Excess money refunded on cancellation of booking of flats couldn't be held as interest for purpose of sec. 194A TDS

Summary – The High Court of Kerala in a recent case of Beacon Projects (P.) Ltd., (the Assessee) held that On cancellation of booking of apartment if excess refund is made to old purchaser after taking advance from new purchaser, such excess payment could not be qualified to be interest as defined under section 2(28A); payer builder would have no TDS obligation

Facts

- The appellant company was a builder which had entered into construction agreements with various customers. After entering into the agreement and making certain payments, some purchasers expressed their inability to fulfil the further obligations and requested for its cancellation. On receipt of such communications, the appellant identified prospective purchasers and entered into fresh agreements with them on higher prices. It is stated that after execution of agreements with the new purchasers, out of the payments made by them, the amounts paid by the purchasers to the appellant together with a portion of the additional amount received from the new purchasers was refunded. The additional amount thus paid was shown in the P&L account of the appellant.
- During the course of a survey it was found that appellant company had debited in P&L account amounts under the head 'indirect expenses' of an amount of Rs. 31,37,341 for the assessment year 2012-13 and Rs. 43,21,593 for the assessment year 2013-14 being excess payments refunded.
- The Assessing Officer held that said amount had to be treated as interest paid on deposit and, hence, liable for TDS under section 194A and that having failed to do so, appellant was an assessee-in-default and accordingly, assessment was completed under section 201. The order of assessment was set aside by the first appellate authority. However, the said order was reversed by the Tribunal. It was in this background, these appeals were filed.
- On appeal:

Held

- From the principles laid down by different Courts, it is obvious that section 2(28A) is not attracted to every payment made and that the provision can be attracted only in cases where there is debtor-creditor relationship and that payments are made in discharge of a pre-existing obligation. Out of the receipts from the new buyers, the appellant refunded to the purchasers the amount paid by them and a portion of the excess amount received. The amount thus refunded to the purchasers represents the consideration the purchasers paid towards the undivided shares in the property agreed to be purchased and also the cost of construction of the apartment, which work was entrusted to the appellant, being the builder. Such a relationship does not spell out a debtor-

creditor relationship nor is the payment made by the appellant to the purchaser one in discharge of any pre-existing obligation to be termed as interest as defined in section 2(28A).

- Further, there is no finding in the assessment order or in the order of the Tribunal that the amount paid by the purchasers, which was refunded, was accounted as deposit or advance received from them or that there is any debtor-creditor relationship between the parties, obliging the appellant to pay the amount to the purchasers. There is also no case for the revenue that the excess amount paid by the appellant was based on any agreement between them or that it was quantified at rates that were already agreed between the parties. In such circumstances, the payments made do not qualify to be interest as defined in section 2(28A) of the Act and the appellant did not have the obligation to deduct tax at source as provided under section 194A nor can they be proceeded against under section 201A, treating them as an assessee-in-default.