IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Smt. P. Madhavi Devi, Judicial Member
and Shri B. Ramakotaiah, Accountant Member

ITA Nos.319 to 323/Hyd/2015
(Assessment years: 2009-10 to 2013-14)

Asstt. Commissioner of Income Tax (TDS) Circle 1(1) Hyderabad (Appellant)	Vs.	Hyderabad Race Club Hyderabad PAN: AAACH 2773 C (Respondent)

For Revenue: Smt. Nivedita Biswas, CIT (DR)
For Assessee: Shri K.C. Devdas

Date of Hearing : 02.09.2015
Date of Pronouncement : 04.09.2015

O R D E R

Per Smt.P. Madhavi Devi, J.M.

All the above appeals for the A.Ys 2009-10 to 2013-14 are filed by the Revenue against the orders of the CIT (A) deleting the demands raised by the AO u/s 201(1) and 201(1A) of the I.T. Act.

2. Brief facts of the case for the A.Y 2009-10 and 2010-11 are that the assessee, a company registered under the Companies Act, is carrying on the business of racing and promotes race meetings at its Malakpet Race Course, Hyderabad. The assessee is collecting entry fee and betting money from punters and utilizing the same for payments as winnings on horse race to punters, payment of stake money to horse owners and to meet the administrative cost and other expenses.

3. A survey operation u/s 133A of the Act was conducted in the premises of the assessee on 11.02.2013. During the survey

operation, the survey party observed that the assessee is not making TDS on payments of stake money disbursed amongst the winning horse owners and also on payments made under the head "winnings from Horse Races", 'share of income to other centres'/'royalty to other centres'. Therefore, assessee was asked to explain as to why it is not to be treated as "Assessee in Default" u/s 201(1) for failure to comply with the TDS provisions u/s 194B, 194BB and 194H of the I.T. Act. The assessee submitted its replies vide letters dated 28.2.13, 11.3.13, 10.3.13 and 15.3.13. After considering the written submissions and also the findings of the survey party, AO observed that section 194B has been widened by the insertion of the words "(or card game and other game or any sort)" w.e.f. 1.6.2001. Therefore, according to him, the horse racing being a game is included u/s 194B of the Act. He observed that the assessee in its reply had stated that the assessee has not deducted any tax at source in 'stake money' credited to the respective horse owners, as, in its opinion, section 194BB is applicable being a special provision with respect to horse racing income and therefore, its prevails over all the remaining provisions. He observed that the assessee had relied upon the CBDT Circular No.240 dated 17th May, 1978 reported in 117 ITR (Statutes) 39, wherein, according to the learned Counsel for the assessee, it was reaffirmed that TDS provision does not apply to payments of way of 'stake money'. The AO however, was not satisfied with the submissions of the assessee and held that the provision of section 194B is applicable to the facts of the case and therefore, assessee was liable to deduct tax at source while making the payment of 'stake money' to the owners of the winning horses. He accordingly held the assessee to be " an assessee in default". As regards the non deduction of tax u/s 194BB from the winnings from horse race,

the AO observed that the assessee is deducting tax u/s 194BB as per applicable rate on payments to punters after deducting the amount of Rs.2500 from their payments. Therefore, according to him, the assessee is not deducting tax on the entire gross amount. Assessee was therefore, asked to explain as to why it should not be treated as "assessee in default" for short deduction of TDS u/s 194BB of the Act. Vide its letter dated 13.03.2013, assessee explained that as per the practice, assessee has been deducting tax at applicable rates on the winnings after deduction of base threshold limit of Rs.2500 and is depositing the same to the govt. account. It was submitted that the same issue had arisen in A.Y 2008-09 as well and the CIT (A), after careful consideration of the fact, had decided the issue in favour of the assessee accepting the basic deduction of Rs.2500 and that the order of the CIT (A) has been affirmed by the ITAT in its order dated 23.04.2010. The AO however, held the assessee to be "an assessee in default" on the ground that the issue has been agitated by the Department in the Hon'ble High Court of Hyderabad. He, therefore, treated the assessee as "an assessee in default" u/s 201(1) and also levied interest u/s 201(1A) of the I.T. Act on this issue also.

4. He further observed that the assessee is conducting horse race in various parts of the country such as Bangalore, Mumbai, Kolkata etc. and the assessee pays an amount of 23% of the income from the tote pools and book makers commission to the other race clubs without deduction of tax at source. He held that the assessee is liable to make TDS from these payments u/s 194H of the Act. He, therefore, issued show cause notice to the assessee. In response to the same, the assessee submitted that similar issue had arisen in assessee's own case for A.Y 2008-09

and the CIT (A) had deleted the same and it was further not taken appeal to ITAT and hence has become final. AO however, held that the "res judicata" does not apply to the taxation law and therefore the assessee is in "assessee in default" u/s 201(1) of the Act. He accordingly raised the demand u/s 201(1) and 201(1A) of the I.T. Act. Aggrieved, assessee preferred appeal before the CIT (A) who granted relief to the assessee. Aggrieved, Revenue is in appeal before us for all the A.Ys.

5. The learned DR supported the orders of the AO while the learned Counsel for the assessee relied upon the order of the CIT (A).

6. Having regard to the rival contentions and the material on record, we find that the AO has applied the provisions of section 194B to the payments made to horse owners as "stake money" on the ground that by insertion of words 'or card game and other game of any sort' w.e.f. 1.6.2001, the horse racing income comes under the ambit of 'other game of any sort', we find that this issue had arisen in the case of Bangalore Turf Club Ltd. Vs. Union of India and others and the Hon'ble Karnataka High Court in the writ petition filed by the Bangalore Turf Club has dealt with this issue at length and has held that the amended provision of section 194B do not apply to horse racing. The relevant portion of the judgment of the Hon'ble High Court is reproduced hereunder for ready reference:

> ***58***. *When the words 'and other game of any sort' used in section 194B is examined with reference to the preceding words and interpreted, the one and only conclusion which can be drawn would be that activity of owning and maintaining horses cannot by any stretch of interpretation be held that it would fall within the definition of 'and other game of any sort'.*

***59**. Thus, harmonious reading of the statutory provisions would indicate that from the year 1972 itself, the term 'other' game of any sort' was taxable under the head 'income from other sources' and TDS was not attracted on such income.*

***60.** Sub-sections (1) and (2) of section 74A which was introduced by Finance Act, 1972, with effect from 01.04.1972 was omitted by Finance Act, 1986 with effect from 01.04.1987. However, sub-section (3) to section 74A was inserted by Finance Act, 1974, with effect from 01.04.1975 indicating the distinction between 'winnings' and 'activity of owning and maintaining horses' which has continued till date. Though, Section 194BB provided for TDS to be made on 'winnings from race horses' with effect from 01.04.1978, the Circular 240 dated 17.05.1978 came to be issued clarifying that it did not apply to stake money. Hence, insertion of the words 'card game or other game of any sort' to section 194B with effect from 2001 would have no bearing on payment of stake monies paid by the Turf Clubs to the race horse owners.*

***61**. Explanation (ii) to sub-section (ix) of section 24 came to be inserted by Finance Act, 2001. It is an inclusive definition. The term "or any other similar game" found in Explanation (ii) will have to be ejusdem generis and so also the term "any other similar game" found in section 2(24)(ix) of the Act. On advent of game shows involving prize money being telecast through electronic media and said prize money having not found its place in the definition clause of "Income" under the Income-tax Act, 1961, Legislature introduced Explanations (i) and (ii) to sub-clause (ix) of sub-section (24) of section 2 so as to include such prize money also under definition of "income", since in those events people would compete with each other to win prizes. In fact, this position becomes clear from the budget speech of the Finance Minister which came to be rendered on the Floor of Parliament in the backdrop of amendment brought to section 194B and section 2(24)(ix). Explanations (i) and (ii) which is once again extracted herein below:*

"Winnings from lotteries, cross-word puzzles etc., are currently taxed at 40%. As the marginal personal income-tax rates have now stabilised at 30%, this income will also now be taxed at 30%. Television game shows are very popular these days. I wish the winners well. At the same time, I propose that income-tax at the rate of 30% will be deducted at source from the winnings of these and all similar game shows."

Ejusdem generis, principle of construction would mean same kind or nature, whereby wide words associated in the text with more limited words are taken to be restricted by implication to matters of the same limited character. For this principle to apply there should be sufficient

indication of a category that can properly be described as a class or genus, even though not specified as such in the enactment. The nature of genus is gathered by implication from the express words which suggests it.

***62**. Now, turning my attention to the facts on hand and Explanation (ii) inserted by Finance Act, 2001 is perused and also read along with section 194B it can be easily inferred the legislature has intended to bring such income earned by the prize winning members who compete with each other and win prizes in any game show or entertainment programme on television or electronic media and games similar to it. Hence, "stake money" which is paid to race horse owners on their horses being placed 1, 2 or 3 onwards in a horse race cannot form the genus of the words found inExplanation II to section 2(24)(ix) nor it can be held that such winnings would fall within the words "and other game of any sort" found in section 194B.*

***63**. Hence, this Court is of the considered view that amendment brought about by Finance Act of 2001 to Section 2(24) and 194B would have no bearing on the income earned from 'owning and maintaining horses'. In other words, the term 'any other similar game' found in Explanation (ii) to section 2(24)(ix) has to be held as inclusive definition and has to be read ejusdem generis and as such, activity of owning and maintaining horses cannot by any stretch of imagination fall in the definition of 'card game o other game of any sort' found in section 194B".*

7. We find that the CIT (A) has followed the decision of the Hon'ble Karnataka High Court to delete the demand raised u/s 201(1A) and 201(1)A of the Act on this issue and therefore, we do not see any reason to interfere with the same. Thus, the Revenue's ground of appeal No.2 against this issue for both the A.Ys is rejected.

8. The ground No.3 of Revenue is against the deletion of the demand raised by the AO u/s 201 (1) and 201(1A) of the Act by applying the threshold limit of Rs.2500 on each payment for making TDS u/s 194BB of the Act. The grievance of the Revenue is that the basic limit is on the aggregate payment made in a year

and not on each payment. On this issue, we find that the CIT (A) had followed the order of this Tribunal in assessee's own case for A.Ys 2002-03 to 2008-09 in granting relief to the assessee. Since the CIT (A) had followed the precedent on the issue and the Revenue has not been able to rebut this finding with any evidence or decision to the contrary, we see no reason to interfere with the same. Therefore, ground No.3 of the Revenue is also rejected. We find that in the A.Ys 2011-12 to 2013-14, the only issue is about the applicability of section 194B of the Act to the assessee. For the detailed reasoning given for the A.Y 2009-10 and 2010-11 respectively as above, the sole ground of appeal in all these years is rejected.

9. In the result, Revenue Appeals for all the A.Ys are dismissed.

Order pronounced in the Open Court on 4thSeptember, 2015.

Sd/-	Sd/-
(B. Ramakotaiah)	**(P. Madhavi Devi)**
Accountant Member	**Judicial Member**

Hyderabad, dated 4th September, 2015.

Vnodan/sps

Copy to:

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2. *M/s. Hyderabad Race Club, Malakpet, Hyderabad*
3. *CIT (A)-8, Hyderabad*
4. *CIT (TDS) Hyderabad*
5. *The DR, ITAT, Hyderabad*
6. *Guard File*

By Order