

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “ C ” BENCH: BANGALORE

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.369 to 371/Bang/2017  
(Assessment Year: 2012-13 to 2014-15)

M/s. Karnataka Vikas Grameena Bank,  
B.C. Road Branch, Bantwal,  
Dakshina Kannada-574 219  
PAN AAAAK 6324Q

....Appellant

Vs.

Income Tax Officer,  
TDS, Mangalore.

.....Respondent.

Assessee By:	Shri S.V. Ravishankar, Advocate.
Revenue By:	Smt. R. Premi, JCIT (D.R)

Date of Hearing :	04.02.2020.
Date of Pronouncement :	26.02.2020.

**ORDER**

**PER SHRI PAVAN KUMAR GADALE, JM :**

These are the appeals filed by the assessee against the separate orders of Commissioner of Income Tax (Appeals), Bangalore passed under Sections 201(1) r.w.s. 201(1A), 194A and 250 of the Income Tax Act, 1961 ('the Act'). Since the appeals have common and identical issues, they are clubbed and heard together and

consolidated order is passed. For the sake of convenience, we shall take up the ITA No.369/Bang/2017 for the Assessment Year 2012-13 and facts narrated therein.

2. The assessee has raised the following grounds of appeal :

1. The order of the learned Commissioner of Income-tax passed under Section 250 of the Act in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.

2. Principles of Natural Justice;

i. The learned Assessing authority erred in passing the assessment order in undue haste and with a pre-determined mind without giving a proper opportunity of hearing to the manager of the Appellant summoned for cross-examination on the facts and circumstances of the case.

ii. The lower authorities ought to have given opportunity of cross-examining the depositors, to the Appellant on the facts and circumstances of the case.

3. Levy of TDS with interest u/s. 201(1) r.w.s 201(1A);

i. The learned lower authorities were not justified in levying TDS under Section 194A amounting to Rs.31,794/- on interest paid to depositors and levying interest u/s. 201(1A) amounting to Rs.11,128/- both in aggregating to Rs.42,922/- by treating the Appellant as 'Assessee in default' on the facts and circumstances of the case.

- ii. The Commissioner of Income tax (Appeals) failed to appreciate that Section 201 of the Act does not envisage a recovery proceeding from the deductor in the event of failure to effect TDS under Chapter XVII B and thus invocation of Section 156 of the Act to levy a demand on the Appellant is totally misplaced and without any foundation.
  - iii. The Commissioner of Income Tax (Appeals) failed to appreciate that the provisions of Section 191 and Section 205 construct a mandate not to recover tax from the deductor in the event of failure to deduct tax.
  - iv. The Commissioner of Income Tax (Appeals) failed to appreciate that the provisions of 201(1A) do not envisage levy of interest on the tax not deducted at all and thus interest levied is not sustainable for this reason also.
  - v. Without prejudice the authorities below erred in not appreciating that few deductees have offered the said interest income for tax in their respective returns of income and some of the deductees having income below the taxable income limit, the question of taxing the income of a person again in the Appellant's hands by way of TDS leads to double taxation.
  - vi. Without prejudice the learned authorities failed to appreciate that the filing of Form 15G / H are only directory and not mandatory under the facts and circumstances of the case.
  - vii. Without Prejudice, the learned assessing authorities failed to appreciate that it is not liable to deduct tax at source under Section 194A on the deposits as it is a co-operative bank and failed to follow the decisions laid down by the Hon'ble Karnataka High Court in the case of National Co-operative Bank Ltd reported in 387 ITR 702.
4. Appellant craves leave to add, alter, substitute and delete any or all of the grounds of appeal urged above.
  5. For the above and other grounds to be urged during the hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice.

3. The assessee is a Branch of Karnataka Vikas Grameena Bank. Whereas the Karnataka Vikas Grameena Bank has come into existence on 12.09.2005 and sponsored by Syndicate Bank for catering to the needs of farm sector and non-farm sector. Survey under Section 133A of the Act was conducted on 7.1.2015 in the premises of assessee for verifying the compliance of TDS provisions under Chapter XVI B of the Act. During the survey proceedings, details were called for in respect of interest payments exceeding Rs.10,000/- per annum and copies of Form no 15G & 15H. Whereas the assessee has obtained Form no 15G & 15H only from four customers and for remaining customers, no compliance of TDS provisions. Finally, assessing officer passed order under Section 201(1) and 201(1A) of the Act dt.4.3.2015 with demand of Rs.31,794 being shortfall of TDS under Section 194A of the Act under Section 201(1) and 201(1A) of Rs.11,128 aggregating to Rs.42,922. Aggrieved by the order, the assessee has filed an appeal with the CIT(Appeals), But The CIT(Appeals) has confirmed the action of the Assessing Officer and dismissed the appeal. Aggrieved by the order, the assessee has filed an appeal with the Tribunal.

4. At the time of hearing, the learned Authorized Representative submitted that the CIT(Appeals) has erred in confirming the order of Assessing Officer, whereas the assessee has obtained Form no 15G & 15H from four depositors and whereas in respect of others, they are agriculturists and no Return of Income was filed. The

learned Authorized Representative submitted that the provisions of Section 194A of the Act shall not apply where there is no taxable income in the hands of deductees. and supported his arguments with the decision rendered by Panaji Bench in the case of RBL Bank Limited Vs. ITO (TDS) (2016) 65 Taxman.com 219 (Panaji). Contra, the learned Departmental Representative supported the orders of CIT(Appeals).

5. We heard the rival contentions and perused the material on record. The sole disputed issue argued and envisaged by the learned Authorized Representative that the CIT(Appeals) has erred in confirming the action of the Assessing Officer on raising demand under Section 201(1) and 201(1A) of the Act. The learned Authorized Representative emphasized that the assessee has complied with the provisions and deposit holders have offered income in their income tax assessments In respect of other deposit holders, they do not have taxable income and are agriculturists, hence the question of deduction of TDS does not arise, and relied on the Tribunal decision of RBL Bank Limited Vs. ITO (TDS) (Supra) extracted below :

Section 201, read with section 194A, of the Income-tax Act, 1961 - Deduction of tax at source - Consequence of failure to deduct or pay (Assessee-in-default) - Assessment years 2011-12 to 2013-14 - Assessee-bank paid interest to a university (recipient) without deducting TDS - Assessing Officer treated bank as assessee-in-default - Recipient of interest showed nil income treating all income as exempt and, thus, did not pay any tax - Whether where no tax was paid by recipient of income because as per recipient, its entire income was exempt or on which no tax was payable, then unless it was shown that due tax could not be recovered by department from recipient, assessee-payer could not be treated as 'assessee-in-default' - Held, yes [Para 13] [In favour of assessee/Matter remanded]

In the course of hearing, the Bench has called for statement of deposit holders along with the names, address and the amount of interest, and the learned Authorized Representative expressed inability to submit immediately. He sought time to furnish the details. In any case, we considering the submissions of assessee, are of the opinion that the Assessing Officer has to verify and examine the details of deposit holders and the component of interest paid to deposit holders being agriculturists who do not have taxable income and allow the grounds of appeal of assessee for statistical purposes.

6. Similarly in ITA Nos.370 & 371/Bang/2017, the issues are similar and identical and the same decision as held in ITA No.369/Bang/2017 shall apply. Accordingly, the orders of the CIT(Appeals) is set aside and restore to the file of Assessing Officer with similar directions cited above and allow the grounds of appeal for statistical purposes.

7. In the result, the assessee's appeals are allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

**(B.R. BASKARAN)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Dated: 26.02.2020.

\*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore