IN THE INCOME TAX APPELLATE TRIBUNAL
'F' BENCH, MUMBAI.

BEFORE SHRI R.V.EASWAR, PRESIDENT AND
SHRI R.K.PANDA, ACCOUNTANT MEMBER

I.T.A. No.3317/Mum/2010
(Assessment Year : 2006-07)

Shri Vipin P.Mehta, C/o.Mehta Kothari & Co., CAs A/2, Hira Anand, 17, Swastik Society Road No.2 JVPD Scheme, Vile Parle(W) Mumbai-400 056. PAN:AADPM9382L	Vs.	The Income Tax Officer, Ward-24(3)(4), Mumbai.
(Appellant)		(Respondent)

Appellant by : Mr. Satish R.Mody
Respondent by : Mr. Vijay Shankar, Sr.AR

O R D E R

Per R.V.Easwar, President: This is an appeal by the assessee and it relates to the assessment year 2006-07. The assessee is an individual carrying on business in the manufacture and printing of packaging materials in the name and style of M/s. V.P. Mehta & Co. The appeal arises out of the assessment made on him under section 143(3) of the Income Tax Act by an order dated 24.12.2008.

2. The only ground in the appeal is whether the departmental authorities are justified in disallowing the interest of Rs.7,87,291/- by invoking section 40(a)(ia) of the Act. Under this section any interest paid by the assessee on which tax is deductible at source under Chapter XVII-B but such tax has not been deducted or after deduction the same has not been paid on or before the due date specified in section 139(1) for filing the return, will be disallowed in computing the income from business. The assessee herein paid Rs.13,51,056/- on account of interest and claimed the same as deduction in computing his

business income. The Assessing Officer noted that the assessee had paid interest exceeding Rs.5,000/- to 34 parties and the total thereof came to Rs.7,87,291/-. The Assessing Officer also noticed that the assessee ought to have deducted tax on such payments under section 194A of the Act. The Assessing Officer, on the footing that the assessee did not deduct the tax as required by section 194A, asked the assessee to explain why the interest should not be disallowed in terms of section 40(a)(ia). The assessee submitted by letter dated 17.11.2008 that all the payees to whom the interest aggregating to Rs.7,87,291/- was paid have furnished declarations in form no.15H/15G, as the case may be, before the date on which tax ought to have been deducted and therefore the assessee was not liable to deduct the tax. It was therefore pleaded that section 40(a)(ia) was not applicable to the assessee's case since it would apply only if the assessee was required to deduct the tax, but had not deducted the same. The assessee also submitted that by oversight he did not submit the copies of the declarations in form no.15G/15H to the office of the CIT(TDS) and that these forms were recently submitted to him.

3. The Assessing Officer did not accept the assessee's explanation. He noted that the declarations submitted by the payees were submitted with the CIT (TDS) only on 15.10.2008 after the Assessing Officer asked the assessee to show cause why the interest should not be disallowed. He also noticed from the returns filed by some of the payees in response to the notices issued under section 133(6) that some of them were having taxable income, even though the assessee claimed that they also filed form no.15G with the assessee which were in turn filed by the assessee with the office of the CIT(TDS). From these facts, the Assessing Officer came to the conclusion that the assessee purposely did not deduct the tax as required by

section 194A. He accordingly invoked section 40(a)(ia) and disallowed the interest payment of Rs.7,87,291/-.

4. On appeal the CIT(A) held that the assessee's arguments cannot be accepted because unless and until the declarations filed by the payees of the interest in the prescribed form are filed with the CIT(TDS) within seven days of the month following the month in which they were submitted to the assessee they are as good as no declarations having been filed and therefore the assessee had committed a default in not deducting the tax at source from the payment of interest. He therefore upheld the disallowance made by the Assessing Officer.

5. The assessee is in further appeal before the Tribunal. The main submission of the learned counsel for the assessee was that for non-filing of the declarations furnished by the payees to the assessee within the time required by sub-section (2) of section 197A of the Act a separate penalty is prescribed by section 272A(2)(f) of the Act in a sum of one hundred rupees for every day during which the default continues and no such penalty proceedings having been initiated by the income-tax authorities, the delay in filing the declarations with the office of the CIT(TDS) should be taken to have been condoned and in these circumstances the assessee was under no obligation to deduct tax under section 194A and therefore the provisions of section 40(a)(ia) were not applicable. The argument of the revenue however is that it cannot be verified as to whether the declarations in the prescribed form were actually furnished by the payees to the assessee at the appropriate time unless the assessee files them with the office of the CIT(TDS) within the time prescribed by sub-section (2) of section 197A, that the fact that the Assessing Officer did not initiate any penalty proceedings under section 272A(2)(f) did not mean that the delay was condoned in the absence of a specific order to that

effect and in these circumstances, and in order to prevent misuse of the provisions of section 197A, it should be held that the assessee did not have the declarations of the payees before him when the payment of interest was made and consequently he was under a liability to deduct tax under section 194A. Having failed to do so, it was submitted, the assessee must suffer the disallowance.

6. We have carefully considered the facts and the rival contentions. Section 194A provides for deduction of tax from the interest paid by the assessee, at the appropriate rate. Section 197A(1A) provides that notwithstanding anything contained in section 194A no deduction of tax shall be made under the section if the payee of the interest furnished to the person responsible for paying the interest, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the tax on his estimated total income of the previous year in which the interest is to be included will be nil. Sub-section (2) provides that the person responsible for paying interest shall deliver or cause to be delivered to the CCIT or CIT one copy of the declaration submitted by the payee of the interest to the assessee on or before the seventh day of the month next following the month in which the declaration was furnished to him. If the person responsible for paying the interest (i.e. the assessee) does not comply with sub-section 2 of section 197A, he is liable to pay penalty of Rs.100/- for every day during which the failure continues. Such penalty can be imposed only by the Commissioner or Chief Commissioner of Income Tax as stated in clause (b) of sub-section 3 of Section 272A and sub-section 4 requires that an opportunity shall be given to the assessee before any penalty order is passed.

7. In the present case the claim of the assessee is that at the time of paying the interest to the 34 persons mentioned in the assessment order, he had before him the appropriate declarations in the prescribed form from the payees stating that no tax was payable by them in respect of their total income and therefore tax need not be deducted from interest under section 194A, and in the light of these declarations he had no option but to make the payment of interest without any tax deduction. If the claim is true then the contention must be accepted because under sub-section (1A) of section 197A, if such a declaration is filed by the payee of interest, no deduction of tax shall be made by the assessee. The revenue authorities have doubted the assessee's version because according to them it is only when the Assessing Officer proposed the disallowance of the interest by invoking the section 40(a)(ia) in the course of the assessment proceedings that the assessee filed the declarations claimed to have been submitted to him by the payees of the interest, in the office of the CIT(TDS) as required by sub-section 2 of section 197A. Apart from this inference, there is no other evidence in their possession to hold that the declarations were not submitted by the payees of the interest to the assessee at the time when the payments were made. Without disproving the assessee's claim on the basis of other evidence, except by way of inference, it would not be fair or proper to discard the claim. The Assessing Officer has not recorded any statements from the payees of the interest to the effect that they did not file any declarations with the assessee at the appropriate time or to the effect that they filed the declarations only at the request of the assessee in September/October, 2008. In the absence of any such direct evidence, we are unable to reject the assessee's claim. The Assessing Officer has stated in para 4.4 of the assessment order that he found that some of the loan creditors were having taxable income but still the assessee had submitted

declarations from them in form no.15G. Unless it is proved that these forms were not in fact submitted by the loan creditors, the assessee cannot be blamed because at the time of paying the interest to the loan creditors, he has to perforce rely upon the declarations filed by the loan creditors and he was not expected to embark upon an enquiry as to whether the loan creditors really and in truth have no taxable income on which tax is payable. That would be putting an impossible burden on the assessee. That apart sub-section 1A of Section 197A merely requires a declaration to be filed by the payee of the interest and once it is filed the payer of the interest has no choice except to desist from deducting tax from the interest. The sub-section uses the word "shall" which leaves no choice to the assessee in the matter. In the case of payment of leave travel concession and conveyance allowance to employees who are liable to deduct tax from the salary paid to the employees under section 192, the Supreme Court has held in CIT Vs. Larsen & Toubro Ltd. (2009) 313 ITR 1, that the assessee was under no statutory obligation under the Act or Rules to collect evidence to show that the employee had actually utilized the money paid towards leave travel concession/conveyance allowance. The position is stronger under section 197A which does not apply to section 192, but which provides in sub-section (1A) that if the payee of the interest has filed the prescribed form to the effect that he is not liable to pay any tax in computing his total income, the payer shall not deduct any tax. The sub-section does not impose any obligation on the payer to find out the truth of the declarations filed by the payee. Even if the assessee has delayed the filing of the declarations with the office of the CIT/CCIT (TDS) within the time limit specified in sub-section (2) of section 197A, that is a distinct omission or default for which a penalty is prescribed. Section 273B provides that no penalty shall be imposed under any of the clauses of sub-section (2) of

section 272A for the delay, if the assessee proves that there was reasonable cause for the same. We have already seen that under sub-section (4) of section 272A, no penalty can be imposed unless the assessee is given an opportunity of being heard. All these provisions indicate that the failure on the part of the assessee, who is the payer of the interest, to file the declarations given to him by the payees of the interest, within the time limit specified in sub-section (2) to section 197A is distinct and separate and merely because there is a failure on the part of the assessee to submit the declarations to the income-tax department within the time limit, it cannot be said that the assessee did not have declarations with him at the time when he paid the interest to the payees. That would be a separate matter and separate proof and evidence is required to show that even when the assessee paid the interest, he did not have the declarations from the payees with him and therefore he ought to have deducted the tax from the payment. No such evidence or proof has been brought by the department.

8. For the aforesaid reasons, we accept the assessee's claim that since he had the declarations of the payees in the prescribed form before him at the time when the interest was paid, he was not liable to deduct tax therefrom under section 194A. If he was not liable to deduct tax, section 40(a)(ia) is not attracted. There is no other ground taken by the income tax authorities to disallow the interest. We therefore accept the assessee's appeal and delete the disallowance of interest of Rs.7,87,291/-.

Order pronounced in the open court on this 20th day of May, 2011.

Sd/-	Sd/-
(R.K. PANDA)	**(R.V.EASWAR)**
Accountant Member	President

Mumbai, Dated 20th May, 2011.
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Copy to :

1. *The Appellant*
2. *he Respondent*
3. *The CIT-24, Mumbai.*
4. *The CIT(A)-34, Mumbai*
5. *The DR 'F ' Bench*

/True Copy/ By Order

Asstt. Registrar, I.T.A.T, Mumbai