

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

BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER AND  
SHRI GEORGE GEORGE K, JUDICIAL MEMBER

ITA Nos. 1246 to 1249/Bang/2017
Assessment years: 2010 – 11 to 2013 – 14

ITO TDS Ward 1, Hubballi	Vs.	The Saraswat Co-Operative Bank Ltd., B ranch Deviate Complex, Club Road, Hubballi - 580029.  <b>PAN: AABAT4497Q</b>
APPELLANT		RESPONDENT

Appellant by	:	Ms. Shreya Rao, Advocate
Respondent by	:	Smt. Padmameenakshi, JCIT DR

Date of hearing	:	01.11.2017
Date of Pronouncement	:	03.11.2017

**ORDER**

*Per Shri A.K. Garodia, Accountant Member*

These four appeals are revenue's appeals directed against the combined order of Id. CIT (A) – Hubli dated 31.07.2015 for Assessment Years 2010 – 11 to 2013 – 14. All these appeals were heard together and are being disposed of by this common order for the sake of convenience.

2. The revenue has raised as many as 4 common grounds in each year but there is only one common grievance that the learned CIT (A) has erred in holding that the provisions of section 194A (3) (v) is applicable in the present case and not section 194A (3) (vii).
3. Learned DR of the revenue supported the orders passed by the A.O. u/s 194A. Learned AR of the assessee supported the order of CIT (A) and placed reliance on a

judgment of Hon'ble Bombay High Court (GOA BENCH) in assessee's own case in Tax Appeals No. 3 to 9 & 11 of 2015 dated 07.03.2017. She submitted a copy of this judgment. She also placed reliance on two separate judgments of Dharwad Bench of Hon'ble Karnataka High Court rendered in the case of The Bailhongal Urban Co Operative bank Ltd. vs. CIT in ITA No. 100001 of 2014 dated 16.12.2015 and in the case of CIT vs. The Jamkhandi Urban Co Operative Bank in ITA No. 100003 of 2015 also dated 16.12.2015. She pointed out that as per these judgments, the amendment in section 194A (3) (v) is effective from 01.06.2015 and as per this amendment, the exemption provided to Co Operative bank has been withdrawn and therefore prior to this date, a co operative bank is also exempt from deducting TDS from interest paid to members. In the rejoinder, learned DR of the revenue placed reliance on a judgment of Hon'ble Apex Court rendered in the case of Citizen Co Operative Society Ltd. vs. ACIT as reported in 397 ITR 1. She pointed out that although this judgment is in the context of allowability of deduction u/s 80P of I T Act but as per Para 25 of this judgment, the members of a co operative society are classified in two categories i.e. Resident or ordinary members and (ii) Nominal Members. The second category of members are those members who are making deposits with the assessee for the purpose of obtaining loans. She submitted that the matter may be restored to AO or CIT (A) for the purpose of finding out as to whether the interest paid by the assessee is to ordinary members or nominal members and as a consequence, exemption from TDS provisions is available or not.

4. We have considered the rival submissions. Regarding this aspect that the in respect of interest payment by the assessee to its members, TDS is not required to be deducted by the assessee u/s 194A prior to 01.06.2015, we hold that this aspect is covered in favour of the assessee by various judgments cited before us by the learned AR of the assessee and hence, on this legal aspect, we decline to interfere in the order of CIT (A) in any of the four years which are before us. But there is a factual aspect also that whether the persons to whom interest was paid by the Assessee without TDS were members or not? This is very important because the exemption from TDS requirement is only in respect of payment of interest to members by a co operative bank up to 31.05.2015. There is no finding of CIT (A) on this factual aspect. Hence, we feel it proper to restore the matter back to CIT (A) for

the limited purpose to examine this factual aspect in the light of this judgment of Hon'ble Apex Court rendered in the case of Citizen Co Operative Society Ltd. vs. ACIT (Supra). We want to make it clear that this aspect is also open as to whether this judgment is applicable in the present case or not because the dispute in that case was with regard to deduction u/s 80P and in the present case, the dispute is regarding TDS u/s 194A. Apparently, the definition of a member of a co operative society for the purpose of deduction u/s 80P and for the purpose of TDS u/s 194A cannot be different but because this aspect was not examined by any of the authorities below and before us also, the parties were not prepared to argue on this aspect, we feel it proper to restore the matter back to decide this issue afresh keeping this aspect open.

5. In the result, all the four appeals filed by the revenue are partly allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-  
(GEORGE GEORGE K)  
Judicial Member

Sd/-  
(A.K. GARODIA)  
Accountant Member

Bangalore,  
Dated, the 03<sup>rd</sup> November, 2017.  
/MS/

Copy to:

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

By order

Senior Private Secretary,  
Income Tax Appellate Tribunal,  
Bangalore.