

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BENGALURU**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
and
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA Nos.1845 & 1846/Bang/2016
(Assessment years: 2012-13 & 2013-14)

Vijaya Bank,
JVSL Branch,
Bellary. ... Appellant
PAN:BLRVO4818C

Vs.

Asst. Commissioner of Income-tax,
TDS Circle,
Bellary. ... Respondent

Appellant by : Shri S.Ananthan, CA.
Respondent by : Dr. P.V.Pradeep Kumar, ACIT(DR).

Date of hearing : 09/01/2018
Date of pronouncement : 23/03/2018

O R D E R

Per INTURI RAMA RAO, AM :

This is an appeal filed by the assessee directed against the order of the learned Commissioner of Income-tax (Appeals), Gulbarga, [CIT(A)] dated 17/08/2016 for the assessment year 2012-13.

2. At the outset, there is a delay in filing of appeal by 5 days. The appellant filed a petition for condonation of delay. The learned Departmental Representative has no objection for condoning the delay in filing of appeal. After considering the petition, we condone the delay.

3. Brief facts of the case are that the assessee is a public sector bank. The Asst. Commissioner of Income-tax, TDS Circle, Hubli [hereinafter referred to as 'TDS officer'], conducted survey proceedings u/s 133A of

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the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short], during the course of such survey proceedings, the TDS officer noticed that out of total interest of Rs.1,63,74,534/-, TDS was not deducted on sum of interest of Rs.82,34,605/-. It is stated that assessee-bank had obtained Form No.15G/15H from the depositors. However, the assessee-bank could not furnish evidence in support of having submitted copy of Form No.15G/15H to the Chief Commissioner of Income-tax/Commissioner of Income-tax. In the circumstances, the TDS officer held the assessee as 'the assessee in default' for not deducting TDS on interest payment of Rs.82,34,605/- and accordingly, demanded tax u/s 201 and 201(1A) of the Act vide order dated 29/3/2014 for the assessment year 2012-13.

4. Being aggrieved, an appeal was preferred before the Id.CIT(A) who, vide impugned order, dismissed the appeal. The relevant observation is as under:

ö4.3. I have gone through the facts of the case and submissions of the assessee. The AO has raised the demand u/s.201(1) & 201(1A) on the interest payments made without deduction of tax at source as required under the provisions of Sec.194A.

4.4. As per facts of the case in hand, the reliance of the assessee on the Delhi ITAT decision in the case of M/s Vijaya Bank is misplaced. The said decision speaks of a case where the deductor has obtained the Form 15G/15H from the depositors but only failed to file the same with the appropriate authorities within the prescribed time. In the present case, the assessee could not produce any evidence to show that the non deduction of tax at source on the Interest payments is supported by Form 15G/15H filed by the depositors. The assessee failed to produce before the AO the Form 15G/15H filed by depositors for non deduction of tax even during the course of survey and subsequent proceedings. The AO has clearly mentioned in the order that the bank failed to furnish the proof of Form 15G/15H submitted by the depositors. Though non filing of the Form 15G/15H before the appropriate authorities is mentioned in the order passed, there is a basic failure on the part of the appellant bank in not producing the Form 15G/15H before the AO. In the absence of any evidence to prove that the appellant bank had rightly deducted tax at source on the interest payments, the appellant bank is clearly at default in not deducting tax at source on the interest payments. The order passed by the AO is proper and hence upheld.ö

5. Being aggrieved, the assessee is in appeal before us raising the following grounds of appeal:

1. The order of the learned Commissioner of Income Tax (Appeals) is bad in law and against the facts of the case.
2. The learned Commissioner of Income Tax (Appeals) erred in upholding the order of the Assessing Officer passed u/s 201(1) & 201(A) of the Income Tax Act for non/less deduction of tax at source.
3. The learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that there was no short deduction of tax.
4. The learned Commissioner of Income Tax (Appeals) erred in not appreciating that the Branch had obtained Form 15H/15G in all the cases.
5. The learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that non submission of Form 15G/15H is only a technical breach and as such the appellant cannot be construed as an assessee in default.
6. Without prejudice to the above, the appellant cannot be held as an assessee in default without proving that the recipient of the income has not paid the tax.

For all these and other grounds which may be urged at the time of the hearing of this appeal, the appellant prays that its appeal be allowed.

6. During the course of hearing learned AR of the assessee submitted that non-submission of copies of Form 15G/15H to the respective Commissioners of Income-tax, does not *ipse facto* cannot lead to hold the assessee as 'the assessee in default'. It is only a technical breach of provisions of law. In this connection, he relied on the following decisions:

- i. *DCIT vs. Vijaya Bank* - 2014(11) TMI 717 (ITAT, Vishakapatnam);
- ii. *Narasu's Spinning Mills vs. Asst.CIT* - 2015 (12) TMI 1553 (ITAT, Chennai);
- iii. *Malineni Babulu (HUF) vs. ITO* - 2015 (8) TMI 705 (ITAT, Hyd.);
- iv. *Vijaya Bank vs. ITO* - 2014(3) TMI 539 (ITAT, Del.); and
- v. *DCIT(TDS) vs. M/s.Jai Prakash Associates Ltd.* - 2015 (5) TMI 356 (ITAT, Lucknow)

Learned AR further drawn our attention to the affidavit filed by the Branch Manager of the appellant bank that where interest was paid in

excess of Rs.10,000/- on term deposits, tax was not deducted at source, Form 15H/15G was obtained from the depositors. In the light of this affidavit, the Id.CIT(A) was not justified in returning a finding that the appellant bank had not obtained Form 15G/15H.

On the other hand, learned Departmental Representative relied on the orders of the lower authorities.

7. We heard rival submissions and perused the material on record. The only issue in the present appeal is in case where 15G/15H Form was obtained from depositors to whom interest was paid, but copy of same was not forwarded to the Commissioner of Income-tax (CIT) as provided u/s 197A of the IT Act, whether the assessee was under legal obligation to deduct taxes on such payment. The provisions of Income-tax Act, prescribe penal provisions for non-forwarding of 15G/15H Form to the CIT. In such circumstances, it has been held by the co-ordinate bench of Tribunal in catena of decisions cited supra, that such default by itself does not lead to hold that the assessee is an assessee in default for not deducting TDS at source. However, in the present case, the TDS officer as well as the Id.CIT(A) disputed the claim that the assessee-bank had obtained 15G/15H Form. However, the branch manager of the appellant-bank had filed an affidavit stating that the appellant had obtained 15G/15H Form from the depositors to whom interest was paid and no tax deduction at source was made. The contents of affidavit has not been disputed by the Id.DR. However, in the interest of justice, we remit this issue back to the file of the TDS Officer for the limited purpose of verifying whether the appellant-bank obtained 15G/15H Form from the depositors, if so found, not to treat the assessee as assessee in default, after affording due opportunity to the appellant bank. In the circumstances, the appeal filed by the assessee-bank for the assessment year 2012-13 is partly allowed.

8. Since identical facts are involved in ITA No.1846/Bang/2016 (assessment year 2013-14), for the reasons given in ITA

No.1845/Bang/2016 for assessment year 2012-13, the issue is also remitted back to the file of the TDS Officer with similar direction.

9. In the result, the appeal filed by the assessee for assessment year 2013-14 is also partly allowed.

Order pronounced in the open court on 23rd March, 2018.

Sd/-
(SUNIL KUMAR YADAV)
JUDICIAL MEMBER

Place : Bengaluru.

D a t e d : 23/03/2018

srinivasulu, sps

Copy to :

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

sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

By order

Senior Private Secretary
Income-tax Appellate Tribunal
Bangalore