CASE NO.:
Appeal (civil) 6820 of 2005

PETITIONER:
Commnr. of Income Tax, Bangalore & Anr

RESPONDENT:
M/s. Century Building Industries Pvt. Ltd

DATE OF JUDGMENT: 10/08/2007

BENCH:
S. H. Kapadia & B. Sudershan Reddy

JUDGMENT:
JUDGMENT
WITH

Civil Appeals Nos. 6834, 6833, 6832, 6831, 6830, 6829, 6828, 6827, 6826, 6823, 6822, 6825, 6824, 6821of 2005

KAPADIA, J.

1 A short question which arises for determination in these civil appeals is : whether Income Tax Appellate Tribunal was right in holding that there was no obligation on the part of the assessee-company to comply with the statutory requirements of Section 194A of the Income-tax Act, 1961 (for short, \021the Act\022) by deducting tax deductible at source (TDS) on interest paid by it for loans availed of by the assessee and repaid by it with interest on the ground that the loans were meant for the directors of the assessee-company and not for the assessee-company and after recording a finding that the directors had misused the name of the company to avail of the loan.

2 The facts giving rise to these civil appeals are as follows:
Assessee (sole respondent in all the civil appeals) 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 when cheque receipt registers and cheque payment registers were found in the business premises of the company. On examination of the said books, the Department detected taking of loans by the directors of the company (assessee) in their individual capacities from creditors in the name of the assessee-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 transferred to the account of the directors on the same day by issuing corresponding cheques. When the directors repaid the loan amount or interest thereon such payments were also routed through the assessee-company. The directors issued cheques in favour of the assessee and the assessee in turn issued cheques to the creditors/lenders of such directors. Receipt of loan amounts by the directors as also repayment of loans and interests were all reflected in the books of accounts of the respective directors. The receipts and outgoings were shown in the accounts of the directors with the assessee-company. The books of accounts of the assessee-company did not reflect the loans borrowed by the assessee-company. According to the assessee, neither the borrowing nor repayment nor payment of interest on the borrowing were reflected as transactions of the assessee in its books of accounts, they were only reflected in

the accounts of the directors in the books of the assessee-company.

3 The A.O. found that when interest was paid by cheques issued by the company to the creditor, TDS was not deducted at source by the assessee on the interest payments as required under Section 194A(1) of the Act and, therefore, the A.O. applied the provisions of Section 201(1) of the Act by declaring the assessee-company as assessee-in-default and also applied Section 201(1A) of the Act imposing interest for not deducting TDS at source. The order passed by the A.O. was confirmed by the appellate authority. Before the Tribunal the assessee contended that the borrowings were routed through the company; that the company was merely a medium through which the borrowings and repayments were routed; that the loans were taken by the directors and not by the company which loans and interests thereon were not reflected in the company\022s books of accounts and that the company was merely disbursing the repayments of loans along with interests and, therefore, it was not liable to deduct TDS at source under Section 194A of the Act. This contention of the assessee has been accepted by the Tribunal. Hence, these civil appeals are filed by the Department.

4 In the present matter, it is not in dispute that the assessee-company has paid interests without deducting TDS under Section 194A of the Act. It is not in dispute that the loans were advanced by the lenders to the assessee-company. It is not in dispute that the loans were repaid by the assessee through its bank accounts. It is not in dispute that interest was paid by the assessee.

5 The above facts came to be detected only in the course of survey conducted by the Department under Section 133A of the Act on 6.12.95. It was never disclosed in the returns filed by the assessee. Opportunity was given to the company to explain why the company failed to deduct TDS under Section 194A of the Act. In reply, the director of the company admitted that the transactions made were only for namesake. However, it was urged that it was the duty of the Department to look at the substance of he transaction between the lenders and the assessee which would indicate that in substance it was a loan to the individual directions and not to the company and that the company was merely a conduit. In reply, director of the assessee-company further stated that the name of the company was lent, borrowings were routed through the company and that in substance loans were in fact given to the directors of the company. One more aspect needs to be mentioned, even according to the impugned decision of the Tribunal the directors had misused the name of the company to avail of the loans and even with this finding the Tribunal has held that there was no obligation on the part of the assessee to comply with the statutory requirements of Section 194A of the Act by deducting TDS on the interests paid by the assessee to the creditors. The first question which arises for determination in these civil appeals is : whether it is open to the directors of the assessee-company to contend before the A.O., after search and survey operations, that the transactions entered into by the assessee were for namesake and that they actually related only to individuals and not to the assessee-company. In other words, it is sought to be submitted that the A.O. should lift the corporate veil at the behest of the assessee who says that the deal was for namesake, ascertain the substance of the transaction and record a finding that the loan was in fact given not to the company but to the individual

directors.

6 In our view, such a submission cannot be accepted. Section 194A of the Act forms part of recovery mechanism. We quote hereinbelow the said section which reads as under:

\023194A. Interest other than "Interest on securities".

(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 :

Provided that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this section.]

Explanation.-For the purposes 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.]

(2) [Omitted by the Finance Act, 1992, w.e.f. 1-6-1992.]

(3) The provisions of sub-section (1) shall not apply-

(i) where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the person referred to in sub-section (1) to the account of, or to, the payee, [does not exceed five thousand rupees:]

Provided that in respect of the income credited or paid in respect of-

(a) time deposits with a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act); or

(b) time deposits with a co-operative society engaged in carrying on the business of banking;

(c) deposits with a public company which is formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes and which is eligible for deduction under clause (viii) of sub-section (1) of section 36 [***],

[* * *] the aforesaid amount shall be computed with reference to the income credited or paid by a branch of the banking company or the co-

operative society or the public company, as the case may be;]
(ii) [***]
(iii) to such income credited or paid to-
(a) any banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies, or any co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank), or
(b) any financial corporation established by or under a Central, State or Provincial Act, or
(c) the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or
(d) the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963), or
(e) any company or co-operative society carrying on the business of insurance, or
(f) such other institution, association or body [or class of institutions, associations or bodies] which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette;
(iv) to such income credited or paid by a firm to a partner of the firm;
(v) to such income credited or paid by a co-operative society [to a member thereof or] to any other co-operative society;]
(vi) to such income credited or paid in respect of deposits under any scheme framed by the Central Government and notified by it in this behalf in the Official Gazette;
(vii) to such income credited or paid in respect of deposits (other than time deposits made on or after the 1st day of July, 1995) with a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);
(viia) to such income credited or paid in respect of,-
(a) deposits with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank;
(b) deposits (other than time deposits made on or after the 1st day of July, 1995) with a co-operative society, other than a co-operative society or bank referred to in sub-clause (a), engaged in carrying on the business of banking;]
(viii) to such income credited or paid by the Central Government under any provision of this Act or the Indian Income-tax Act, 1922 (11 of 1922), or the Estate Duty Act, 1953 (34 of 1953), or the Wealth-tax Act, 1957 (27 of 1957), or the Gift-tax Act, 1958 (18 of 1958), or the Super Profits Tax Act, 1963 (14 of 1963), or the Companies (Profits) Surtax Act, 1964 (7 of 1964), or the Interest-tax Act, 1974 (45 of 1974);]
(ix) to such income credited or paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may be,

the aggregate of the amounts of such income credited or paid during the financial year does not exceed fifty thousand rupees;]
(x) to such income which is paid or payable by an infrastructure capital company or infrastructure capital fund or a public sector company in relation to a zero coupon bond issued on or after the 1st day of June, 2005 by such company or fund or public sector company.]
Explanation 1.-For the purposes of clauses (i), (vii) and (viia), "time deposits" means deposits (excluding recurring deposits) repayable on the expiry of fixed periods.
Explanation.-2 \026 Omitted.
(4) The person responsible for making the payment referred to in sub-section (1) may, at the time of making any deduction, increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year.\024
(emphasis supplied)

7 The material expression in Section 194A(1) of the Act is \023at the time of credit of such income to the account of the payee\024. When interest is debited to \023Interest Account\024 the debit is for a specific amount calculated with reference to the liability of the deductor to a particular creditor in accordance with the terms and conditions of the loan. Therefore, whenever interest is credited to the account of the payee the payer has to deduct the TDS. The crux of the matter is that the debit is for a specific amount calculated with reference to the deductor\022s liability to a particular creditor in accordance with the terms and conditions of the loan. In the present case, the lender had advanced the loan to the assessee-company. Debit was made by the assessee-company to the \023Interest Account\024 for a specific amount calculated with reference to the deductor\022s liability to a creditor. There is no resolution of the assessee-company placed before the A.O. whereby the company has agreed to act as a medium for routing the borrowings and repayments. In the circumstances it cannot be said that the assessee-company was incharge of disbursing the repayments made by directors in their individual capacities.

8 Consequently, Department was right in invoking the provisions of Sections 201 and 201(1A) of the Act. However, on facts we are of the view that in the first instance over the years the Department should have not allowed non-deduction of TDS by the company and nothing prevented the A.O. from raising the objection to such practice.

9 For the aforestated reasons, we answer the above question in the negative, i.e., in favour of the Department and against the assessee-company. The Department\022s civil appeals are accordingly allowed with no order as to costs.