

No TDS liability as sum paid by developer for delayed allotment of plot of land couldn't be treated as interest

Summary – The High Court of Calcutta in a recent case of West Bengal Housing Infrastructure Development Corpn. Ltd., (the Assessee) held that Payment for delayed allotment of plot of land by Housing Corp. not 'interest' under section 2(28A)

Facts

- The assessee, was engaged in development of land, housing and infrastructural facilities. A sum of Rs. 9.71 crore was found debited in the profit and loss account of the assessee. This sum was claimed as deduction in computing the income of the assessee under the head '*income from business*'. The nature of this expenditure was explained by the assessee before the Assessing Officer as '*compensation for delay, delivery of plots*'. The explanation given was that as per the offer of allotment of plot of land developed by the assessee, the assessee was under an obligation to hand over physical possession of the plot to the allottees on payment of the entire cost of the land. If possession of handing over of the plot was delayed for more than six months from the scheduled date of possession, the assessee had to pay interest on instalments already paid by the allottee during such extended period at the prevailing fixed term deposit rates for similar period offered by the State Bank of India. According to the assessee, the actual nature of payment was in the nature of damages for delayed allotment of a plot and, thus, the assessee had no TDS obligation.
- The Assessing Officer viewed the payment to be in the nature of payment of interest and held that by reason thereof, the assessee should have deducted tax at source under section 194A at the time of payment or credit. The Assessing Officer further held that since the assessee failed to deduct tax at source on the amount, the claim of the assessee for deduction of the said sum cannot be allowed by reason of section 40(a)(ia).
- On appeal the above order of the Assessing Officer was confirmed by the Commissioner (Appeals).
- On further appeal, the Tribunal held that the amount in question cannot be characterised as interest within the meaning of section 194A and, hence, there was no obligation on the part of the assessee to deduct tax at source.
- On revenue's appeal:

Held

- From the definition of interest as occurring in section 2(28A), it appears that the term 'interest' has been made entirely relatable to money borrowed or debt incurred and various gradations of rights and obligations arising from either of the two. The parenthesis in the section is in the nature of a qualification of the borrowing of money/incurrence of debt and what it includes.
- In *CIT v. H.P. Housing Board* [2012] 18 taxmann.com 129/205 Taxman 1/340 ITR 388 (HP) the High Court held that the money was paid on account of damages suffered by the allottee for delay in completion of the flats.

- Reference may be made to the Apex Court in *Central India Spg. & Wvg. & Mfg. Co. Ltd. v. Municipal Committee, Wardha* AIR 1958 SC 341. Besides agreeing with the reasons given by the Himachal Pradesh High Court for holding that payment for delayed allotment of flats cannot be brought under section 2(28A) the said decision is of a co-ordinate Bench.
- The payment made by the assessee to the allottee was in terms of the agreement entered between them where the liability of the assessee would arise only if it failed to make the plots available within the stipulated time. Hence, the payment made under the relevant clause was purely contractual and as rightly held by the Tribunal, in the nature of compensation or damages for the loss caused to the allottee in the interregnum for being unable to utilise or possess the flat: The Flavour of compensation becomes evident from the words used in the particular clause. The expression 'interest' used in the relevant clause of the Housing Scheme may be seen merely as a quantification of the liability of the assessee in terms of the percentage of interest payable by the State Bank of India. Since there is neither any borrowing of money nor incurring of debt on the part of the assessee, in the present factual scenario, interest as defined under section 2(28A) can have no application to such payments. Consequently, there was no obligation on the part of the assessee to deduct tax at source and consequently no disallowance could have been made under section 40(a)(ia)
- In view of the above, the decision of the Tribunal is to be confirmed