201 of the Act is not the validity or propriety of the acts of the directors/managing director in using the assessee-company for their borrowings, but the question whether the assessee-company, as person responsible for paying interest, has paid interest to the creditor. The answer is in the negative. We therefore agree with the Tribunal that there is no liability on the part of the assessee-company for bearing the tax amount under Section 201(1) of the Act nor any liability for payment of interest on such tax amount under Section 201(1A) nor any penalty under Section 271C. We find no merit in these appeals and accordingly they are rejected.