

**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 No. 203/Agra/2018 A.Y. 2012-13

I.T.A No. 204/Agra/2018 A.Y. 2013-14

I.T.A No. 205/Agra/2018 A.Y. 2012-13

ITO, (TDS)-II, Agra. (Revenue)	Vs.	Punjab National Bank, Gwalior Road, Rohta, Agra. PAN.AAACP0165G (Assessee)
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Revenue by	Shri Waseem Arshad, Sr.DR.
Assessee by	Shri R.C. Tomar, AR.

Date of Hearing	04.06.2018
Date of Pronouncement	07.08.2018

ORDER

PER, A. D. JAIN, JUDICIAL MEMBER:

These are Department's appeals for Assessment Years 2012-13 and 2013-14, respectively, against the deletion of penalty levied u/s 271C of the IT Act, on ground of non TDS on interest income accrued on FDRs.

2. Since a common issue is involved in all these three appeals, they are being disposed of by this composite order. For convenience, the facts are being taken from ITA No.203/Agra/2018, for A.Y. 2012-13.

3. The ld. CIT(A), while cancelling the penalty levied has held as follows:

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“9.2 As regards grounds no. 4, 5, 6 and 7, it is observed that the appellant's objection to the levy of penalty under section 271C of the Act is that there existed a reasonable cause with it for not deducting TDS on interest paid to Agra Development Authority and so it should be given benefit of the provisions of section 273B of the Act.

I notice that it is a fact that Agra Development Authority is a body formed and run by the state government, and it is also a fact that a copy of registration certificate under section 12A dated 24.09.2003 was provided by it to the appellant with its letter of request dated 15.04.2010 that no TDS may be made in respect of interest payments to it in that year and in subsequent years. According to the Addl. CIT(TDS), author of the impugned order, the said certificate issued under section 12AA to the Agra Development Authority was not sufficient evidence to believe that the appellant had formed any bonafide belief on the issue of non-deduction of TDS in respect of interest payments to the Agra Development Authority.

I am of the contrary opinion on this matter and would tend to agree with the appellant that it indeed had a bonafide reason and belief not to deduct tax from the said interest payments. The fact is that a certificate under section 12AA was already on record and Agra

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Development Authority, is closely identified with the state government, and its key decision-makers are government officials, which, in my opinion, was sufficient reason for the appellant bank to be under the bonafide belief that no TDS was to be deducted in that case. My view gets supported by the fact that after conducting discreet inquiries and verification by way of a survey conducted under section 133A (1), such default could be detected by the department only in the case of Agra Development Authority and not in relation to a large number of its customers.

Therefore, in light of the facts of the case, arguments and judicial precedents in this regard, I am inclined to conclude that there existed a reasonable cause with the appellant not to deduct TDS in respect of payments made by it to Agra Development Authority and hence the levy of the impugned penalty of Rs. 14,97,690/- under section 271C of the Act is not justified and it is liable to be cancelled. Grounds no. 4, 5, 6 and 7 are allowed accordingly.”

4. Challenging the impugned orders, the Id. DR has contended that the Id. CIT(A) has erred in law and on facts in deleting the penalty levied for a sum of Rs. 14,97,690/- U/s 271C of the Act without appreciating the facts of the case as also

without considering the interpretation by the Hon'ble Supreme Court in the case of 'Hindustan Coca Cola Beverage Pvt. Ltd. Vs. CIT', 293 ITR, 226 (SC) that the Circular dated 29.1.1997 issued by the CBDT will not alter the liability for penalty u/s 271C of the IT Act, notwithstanding the fact that taxes due have been paid by the deductee-assessee; and that the Id. CIT(A), has erred in law and on facts in relying upon the arguments put forth in the appellate proceedings ignoring the basic fact that there did not exist a reasonable cause u/s 273B so as not to deduct TDS in respect of payments made to ADA unless and until the required certificate u/s 197A had been obtained and furnished to the deductor-assessee, however in absence thereof deductor-assessee was liable to comply with the provisions of TDS and registration certificate u/s 12AA will not come to any aid for non-deduction of tax at source.

5. On the other hand, the Id. Counsel for the assessee has placed strong reliance on the impugned orders.

6. Heard. As available from the assessment order in ITA No. 203/Agra/2018 (para 5 thereof), vide replies dated 28.02.2013 & 04.03.2013 viz-a-viz defaults u/s 194A, the assessee bank submitted that the TDS on the payments of interest was not deducted in view of the copy of registration Certificate u/s 12AA dated 24.09.2003 as provided by the ADA and under the presumption that the ADA is a

Government charitable body. As soon as the deductor-assessee came to notice that the provisions of section 194A are applicable in the case of payment of interest on FDR of ADA, it started to deduct tax at source and accordingly, deducted TDS during 2012-13. The act of non deduction of tax during financial years 2010-11 & 2011-12 was not intentional, rather, it was due to wrong interpretation and impression drawn by the deductor and the said mistake was rectified during F.Y. 2012-13.

7. Section 273B of the IT Act provides for non-levy of penalty in the case of presence of a reasonable cause. The Id. CIT(A) has cancelled the penalties, as he found the belief of the assessee bank regarding its non-liability to TDS, to be constituting a reasonable cause within the meaning of section 273B. It is undisputed that the Agra Development Authority, a body formed and run by the State Government, had provided a registration Certificate dated 24.09.2003, regarding registration of the Agra Development Authority u/s 12A of the IT Act, to the assessee bank. The assessment order for A.Y. 2012-13, itself, as noted above, admits this Certificate to be on the record of the Department. Alongwith the Certificate, the Agra Development Authority had also addressed a letter dated 15.04.2010 to the assessee bank, requesting that no TDS may be made in respect of

interest payments to the Agra Development Authority in the concerned year/ s and the subsequent year.

8. Further, the Id. CIT(A) has also found as a fact that in the survey conducted, the default of non-TDS was detected by the Department only in the case of the Agra Development Authority and not in relation to a large number of its customers.

9. Before us, the Department has not been able to show that the bonafide belief entertained by the assessee bank, as above, does not constitute a reasonable cause within the meaning of section 273B of the Act. Reference by the Department, in these facts, to ‘Hindustan Coca Cola Beverage Pvt. Ltd. Vs. CIT’, 293 ITR 226 (SC), is of no aid to it. It also remains a fact, as noted for the assessment year (para 6 of the penalty order) for A.Y. 2012-13, that the AO, on verifying the documents filed by the bank, found that the Agra Development Authority had paid the requisite taxes for F.Ys. 2010-11 and 2011-12, relevant to A.Y. 2011-12 and 2012-13.

10. Apropos A.Y. 2012-13, the assessee made TDS immediately on coming to note that the provisions of section 194A of the IT Act are applicable to payment of interest on the FDRs of the Agra Development Authority.

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11. In view of the above, as we find no error therein, the impugned orders in all these appeals are confirmed while rejecting the grievance raised by the Department as non est and shorn of merit. Ordered accordingly.

12. In the result, all the three appeals are allowed.

Order pronounced in the open court on 07/08/2018.

Sd/-

**(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER**

Sd/-

**(A.D. JAIN)
JUDICIAL MEMBER**

AKV

Copy forwarded to:

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

ASSISTANT REGISTRAR