

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "बी" चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B', CHANDIGARH

श्री एन. के. सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य
BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRI SANJAY GARG, JUDICIAL MEMBER

आयकरअपीलसं./ITA Nos. 1567 to 1570/CHD/2017

निर्धारणवर्ष / Assessment Years : 2011-12 & 2014-15

Canara Bank, New Shimla Branch, Sector 2, Shimla	Vs. बनाम	The ITO (TDS), Shimla
स्थायीलेखासं./PAN NO: PTLC1161D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे/Assessee by : Sh. Hardesh Kant Jindal, CA
राजस्वकीओरसे/ Revenue by : Sh. Arvind Sudershan, Sr.DR

सुनवाईकीतारीख/Date of Hearing : 19.11.2019
उदघोषणाकीतारीख/Date of Pronouncement : 19.11.2019

आदेश/Order

Per Bench:

The captioned appeals have been preferred by the assessee against the common order dated 31.01.2017 of the Commissioner of Income Tax (Appeals), Shimla [hereinafter referred to as CIT(A)].

2. Earlier these appeals were dismissed by the Tribunal for non-prosecution vide order dated 20.4.2018, however, the said order of the Tribunal was recalled vide order dated 4.10.2019 passed by the Tribunal in M.A. Nos. 28 to 31 /Chd/2019. Accordingly, the appeals of the assessee were heard afresh on merits.

3. Since the facts and issue involved in all the captioned appeals are identical, hence, these were heard together and are being disposed off by this common order.

4. The **ITA No.1567/Chd/2017** is taken as a lead case. The assessee in this appeal has taken 10 grounds of appeal, which are identical in all the captioned appeals.

1. The assessing officer had no power of survey u/s 133A. Hence, the survey should be considered ultra vires and proceeding of survey and the order passed be quashed.

2. Section 201(1) and 201(1 A) are not the sections to pass an order and hence these should not be considered binding upon the assessee.

3. There was no valid notice served on the deductor and in the absence of valid notice, no demand being enforced upon the assessee.

4. The Ld. CIT(A) has erred in law and facts of the case while confirming almost all the additions in the TDS amount of the assessee.

5. The Id CIT(A) has erred in law and facts of the case while not allowing the excess TDS deposited for the quarter ending 31st march, which was considered to be short deducted during the previous 3 quarters in the financial years 2010-11, 2011-12, 2012- 13 and 2013-14.

6. The Ld. CIT(A) has erred in law and facts of the case while confirming the calculation of interest u/s 201(1 A) till the date of passing of order instead of year end when such taxes have been paid.

7. The CIT(A) has erred in law and facts of the case while rejecting implementation of circular no. 03/2010 dated 03.02.2010.

8. The Id. CIT(A) has erred in law and facts of the case while confirming the calculation of interest u/s 201 (1 a) till the date of passing of order instead of year end when such taxes have been paid.

9. The CIT(A) has erred in law and facts of the case while confirming the demand of TDS in the case of HPPTL Corporation when there were too many reasons with the deductor for not deducting TDS from he said corporation.

10. That the appellant craves leave to add, amend or delete any of the grounds of appeal at the time of hearing of appeal or before the appeal is being heard.

5. At the outset, the Ld. Counsel for the assessee has submitted that as per the instructions of his client, he does not press **ground Nos. 1 to 6** of the appeal. Ground Nos. 1 to 6 of the appeal are therefore, dismissed as 'not pressed'.

5. Now, we are left with **Ground Nos. 7 to 10** of the appeal.

6. A perusal of the above grounds of appeal reveals that the **Ground No.10** of the appeal is general and does not require any specific adjudication.

7. So far as **Ground Nos. 7 and 8** are concerned, the issue raised by the assessee through these grounds of appeal is regarding the

applicability of the CBDT Circular No.3 of 2010 to the facts and circumstances of the case.

8. The brief facts relating to the issue are that the assessee is a Branch of Canara Bank, which is a Public Sector Bank. A survey action u/s 133A of the Income Tax Act, 1961 (in short 'the Act') was conducted on 30.1.2014 at the premises of the assessee bank. In the post survey proceedings, the Assessing Officer noticed that the TDS deducted on interest payment made to FDRs / KDRs was not as per the provisions of section 194A of the I.T. Act, 1961. He, therefore, held the assessee as 'assessee in default' and raised the demand u/s 201 & sec. 201(1A) of the Act.

9. As per provisions of section 194A of the Income Tax Act 1961, income tax has to be deducted at source at the time of credit of interest income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, at the rates in force if such interest amount exceeds specified limit. Further, Explanation to section 194A states that *"for the purpose of this section, where any income by way of interest as aforesaid is credited to any account, whether called 'Interest payable account' or 'Suspense Account' or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of*

such income to the account of the payee and the provisions of this section shall apply accordingly".

Representations have been received by the CBDT from Indian Banks Association (IBA) seeking clarification regarding deduction of tax at source from payment of interest on time deposits by banks using Core-Branch Banking Solutions (CBS) software. In case of banks using CBS software, interest payable on time deposits is calculated generally on daily basis or monthly basis and was swept & parked accordingly in the provisioning account for the purposes of macro-monitoring only. However, constructive credit is given to the depositor's / "payee's account either at the end of the financial year or at periodic intervals as per practice of the bank or as per the depositor's / payee's requirement or on maturity or on encashment of time deposits; whichever is earlier.

The CBDT after considering the above representation vide Circular No. 3 dated 2.3.2010 clarified the position as under:-

"4. In view of the above position, it is clarified that since no constructive credit to the depositor's / payee's account takes place while calculating interest on time deposits on daily or monthly basis in the CBS software used by banks, tax need not be deducted at source on such provisioning of interest by banks for the purposes of macro monitoring only. In such cases, tax shall be deducted at source on accrual of interest at the end of financial year or at periodic intervals as per practice of the bank or as per the depositor's / payee's requirement or on maturity or on encashment of time deposits; whichever event takes place earlier; whenever the aggregate of amounts of interest income credited or paid or likely to be

credited or paid during the financial year by the banks exceeds the limits specified in section 194A."

10. The assessee before the Assessing Officer relying upon the aforesaid Circular No. 3 of 2010 of CBDT pleaded that the interest amount was credited in the account of the depositor only at the time of maturity of the FDRs or at the end of the year and, therefore, in the light of the Circular No. 3 of 2010 of CBDT, there was no default on the part of the assessee as per the provisions of section 194A of the Act. However, the Assessing Officer observed that the assessee was in default as the bank branch itself has admitted that it had been deducting TDS on quarterly basis on all these KDRs/ FDRs till F.Y. 2011-12. The claim of change from quarterly deduction of TDS to annual deduction of TDS in view of the provisions as mentioned in CBDT Circular after March 2012 was not accepted by the Assessing Officer by holding that the circular was issued to help bona fide deductors to help implement the CBS software for the purpose of macro provision only. Therefore, the Assessing Officer held that since the bank has credited interest earned on quarter ending in the principal as on the opening of the next quarter, it was nothing but credit / accrual of interest and on such credit / accrual TDS was to be deducted / deposited under section 194A of the I.T. Act 1961. The Assessing Officer, accordingly held the assessee to be as "assessee in default" by holding that the TDS was required to be

deducted on quarterly basis. The Assessing Officer, thus, raised demand u/s 201(1) / 201 (1A) for the financial years 2010-11 to 2013-14.

11. Before the Ld. CIT(A), the assessee pleaded that the observation of the Assessing Officer that the assessee had credited interest in the principal amount of the depositors on quarterly basis was wrong. That no interest was credited by the assessee on quarterly basis, rather, the interest amount was credited to the account of the depositor / principal amount only at the time of maturity or at the end of the year and accordingly the TDS was deducted. The Ld. counsel has further submitted that the Ld. CIT(A) did not give proper time and opportunity to the assessee to furnish the necessary details. That the time was sought from the CIT(A) to furnish the necessary details. However, the Ld. CIT(A) proceeded to decide the appeals on merits.

The Ld. counsel in this respect has invited our attention to the para 14 of the impugned order of the CIT(A), wherein, the Ld. CIT(A) has mentioned that the assessee was asked to furnish the copies of the FDRs account to show and establish that no interest was accrued and credited to the specific account of the depositor during the year. Since the assessee had failed to furnish the same during the course of appeal proceedings, hence, the Ld. CIT(A) proceeded to uphold the findings of the Assessing Officer that the assessee was deducting and depositing

the TDS on quarterly basis on the FDRs/ KDRs till 2011-12 and further that the assessee had not been able to establish that it was covered by Circular No.3 of 2010 of the CBDT. The Ld. counsel has further submitted that the assessee be given opportunity to properly present its case by furnishing necessary details before the CIT(A).

12. So far as the **Ground No. 9** is concerned, the plea of the Ld. Counsel for the assessee is again that the assessee was not required to deduct the TDS on the interest paid to H.P. Power Transmission Corporation Ltd. The Ld. Counsel for the assessee submitted that there were various reasons for the same. However, the assessee was not given proper time and opportunity to present its case on this account also.

13. It has, therefore, been requested that both the issues i.e. raised vide ground Nos. 7 & 8 and issue raised vide ground No.9 of the appeal be remanded back to the file of the CIT(A) for decision afresh after giving proper opportunity to the assessee to present its case and furnish the necessary details and evidences.

14. The Ld. DR though has relied upon the findings of the lower authorities, however, could not rebut the submissions of the Ld. counsel for the assessee that it is a case where examination of the facts is required.

15. Considering the submissions of both the Ld. representatives of the parties, the issue raised vide ground Nos. 7 to 9 are restored to the file of the CIT(A) for decision afresh. The Ld. CIT(A) will give proper opportunity to the assessee to furnish the necessary details and evidences and then to decide both the issues by way of a speaking order.

Since the identical grounds have been taken in all the appeals, hence, these issues raised in all the captioned appeals are accordingly restored to the file of the CIT(A).

In view of our observations given above, all the captioned appeals are treated as partly allowed for statistical purposes.

Order pronounced in the Open Court on 19.11.2019.

Sd/-
(एन. के. सैनी / N.K. SAINI)
उपाध्यक्ष /Vice President
Dated : 19.11.2019
"आर.के."

Sd/-
(संजय गर्ग / SANJAY GARG)
न्यायिकसदस्य/ Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar