

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2290/Del/2017
(Assessment Year: 2013-14)

The Gurgaon Co-operative Bank ltd, Civil Lines, Gurgaon PAN: AAALT0271A	Vs.	ITO(TDS), Gurgaon
(Appellant)		(Respondent)

Assessee by :	None
Revenue by:	Shri N. K. Bansal, Sr. DR
Date of Hearing	24/09/2019
Date of pronouncement	26/09/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the ld CIT(A)-I, Gurgaon dated 28.11.2016, wherein, the ld CIT(A) has dismissed the appeal filed before him by the assessee against the order of the ld ITO(TDS), Gurgaon dated 20.03.2015 passed u/s 201(1) and 201(1A) of the Income Tax Act, 1961 confirming the assessee is an 'assessee in default' for failure to deduct tax at source on interest paid to other cooperative societies and also to other persons who are not shown to be the members of the assessee society and did not possess PAN. He also confirmed consequent interest u/s 201(1A) of the act.
2. However, assessee has raised nine grounds of appeal but only issue involved in this appeal is that the assessee is a cooperative bank and it has paid interest to certain persons who are not the members of the assessee and also to other cooperative societies. This information was found in TDS Inspection conducted on 07.11.2013. Thus, it was noted that the assessee should have deducted tax at source u/s 194A of the Act. The assessee has failed to do so.
3. Therefore, the ld AO found that for FY 2012-13 the assessee has paid interest to other persons whose name, address and Pan was not available

of Rs. 10914257/- on which tax @20% should have been deducted amounting to RS. 2182852/-. Further, that tax was not deposited into the bank account of the Govt and therefore, interest of Rs. 654856/- was found to be payable by the assessee. Thus, in Assessment Year 2012-13, the assessee has not deducted tax at source on the persons whose Permanent Account No is not available.

4. Further, it was also noted that there are several other cooperative societies to whom interest is paid but no tax is deducted at source.
5. Accordingly, the ld AO found that total interest paid is Rs. 10852674/- on which tax should have deducted @20% of Rs. 1387525/- and thus total liability of Rs. 1803783/- was worked out. Accordingly, the order was passed holding that the assessee in default for tax deducted at source of Rs. 3570377/- and interest thereon u/s 201(1A) of the Act of Rs. 1071114/-. Such orders passed by the ld AO on 20.03.2015.
6. The assessee aggrieved with the order of the ld AO preferred an appeal before the ld CIT (A). The ld CIT (A) after considering the submission and order of the ld AO confirmed the demand raised by the ld AO because of non-deduction of tax at source on interest paid to the cooperative societies and. He further confirmed the failure to deduct tax at source on various persons of Rs. 10914257/-. Thus, order of the ld AO was confirmed.
7. Despite notice none appeared before us on behalf of the assessee therefore, the issue is decided on the facts available on record.
8. The DR vehemently submitted that the issue is squarely covered in favour of the revenue.
9. At the time of hearing, we put to the attention of ld DR that there is insertion of a proviso by the Finance Act 2012 w.e.f. 01.04.2013 u/s 201 (1) a) of the act which is held to be retrospective in nature which provided that if the assessee is not deemed to be an assessee in default u/s 201(1) of the Act , then it is deemed that the assessee has deducted and paid the tax at such sum on the date of furnishing of return of income by the payee. Therefore, no disallowance can be made.

10. The Ld. DR submitted that such proviso is not retrospective in nature, as it has been inserted with effect from 1-4-2013. He submitted that there is no exemption to interest paid for non-deduction of tax u/s 194A of the act.
11. We have carefully considered the contention of the ld DR and the facts stated in the order. The assessee is a cooperative society carrying on banking business-paying interest to various other societies and persons. On such payment of interest, the tax should have been deducted u/s 194A of the Act. Though the amendment by insertion of Clause No. (v) to section 194(3) as come into effect w.e.f. 01.06.2015. Therefore, prior to that any income credited or paid by cooperative society to a member thereof is only exempt for non-deduction of tax at source u/s 194A of the Act. Therefore, prior to that the cooperative society even if paying interest to another cooperative society is subject to tax deduction at source u/s 194A of the Act. The impugned assessment order before us is FY 2012-13 related to Assessment Year 2013-14. Therefore, the assessee should have deducted tax at source on interest paid to another cooperative society u/s 194A of the act. Further, with respect to interest paid to other persons the assessee did not show that name, address and PAN of the depositors. Therefore, it is not established by the assessee that they are members of the society. As the assessee has also failed to show that those persons are not holding any PAN and therefore, the provision of section 206AA applied and AO has taken the rate of tax deducted at source correctly @20%. In view of the above facts we do not find any infirmity in the order of the ld lower authorities in upholding the action of the ld AO u/s 201(1) and 201(1A) of the Act.
12. However, w.e.f 01.07.2012 a proviso has been inserted to section 201(1), wherein, the assessee will be deemed to be an assessee in default in respect of tax deduction provided assessee furnishes the requisite information. By several judicial precedents, this proviso is held to be retrospective in nature. In view of this fact, we set aside the appeal of the assessee back to the file of the ld AO with a direction to the assessee to provide such necessary information as prescribed in accordance with that proviso before the ld AO within 90 days from the date of this order. If the assessee submits that information to the satisfaction of the ld AO, then to that extent the assessee

may not be held to be an assessee in default. With respect to the interest u/s 201 (1A) of the act, proviso is added u/s 201(1A) w.e.f. 01.07.2012. The above proviso provides that if the assessee is not deemed to be an assessee in default under the proviso to section 201(1) of the Act then interest shall be payable only from the date on which such tax was deductible to the date of furnishing of return of income by payee. Accordingly, the ld AO may also calculate the interest u/s 201(1A) of the act thereafter.

13. In view of this appeal filed by the assessee is allowed accordingly with above direction for statistical purposes.

Order pronounced in the open court on 26/09/2019.

-Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 26/09/2019
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi