

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH: AGRA
BEFORE SHRI A. D. JAIN, JUDICIAL MEMBER, AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

**I.T.A Nos. 55 & 56/Agra/2017
(ASSESSMENT YEARS: 2012-13 & 2013-14)**

ITO (TDS)-II Agra. (Revenue)	Vs.	Oriental Bank of Commerce, 251, Jaipur House, Lohamandi, Agra. PANNo.AAACO0191M (Assessee)
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**C.O. Nos. 05 & 06/Agra/2017
(in I.T.A Nos. 55 & 56/Agra/2017)
(ASSESSMENT YEARS: 2012-13 & 2013-14)**

Oriental Bank of Commerce, 251, Jaipur House, Lohamandi, Agra. PANNo.AAACO0191M (Assessee)	Vs.	ITO (TDS)-II Agra. (Revenue)
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Revenue by	Shri Waseem Arshad, Sr. DR.
Assessee by	Shri Anurag Sinha, AR.

Date of Hearing	13.09.2017
Date of Pronouncement	23.11.2017

ORDER

PER, BENCH:

These are Department's appeals and assessee's Cross objections for Assessment Years 2012-13 and 2013-14, respectively. The following are the common grounds that have been taken by the Department.

1. *The Ld. CIT (A)-I, Agra has erred in law and on facts in holding that there existed a reasonable cause with the assessee for not deducting tax in respect of payment to Agra Development Authority as belief of the assessee was contrary to the provision of the Income Tax Act, 1961 as tax is deductible even in cases which are granted registration u/s 12AA.*

2. *The Ld. CIT (A)-I, Agra has erred in law and on facts in holding that the ratio given in the case of DCIT Vs SMS India Ltd. Reported as (2006) 7 SOT 424 favours the assessee's first objection as the facts of the case are distinguishable as in the above reported case, the order u/s 271C was passed by the assessing officer and whereas in the present case, the order u/s 271C was passed by the Addl. CIT (TDS), Kanpur.*

3. *The Ld. CIT (A)-I, Agra has erred in deleting the penalty u/s 271C ignoring the fact that the default was an admitted default and the*

assessee had itself withdrawn its appeal against the order u/s 201(1)/201(1A), in view of which, penalty u/s 271C was clearly leviable.

2. The following are the common cross objections raised by the assessee:

- “1. Because, the Learned CIT(A) ought to have held the penalty order dated 30.03.2015 passed under section 271C of the Income Tax Act by the Ld. Income Tax Officer (TDS)-2, Agra to be as void-ab-initio being barred by limitation.*
- 2. Because, in any view of the matter penalty order passed under section 271C of the Income Tax Act by the Ld. Income Tax Officer (TDS)-2, Agra is bad in law and on facts.”*

3. As per the Cross objections, both the orders of the Id. CIT(A) are bad in law, since the penalty orders ought to have been held void ab initio, being barred by limitation, which has not been done.

4. The objection of the assessee's is correct. The issue of limitation was specifically raised by the assessee for both the years before the Id. CIT(A). However, the Id. CIT(A) has not decided this issue. The issue of limitation is the basic issue, which needs to be decided first. Accordingly, both these appeals as well as cross-objections are remitted to the file of the Id. CIT(A), to be decided in fresh in accordance with law after deciding the issue of limitation first. The merits

of the cases shall be decided in accordance with the decision to be taken on the issue of limitation. The assessee shall be afforded due and adequate opportunity of hearing. The assessee, no doubt, shall co-operate with the Id. CIT(A) in the fresh proceedings. All pleas available under the law shall remain so available to the assessee. Ordered, accordingly.

5. In the result, for statistical purposes, both the appeals as well as both the Cross-objections are treated as allowed.

Order pronounced in the open court on 23/11/2017.

Sd/-
(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER

Sd/-
(A.D. JAIN)
JUDICIAL MEMBER

Dated: 23/11/2017

AKV

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT AGRA