IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI , ACCOUNTANT MEMBER AND

SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.1848 & 1850/BANG/2019
Assessment Year : 2012 – 13 & 2015-15

Bangalore Turf Club Ltd., Post Box No.5038, #52, Race Course Road, Bengaluru-560 001. **PAN – AABCB 6217 G**	**Vs.**	The Asst. Commissioner Income Tax, (ITA 1848) Circle-2(1)(1), The Dy. Commissioner Income Tax, (ITA 1850) Circle-1(1)(2), Bengaluru.
APPELLANT		**RESPONDENT**

Appellant by	:	Shri Padamchand Khincha, C.A
Respondent by	:	Ms. Neera Malhotra, CIT (DR)

Date of Hearing	:	10-12-2020
Date of Pronouncement	:	18-12-2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals has been filed by assessee against separate orders dated 31/07/2019 passed by Ld.CIT (A)-1, Bangalore for assessment years 2012-13 and 2014-15.

2.Both sides submit that the issue alleged for consideration before this tribunal in both these appeals are common and on identical

facts. For sake of convenience we reproduce grounds raised by assessee for assessment year 2012-13 as under:

1. ***General Ground***

1.1. *The learned Assistant Commissioner of Income Tax, Circle 2(1)(1), Bangalore (`AO') has erred in passing the order under section 143(3) of the Income Tax Act, 1961 (`the Act') in the manner passed by him and the Commissioner of Income Tax-(Appeals)-1 (`CIT(A)') has erred in confirming the said order. The said order being bad in law is liable to be quashed.*

2. ***Grounds relating to disallowance under section40(a)(ia)***

2.1. The learned CIT(A) has erred in confirming the disallowance in respect of payment of stake money amounting to Rs. 34,15,30,436 under section 40(a)(ia) without appreciating the fact that no tax was deductible under section 194BB or 194B of the Act.

2.2. The learned CIT(A) has erred in not appreciating that section 194BB does not cover stake money paid to horse owners; a legal proposition accepted by the Board in Circular No 240 dated 17.05.1978. The disallowance made by the learned AO and confirmed by learned CIT(A) is therefore against the mandate of a binding circular.

2.3. Assuming and without admitting that the disallowance under section 40(a)(ia) is correct, such disallowance must be restricted to 30% as the amendment made by Finance Act (No.2), 2014 with effect from 01.04.2015 is remedial in nature and hence retrospective in its applicability.

3. ***Grounds relating to applicability of a binding judgment which has been stayed.***

3.1 The learned AO has erred in not following the decision of the Jurisdictional High Court in ***Bangalore Turf Club v U01 (2014) 228 Taxman 234*** *wherein it has held that the payment of stake money is neither covered under section 194BB nor under section 194B of the Act.*

3.2. The learned AO has erred in not appreciating that a review petition filed by the department does not empower the assessing officer to disregard a binding jurisdictional high court decision.

3.3. On facts and in the circumstances of the case and law applicable, the decision of the Jurisdictional High Court was binding on the department and therefore the disallowance of stake money under section 40(a)(ia) is to be deleted.

3.4. The learned CIT(A) has erred in not appreciating the fact that the stay of operation of a decision by an interim order does not wipe out the existence of the decision and it does not undermine the authority of a decision as a precedent.

3.5. The learned CIT(A) has erred in relying on the order passed under section 194B read with section 201for the AY 2006-07 to AY 2015-16 without appreciating the fact that the same is pending before the Division Bench of High Court and the High Court has implicitly directed that no order connected thereto be implemented without the leave of the court.

3.6. The learned CIT(A) has erred in not appreciating the fact that the interim order of the High Court was passed on 07.12.2016, which is after the close of the financial year 2011-12. Such being the case, the decision of Hon'ble Single Judge of Karnataka which has categorically held that there is no liability to deduct taxes on stake money is explicitly applicable during the financial year 2011-12.

4. Levy of Interest under sections 234B and 234C

4.1. The learned AO has erred in levying interest under section 234B and 234C of the Act. On the facts and in the circumstances of the case and law applicable, interest under section 234B and 234C is not leviable. The appellant denies its liability to pay interest under section 234B and 234C.

5. Prayer

5.1, In view of the above and other grounds to be adduced at the time of hearing, the appellant prays that the order passed by the learned CIT(A) and the order under section143(3) passed by the AO be quashed Or in the alternative

a) Disallowance of stake money paid to horse owners of Rs 34,15,30,436/- be deleted

b) Interest levied under section 234B amounting to Rs. 3,93,70,932 be deleted.

c) Interest levied under section 234C amounting to Rs.22,440 be deleted. The appellant prays accordingly.

Brief facts of the case are as under:

2.1Assessee is company engaged in the business of conducting horse races. It has been observed by Ld.AO that assessee would collect ticket money from across the counters and disburse the

money to winners immediately it is also been observed by Ld.AO that assessee maintains to set of books of accounts viz primary and secondary, and the financials are prepared as per the primary books.

2.2Ld.AO noted that during the assessment year 2012-13 assessee collected total sum of Rs.1,354.44 crores through counters and the revenue recognised and declared by assessee was at 12.75% treating them as club, amount amounting to Rs.173.59 crores which was a part of primary books.

2.3Ld.AO noted that the balance amount of Rs.1180.85 crores was disbursed as prise money to the betting individual (partners). Ld.AO also noted that assessee does not maintain the name address and pan of winning persons to whom the prize money were disbursed owing to its volume. The details such as ticket No., ticket amount and prize money disbursed are maintained in the secondary book which is not rooted through the regular books of accounts. The

2.4Ld.AO was also informed that prize money amount upto Rs. 5000 are disbursed without TDS and TDS is deducted only on prize money over Rs.5000 to punters.

2.5Ld.AO noted that out of the revenue recognised during the year under consideration (173.59 crores) is assessee among other expenditure had disbursed stake money and cups amounting to Rs.34,15,30,436/- to the horse owners without deducting TDS as required under section 194 BB.

2.6Ld.AO called upon assessee as to why the stake money and cups amounting to Rs.35,15,30,436/- disbursed to horse owners without

deducting TDS and claimed as expenditure in P&L account should not be disallowed in terms of provisions of section 40(a)(i) of the Act. Assessee in response submitted that *Hon'ble Karnataka High Court* in a Writ petition filed by assessee along with others by judgment dated 26/09/2014 observed that Circular No.240 dated 17/05/1978 issued by CBDT in respect of section 194 BB would not apply to stake money is and such stake monies are not regarded as winning from horse races or races, but constitute prize-money which the owner of a race horse is proceeds on account of his horse winning a position in the race. It was also submitted that *Hon'ble Karnataka High Court,* with regard to applicability of provisions of section 194B held that the stake money or prize money paid by race clubs to horse owners would not attract provisions of section.

2.7Ld.AO however disallowed the sum of Rs.35,15,30,436/- under section 40(a)(i) for the reason that revenue sought review petition before *Hon'ble Karnataka High Court* against the decision dated 26/09/2014.

3.Aggrieved by disallowance made by Ld.AO, assessee preferred appeal before Ld.CIT(A).

3.1Ld.CIT(A) dismissed the appeal filed by assessee by observing as under:

> *"**4.0** Having considered the submissions, it is observed that the only issue is regarding disallowance of expenses made by the AO in respect of prize money / stake money paid to the winning horse owners. The appellant relied on the single Judge Order of Karnataka High Court (supra), to say that withholding tax on the price money paid to winning Horse owner is not*

applicable. However, the AO has relied on the appeal filed by the department before the division bench of the Hon'ble Karnataka High Court, having not accepted the Judgement of the Hon'ble Single Judge of the Karnataka High Court supra.

However, it is observed that the appeal filed by the department against the Judgement of the Hon'ble Single Judge of the Karnataka High Court supra, was disposed by vide interim order WA 60/2015 dated 07-12-2016, wherein, the Hon'ble Karnataka High Court observed that:

7. The observations made by the learned Single Judge in the impugned judgment so far as interpretation of the respective provisions of the Act for TDS, shall remain stayed...

The relevant extract is reproduced supra in para 9 of this order. Considering the above, I am of the view that the matter has not reached any finality and the Hon'ble High court has given liberty to the AO to take a decision in the matter based on the facts and circumstances of the case in the proceeding under Section 201 of the Act. These proceedings u/s. 201 have direct bearing on the allowability of expenditure by the Assessing Officer u/s. 40(a)(ia) of the Act. considering the reasoning of the AO in the impugned order I am of the view that the amount paid as prize money / stake money to the horse owners upon his Horse winning the race, is nothing but identical to that of the price money won by the punters by buying the Tickets at the Race Course. Therefore, I do not find any reason to disturb the findings of the AO in this regard. Accordingly, the appeal, consisting of various grounds raised in this regard, is dismissed."

4.Aggrieved by the order of Ld. CIT (A) assessee is in appeal before us now.

4.1Ld.AR submitted that against the order passed by Ld.Single Judge of *Hon'ble Karnataka High Court* by decision dated 26/09/2014, revenue preferred a writ appeal being WA-60/2015, before a division bench filed on 07/01/2015. Hon'ble court passed an interim order by observing as under:

"4. On the aspects of the amounts of TDS to be deducted towards stake money by the club, we find that as up till now in past, deduction has not been made and the question is to be considered on the aspects of deduction by the club while making payment of the state money. It appears to us that, the payee of the stake money should file an undertaking to this court that as and when it is to be directed by the court, the amount of TDS shall be deposited with the club for enabling the club to deposit the amount with the Revenue/Income Tax Department.

5. As a matter may required to be considered de novo by the authority concerned, it would be appropriate to stay the observations made by the Ld.Single Judge so far as they relate to the obligations of the club to deduct TDS or as to whether the provisions of TDS would be applicable or not. But, of course, even if the authority after hearing the parties passes the appropriate order, the same should not be implemented without leave of this court.

6. *Interim order passed by the Karnataka in Writ Appeal filed by the revenue:*

On 07/12/2016, the Hon'ble High Court of Karnataka has passed an interim order with regard to the Writ Appeal filed by the department (WA 60/2015). Copy of the said interim order is enclosed as Annexure 2.

7. *After admitting the writ appeals filed by the department, the Karnataka High Court at para 4 of the interim order held as under.*

"4. On the aspects of the amount of TDS to be deducted towards stake money by the club, we find that as up till now in past, deduction has not been made and the question is to be considered on the aspects of deduction by the club while making payment of the stake money. It appears to us that, the payee of the stake money should file an undertaking to this Court that as and when it is so directed by the Court, the amount of TDS shall be deposited with the club for enabling the club to deposit the amount with the Revenue/Income Tax Department."

8. *At para 5 of the interim order on Writ Appeal filed by the department (WA 60/2015), the observations of the learned Single Judge in Bangalore Turf Club Ltd v U01 (2014) 228 Taxman 234 on the obligation of the appellant to deduct TDS or whether TDS provisions would be applicable or not was stayed and it was held as under.*

"5. As the matter may required to be considered denovo by the authority concerned, it would be appropriate to stay the observations made by the learned Single Judge so far as they relate to the

obligation of the club to deduct TDS or as to whether the provisions of TDS would be applicable or not. But, of course, even if the authority after hearing the parties passes the appropriate order, the same should not be implemented without leave of this Court."

9. *Subsequently, the Karnataka High Court, by vide interim order WA 60/2015 dated 07-12-2016 held as under:*

6. "In view of the aforesaid, we are inclined to pass thv following interim order:
The matter shall stand restored to the authority at the stage of show cause notice. The club-original respective petitioner shall be at liberty to file a reply/ additional reply if it so desires....

7. The observations made by the learned Single Judge in the impugned judgment so far as interpretation of the respective provisions of the Act for TDS, shall remain stayed.

8. *It is also observed and directed that the concerned authority or the appropriate officer after the reply/additional reply is submitted by the original petitioner, club or the private respondent/original petitioner as the case may be shall give opportunity of hearing to the respective parties and shall pass a fresh order in accordance with law and shall decide as to whether the requirement of TDS is applicable to the stake money being paid by the club to the person concerned who are owners of the horse participating in the race or not.*

9. *The aforesaid exercise shall be completed preferably within a period of three months from the receipt of certified copy of the order of this Court. However, it is observed that, the order which may be passed by the authority or the appropriate officer shall not be implemented without express leave of this Court"*

10. *Until further orders, at the time when stake money is to be paid by the original petitioner-club to the person concerned, the deduction shall not be made under the head of TDS if the owner of the horse/person concerned files an undertaking before this Court that he shall re-deposit the amount with the club with the interest chargeable as per the Income Tax Act within a period of one month from the date on which this Court so directs to deposit the amount, so as to enable the club to deposit the amount of TDS with the Income Tax Department. Upon the copy of the undertaking produced by the owner of the horse/person concerned, the petitioners club shall be at liberty to pay the amount without TDS, but separate calculation and record shall be maintained of the amount of TDS not deducted pursuant to this order.*

11. *It is also clarified that pending present proceedings, it would be open to the person concerned/owner of the horse to show the income of stake money received in their respective returns in accordance with law and the pendency of these proceedings shall not operate as a bar in the assessment proceedings before the respective authority. However, it is observed that, the assessment order if any passed in respect of any owner of the horse/person concerned shall be placed on record which may be considered by the Court at the time when final order is to be passed on the aspects of re-deposit of the amount of TDS or otherwise as observed earlier.*
12. *Office to place the matter upon a note filed by either side declaring that the order is passed by the appropriate authority pursuant to show cause notice.*
13. *It is observed and directed that the appropriate authority shall independently consider the matter without being in any manner influenced by any observations made by the learned Single Judge or the earlier order passed by it. The authority shall consider the matter independently in accordance with law.*

4.2Ld.AR submitted that *Hon'ble Karnataka High Court* stayed the operation of order dated 26/09/2014 and directed authorities below not to recover any demand under section 201(1) and 201(1A), for relevant assessment years which also included assessment year 2012-13 in assessee's case, without the leave of *Hon'ble Court. Hon'ble Court* vide para 8 also directed to decide whether the provisions of TDS are applicable to stake money being paid to the club to the person concerned who are owners of horse participating in the race.

4.3On merits Ld.AR placed reliance on following decisions and CBDT circulars:

- *Extract from CBDT circular No. 240 dated 17/05/1978*
- *Extract from Finance Minister's speech, memorandum explaining provisions of finance bill 2001 dated 28/02/2001 proposing amendments to section 194B w.e.f. 01/06/2001*
- *Circular issued by CBDT No. 14/2001 dated 09/11/2011 explaining provisions of Finance Bill 2001*
- *Decision of Hydrabad Tribunal in case of ACIT vs Hydrabad race club in ITA No. 319-323/HYD/2015 for assessment year 2009-10 to 2013-14 by order dated 04/09/2015*
- *Decision of Chennai Tribunal in case of Madras Race Club vs DCIT in ITA No. 646-657/MDS/2015 for assessment years 2007-08 to 2012-13 by order dated 28/10/2015*
- *Decision of Mumbai Tribunal in case of Royal Western Turf Club Ltd vs ACIT reported in (2019) 108 Taxmann.com 91 for assessment year 2012-13*

4.4Ld.AR submitted that, *Mumbai Tribunal* in case of *Royal Western Turf Club Ltd vs ACIT* (supra) in recent a judgment followed the view taken by *Ld.Single Judge* of *Hon'ble Karnataka High Court (supra)* held that, stake monies are not liable to TDS under section 194B of the Act.

5.On the contrary, Ld.CIT DR placing reliance on orders passed by authorities below submitted that, steak monies forms part of the words card games and other games of any sort which has been inserted in section 194B of the Act w.e.f. 01/06/2001. She submitted that horse racing income comes under the ambit of other

games of any sort and therefore TDS is necessarily to be deducted on stake money paid by club to horse owners.

6.We have perused submissions advanced by both sides in light of records placed before us.

6.1All the apprehensions raised by learnt CIT DR has been dealt with by *Mumbai Tribunal* in case of *Royal Western Turf Club Ltd vs ACIT (supra)* as under:

> ***5.*** *Before us, the first argument put forth by the learned representative for the assessee was that Section 194BB of the Act was brought in the statute by Finance Act, 1978 w.e.f. 01.04.1978, and it applies to a person who has license for horse racing and who is responsible for paying to any person any income by way of winning from horse races. A Circular was issued by the CBDT explaining the provisions of the Finance Act, 1978 i.e. Circular No. 240 dated 17.05.1978. In para 25.1.6 of the said Circular, it is specifically provided that the provisions of TDS shall not apply to income by way of 'Stake Money' as the term 'Stake Money' constitute the prize money received by the owners of the horse on account of the fact that the horse wins the race or comes second or third, as the case may be. It was contended that the CBDT Circulars are binding on the Departmental authorities, as held by the Hon'ble Supreme Court in the cases of K.P. Verghese v. ITO [1981] 7 Taxman 13/131 ITR 597 and Ellerman Lines Ltd. v. CIT [1971] 82 ITR 913. In fact, the very same Circular No. 240 dated 17.05.1978 came up for consideration before the Madras High Court in the case of CIT v. Investment Trust of India Ltd. [2003] 127 Taxman 168/264 ITR 506 and it was held to be binding on the Departmental authorities. Accordingly, it has been explained that in view of the Circular of CBDT dated 17.05.1978 (supra), which specifically provides that no TDS is required to be made in respect of payment of stake money, the Assessing Officer is not right in treating the assessee as an 'assessee in default' for the purposes of Sec. 201(1) of the Act. It was further pointed out that what cannot be done directly, cannot be done indirectly. The Assessing Officer, being bound by the CBDT Circular, cannot hold the assessee liable to TDS by bringing the assessee within the domain of Section 194B of the Act, which is not permitted in law. In V.M. Salgaocar & Bros. (P.) Ltd. v. CIT [2000] 110 Taxman 57/243 ITR 383 (SC), the Hon'ble Supreme Court has held that the Circulars of the CBDT provide as to how the Revenue itself*

understands the enactment/amendment. Hence, the language of the Circular is very clear that Revenue accepts that "stake money" is outside the purview of TDS.

6. *The next argument put-forth by the learned representative was that specific provisions prevail over general provisions. As per the learned representative, Section 194BB of the Act is a specific provision applicable in case of winnings from horse races. It is contended that a specific provision overrules a general provision, provided both the provisions operate in the same field. In this regard, reliance was placed on the decision of CIT v. Shahzada Nand & Sons[1966] 60 ITR 392 (SC) and Kirloskar Pneumatic Co. Ltd. v. Commissioner of Surtax [1994] 74 Taxman 615/210 ITR 485 (Bom.) and Forbes Forbes Compbell & Co. Ltd. v. CIT [1994] 74 Taxman 268/206 ITR 495 (Bom.). Thus, as per him, the Assessing Officer erred in applying Section 194B of the Act, which is a general provision applicable to 'card game or other game of any sort', which would not cover stake money on horse races; and, for the latter income, Section 194BB of the Act is the specific provision. It was further brought to our notice that even CBDT accepts that specific enactment prevails over the general enactment. In Circular No. 8 of 2005, the CBDT itself has stated that specific provision of law will override general provisions of law. When a specific section in Chapter XVII is provided for by the Legislature to deal specifically with horse races, the Revenue cannot invoke a general section, such as 194B of the Act, to hold the assessee in default. In this regard, reliance was also placed on decision of Hon'ble Supreme Court in the case of U.P. State Electricity Board v. Hari Shankar Jain [1978] 4 SCC 16 and LIC v. D.J. Bahadur [1981] 1 SCC 315.*

7. *Thereafter, the learned representative for the assessee explained why the provisions of Section 194B of the Act are not applicable. It was pointed out that when Section 194B of the Act was amended in 2001 to insert the words 'card game or other game of any sort', the intention was to cover TV shows and quiz shows. Correspondingly, another amendment was brought in Section 2(24)(ix) of the Act w.e.f. from 01.04.2002 and an Explanation was added explaining that the words 'card game or other game of any sort' shall include any game show, an entertainment program on TV or any electronic mode in which people compete or any other similar game. A combined reading of Sections 194B and 2(24)(ix) Explanation (ii) makes it clear that the said amendment would not apply to winning from horse races. This fact is also clear from the Memorandum explaining the provisions of Finance Bill, 2001 which makes it clear that the intention of the Legislature was to cover various kinds of quiz shows which are*

launched on TV and shows of similar kind. Our attention was also drawn to the Budget speech of the Finance Minister on 28.02.2001 wherein he stated that "television game shows are very popular these days and I propose that income tax at 30 % will be deducted at source from the winnings of these and all similar game shows." Hence, it is submitted that it would be incorrect to say that the aforestated amendment in Section 194B of the Act brings within its fold the 'Stake Money' received by the owners of the winning horses; and, that in any case, Section 194BB of the Act is the relevant section, which anyway excludes the aforesaid receipts from its purview. Thus, a subsequent amendment in a general enactment cannot be said to override earlier special enactment. It has also been asserted that the amendment to Section 194B of the Act came in 2001 and, it was an admitted position that in all earlier years, this provision was never made applicable on the assessee.

8. *The learned representative thereafter explained the difference between the term "winnings" and "stake money". "Winnings" is the amount received by people who bet in horse races. Income by way of "stake money" is the gross amount received by the owner on account of horse securing a position in the race. Hence, income from "stake money" is different from income from "winnings" and Section 194B of the Act only applies to income from "winnings". It is because of this difference that the CBDT issued a Circular in 1978 (supra) wherein it was held that Section 194BB applies to "winnings", and because "stake money" is different from "winnings"; and since Section 194BB uses the word "winnings from horse races", hence it will not apply to "stake money" as per the CBDT Circular. Circular No. 240 dated 15.05.1978 which explains the provisions inserted by the Finance Act, 1978, whose relevant extract is as under:*

"3. The term "winnings", in common parlance, means the amount received by the punter in excess of the bet laid by him on the horse or horses which have won in the particular race. Where a punter places bets on more than one horse in a particular race, the expression winnings" will connote the amount won by the punter in that horse race reduced by the amount invested by way of bet on the particular horse or horses which won the race, and not by the amount invested on the horse or horses which lost in that race. Hence, where a punter invests Rs. 100 each on two horses - horse "A" and horse "B"- in a particular horse race, and he wins Rs. 500 on the bet placed on horse "A" but loses the bet on horse "B", the winnings of the punter from this horse race would be Rs. 400 (Rs. 500 Rs. 100) and not Rs. 300 (Rs. 500-Rs. 200).

6. The provisions for deduction of tax at source will, however, not apply to income by way of stake money. This is because "stake money" in common parlance is not regarded as winnings from horse race, but really constitutes the "prize money" received on a horse race by the owner thereof on account of the fact that the horse wins the race or stands second or in any lower position."

(underlined for emphasis by us)

It has also been emphasized that even the Legislature accepts the aforesaid understanding of "stake money" inasmuch even Section 74A of the Act explains the meaning of "stake money" as contained in CBDT Circular dated 15.05.1978 (supra).

***9.** The next argument advanced by the learned representative was that there is an inherent difference between Sections 194B and 194BB of the Act; that Section 194B of the Act was introduced in 1972 and Section 194BB of the Act was introduced in 1978. Had the Government been of the view that horse races are covered in Section 194B of the Act, there would have been no need to specially introduce a new Section altogether in 1978. This clearly shows that even the Legislative intent was never to include horse races within the domain of Section 194B of the Act. As per the learned representative, the Government could have amended Section 194B of the Act itself and introduced the words "income from horse races"; however, the legislature was conscious of the fact that Section 194B of the Act operates in an altogether different domain and largely refers to "luck based games" as opposed to "skill based games" and hence, did not include horse races within Section 194B of the Act.*

***10.** It was further submitted that Section 194B of the Act was amended in 2001 and the words 'card game or other game of any sort' were inserted. An amendment was also brought about in Section 2(24)(ix) of the Act whereby it has been stated that "card game or other game of any sort" includes any game show, any entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game. Hence, "card game or other game of any sort" is to be read and understood in this background and a 'horse race' cannot be put in this category since this definition talks about other games on television or electronic mode, in which people compete to win prizes. It refers to a platform wherein people compete and participate, which cannot be equated with a horse race. Thus, the Legislative intent at the time of introducing the amendment in Section 194B of the Act was to bring within its scope, money earned through games on television or electronic mode, in which people*

compete. In the above background, the learned representative for the assessee asserted the principle of 'ejusdem generis' and 'noscitur a sociis' are applicable in the instant situation. It was canvassed that as per the aforesaid principles, any word or a phrase takes its colour from the context in which same are used. Hence, the phrase 'or other game of any sort' in the instant situation refers to games akin to the games which are specifically mentioned in the text of Section 194B of the Act. The other principle is that of 'noscitur a sociis', which means that a word is to be judged by the company it keeps. In other words, in case of doubt, meaning of a word can be ascertained with reference to the meaning of words associated with it. Reliance in this regard was placed on the decision of Hon'ble Supreme Court in the case of State of Bombay v. Hospital Mazdoor Sabha AIR 1960 SC 610. Thus, when the words 'or other game of any sort' used in Section 194B of the Act are examined with reference to the preceding words and interpreted, it can be concluded that the activity of owning and maintaining horses cannot be equated with lotteries and card games. Moreover, words used in Section 194B of the Act are lottery, crossword-puzzle, and card games, which are essentially 'luck oriented' as opposed to being 'skill oriented' and hence, it would be wrong to equate a horse race, which is skill oriented with luck oriented games. It has also been explained that the Hon'ble Supreme Court in case of Dr. K.R. Lakshmanan v. State of Tamil Nadu [1997] 223 ITR 601 held that horse racing is a game of skill.

11. *It has also been explained that the Act itself distinguishes between income earned from lottery and such games vis-à-vis income of horse owners. Elaborating further, it is explained that Section 58 of the Act refers to amounts not deductible and sub-section (4) states that no deduction in respect of any expenditure shall be allowed while computing the income by way of any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature, whatsoever. However, the proviso thereof clearly distinguishes the case of the horse owners. It states that "Provided that nothing contained in this sub-section shall apply in computing the income of an assessee, being the owner of horses maintained by him for running in horse races, from the activity of owning and maintaining such horses."*

12. *Section 74A of the Act is a specific section stating that loss arising to horse owners from the activity of maintaining and owning race horses shall not be set-off against other income. Even there are restrictions on carry forward. Hence, this restriction of no set-off against income from other*

'winnings' and allowing certain benefits of carry forward of loss arising from the activity of maintaining and owning race horses, and not other 'winnings', makes it evident that the intention of the Legislature from the very beginning has been to treat 'Income by way of stake money' as different from 'Income from winnings'. Further, Section 115BB of the Act, which was introduced via Finance Act, 1986, prescribed a flat rate of tax on Winnings from such games and states that income from any lottery or crossword puzzle or race including horse race (not being income from the activity of owning and maintaining race horses) or card game and other game of any sort or from gambling or betting of any form or nature whatsoever, shall be taxed in accordance with the provisions of that Section. Hence, Section 115BB of the Act itself distinguishes between other games and income earned through the activity of owning and maintaining race horses and excludes the latter. Notably, with the introduction of Section 115BB, sub-section (1) and (2) of Section 74A of the Act, which provided for set-off of losses with respect to lotteries etc., were omitted, but Sub-section (3), as discussed above, continued. Thus, as per the appellant, the Legislature has always treated lotteries and such other games differently from the activity of maintaining and owning horses.

13. *It was further pointed out that identical issue was raised in the case of Bangalore Turf Club Ltd. v. Union of India [2014] 52 taxmann.com 290/[2015] 228 Taxman 234, wherein Single Judge Bench of the Hon'ble Karnataka High Court has ruled this issue in favour of the assesse. It was held that prize money paid by the Race Course to the owners of the horses would not attract the provisions of Section 194B of the Act. Against this Single Bench ruling, the Department moved to the Division Bench, which has sent back the case to the file of the Assessing Officer to adjudicate the issue de novo. Furthermore, it has been mentioned that the Chennai Bench of the Tribunal in the case of Madras Club v. DCIT [IT Appeal No. 646-657 (Mds) of 2015] and Hyderabad Bench of the Tribunal in the case of Hyderabad Race Club [IT Appeal No. 319/323 (Hyd) of 2015] has adjudicated similar issue in favor of the assessee.*

14. *An alternate plea has been raised to the effect that the Assessing Officer has not recorded a finding that the recipients of the stake money have not paid income-tax on the said income, and in the absence of such a finding, the assessee cannot be treated as an "assessee in default", and reliance was placed on the judgment of the Hon'ble Allahabad High Court in the case of Jagran Prakashan Ltd. v. Dy. CIT [2012] 21 taxmann.com 489/209 Taxman 92/345 ITR 288. Elaborating further, it is contended that the purpose of Chapter XVII of the Act is to provide for a mechanism of*

withholding tax. Explanation to Section 191 of the Act clearly states that a person can be held as an 'assessee in default' only when the recipient of income has also failed to pay such tax directly. In present case, however, the owners of the horses have declared such income in their tax returns. Hence, as per the provisions of Section 201 of the Act, the assessee cannot be treated as an 'assessee in default'. Reliance was placed on decision of the Hon'ble Supreme Court in the case of Hindustan Coca Cola Beverages (P) Ltd. v. CIT [2007] 163 Taxman 355/293 ITR 226 (SC). Before us, it was explained that complete details of the horse owners were filed before the Assessing Officer showing that taxes have been duly paid by them. Thus, as the horse owners who have earned the stake money are liable for payment of taxes, any additional demand on the assessee would amount to double recovery, which is impermissible.

15. *It has also been submitted that in the present case, full list of recipients of the 'stake money', alongwith their details/documents and confirmations stating that this amount has been included by them in their respective Returns of income were filed before the lower authorities, a copy of the said list has also been submitted in the Paper Book filed before us. Countering the allegation of the Assessing Officer that certificate was incomplete, it has been asserted that complete details, including PAN numbers and addresses of all recipients were provided. Furthermore, proviso to Section 201(1) of the Act is a beneficial provision, which has been introduced to avoid undue hardships and is retrospective in its applicability and is thus applicable for the instant year. In this regard, reliance was placed on the following judgments :—*

Gujarat Pipavav Port Ltd. v. Dy. CIT [2013] 40 taxmann.com 174/[2014] 149 ITD 23 (Rajkot - Trib.)Radeus Advertising (P.) Ltd. v. Asstt. CIT [2017] 80 taxmann.com 353/164 ITD 384 (Mumbai - Trib.)

16. *The Ld. DR, on the other hand has merely placed reliance on the orders of the authorities below, and reiterated the reasoning contained in the respective orders, which we have already noted in the earlier part of the order, and is not being repeated for the sake of brevity.*

17. *We have carefully considered the rival submissions. The issue before us is limited to the applicability of TDS on the 'stake money' paid by the assessee to the owners of the horses who win the races. In this context, we shall first discuss the type of payments made by the assessee to owners on winning of the horse races. The assessee makes two types of payments. First, is in the nature of amount paid to the person who bets on the horses/jockeys. There is no dispute with regards to applicability of TDS on this type of payment as the same is liable for TDS u/s 194BB of the Act.*

We are concerned with the second type of payment made by the assessee, which are in the nature of prize money paid by the assessee to the owner of horses on account of the horse winning the race or standing second or in any lower position, which is termed as 'stake money'. The Assessing Officer has not disputed the fact that the payment made by the assessee is in the nature of 'stake money', thus there is no dispute with respect to the fact as to what constitutes 'stake money'. The Assessing Officer is of the view that by virtue of amendment in Section 194B of the Act by Finance Act, 2001, the scope of Section 194B of the Act has been widened to cover within its ambit winning from games of any sort even though Circular No. 240 dated 17.05.1978 (supra) issued in the context of Section 194BB of the Act excluded from its ambit 'stake money'; as per the Assessing Officer, due to the amendment assessee was very much liable to deduct tax at source u/s 194B of the Act. On the other hand, the appellant vehemently contends that the expression "card game and other game of any sort" derives its meaning from the words accompanying it and cannot be read to mean all games of any sort. It was further pointed out that specific provision shall prevail over general provision and Section 194BB of the Act being a special provision dealing with TDS on income arising from horse races and Circular no. 240 dated 17.05.1978 (supra) specifically excluding 'stake money' from the ambit of TDS, it was further argued that the amendment in general provision cannot bring back to tax what has been specifically excluded from its ambit by the special provision. Thus, it was submitted that provisions of Section 194B of the Act were not applicable on 'stake money' even after the amendment. The learned representative had also raised an alternate plea that the recipients of 'stake money' have already paid the taxes on the 'stake money' received from the assessee and thus, assessee should not be treated as "assessee in default" in view of the decision of Hon'ble Supreme Court in the case of Hindustan Coca Cola (supra) and provisions of Section 201(1) of the Act.

18. *At the outset, we find that heading of Section 194B of the Act is "Winning from lottery or crossword puzzle". It is a well settled principle of interpretation that the heading of a section should also be assigned meaning while interpreting the section. From the heading of the Section 194B of the Act it is amply clear that there is no whisper that Section 194B of the Act was intended to cover within its purview winnings from horse races. Now coming to the heading of Section 194BB of the Act, which reads as "Winning from horse race". Going by the heading of the two sections, it can be seen that Section 194BB of the Act is a specific section dealing with TDS on the winnings from horse races. Though the CBDT has specifically*

excluded "stake money" from the ambit of section 194BB of the Act by way of Circular No. 240 dated 19.05.1978, but it cannot be disputed that Section 194BB of the Act is the specific section which deals with TDS on 'Winning from horse races'.

19. *Now, coming to the argument raised by the Assessing Officer that the Finance Act, 2001 has inserted the words 'card game or other game of any sort' in Section 194B of the Act which will even cover the "stake money" which is otherwise not covered by Section 194BB of the Act. We find that at the time when the amendment was brought in Section 194B of the Act, Section 194BB of the Act, which specifically dealt with TDS on winning from horse races, was already on the statute and the Legislature in its wisdom could have made the amendment in Section 194BB of the Act itself to include 'stake money' within its ambit; that would have obviated any need to make amendment in Section 194B of the Act, which is a general provision for TDS, in order to cover 'stake money' in its ambit. The learned representative has rightly pointed out to the Budget speech of the Finance Minister wherein it was stated that "television game shows are very popular these days and I propose that income tax at 30 % will be deducted at source from the winnings of these and all similar game shows." Another way of bringing to tax the 'stake money' was by way of withdrawal of Circular No. 240 dated 17.05.1978, which clarified that tax was not required to be deducted u/s 194BB of the Act with respect to income by way of 'stake money' as the same is not regarded as winning from horse races. However, said Circular is still in existence and the ld. DR has not disputed this fact. The entire gamut of the legal position leads to an irresistible conclusion that position of TDS on 'stake money' has not changed even after amendment in Section 194B of the Act by Finance Act, 2001 and the position prior to amendment continues to prevail, i.e. the stake money is not liable to TDS either under Section 194BB or under Section 194B of the Act.*

20. *Further, it is a well settled proposition of law that the CBDT Circulars are binding on the Department as it clarifies the understating of the provisions of the Act by the Revenue which cannot be disregarded by the income-tax authorities while construing the provisions of the Act. The ld. DR was not able to point out why the interpretation given in the CBDT Circular relied upon by the assessee should not prevail. We find that the Department has tried to indirectly tax what cannot be taxed by virtue of Circular issued by the CBDT, a situation which is impermissible in law.*

Thus, on this aspect also, we hold that 'stake money' is not liable to TDS u/s 194B of the Act."

6.2We note that *Mumbai Tribunal* considered the issues in accordance with various provisions independently as per the directions of *Hon'ble Karnataka High Court* 13 and held that section 194B/194BB are not applicable to stake money.

6.3Respectfully following the same we also hold that stake money paid by assessee to the horse owners are not liable to TDS under section 194B or section 194 BB of the Act. Consequentially no disallowance could be made under section 40 (a) (ia) of the act in the hands of assessee.

Accordingly ground No. 2-4 raised by assessee stands allowed.

Ground No. 1 is general in nature and therefore do not require any adjudication.

In the result appeal filed by assessee for assessment year 2012-13 stands allowed.

Assessment year 2014-15:

7.Identical issues have been raised challenging the disallowance made by Ld. AO under section 40 (a) (ia) of the act for non-deduction of TDs under section 194 BB or section 194B of the Act.

In the preceding paragraphs hereinabove we have already held that stake money paid by assessee to the horse owners are not liable to TDS under section 194B or section 194BB of the Act. Consequentially no disallowance could be made under section 40 (a) (ia) of the act in the hands of assessee.

7.1The same view is applied *mutatis mutandis* to the present facts for assessment year 2014-15

Accordingly ground No. 2-4 raised by assessee stands allowed.

Ground No. 1 is general in nature and therefore do not require any adjudication.

In the result appeal filed by assessee for assessment year 2014-15 stands allowed.

Order pronounced in the open court on 18th Dec, 2020

Sd/-	Sd/-
(CHANDRA POOJARI)	(BEENA PILLAI)
Accountant Member	Judicial Member

Bangalore,
Dated, the 18th Dec, 2020.
/Vms/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar, ITAT, Bangalore

		Date	**Initial**	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-12-2020		Sr.PS
3.	Draft proposed & placed before the second member	-12-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-12-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-12-2020		Sr.PS/PS
6.	Kept for pronouncement on	-12-2020		Sr.PS
7.	Signed Order comes back to Sr.PS/PS	-12-2020		Sr.PS
8.	Date of uploading the order on Website	-12-2020		Sr.PS
9.	If not uploaded, furnish the reason	--		Sr.PS
10.	File sent to the Bench Clerk	-12-2020		Sr.PS
11.	Date on which file goes to the AR			
12.	Date on which file goes to the Head Clerk.			
13.	Date of dispatch of Order.			
14.	Draft dictation sheets are attached	No		Sr.PS