

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

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य  
BEFORE: SHRI. N.K.SAINI, VP & SHRI, SANJAY GARG, JM

आयकर अपील सं./ ITA NO. 747/Chd/2019

निर्धारण वर्ष / Assessment Year : 2011-12

The Manager, Allahabad Bank Bhagra Niwas, The Mall Shimla- Himachal Pradesh	बनाम	The ITO TDS, Kasumpti Shimla- Himachal Pradesh
स्थायी लेखा सं./PAN NO: PTLA1051B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Vishal Mohan

राजस्व की ओर से/ Revenue by : Shri J.K. Garg, CIT

सुनवाई की तारीख/Date of Hearing : 24/02/2020

उद्घोषणा की तारीख/Date of Pronouncement : 27/02/2020

### आदेश/Order

#### PER N.K. SAINI, VICE PRESIDENT

This is an appeal by the Assessee against the order of the Ld. CIT(A), Shimla, H.P. dt. 26/03/2019.

2. Following grounds have been raised in this appeal:

1. That in the facts and circumstances of the case the Ld. Commissioner of Income Tax (Appeals) is not justified in upholding that the tax was required to be deducted on the deposits of Himachal Pradesh Power Corporation under section 194A of the Income Tax Act, 1961.

2. That in the facts and circumstances of the case the Ld. Commissioner of Income Tax (Appeals) is not justified in upholding the charging of interest under section 201(1A) of the Income Tax Act, 1961.

3. That order of the Commissioner of Income Tax (Appeals) is bad in law and facts.

3. During the course of hearing the Ld. Counsel for the Assessee also moved an application for admission of the additional evidence in the form of a certificate issued by the Director (Finance), H.P. Power Corporation Ltd., BCS, New Shimla dt. 07/01/2020 written to The Chief Manager, Allahabad Bank, The Mall, Shimla. In the application moved under Rule 29 of the ITAT Rules 1963, the assessee stated as under:

"2. That only reason which weighed with the Ld CIT(A) in holding the assessee responsible for non deduction of TDS under section 194 A of the Income Tax Act,1961 was that no proof had been placed on record to prove that fact that the appellant had not placed on record any material to show that the deductee Himachal Pradesh Power Corporation Ltd was a 100% govt owned company though on their letter head it was mentioned that all it is a govt owned company.

3. That now the applicant has sought a letter in respect of the same and the is sought to be placed for appreciation of this Hon'ble Bench as additional evidence.

4. That as the said document goes to the root of the case it is most respectfully prayed that the same may kindly be admitted.

5. That no prejudice shall be caused to the non application is the additional evidence is admitted on the other hand the applicant shall be put to an irreparable loss.

It is, therefore, most respectfully prayed that this application be taken on account and additional evidence in respect of the be admitted or any other order be passed in the interest of justice."

4. During the course of hearing the Ld. CIT DR opposed the admission of the additional evidence and submitted that the same was not furnished before the Ld. CIT(A).

5. Facts of the case in brief are that the assessee is a banking institution and is a person responsible for deduction of tax at source. The A.O. noticed that the assessee had not deducted TDS in accordance with the provisions of Section 194A of the Income Tax Act, 1961 on the interest paid to various consumers on the term deposits etc. and created the demand of Rs. 6,18,218/- for the year under consideration.

6. Being aggrieved the assessee carried the matter to the Ld. CIT(A) who confirmed the demand raised by the A.O. for the year under consideration by observing in para 1 at page no. 16 of the impugned order as under:

*1. Nothing has been brought on record to establish that Himurja satisfies the clause 194A(3)(iii)(f) referred supra. The only documents on record is on page 68 which is a letter by Himurja CEO making a claim that it is registered under societies registration Act 1860 and being wholly financed by the State and Central Government, it satisfied the clause 194A(3)(iii)(f) referred supra. However, the said letter is a mere claim by the CEO and cannot be taken as evidence to establish the stated facts. Accordingly, the action of the A.O is upheld with regard to this issue."*

7. Now the assessee is in appeal.

8. Ld. Counsel for the assessee furnished the additional evidence and submitted that it goes to the root of the matter as alleged deductee is a Government Company,

therefore no TDS is to be deducted as per the provisions of Section 194A of the Act. However, he admitted that the additional evidence now furnished was not available to the Ld. CIT(A), he requested to remand the matter to the Ld. CIT(A) for consideration of the aforesaid certificate issued by the Director (Finance), H.P. Power Corporation Ltd., BCS, New Shimla.

9. The Ld. CIT DR opposed the admission of the additional evidence and submitted that the certificate now furnished before the ITAT, was not submitted before the Ld. CIT(A).

10. We have considered the submissions of both the parties and perused the material available on the record. In our opinion the certificate now furnished in the form of new evidence goes to the root of the matter, therefore, the same is admitted, however, it was not available to the Ld. CIT(A), we, therefore deem it appropriate to set aside this issue back to the file of the Ld. CIT(A) to be decided afresh in accordance with the law after providing due and reasonable of being heard to the assessee.

11. In the result, appeal of the assessee is allowed for statistical purposes.

(Order pronounced in the open Court on 27/02/2020 )

**Sd/-**  
**संजय गर्ग**  
**(SANJAY GARG)**  
**न्यायिक सदस्य/ Judicial Member**  
**AG**  
**Date: 27/02/2020**

**Sd/-**  
**एन.के.सैनी,**  
**( N.K. SAINI)**  
**उपाध्यक्ष / VICE PRESIDENT**

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File