

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM AND SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 221/JP/2018
निर्धारण वर्ष/Assessment Year : 2009-10.

The Railway Employees' Co-op. Bank Ltd., L-86, Railway Bangla, Hazari Bagh, Beawar Road, Ajmer.	बनाम Vs.	The Income Tax Officer, TDS Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN No. /TAN NO. JDHT 02234 B		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Vinod Gangwal (CA)
राजस्व की ओर से/ Revenue by : Smt. Poonam Rai (DCIT)

सुनवाई की तारीख/ Date of Hearing : 19.06.2018.
घोषणा की तारीख/ Date of Pronouncement : 21/06/2018.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 15th December, 2017 of Id. CIT (A), Ajmer arising from the order passed under section 201 and 201(1A) of the IT Act for the assessment year 2009-10. The assessee has raised the following grounds :-

- “ 1.1. For that the learned CIT (Appeals) was not justified in not admitting (dismissing) the appeal of the appellant on the ground that there was inordinate delay in filing the appeal, whereas in fact there was no delay in filing the appeal as the assessment order was received by the appellant on 31.03.2016 and the appeal was filed on 29.04.2016.
- 1.2. For that the learned CIT (appeals) had not considered the contention of the appellant that the initiation of proceedings and

passing of order u/s 201/1A on 29.03.2016 was time barred, bad in law and therefore, liable to be quashed.

- 1.3. for that the learned CIT (Appeals) had not considered the contention of the appellant that Form 15H is acceptable where amount of interest exceeds the maximum amount which is not chargeable to income tax in lieu of provisions of section 194A(1C).
2. For that the appellant craves right to alter any of the above grounds or to put additional grounds of appeal at any time prior to or at the time of hearing of the appeal."

2. The assessee is a Cooperative Society Bank and engaged in the business of banking which includes accepting deposits from its members, providing loans and other banking services to its members. The AO noted that the assessee has paid interest to non-members on FDRs during the year under consideration without deducting TDS. Accordingly, the AO initiated the proceedings under section 201 and 201(1A) by holding the assessee as assessee-in-default in respect of the interest paid to non-members without deduction of TDS. As regards the interest paid to the Ajmer Cooperative Thrift Saving Society, the AO allowed the same as eligible for deduction under section 80P and, therefore, though the said amount was considered under section 201 but benefit of section 80P was allowed by the AO. Thus the interest paid to non-member individual of Rs. 3,44,816/- was considered by the AO while passing the order under section 201 and 201(1A) and determined the short fall of the tax liability of Rs. 34,482/- on which the AO has also computed the interest under section 201(1A) amounting to Rs. 33,103/- and hence the AO has raised total demand of Rs. 67,585/-. The assessee challenged the action of the AO before Id. CIT (A) and submitted that when the assessee has taken Form No. 15G/H from the

recipient of the interest, then the assessee was under no obligation to deduct TDS on payment of interest. The Id. CIT (A) dismissed the appeal of the assessee without going into the merits on the ground of barred by limitation.

3. Before us, the Id. A/R of the assessee submitted that the appeal of the assessee was filed before the Id. CIT (A) within the prescribed period of limitation. He has submitted that the order passed under section 201/201(1A) dated 29th March, 2016 was received by the assessee on 1st April, 2016 and, therefore, the appeal filed by the assessee on 29th April, 2016 is well within the period of limitation from the date of receipt. In support of his contention, the Id. A/R has filed the copy of Letter Receipt Register of the Postal Department at page 8 of the paper book. Thus the Id. A/R has submitted that the Id. CIT (A) has dismissed the appeal without applying his mind on the fact that the appeal filed by the assessee was within the period of limitation. Further, on merit, the Id. A/R has submitted that once the assessee has obtained Form No. 15G/H, then as per the provisions of section 197(1A) if the deductee has given a declaration that his income including the receipt in question is not liable to tax as the total income would be nil, then the assessee is not supposed to deduct TDS on such payment. The Id. A/R has further contended that the order passed by the AO dated 29th March, 2016 is barred by limitation as per the provisions of section 201(3) of the IT Act as existed at the relevant point of time. He has relied upon the decision of Hon'ble Gujarat High Court in case of Tata Teleservices vs. Union of India & Anr. 385 ITR 497 (Guj.) and submitted that the Hon'ble High Court while considering this issue for the same assessment year has held that the limitation for passing the order under section 201 expired on 31st

March, 2012 and, therefore, the order passed thereafter is barred by limitation. The Hon'ble High Court has also held that the amendment by Finance Act, 2014 was after the limitation provided under section 201(3) of the Act was expired. Therefore, the said extension of limitation by the amendment vide Finance Act, 2014 is not applicable in the case. The Id. A/R has also relied upon the series of other decisions on this point.

3.1 On the other hand, the Id. D/R has relied upon the order of the Id. CIT (A) and submitted that the issue of limitation for passing the order under section 201/201(1A) was not raised by the assessee before the Id. CIT (A) and, therefore, such issue cannot be raised without seeking the leave of the Tribunal.

3.2. In rejoinder, the Id. A/R has referred to the submissions raised before the Id. CIT (A) as reproduced at pages 3 & 4 of the Id. CIT (A)'s order and submitted that the assessee has duly raised this issue of limitation before the Id. CIT (A) and also placed reliance on the decision of Hon'ble Gujarat High Court in case of Tata Teleservices vs. Union of India & Anr. (supra). Thus the issue was very much raised before the Id. CIT (A).

4. We have considered the rival submissions as well as the relevant material on record. The Id. CIT (A) has dismissed the appeal of the assessee by holding that the appeal filed by the assessee is barred by limitation and there is an inordinate delay. The relevant finding of the Id. CIT (A) in para 3 are as under :-

" 3.0. Thus, from the report of the AO, it is cler that the notice of demand was sent to the appellant on 29.03.2016 by Speed Post. As per Section 249(2), the appeal has to be presented within 30 days of

date of service of notice of demand. The appellant has not filed the appeal within the period specified u/s 249(2). There is an inordinate delay in filing the appeal. I am of the considered view that the appellant did not have any sufficient cause for not presenting the appeal within the period specified u/s 249(2). Hence, the appeal is dismissed as "not admitted".

However, we note that there is no dispute that the order passed by the AO under section 201/201(1A) is dated 29th March, 2016 and the appeal before Id. CIT (A) was also undisputedly filed on 29.04.2016. Therefore, from these two dates itself it cannot be a case of inordinate delay as observed by Id. CIT (A). Thus the Id. CIT (A)'s dismissal of appeal in limini is contrary to the facts apparent on record which are not in dispute. It shows that the Id. CIT (A) has passed the impugned order without application of mind. Further, we note that the assessee received the impugned order passed by AO under section 201/201(1A) on 1st April, 2016 as per the copy of the Letter Receipt Register of Postal Department. Therefore, the appeal filed on 29th April, 2016 is well within the period of limitation provided under section 249 of the IT Act. Hence, we set aside the order of Id. CIT (A) on the issue of limitation and hold that the appeal filed before the Id. CIT (A) is within the period of limitation and is a valid appeal.

5. As regards the validity of the order passed under sec. 201/201(1A) of IT Act, we note that the assessee has duly raised the issue of limitation for passing the impugned order under section 201/201(1A) of the Act as it is apparent from the submissions reproduced by the Id. CIT (A) in para 2.1 of the impugned order and particularly in para 1.3 of the submission at page 3 of the order of Id. CIT (A) as under :-

" 1.3. *The relevant payment of interest is for Financial Year 2008-09 (Asst. Year 2009-10). First letter for calling for information/s 133(6) was issued on 23.02.2016, whereas show cause notice u/s 201/201A of the I.T. Act, 1961 for non/short deduction of TDS u/s 194A was issued on 16.03.2016 and Order u/s 201/201A of the I.T. Act was passed on 29.03.2016. Therefore, the initiation of proceedings as well as order passed u/s 201/201A was time barred as the same was passed after a period of six years and 10 months after ending of financial year 2008-09 in which interest was paid. Provisions of Section 201(3) say that :-*

" *No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of—*

- (i) two years from the end of the financial year in which the statement is filed in a case where the statement referred to in [section 200](#) has been filed;*
- (ii) four years from the end of the financial year in which payment is made or credit is given, in any other case :*

Provided *that such order for a financial year commencing on or before the 1st day of April, 2007 may be passed at any time on or before the 31st day of March, 2011.*

Therefore, as per above provisions the order u/s 201/201A for financial year 2008-09 should have been passed upto 31.03.2013, whereas in appellant's case proceeding was initiated on 23.02.2016 and order was passed on 29.03.2016, therefore initiation of proceedings and the order passed u/s 201/201A is barred by limitation, bad in law and therefore, is liable to be quashed.

To support out above contentions we also rely on the following decisions :-

- (i) Tata Teleservices vs Union of India 385 ITR 497 in which Hon'ble Gujarat High Court has held tht "section 201(3), as*

amended by Finance (No.2) Act, 2014 shall not be applicable retrospectively and therefore, no order under section 201(1) can be passed for which limitation has already expired prior to amended s. 201(3); proceedings for financial year 2007-08 and 2008-09 had become time-barred and /or limitation under s. 201(3)(i) had already expired on 31st March, 2011 and 31st March 2012, respectively, much prior to the amendment in section 201 as amended by Finance Act, 2014 and therefore impugned notices/summons cannot be sustained and the same deserve to be quashed and set aside."

Thus the assessee raised the issue of limitation and also placed reliance on the decision of Hon'ble Gujarat High Court in case of Tata Teleservices vs. Union of India & Anr. (supra) as well as other decisions.

6. There is no dispute that the order passed by the AO under section 201/201(1A) on 29.03.2016 is after six years from the Financial Year 2008-09. The limitation for passing the order under section 201/201(1A) is provided under section 201(3) of the Act as existed at the relevant point of time as under :-

201.¹²[(1) Where any person, including the principal officer of a company,—
(a) who is required to deduct any sum in accordance with the provisions of this Act; or
(b) referred to in sub-section (1A) of [section 192](#), being an employer,

does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

Provided that no penalty shall be charged under [section 221](#) from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.]

[(1A) ¹⁴Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct ¹⁵[the whole or any part of the tax] or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest at ¹⁶[one per cent for every month or part of a month] on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually paid ¹⁷[and such interest shall be paid before furnishing ^{17a}[the statement] in accordance with the provisions of sub-section (3) of [section 200](#).]

(2) Where the tax has not been paid as aforesaid after it is deducted, ¹⁸[the amount of the tax together with the amount of simple interest thereon referred to in sub-section (1A)] shall be a charge upon all the assets of the person, or the company, as the case may be, referred to in sub-section (1).

The following sub-sections (3) and (4) shall be inserted after sub-section (2) of section 201 by the Finance (No. 2) Act, 2009, w.e.f. 1-4-2010 :

(3) No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of—

- (i) two years from the end of the financial year in which the statement is filed in a case where the statement referred to in [section 200](#) has been filed;*
- (ii) four years from the end of the financial year in which payment is made or credit is given, in any other case :*

Provided that such order for a financial year commencing on or before the 1st day of April, 2007 may be passed at any time on or before the 31st day of March, 2011.

(4) The provisions of sub-clause (ii) of sub-section (3) of [section 153](#) and of Explanation 1 to [section 153](#) shall, so far as may, apply to the time limit prescribed in sub-section (3).

Thus it is clear that prior to the amendment vide Finance Act, 2014 the limitation for passing an order under section 201/201(1) was four year from the end of the

financial year in which payment is made or credit is given. The case of the assessee falls in the category where statement was not filed by the assessee and, therefore, even if the period of limitation for passing the order is taken as four year from the end of the financial year in which the payment was made, the said limitation expired on 31st March, 2012. Hence the limitation extended by the amendment vide Finance Act, 2014 are not applicable in the case of the assessee. The Hon'ble Gujarat High Court in the case of *Tata Teleservices vs. Union of India & Anr.* (*supra*) while considering the identical issue has held in para 14 to 15 as under :-

"14. Now, so far as reliance placed upon the decisions of the Hon'ble Supreme Court in the case of *Ahmedabad Mfg. & Calico Printing Co. Ltd.* (*supra*) as well as another decision of the Hon'ble Supreme Court in the case of *Jyoti Traders*(*supra*), by the learned counsel appearing on behalf of the revenue is concerned, on facts and considering the provisions which came to be considered by the Hon'ble Supreme Court in the aforesaid decisions, none of the aforesaid decisions shall be applicable to the facts of the case on hand.

In the case of *Jyoti Traders* (*supra*), the Hon'ble Supreme Court was considering the proviso to section 21 which specifically provided that assessment and reassessment may be made after expiration of the period aforesaid but not after the expiration of 8 years and from the end of such year. In the aforesaid proviso it expressly enabled assessment where period expires and it operates upon expiry of limitation period. Therefore, the said decision shall not be applicable considering the wordings used in section 201 as amended by Finance Act, 2014, more particularly when it has been expressly provided and/or made prospective w.e.f. 1/4/2010.

14.1 Now, so far as the reliance placed upon the decision of the Hon'ble Supreme Court in the case of *Biswanath Jhunjunwala* (*supra*) by the learned counsel appearing on behalf of the revenue is concerned, considering the language used in the notification which felt for consideration by the Hon'ble Supreme Court and observations made by the Hon'ble Supreme Court in para 12 and 13 and considering the provisions of section 201 as amended by Finance Act, 2014 and the Statement and Object while amending section 201, as referred to hereinabove, the said decision shall not be applicable to the facts of the case on hand.

15. Considering the law laid down by the Hon'ble Supreme Court in the aforesaid decisions, to the facts of the case on hand and more particularly

considering the fact that while amending section 201 by Finance Act, 2014, it has been specifically mentioned that the same shall be applicable w.e.f. 1/10/2014 and even considering the fact that proceedings for F.Y. 2007-08 and 2008-09 had become time barred and/or for the aforesaid financial years, limitation under section 201(3)(i) of the Act had already expired on 31/3/2011 and 31/3/2012, respectively, much prior to the amendment in section 201 as amended by Finance Act, 2014 and therefore, as such a right has been accrued in favour of the assessee and considering the fact that wherever legislature wanted to give retrospective effect so specifically provided while amending section 201(3) (ii) of the Act as was amended by Finance Act, 2012 with retrospective effect from 1/4/2010, it is to be held that section 201(3), as amended by Finance Act No.2 of 2014 shall not be applicable retrospectively and therefore, no order under section 201(i) of the Act can be passed for which limitation had already expired prior to amended section 201(3) as amended by Finance Act No.2 of 2014. Under the circumstances, the impugned notices / summonses cannot be sustained and the same deserve to be quashed and set aside and writ of prohibition, as prayed for, deserves to be granted.”

Accordingly, by following the decision of Hon'ble Gujarat High Court in the case of Tata Teleservices vs. UOI (supra), we hold that the impugned order passed by the AO under section 201/201(1A) dated 29th March, 2016 is barred by limitation as provided under section 201(3) of the Act as existed at the relevant point of time and hence the said order is invalid and liable to be quashed. Accordingly, we quash and set aside the impugned order passed by the AO under section 201/201(1A).

7. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 21/06/2018.

Sd/-

(विक्रम सिंह यादव)

(VIKRAM SINGH YADAV)

लेखा सदस्य/Accountant Member

Sd/-

(विजय पाल रॉव)

(VIJAY PAL RAO)

न्यायिक सदस्य/Judicial Member

Jaipur

Dated:- 21/06/2018.

Das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- The Railway employee's Co-operative Bank Ltd., Ajmer.
2. The Respondent –The ITO, TDS, Ajmer.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 221/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

