

No TDS credit available if assessee had failed to offer corresponding income to tax in relevant year

Summary – The High Court of Andhra Pradesh in a recent case of Y. Rathiesh, (the Assessee) held that whenever an amount deducted as tax at source becomes incapable of being adjusted or counted towards tax payable, it acquires character of income.

Facts

- The assessee was functioning as a Managing Director of 'A.P.' the 1st company. He gave loan of certain amounts to the said company as well as to another company by name 'A', the 2nd company. The latter was paying interest on the amount advanced by him regularly, whereas the former was just showing the accumulated interest, in its account books without making actual payment. It was also his case that even while showing the interest payable to him in the account books, the 1st company deducted tax at source (TDS) on the amount of interest payable and issued certificates, in relation thereto.
- In the returns filed by him, the assessee was adopting a hybrid procedure. While in respect of his transaction with the 1st company, he adopted cash system, as regards the transaction with the 2nd company, he adopted the mercantile system. The result was that he did not pay the tax on the interest payable to him by the 1st company, even while he enjoyed the entire benefit of TDS made in that behalf. There was no dispute about the interest paid by the 2nd company, since the assessee had shown the same as income and paid tax thereon.
- The Assessing Officer took objection to this and passed an order of assessment treating the interest payable by the 1st company on transfer basis, as income and levied tax. The same result ensued for various financial years.
- The assessee filed appeals before the Commissioner. The appeals were dismissed. Thereupon, the assessee filed further appeals before the Tribunal. The Tribunal dismissed the appeals.
- On appeal:

Held

- The assessee cannot be permitted to blow hot and cold at one and the same time. If no TDS was affected and interest was not paid, he would not have been under an obligation to show the amount of interest in his returns, much less to pay tax thereon. However, once TDS is affected, he cannot be permitted to use the certificate to cover other amounts even while refusing to show the amount of interest in his returns. The steps taken by the authorities in this behalf cannot be treated as applying the parameters for mercantile system to a component of the returns filed under the cash system. The effect of the order passed by the assessing officer as upheld by the Commissioner and the Tribunal is only that the assessee must desist from having the best of both the systems and discarding the one, which is disadvantageous to him. Once he intends to treat the amount deducted

as TDS as a component of tax paid, the corresponding to the TDS must form part of the returns and assessment. On the other hand, if he intends to pay the tax on the interest as and when he receives it, the amount covered by the TDS certificate can be treated as just income outstanding, till the actual date of receipt.

- In the facts of the present case, section 198 gets attracted. Whenever an amount deducted as tax at source becomes incapable of being adjusted or counted towards tax payable, it acquires the character of income. In such an event, it partakes the character of any other income and is liable to be dealt with accordingly, in the order of assessment. Since the assessee has adopted the cash system and he did not receive the interest regarding which the TDS was affected, the TDS amount deserves to be treated as income. However, the attempt made by him to treat that amount as tax for the corresponding amount, cannot be permitted.
- For the foregoing reasons, the appeals are partly allowed holding that the assessee cannot be permitted to give credit to the amount representing TDS as tax and on the other hand, it shall be treated as an item of income for the concerned assessment year.