

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

Sl. No.	ITA No.	Name of Appellant	Name of Respondent	Asst. Year
1	130/PUN/2019	Bank of India (Gaganbawada Branch), Plot No.209, At & Post & Tal. Gagan Bawda, Kolhapur PAN: AAACB0472C	ITO, TDS, Kolhapur	2010-11
2	137/PUN/2019	Bank of India (Rukadi Branch), Kapila Niwas, C.S. No.1047, East, At & Post Rukadi, Tal. Hatkanangale, Kolhapur PAN: AAACB0472C	ITO, TDS, Kolhapur	2010-11
3	141/PUN/2019	Bank of India (Ambabi Mandir Branch), 135, "C", Swaroop Chambers, 2 nd Floor, Mahadwar Marg, Kolhapur PAN: AAACB0472C	ITO, TDS, Kolhapur	2010-11

Assessee by	Shri Nikhil Pathak Shri Mayuresh Doshi
Revenue by	Shri A. K. Modi Shri Rajesh Gawali
Date of hearing	15.07.2019
Date of pronouncement	25.07.2019

आदेश / ORDER

PER BENCH :

There are 3 appeals under consideration filed by the different branches of Bank of India for the assessment year 2010-11.

2. The facts, issues, written submissions and arguments of counsels are similar in all the above 3 appeals and, therefore, we proceed to consolidate all these appeals and dispose of by this composite order.

3. Since the grounds/additional grounds are common in all the three appeals, we may reference to the grounds/additional grounds raised in ITA No.141/PUN/2019 for the assessment year 2010-11.

ITA No.141/PUN/2019

4. In this appeal, the assessee raised the following **grounds** :-

“1] The learned CIT(A) erred in holding that the order passed u/s 201(1) / 201(1A) is valid in law without appreciating the same was **barred by limitation**.

2] The learned CIT(A) failed to appreciate that as per the relevant provisions of section 201, the learned A.O. ought to have passed the order u/s 201(1) / 201(1A) before 31.03.2015 and since the said order is passed on 29.03.2016, the same is clearly **barred by limitation**.

3] Without prejudice, the assessee submits that the learned CIT(A) erred in confirming the order of the A.O. in treating the assessee in default u/s 201 without appreciating that on the facts of the case, there was no reason to treat the assessee in default and the demand raised should have been deleted.

4] Assessee submits that wherever the payee have shown relevant income in its return of income and have also paid taxes thereon and as such the assessee cannot be treated as assessee in default in view of proviso to sec. 201(1).

5] The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”

5. The assessee filed **additional grounds** and the same reads as under :-

“1] The order passed u/s 201 and 201(1A) is bad in law since the learned A.O. has erred in passing one order for the F.Y. 2009-10 as against **separate orders for each quarter of the concerned year**.

2] The learned CIT(A) failed to appreciate that as per the relevant provisions of section 201, the learned A.O. ought to have passed the order u/s 201(1) / 201(1A) within a period of two years from the end of the financial year in which the statement u/s. 200 was filed by the assessee and since the said order after the said period, the same is clearly barred by limitation.”

6. **Background Facts:** Before taking up the issues for adjudication, first, we shall narrate the background facts of this case. The assessee is a Nationalized Bank and is engaged in the business of banking activities. During the assessment proceedings, the Assessing Officer verified the details of interest paid by the bank on FDRs of the customers. The Assessing Officer noticed that despite the fact that the interest paid on the Fixed Deposits (FDs) to customers exceeded the basic exemption limit chargeable to tax, no TDS was deducted u/s. 194A of the Act by the assessee bank. The assessee contended before the Assessing Officer that the depositors filed Form No.15G & 15H and therefore, no TDS was made. However, the Assessing Officer was of the view that if the depositors filed declarations in Form No.15G/15H, the bank was required to file relevant information to this effect in its TDS return and not doing so is a violation of section 197A(1A) and section 197A(1C) of the Act. The Assessing Officer noted that in some cases, the amount of aggregate interest credited/paid exceeded the basic exemption limit of taxation, and that the bank had still not deducted TDS on the strength of incorrect Form No.15H & 15G filed by the depositors. The Assessing Officer was of the view that all cases where TDS was not deducted, had to be mentioned in the TDS return and appropriate flag of Form No.15G/Form No.15H was needed to be filed mentioning the reason for not deducting the TDS. The Assessing Officer contended that by not deducting TDS, on the basis of incorrect Form No.15G & 15H filed by the depositors, the assessee bank had created a leakage of revenue and it was impossible on the part of the Department to find out whether such interest income had been properly offered to tax or not by the respective customers of the Bank. The Assessing Officer referred to Note-6 in Form

No.15G as prescribed under the Income Tax Rules, 1962 and was of the view that the Rules have clearly cast responsibility on the deductor/payer to ensure that Form No.15G & 15H should not be accepted if the income credited or paid was likely to exceed the maximum amount not chargeable to tax.

7. The Assessing Officer noted that for this year, the interest on FDRs on which TDS was not deducted by the assessee bank was far in excess of the maximum amount not chargeable to tax and therefore the assessee bank was proposed to be treated as an **“assessee in default”**. The Assessing Officer, after careful consideration of the assessee's submission, held that the payees in the case of the assessee bank was individual, and therefore as per section 194A(3)(i) of the Act, the assessee bank was required to deduct tax at source from the payments of interest made to them exceeding Rs.10,000, unless, such payee had produced certificate to the payer for deducting TDS at lower rate or Nil rate as provided u/s. 197(1) of the Act, which admittedly was not the case. Regarding the contention of the assessee that the payee had duly offered to tax the interest received on FDRs, the Assessing Officer held that no evidence for the same was filed before him and therefore the assessee was in violation of the TDS provisions and was an assessee in default. The Assessing Officer was of the view that the assessee bank had a responsibility to verify the Form No.15G/15H filed before it, which it admittedly did not. The assessee bank should have refused to accept the Form No.15G/15H filed before it as the limit of interest credited/paid had exceeded the maximum amount chargeable to tax. The assessee, however, failed to do so and merely accepting such forms had not

deducted TDS and therefore it was liable to be treated as an assessee in default for payment of tax and interest u/s 201(1) & 201(1A) of the Act.

8. Regarding the decision of the case of ACIT Vs. Wockhardt Hospital Ltd., Mumbai relied upon by the assessee, the Assessing Officer contended that the said judgement was delivered by the Hon'ble Court on different fact and perspective. In that case, confirmations from payees regarding disclosure of payment (income) made by the assessee-payer with PAN of payee etc. was produced on record; whereas in the present case, mere correspondence made with the payee regarding its tax matter was filed which could not come to rescue the assessee bank. The Assessing Officer, therefore, computed the tax u/s 201(1) of Rs.15,904/- and interest u/s 201(1A) at Rs.13,356/-. Aggrieved with the said action of the Assessing Officer, the assessee carried the matter before the CIT(A). The CIT(A) confirmed the orders of Assessing Officer. Aggrieved, these three assesseees are in appeals before us.

9. At the outset, deviating from the above grounds/additional grounds, ld. Counsel for the assessee brought our attention to the additional evidences by way of Form No.26AS, affidavit/registration certificate etc furnished by the assessee before us and submitted that the said evidences go to the root of the matter. Ld. AR read out the submission for admission of the same. As per ld. AR, they are required to be admitted, adjudicated and remanded to the file of the Assessing Officer as per the set principles of natural justice. Ld. AR argued that the said evidences prove that the payees are taxpayers paid the taxes on the interest paid by the Bank.

10. On hearing both sides and perusing the said additional evidences, we find them relevant to admit the same. We shall take up the adjudication of the issues in the following paragraphs.

11. Further, on the merits of the issues raised in the penalty orders, deviating from the above grounds/additional grounds, ld. Counsel submitted that all the three appeals under consideration may be remanded to the file of the Assessing Officer [ITO (TDS)] for adjudication of the issue afresh after considering the additional evidences discussed above.

12. On hearing both the sides, we find the ITO (TDS) raised the demand u/s 201(1) & 201(1A) of the Act for the reason of default in matters of TDS. The CIT(A) granted part relief wherever the assessee furnished evidences in support of the fact that deductee filed the returns in their respective hands and paid the taxes on their interest income. Through the additional evidences now furnished, the assessees submitted that the facts relating to the assessment of the deductees, their assessment particulars, interest amounts etc. As per ld. AR, if these additional evidences are considered, the assessee shall not be treated as assessee in default.

13. We find it is in the interest of justice, all the three appeals should be remanded to the file of the Assessing Officer along with additional evidences furnished before us by the respective assessees. The Assessing Officer [ITO (TDS)] is directed to admit the same and adjudicated the issue and granted relief wherever the conditions laid down in this regard are met by the assessees. Accordingly, this part of the

grounds/additional grounds raised by the assessee is allowed for statistical purposes.

14. Considering the relief granted to the assessee, we are of the opinion, the adjudication of other issues on legal and merits become an academic exercise and, therefore, the same are dismissed as academic.

15. In the result, all the three appeals of the assessee are partly allowed for statistical purposes.

Order pronounced on 25th day of July, 2019.

Sd/-
(विकास अवस्थी /**VIKAS AWASTHY**)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-
(डी. करुणाकरा राव/**D. KARUNAKARA RAO**)
लेखा सदस्य/**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 25th July, 2019.
Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A) concerned.
4. The CIT concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.