IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI A.K. GARODIA, ACCOUNTANT MEMBER

ITA No.2/Bang/2017
Assessment year : 2014-15

M/s. Pragathi Krishna Gramin Bank, Head Office, No.32, Sanganakal Road, Gandhi Nagar, Bellary – 583 103. **TAN: BLRP06283E**	Vs.	The Assistant Commissioner of Income Tax, TDS Circle, Hubli.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Sheetal Borkar, Advocate
Respondent by	:	Ms. Neera Malhotra, CIT-II(DR), ITAT, Bengaluru

Date of hearing	:	20.09.2017
Date of Pronouncement	:	27.09.2017

O R D E R

Per Sunil Kumar Yadav, Judicial Member

This appeal is preferred by the assessee against the order of the CIT(Appeals) *inter alia* on the following grounds:-

> "1. The order u/s.201/201(1A) of the learned Commissioner of Income-tax (A) in respect of the assessment year 2014-15 determining the TDS liability at Rs.2.35,99,380/- is against law, weight of evidence and probabilities of the case.
>
> 2. The learned CIT(A) ought to have given sufficient opportunity for furnishing the particulars of interest payments made by the bank and that an opportunity should be given for the bank to furnish the acknowledgements in respect of the remaining

branches for having furnished before the jurisdictional CIT copies of Form No.15G/ 15H.

3. The learned CIT(A) has erred by concluding that just because the copies of Form No. 15G/ 15H were not furnished within the prescribed time before the Jurisdictional CIT, the entire interest supported by Form No.15G/15H is liable for TDS. It is the appellant's contention that once the branch managers obtain Form-15G/H from the depositors, the liability to deduct TDS ceases. This view is supported by the decision of Mumbai Bench of the Tribunal in the case of Karwart Steel Traders.

4. The learned Commissioner (A) ought to have appreciated that there was no obligation on the part of the appellant to deduct tax at source by applying the provisions of Sec.194A of the Act and consequently the provisions of Sec.40 (a)(ia) of the Act were not applicable to justify the disallowance as made by him.

5. The learned Commissioner (A) erred in upholding the disallowance even though when the expenditure claimed was supported by 15G and 15H given by the recipients, only on the ground of that the submission of the copies of the forms with the jurisdictional Commissioner was belated.

6. The learned Commissioner (A) ought to have appreciated though there was delay, the formalities have been complied with and the genuineness of the claim was not doubtful, the learned Commissioner (A) ought to have allowed the deduction in full.

7. The learned Commissioner (A) also ought to have appreciated that several payments of interest were outside the purview of Sec.194A of the Act and consequently the provisions of Sec.40(a)(ia) will not be applicable to justify the disallowance of deduction as claimed by the appellant.

8. Without prejudice, the disallowances are excessive, arbitrary and unreasonable and ought to be reduced substantially.

9. For these and other grounds that may be urged at the time of hearing of the appeal the appellant prays that the appeal may be allowed.

2. During the course of hearing, the ld. counsel for the assessee has invited our attention that identical issues were examined by the Tribunal in the assessee's own case for the AYs 2011-12 & 2012-13 in which the Tribunal has restored the matter to the file of the AO to adjudicate the issue afresh after affording the assessee opportunity of being heard and assessee to file details/submissions. Copy of the order is placed on record.

3. The ld. DR did not dispute these facts.

4. Having carefully examined the orders of lower authorities and the order of the Tribunal in assessee's own case for the AYs 2011-12 & 2012-13, copy of which is placed on record, we find that the impugned issue is squarely covered by the order of the Tribunal in assessee's own case. The relevant observations of the Tribunal is extracted hereunder for the sake of reference:-

> "3.2 We have heard rival contentions of the Ld AR for the assessee in support of the grounds raised and the Id DR in support of the impugned orders of the ld CIT(A) for both asst. years 2011-12 2012-13.
>
> 13. The grounds raised (Supra) are in respect of the treatment of the assessee by the authorities below as an assessee in default u/s 201(1) of the Act for failure on its part to deduct tax at source on interest payments as required u/s 194A of the Act. While disposing the assessee's appeal for Asst. years 2011-12, the ld CIT(A) considered the issue and held as under at paras 5 to 6 thereof.
>
> 5.0. It is Clear from the above that the AO completed the TDS assessment and passed order 4/s 201/201(1a) of the Act without

giving sufficient time and opportunity. In the case of appellant bank having 325 branches it could not collect the information with regard to TDS deducted, paid and other relevant information in time and submitted before the AO during the TDS proceedings. The AO has not considered the Form no. 15G/H since they have not filed before jurisdictional CIT in prescribed time.

5.1. The CIT(A), Hubli in assessee's own case on the same issues for A.Y.2010-11 (after considering the submissions of assessee and the assessment order held as "Hence, the AO is directed to verify the branch wise and deductee wise details of the interest payments and filling of the Form 15G/H, before respective CITs, in time and after giving a reasonable opportunity to the assessee, the claim of the assessee has to be considered accordingly."

6.0 It can be observed from the order of CIT(A), Hubli in assessee's own case for A.Y.2010-11 on the same issue, the assessee had not submitted the required information in time during the TDS verification by the jurisdictional AO. In the A.Y.2011-12 also the assessee has not submitted the information in time for TDS verification. Since the time is getting barred to complete the TDS verification process and to pass the order u/s 201(1)/201(1A) of the Act, the AO cannot wait for information and passed the order u/s 201(1)/201(1A) of the Act. It can be seen that this has become the assessee's regular practice for not producing information in time stating the practical problems of the assessee bank for collecting the information from all its branches. It is assessee's duty to comply with the TDS provisions and to keep the information ready which is mandatorily to be maintained as per the TDS provisions. Whenever jurisdictional AO calls for information for TDS verification it is the assessee's duty to co-operate and provide the information viz complete particulars of interest payments branch wise and deductee wise and filing of the Form 15G/15H which has to be filed before jurisdictional CITs within prescribed time. In this case the assessee failed to provide the information in time to complete the TPS verification process and to pass the order u/s 201(1)/201(1A) of the Act. Hence the disallowance made by the AO is in order and is upheld. The grounds of appeal of the assessee are dismissed.

3.2.2 From a perusal of the observations and findings rendered by the ld CIT(A) at para 5 and 6 of the impugned order for asst. year 2011-12 (Supra), it is amply clear that the AO completed the TDS assessment, and passed the orders u/s 201(1)/201(1A) of the Act for this year, admittedly without affording the assessee sufficient time and opportunity to collect the information from its 325 branches in respect of TDS deducted on interest payments and other relevant information for his consideration. It is further observed by the ld CIT(A) that in similar circumstances, the ld CIT(A) while disposing off the assessee's appeal for asst. year 2010-11 on identical issues had, after considering the assessee's submissions, directed the AO to verify the branch wise and deductee wise details of the interest payments and filing of Form 15G/15H before the respective C'sIT in time and to consider the assessee's claims after affording reasonable opportunity to the assessee. After admittedly observing as above, the ld CIT(A) has strangely proceeded to uphold orders of the AO stating that the assessee is in the regular practice of not providing information required for TDS verification before the AO and since the matter was getting barred by limitation, the AO's action in passing the orders u/s 201(1)/201(1A) of the Act was upheld. In our considered view on an appraisal of the material on record, we find that the factual situation on the identical issue prevailing in the asst. year 2010-11, is similar to that prevailing in the asst. years 2011-12 and 2012-13, i.e the years under consideration before us; where the AO was directed by CIT(A) to verify and examine the issue afresh and consider the assessee's claim after affording the assessee adequate opportunity of being heard. In the case of hand it is not clear from the record as to how many cases of payment of interest the assessee was having Form No.15G/15H and whether these Forms were at all submitted with the jurisdictional CIT. In this factual matrix of the case, as discussed above, we are of the opinion that the impugned orders of the ld CIT(A) for both asst. years 2011-12 and 2012-13 rejecting the assesse's claims which are presently before us for consideration, cannot be sustained in view of the observations by the ld CIT(A) of the lacuna and shortcomings of the AO in carrying out proper verification in the TDS made on interest payments. In this view of the matter, we, therefore, in the interest of equity and justice, set aside the impugned orders of the ld CIT(A) for asst. years 2011-12 and 2012-13 and restore the matter to the file of the AO for denovo

> adjudication of this matter, with the directions to verify the assessee's TDS liability branch wise and deductee wise details of interest payments on the point of availability of Form No.15G/15H only in respect of cases when such Forms were before the respective CIT even though belatedly. The assessee will get the benefit of availability of Form No.15G/15H only in respect of cases where such Forms are available with the assessee and submitted with the jurisdictional CIT concerned. Needless to add that the AO will adjudicate the matter denovo only after affording the assessee adequate opportunity of being heard in the matter and to file details/submissions required in this regard. Consequently, the assessee's grounds are treated as allowed for statistical purposes."

5. Since the Tribunal has taken a particular view in a similar set of facts, we find no reason to take a contrary view in this appeal. Accordingly, following the order of the Tribunal, we set aside the order of CIT(Appeals) and restore the matter to the file of the Assessing Officer with a direction to readjudicate the matter *de novo* after affording the assessee adequate opportunity of being heard. The assessee is also directed to extend all sorts of cooperation to the department. Accordingly, the appeal of the assessee stands allowed for statistical purposes.

Pronounced in the open court on this 27th day of September, 2017.

Sd/-	Sd/-
(A.K. GARODIA)	(SUNIL KUMAR YADAV)
Accountant Member	Judicial Member

Bangalore,
Dated, the 27th September, 2017.
/ Desai Smurthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Senior Private Secretary
ITAT, Bangalore.