

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 6706/Del/2015
Assessment Year: 2012-13

ITO (TDS),
5TH FLOOR, UDYOG VIHAR,
PHASE-V, GURGAON

(APPELLANT)

VS. THE GURGAON CENTRAL COOP. BANK,
VILL. WAZIRABAD, GURGAON

(PAN:AAALT0271A)

(RESPONDENT)

ITA No. 6708/Del/2015
Assessment Year: 2012-13

ITO (TDS),
5TH FLOOR, UDYOG VIHAR,
PHASE-V, GURGAON

(APPELLANT)

VS. THE GURGAON CENTRAL COOP. BANK,
VILL. BADASHPUR, GURGAON
PAN:AAALT0271A)

(RESPONDENT)

Department by : Sh. Kaushlendra Tiwari, Sr. DR
Assessee by : Sh. Prashant Sharma, CA

ORDER

PER H.S. SIDHU, JM

The Department has filed these 02 Appeals which are emanate from the common order dated 14.10.2015 of the Ld. CIT(A)-2, Gurgaon both pertaining to A.Y. 2012-13. Since the issues involved in these appeals are common and identical, hence, the appeals were heard together and are being disposed of by this common order for the sake of convenience.

2. We deal with ITA No. 6706/DEL/2015 (AY 2012-13) wherein the following identical and common grounds have been raised.

"The Ld. CIT(A) erred in law and facts by considering the appellant has cooperative society and not liable to deduct TDS in accordance to Section 194(3)(v) of the I.T. Act, 1961.

1. *The Ld. CIT(A) erred in law and facts by ignoring the fact that though appellant is Co-op Society but engaged in the business of banking and therefore not exempt u/s. 194(3)(v) and thus the Ld. CIT(A), Gurgaon has erred in deleting the demand raised on account of short deduction of TDS of Rs. 88,83,288/- and interest thereon of Rs. 27,09,403/-.*

2. *The Ld. CIT(A), Gurgaon has erred in deleting the demand raised on account of short deduction of TDS of Rs. 16,686/- and interest thereon of Rs. 5,006/- with respect to cases where Form No. 15G/15H were not submitted to the CIT(TDS), Chandigarh on or before 7th day of week, next following the month in which declaration is furnished him (Sec. 197A and note 28C).*

3. *The appellant craves leave to add, alter, amend and / or, modify any of the grounds of appeal at or before the hearing of the appeal.*

2.1 In another Appeal, identical issues are involved and similar grounds have been raised, the only difference is in the figures involved, hence, the grounds are not reproduced here for the sake of brevity.

3. The brief facts of the case are that assessee bank has filed its TDS returns under TAN: RTKT01337A. The TDS inspection was conducted at the Head office of the Gurgaon Central Coop. Bank, Gurgaon on 07.11.2013. During the course of inspection, it was found that various branches of this bank have not deducted TDS u/s 194A on the amount of interest paid on term deposits which was required to be made. During inspection it was also noticed that the deductors had allowed substantial amount of interest to Primary Agricultural societies (PACS) and other societies/institution during the F.Y. 2011-12 and subsequent years but did not make TDS on such Payments. Therefore, a show cause notice u/s 201(1)/201(1A) of the Act was issued on 29.11.2013 and it was asked to file ledgers/details of all expenses debited for F.Y. 2011-12 alongwith details/evidences of TDS made/deposited on such expenses. In response to this notice Deductor did not file any reply/submission. Again Fresh Notice vide letter F.No. ITO/(TDS)/GGN/2013-14/774 dated 21.1.2014 was issued and asked to file the required information and fixed the case for 27.01.2014. In response to this notice, the A.R. of the assessee appeared and filed power of attorney and certain information. After examination of the same, vide AO's letter F.No. ITO/(TDS)/GGN/2013-14/814 dated 31.01.2014, a further notice was issued to furnish the details of various expenses debited / paid during the year Total amount

debited/paid during the year. In response to the said notice, assessee bank filed information vide its letter dated 5.2.2014 and after perusing the same, it was found by the AO that assessee bank has paid total interest of Rs. 5,83,00,389/- during the FY 2011-12 and it was further noticed that interest of Rs. 4,44,16,410/- was shown paid to PACS whereupon no TDS was made, as a result, the assessee bank failed to deduct the tax at source u/s. 194A on payment of interest on deposits from PACS and other societies and also failed to deposit in the Central Government Account so far. The Bank was required to show cause as to why not the assessee bank be treated as person in default u/s. 201(1)/201(1A) of the I.T. Act, 1961 and in response thereof, the assessee submitted its reply dated 24.2.2014 stating therein that *"Tax has not been deducted on interest to Primary Agricultural Credit Societies (PACS) and keeping in view the clause (v) of sub-section 3 of Section 194A of Income Tax Act, which states that:*

The provisions of sub-section (1) shall not apply to such income credited or paid by a cooperative society to a member thereof or to any other cooperative society.

3.1 It was further submitted by the assessee that the assessee bank is a branch of cooperative society registered under the Punjab Cooperative Societies Act, 1912 with Registrar of Cooperative Societies, Punjab on 27.2.2015. The PACS from which, we have accepted deposits is our member as well as a cooperative society and relied upon the Circular No.

9/2002 dated 11.9.2002 issued by the Income Tax Department. After considering the above submissions, the AO was not satisfied with the rely. Accordingly, AO held that as the assessee is a cooperative society engaged in the business of banking, it is covered under these specific clauses as has been held by the ITAT, Pune Bench in the case of Bhagani Nivedita Sahakari Basnk Ltd. vs. ACIT 87 ITD 579 wherein the ITAT held that the term "Cooperative Society" mentioned in section 194A(3)(v) is to be interpreted as cooperative society other than cooperative bank. AO further held that since the person responsible has failed to furnish the documentary evidence in respect of the same to the concerned CIT, it is concluded that the Person Responsible has failed to comply with the provisions of the I.T. Act, 1961, hence, credit for the amount of interest claimed to be covered by Form 15G/15H is not being allowed. Accordingly, the Deductor was held to be in default u/s. 201(1)/201(1A) in respect of amount of Rs. 1,66,874/- and accordingly, total demand payable was computed us 201(1) Rs. 88,99,974/- and u/s. 201(1A) Rs. 27,14,409/-, thus totaling to Rs. 1,16,14,383/- vide order dated 03.3.2014 passed u/s. 201(1) & 201(1A) of the Income tax Act, 1961.

4. Against the assessment order dated 03.3.2014, the assessee appealed before the Ld. CIT(A-2), Gurgaon, who vide his common impugned order dated 14.10.2015 has allowed the appeal of the assessee. Aggrieved with the impugned order, the Revenue is in appeal before the Tribunal.

5. Ld. DR relied upon the order of the AO and reiterated the contentions raised in the grounds of appeal.

6. On the other hand, Ld. A.R. of the assessee relied upon the order of the Ld. CIT(A) and stated that he has passed a well reasoned order which does not need any interference on our part.

7. We have heard both the parties and perused the records. Apropos ground no. 1 relating to issue whether the provisions of section 194A(3)(v) apply to cooperative society involved in the business of banking is concerned, we find that this issue is squarely covered by the decision of the ITAT, Delhi passed in ITA No. 5324/Del/2013 for AY 2012-13 in the case of Almora Urban Cooperative Bank Ltd. vs. ITO(TDS), Kashipur, wherein it was held that the provisions of section give blanket exemption to the interest paid by any cooperative society to its members and that neither section 2(19) nor section 194A(3)(v) claims any discrimination between the cooperative societies carrying on banking business and other cooperative societies. Therefore, the Ld. CIT(A) has rightly followed the aforesaid decision and deleted the demand in dispute, which does not need any interference on our part, hence, we uphold the same and reject the ground no. 1 raised by the Revenue.

7.1 Apropos ground no. 2 relating to deletion of demand raised on account of short deduction of TDS of Rs. 16,686/- and interest thereon of Rs. 5,006/- with respect to cases where Form No. 15G/15H were not submitted to the CIT(TDS), Chandigarh on or before 7th day of the week, next following the month in which declaration is furnished to him is

concerned, we note that as per the Assessment order the demand has been raised as the assessee had failed to furnish the documentary evidence in respect of submission of Form 15G/15H to the concerned CIT, Income Tax Department. It is not disputed that the assessee obtained Form 15G/15H in respect of the person to whom the interest pertaining to the demand raised in the ground was paid. It is also a fact that the assessee had claimed that the forms were sent to the Income Tax Department albeit not to the concerned CIT of the Income Tax Department. The AO has not controverted this claim of the assessee but has rejected the same on the ground that the forms were not sent to the concerned CIT. We further note that assessee had contended that being a cooperative bank working basically in rural areas, it had no idea about CIT having jurisdiction over TDS matters. In view of the above, it is evident that the assessee had received Form 15G/15H from all the persons to whom the interest was paid and the assessee had also sent these Forms to the Income Tax Department. Not sending these Forms Specifically to CIT, TDS is a mere technical breach. Therefore, the Ld. CIT(A) has rightly held that assessee was not required to deduct TDS on interest so paid, hence, the demand raised by the AO was accordingly deleted, which does not need any interference on our part, therefore, we uphold the order of the Ld. CIT(A) on the issue in dispute and reject the ground no. 2 raised by the Revenue.

8. In the result, both the Appeals filed by the Revenue stand dismissed.

Order pronounced on 27/09/2017.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

Date: 27/09/2017

"SRBHATNAGAR"

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY
By Order,

Assistant Registrar,
ITAT, Delhi Benches