

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A .No. 35/DEL/2016 (A.Y 2013-14)
I.T.A .No. 36/DEL/2016 (A.Y 2013-14)
I.T.A .No. 37/DEL/2016 (A.Y 2013-14)
I.T.A .No. 39/DEL/2016 (A.Y 2013-14)
I.T.A .No. 40/DEL/2016 (A.Y 2013-14)
I.T.A .No. 41/DEL/2016 (A.Y 2013-14)
I.T.A .No. 42/DEL/2016 (A.Y 2013-14)
I.T.A .No. 43/DEL/2016 (A.Y 2012-13)
I.T.A .No. 44/DEL/2016 (A.Y 2012-13)
I.T.A .No. 45/DEL/2016 (A.Y 2012-13)
I.T.A .No. 46/DEL/2016 (A.Y 2012-13)
I.T.A .No. 47/DEL/2016 (A.Y 2012-13)
I.T.A .No. 48/DEL/2016 (A.Y 2012-13)
I.T.A .No. 49/DEL/2016 (A.Y 2013-14)
I.T.A .No. 50/DEL/2016 (A.Y 2012-13)
I.T.A .No. 51/DEL/2016 (A.Y 2012-13)
I.T.A .No. 52/DEL/2016 (A.Y 2013-14)
I.T.A .No. 53/DEL/2016 (A.Y 2013-14)
I.T.A .No. 54/DEL/2016 (A.Y 2012-13)
I.T.A .No. 55/DEL/2016 (A.Y 2012-13)

ITO TDS, 5 th Floor, Udyog Vihar, Phase-V Gurgaon (APPELLANT)	Vs	The Gurgaon Central Co- operative Bank Ltd. B.O- Indri Mewat AAALT0271A (RESPONDENT)
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Appellant by	Sh. Arun Kumar Yadav, Sr. DR
Respondent by	Sh. Prashant Sharma, CA

Date of Hearing	18.07.2018
Date of Pronouncement	18.07.2018

ORDER**PER BENCH**

These appeals are filed by the Revenue against the common order dated 30/10/2015 passed by the CIT(A)-1, Gurgaon.

2. All these appeals filed by the Revenue are on the common ground relating to TDS and interest thereon in accordance with Section 194A(3)(v) of the Act. Therefore, we are taking the ground for Assessment Year 2013-14 in ITA No. 35/Del/2016 which are as under:-

“The Ld. CIT(A) erred in law and facts by considering the appellant has co-operative society and not liable to deduct TDS in accordance to section 194 (3) (v) of the I.T. Act, 1961.

1. *The Ld. CIT(A) erred in law and facts by ignoring the fact that though appellant is Co-op Society but engaged in the business of banking and therefore not exempt u/s 194 (3)(v) and thus the Ld. CIT(A), Gurgaon has erred in deleting the demand raised on account of short deduction of TDS of Rs. 2,23,101/- & interest thereon of Rs. 56,891/-.*
2. *The Ld. CIT(A), Gurgaon has erred in deleting the demand raised on account of short deduction of TDS of Rs. 29,630/- & interest thereon of Rs. 7,408/- with respect to cases where Form No. 15G/15H were not submitted to the commissioner of Income Tax (TDS), Chandigarh on or before 7th day of the week, next following the month in which declaration is furnished him (Sec. 197A & note 28C).*
3. *The appellant craves leave to add, alter, amend and/or, modify any of the grounds of appeal at or before the hearing of the appeal.*

3. Since the issue is common in all these appeals for the factual matrix, we are taking up Assessment Year 2013-14. The assessee bank has filed its TDS return under TAN: RTKT01617A which falls under the jurisdiction of the ITO (TDS), Gurgaon. TDS inspection has conducted on 7/11/2013 at the head office of the assessee by the DCIT, TDS Circle, Gurgaon. During the course of the inspection, from the records of the assessee it was found that various Branches of these bank have not deducted TDS u/s 194A on the amount of interest paid on term deposits which was required to be made in view of the decisions of the ITAT, Panji Bench. During the inspection, it was noticed by the Assessing Officer that the deductors had allowed substantial amount of interest to Primary Agricultural Societies and other Societies/Institution during the Financial Year 2012-13 and subsequent years who did not make TDS on such payments. A notice u/s 201(1)/201(1A) of the Act was issued on 27/5/2014 and again on 10/7/2014 and asked the assessee to file ledgers/details of all expenses debited for Financial Year 2012-13 along with details/evidences of TDS made/deposited on such expenses and fixed the case for hearing on 23/7/2014. In response to this notice deductor did not file any reply/submission. Therefore, fresh notice dated 24/7/2014 was issued. In response to the said notice Chartered Accountant of the assessee attended the proceedings and filed information/details related to interest payments. From this information, it was found that the assessee bank paid total interest of Rs. 66,43,281/- during the Financial Year 2012-13. It was further noticed that interest of Rs. 22,31,011/- was shown paid to Primary Agricultural Society where upon no TDS was made. The Assessing Officer passed order u/s 201(1) and 201(1A) of the Act thereby making demand of Rs. 3,17,030/- for Assessment Year 2013-14.

4. Being aggrieved by the order passed u/s 201(1) and 201(1A) of the Act, the assessee filed appeal before the CIT(A). The CIT(A) in common order allowed all the appeals thereby held that it is an undisputed fact on record that the assessee had obtained Form 15G/15H from the person to whom the interest

pertaining to the demand raised in the ground was paid. The CIT(A) further observed that the assessee had sent this Form to the Income Tax Department but not to the concerned CIT of Income Tax Department. In the assessment order, the Assessing Officer raised the demand holding that the assessee failed to furnish the documentary evidence in respect of submission of Form 15G/15H to concern CIT of the Income Tax Department as contemplated in Rule 29C. The CIT(A) held that the Forms were not submitted to CIT, TDS which is a mere technical breach so as to treat the assessee deemed to be in default attracting levy of demand as provided u/s 201 of Income Tax Act. Accordingly, the CIT(A) deleted the demand raised by the Assessing Officer. The appeal of the assessee was allowed by the CIT(A).

5. The Ld. DR relied upon the order of the Assessing Officer passed u/s 201(1) and 201(1A) of the Act.

6. The Ld. AR submitted that this issue is covered by the Tribunal's decision in assessee's own case for Assessment Year 2012-13 being ITA Nos. 6706 & 6708/Del/2015 ITO Vs. The Gurgaon Central Co-operative Bank order dated 27/9/2017 in favour of the assessee. Besides this the Ld. AR submitted that the CIT(A) has given a detailed finding and rightly allowed the appeal of the assessee. Therefore, the Ld. AR submitted that the appeals filed by the Revenue may be dismissed.

7. We have heard both the parties and perused the material available on record. All these appeals have common issue which is relating to provisions of Section 194A(3)(v) which applies to Co-operative Society. The ITAT in assessee's own case held as under:-

"7. We have heard both the parties and perused the records. Apropos ground no. 1 relating to issue whether the provisions of [section 194A\(3\)\(v\)](#) apply to cooperative society involved in the business of banking is concerned, we find that this issue is squarely covered by the decision of the ITAT, Delhi passed in ITA No.

5324/Del/2013 for AY 2012-13 in the case of Almora Urban Cooperative Bank Ltd. vs. ITO(TDS), Kashipur, wherein it was held that the provisions of section give blanket exemption to the interest paid by any cooperative society to its members and that neither [section 2\(19\)](#) nor [section 194A\(3\)\(v\)](#) claims any discrimination between the cooperative societies carrying on banking business and other cooperative societies. Therefore, the Ld. CIT(A) has rightly followed the aforesaid decision and deleted the demand in dispute, which does not need any interference on our part, hence, we uphold the same and reject the ground no. 1 raised by the Revenue. 7.1 Apropos ground no. 2 relating to deletion of demand raised on account of short deduction of TDS of Rs. 16,686/- and interest thereon of Rs. 5,006/- with respect to cases where Form No. 15G/15H were not submitted to the CIT(TDS), Chandigarh on or before 7th day of the week, next following the month in which declaration is furnished to him is concerned, we note that as per the Assessment order the demand has been raised as the assessee had failed to furnish the documentary evidence in respect of submission of Form 15G/15H to the concerned CIT, Income Tax Department. It is not disputed that the assessee obtained Form 15G/15H in respect of the person to whom the interest pertaining to the demand raised in the ground was paid. It is also a fact that the assessee had claimed that the forms were sent to the Income Tax Department albeit not to the concerned CIT of the Income Tax Department. The AO has not controverted this claim of the assessee but has rejected the same on the ground that the forms were not sent to the concerned CIT. We further note that assessee had contended that being a cooperative bank working basically in rural areas, it had no idea about CIT having jurisdiction over TDS matters. In view of the above, it is evident that the assessee had received Form 15G/15H from all the persons to whom the interest was paid and the assessee had also sent these Forms to the Income Tax Department. Not sending these Forms Specifically to CIT, TDS is a mere technical breach. Therefore, the Ld. CIT(A) has rightly held that assessee was not required to deduct TDS on interest so paid, hence, the demand raised by the AO was accordingly deleted, which does not need any interference on our part, therefore,

we uphold the order of the Ld. CIT(A) on the issue in dispute and reject the ground no. 2 raised by the Revenue.

8. In the result, both the Appeals filed by the Revenue stand dismissed.”

The issue is squarely covered in assessee's own case and all these appeals have identical issue. The Ld. DR also, during the course of hearing could not distinguish the factual aspect. Therefore, all these appeals are dismissed.

9. In result, all these appeals are dismissed.

Order pronounced in the Open Court on 18th July, 2018.

Sd/-

(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 18/07/2018
R. Naheed *

Copy forwarded to:

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

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	18.07.2018
Date on which the typed draft is placed before the dictating Member	18.07.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	18.07.2018
Date on which the final order is uploaded on the website of ITAT	18.07.2018
Date on which the file goes to the Bench Clerk	18.07.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	