

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" NEW DELHI
BEFORE SHRI P.N. PARASHAR AND SHRI K.D. RANJAN

ITA Nos. 4265, 4266, 4267, 4268, 4269 & 4270/Del/06
F. Yrs: 1999-2000, 2000-01, 01-02, 02-03, 03-04 & 04-05

M/s NTPC Ltd. Employees Provident
Fund Trust, NTPC, Bhavan, Core-7,
Scope Complex, Lodi Road,
New Delhi.

Vs. Income Tax Officer,
Ward 50(2), New Delhi.

(Appellant)

(Respondent)

Appellant by : Shri Ved Jain FCA & Smt. Rano Jain CA
Respondent by : Shri M.L. Meena DR

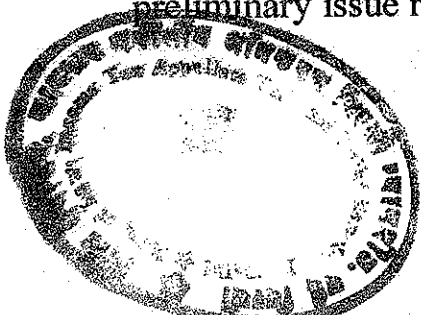
ORDER

PER BENCH :

The above mentioned six appeals have been filed by the assessee against the combined order of the learned CIT(Appeals) dated 18-10-2006 for F.Y. 1999-2000 to 2004-05. As common grounds have been taken in all these six appeals and further as they arise out of the combined order of the learned CIT(Appeals), for the sake of convenience these appeals are being decided by a common order.

2. Shri Ved Jain FCA along with Smt. Rano Jain appeared for the assessee whereas Shri M.L. Meena DR represented the revenue.

3. At the out set the learned counsel for the assessee clarified the preliminary issue relating to approval of COD. He submitted that in view of



the decision in the case of Andhra Pradesh Power Generation Corporation Ltd. Vs. ACIT & Another (2006) 280 ITR 388 (A), and in view of the decision in the case of CIT Vs. Combustion Engineering Inc. (USA) (2007) 295 ITR 70 (Mad), the clearance from the committee constituted under the direction of Hon'ble Supreme Court is required only when the dispute is in between the Ministries of Government of India or Ministry and Public Sector Undertakings. According to him, the assessee trust is not a public sector undertaking and therefore the approval of COD is not required. The learned DR could not controvert this submission of the assessee. In view of the above, the appeals are legally maintainable.

4. The learned counsel for the assessee proceeded to argue the appeals on merit. After narrating the facts relating to the relevant financial years, he pointed out that the order of AO and that of the learned CIT(Appeals) are not maintainable because section 194A of the I.T. Act is not applicable to the case of the present assessee. It was pointed out by him that this plea was taken before the learned CIT(Appeals) also but he has not properly adjudicated the same.

5. On the issue relating to status the learned counsel made reference to the following ground taken in the appeal:

"5(i) On the facts and circumstances of the case, the learned CIT(A) ha erred both on facts & in law, in not appreciating that



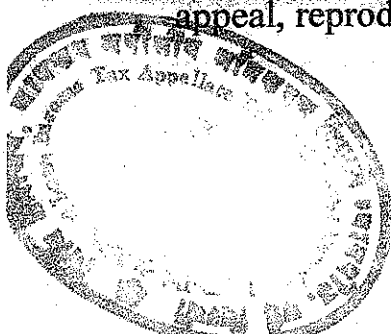
the provision of tax deduction at source u/s 194A were not applicable to the appellant and the instant case.”

6. This ground is identical in all the appeals. Therefore, we consider it proper to adjudicate the issue involved in the above mentioned ground, as decided during the course of hearing of the appeals.

7. On going through the order passed u/s 201(1) and 201(1A) read with section 19A of the I.T. Act dated 13-3-2006, it is found that the contention of the assessee was that sub-section (3) of sec. 194A provides circumstances under which exclusion from operation of section 194A is given. According to learned counsel, the provisions of section 194A have been applied wrongly by the AO by following the order of the ITAT Delhi Bench “A” in the case of ONGC Ltd. Vs. ITO (TDS), Dehradun (2005) 4 SOT 333 (Delhi), and held that the assessee was liable to deduct tax at source u/s 194A in respect of credits made to account of members of the Trust who have ceased to be the employees of the NTPC Ltd. and thereby the assessee was treated as an assessee in default u/s 201(1) and 201(1A) of the I.T. Act.

8. It was submitted by him the Ld. . counsel for the assessee that in the above appeal filed before ITAT, the plea of status was not raised before the Tribunal and therefore the decision of the ITAT in that case is distinguishable.

9. Coming to the applicability of section 194A, supporting the ground of appeal, reproduced as above, it was contended by him that the plea of status

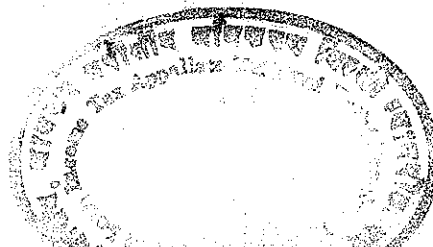


was taken by the assessee before the learned CIT(Appeals) by submitting that the assessee trust has to be treated as an individual. He submitted that the trust is not to be treated as an Association Of Persons nor as a body of individuals nor a juristic person. The learned counsel further submitted that although the assessee placed reliance on several authorities on this issue but the learned CIT(Appeals) has not dealt with the argument of the assessee and has summarily rejected the same by observing as under:

“4.3. A new ground is also raised before me, relying on the cases of M.L. Family Trust & Others v. State of Gujarat & Another 213 ITR 152 and Income Tax Officer v. Arihant Trust & Others 214 ITR 306 for the proposition that a status of the trustees being same as that of beneficiaries, trustees and individuals and not AOP.

I have considered these decisions and I find that these decisions were rendered in the context of prosecution proceedings when the artificial veil was lifted to identify the individuals who had to be prosecuted. Apart from the above, section 2(31) of the I.T. Act defines “persons”. In the said definition individuals and AOPs etc. are distinctly and categorically mentioned as separate entities. In the light of the above I am of the opinion that the above case laws would not apply as the issue in this case tax deduction at source.”

10. For supporting his argument that the trust is to be treated as individual because the trust is represented on behalf of the employees and trustees being individual, provision contained u/s 194A of the I.T. Act will not be attracted, the learned counsel placed reliance on the decisions in the cases of ITO Vs. Arhant Trust & Ors. 214 ITR 306 (Mad.); Ganesh Chhababhai



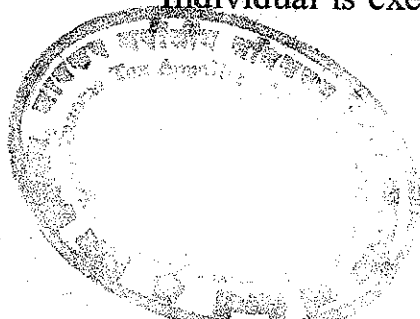
Vaalabhai Patel family Trust v. ITO 51 ITD 544; ACIT Vs. Guru Trust 52 ITD 247; Lalchand Tikamdas Makhija & Another Vs. J.K. Kuriyan CIT & Ors. (1991) 188 ITR 253 (Bom.); CIT Vs. T.S.K. Enterprises (2005) 274 ITR 41 (Mad). Copies of these decisions have also been filed in the paper book. He made reference to several other authorities also on this point.

11. We have carefully considered the facts and circumstances relating to this matter and the rival submissions. In the case of M.L. Family Trust & Others Vs. State of Gujarat & Another 213 ITR 152, the Hon'ble Gujarat High Court has observed as under:

“Prosecution- offence under ss. 276B r/w 278B – Trustees accused – beneficiaries individual – Status of the trustees being same as that of beneficiaries, trustees are individuals, and not AOP – Provisions of s. 194A, therefore, not applicable in case of such trustees – Prosecution under ss. 276B r/w r. 278B for non-compliance with s. 194A is invalid and quashed – CWT vs. Trustees of HEH Nizam's Family (Remainder Wealth) Trust 1977 CTR (SC) 306: (1977) 108 ITR 555 (SC) applied.”

11.1. In the case of ITO Vs. Arhant Trust & Others (supra), the Hon'ble Madras High Court has observed as under:

“Prosecution – offence under s. 276B – Trust failed to deduct tax at source – It was assessed under s. 161(1) i.e. in the manner of the beneficiaries, who are individuals – Even an artificial juridical person can be treated a an individual under s. 194A – When the trust was treated a an individual while receiving the income, there is no law to change its status for other purposes – It has to be treated as same individual under s. 194A also – Individual is exempt from provisions of s. 194A – Department



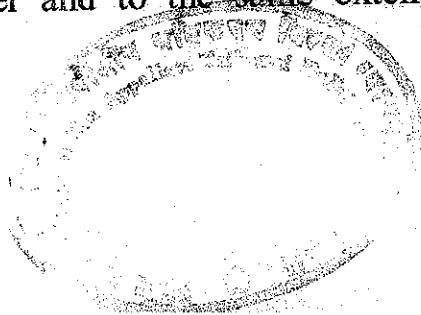
cannot prosecute the trust and its trustees for failure to deduct tax at source.”

11.2. In the case of Ganesh Chhababhai Vaalabhai Patel Family Trust (supra), the Ahmedabad Bench of the ITAT while dealing with the applicability of sec. 194A has made the following observations:

“Liability to deduct income tax would arise in cases where person paying income by way of interest is not an individual or HUF. If he comes in the category of “individual” or “HUF”, there would be no liability under the said provision. In the present case the trustees represent individuals and HUFs They do not represent AOP or BOI. Consequently, they would be assessable in the status of “individual” or “HUF” and such assessment would be in the like manner and to the same extent as the beneficiary. Beneficiaries have been assessed in respect of income of the trust in the status of individuals and HUFs and even if the trustees were to be assessed, the assessment would be in the status of individuals and HUFs whose beneficial interest are represented by trustees. Consequently, the provision of s. 194A regarding liability to deduct income-tax on payment of income by way of interest would not be applicable to the trustees of the specific trust.”

11.3. In the case of ACIT Vs. Guru Trust (supra), the Bangalore Bench of the ITAT has also adopted a similar view which is as under:

“TDS obligation to deduct tax under s. 194A – In the case of a trust it is the assessee i.e. the beneficiary alone who is required to be considered as payer and the status of assessee will determine the applicability of s. 194A – Trustees are merely placed in the position of physical agent carrying on the functions relating to administration of trust – However, trust is not something different from trustees – Trustees are to be assessed in the like manner and to the same extent as the



beneficiaries themselves – Therefore, in the instant case, trustees are also assessable in the status of individual – Same status should again apply for deduction of tax at source under s. 194A – Provisions of s. 194A not therefore applicable to trust – Interest under s. 201(1A) as also penalty under s. 221 therefore not attracted.”

11.4. In the case of CIT Vs. T.S.K. Enterprises (2005) 274 ITR 41 the Hon'ble Madras High Court has also taken identical similar view. The Hon'ble Bombay High Court in the case of CIT Vs. Marsons Beneficiary Trust (1991) 188 ITR 244 has also taken similar view. We are not required to multiply the authorities because the status of the trust has been well defined in the above mentioned authorities against which the learned DR could not bring to our notice any decision to counter the argument of the learned counsel for the assessee.

11.5. The assessee had taken specific plea before the learned CIT(Appeals) but the learned CIT(A) has wrongly distinguished the decision in the case of M.L. Family Trust (supra) and the decision in the case of ITO vs. Arhant Trust & Ors. (supra). He has not assigned any cogent reasons to do so and has simply stated that these decisions related to prosecution proceedings. In our considered opinion, this ground for distinguishing the authorities is not justified because in various cases categorical findings have been recorded about the status of the trust in relation to section 194A of the I.T. Act. We have already reproduced the relevant observations made in these judgments



by the Hon'ble Courts and on going through the same, there appears to be no scope to take a different view, nor any authority has been brought to our notice for taking such a view.

11.6. Section 194A runs as under:

“194A(1) Any person 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.”

11.7. In view of the above, the provision under section 194A is not applicable to individual and since in view of the above authorities, the status of the assessee trust is to be taken as that of an individual, the provisions of section 194A are not attracted in the case of the assessee. Consequently it cannot be held that the assessee committed any default within the ambit of that provision. Consequently, the liability u/s 201(1) and 201(1A) is also not attracted against the assessee.

11.8. On the basis of the discussion made above, common ground no. 5(i) in all the appeals, is decided in favour of the assessee. Since provisions of sec. 194A are not attracted, the order passed by the AO u/s 201(1) and 201(1A) read with section 194A of the I.T. Act and the order of the learned CIT(Appeals) in upholding the same are liable to be quashed. We order accordingly. Accordingly, appeals are allowed on this ground alone.



12. Since we have allowed all these appeals on common ground being ground no. 5(i) the other grounds taken in these appeals are not required to be adjudicated on merits.

13. In the result, all the appeals stand allowed.

Order pronounced in open court on 30-11-2005.

Sd/-

(K.D. RANJAN)
ACCOUNTANT MEMBER

Dated: 30th November 2007.

MP

Copy to :

1. Assessee *By Hand*
2. AO
3. CIT
4. CIT(A)
5. DR

Sd/-

(P.N. PARASHAR)
JUDICIAL MEMBER

[Signature]
Income Tax Appellate Tribunal
बिचौली, नई दिल्ली
Delhi Bench, New Delhi



