



Standard Chartered Bank
ITA Nos.2153 to 2156/Mum/2018
Assessment Year: 2008-09

**आयकर अपीलीय अधिकरण "जी " न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI**

**माननीय श्री छल्ला नागेन्द्र प्रसाद, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI C.N. PRASAD, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)**

आयकर अपील सं./ I.T.A. No.2153 to 2156/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2008-09)

Standard Chartered Bank Taxation Department, C-38/39, G-Block, Behind MCA Club, 7 th Floor, Bandra Kurla Complex, Bandra East, Mumbai 400 051.	बनाम/ Vs.	DCIT (TDS)-2(2) Room No.717 Smt. K.G. Mittal Ayurvedic Hospital Bldg. Charni Road Mumbai 400 002.
PAN/TAN: AABCS-4681-D / MUMS30129B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Madhur Aggarwal – Ld. AR
Revenue by	:	Shri V. Vinod Kumar-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	18/08/2020
घोषणा की तारीख / Date of Pronouncement	:	21/08/2020

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. The assessee has common grievance in all the 4 captioned appeals for Assessment Year (AY) 2008-09. The facts are pari-materia the same in all the appeals and therefore, the appeals were heard together and are now being disposed-off by way of this consolidated order for the sake of convenience and brevity.



ITA No.2155/Mum/2018, Quarter-1 of Financial Year 2007-08

2. ITA No. 2155/Mum/2018 pertains to Quarter-1 of financial year 2007-08 and the same is taken as lead case for adjudication. This appeal assails the order of Ld. Commissioner of Income Tax (Appeals)-60, Mumbai [CIT(A)], Appeal No. CIT(A)-60/IT-152/DCIT(CPC)(TDS)-2(2)/2015-16 dated 31/01/2018 on following grounds: -

1. Levy of Interest Under section 201(1A) for late deposit of Tax Deducted at Source-("TDS")

1.1 The learned Commissioner of Income Tax (Appeals)-60, Mumbai ["CIT(A)"] erred in law and on facts to confirm the levy of interest for late payment of tax deducted at source of Rs.42,09,766 under section 201(1A) of the Income-tax Act.

1.2 The Learned CIT(A) erred in not appreciating that no interest under section 201(1A) of the Act is leviable as TDS on salary payments was deposited through a cheque by the prescribed due date of i.e. 7th of the following month.

1.3 The Learned CIT(A) erred in holding that interest under section 201(1A) of the Act was leviable in case where the cheque for payment of TDS is deposited within due date with authorized bank, duly honoured but the cheque is encashed thereafter.

1.4 The Learned CIT(A) erred in holding that section 201(1A)(ii) provides that interest is leviable up to the date tax is '**actually paid**' to the credit of the Government even if cheque towards the tax deducted at source is presented to Authorized Bank within prescribed due date.

1.5 The Learned CIT(A) erred in not considering the Supreme Court decision in the case of CIT v. Ogale Glass Works Ltd. 25ITR 529 wherein it is held that "**the cheques not having been dishonored but having been cashed, the payments related back to the dates of the receipt of the cheques and in law the dates of payment were the dates of the delivery of the cheques**"

1.6 The Learned CIT(A) erred in confirming the consequential levy of interest of Rs.1,68,388 under section 220(2) of the Act.

2. Levy of Interest for two months

2.1 Without prejudice to the above the learned CIT(A) erred in confirming of action levy of interest under section 201(1A) of the act for two months.

2.2 Without prejudice to the above the learned CIT(A) erred in not appreciating that as the period of delay in payment of TDS is less than 30 days interest can be levied only for one month and not for two months.

As evident, the sole subject matter of appeal is levy of interest on alleged late payment of tax deducted at source (TDS) by the assessee.



3.1 Facts on record would reveal that the assessee received an intimation u/s 154 of Act, 1961, Communication Ref. No. TDS/0708/24Q/D/100015357388 from TDS-CPC, Vaishali, Ghaziabad vide order dated 20/06/2015. This intimation processed the correction TDS statement in Form 24Q for Q-1 of financial year 2007-08 filed by the assessee on 18/06/2015. In the said intimation, the assessee has been charged with interest of Rs.42,09,766/- on account of late payment of tax u/s 201(1A) and another interest of Rs.1,68,388/- u/s 220(2) of Act. The total interest demand thus raised against the assessee aggregated to Rs.43,78,154/-.

3.2 Aggrieved as aforesaid, the assessee challenged the interest demand before Ld. CIT(A) by submitting that TDS of each month was deposited on or before the stipulated date of 7th of succeeding month as prescribed u/s 200 of the Act read with Rule 30 of Income Tax Rules, 1962 and therefore, the question of levy of interest u/s 201(1A) would not arise. It was also submitted that the processing system, for the purpose of computing interest, erroneously considered the date of realization of cheques as the date of payment instead of date of tendering of TDS cheques to the authorized bank by the assessee. It was pleaded that the date of deposit would be the date on which constructive payment was made and a cheque, unless dishonored, would amount to payment. Once the cheque was tendered to the bank and it was honoured, the tax would be considered to have been paid on the date on which the cheque was tendered by the assessee to the bank and not on the date on which it was presented for collection by the bank. Reliance was, *inter-alia*, placed in the decision of Chennai Tribunal in



P.L.Haulwel Trailers Ltd. Vs DCIT (100 ITD 485 20/01/2006) for the said proposition. Reliance was also placed on the decision of Hon'ble Supreme Court in **CIT V/s Ogale Glass Works Ltd. (25 ITR 529 19/04/1954)** for the submissions that the payment would relate back to the date of receipt of the cheque. The said decision was stated to be followed by Hon'ble Apex Court in **DIT V/s Raunaq Educational Foundation (350 ITR 420)** as well as Hon'ble Madras High Court in **CIT V/s Repco Home Finance Ltd. (53 Taxmann.com 47)**. Reliance was placed on similar other decisions to support the various submissions. These decisions have already been enumerated in the impugned order.

3.3 The Ld. CIT(A), after perusing the detailed payment chart submitted by the assessee, noted that there was a difference in tendering of challans by the assessee to SBI and date of clearing / stamping on the challan. Going by the wordings of Section 201(1A) (ii) which used the expression **actually paid**, it was held that interest was to be levied from date of deduction to the date on which such tax was actually remitted to the credit of the Government. The case laws being relied upon by the assessee were held to be not applicable. The assessee's reliance on CBDT Circular No. 261 dated 08/08/1979 was rejected in view of the fact that the said circular was based on Rule 80 of the compilation of the treasury rules which became redundant and were replaced by Central Government (receipt and payment) Rules, 1983. As per Rule 20 of new rules, the date of receipt of government revenue would be the date on which cheque / draft was cleared and entered in the receipt scroll. Since the basis on which old circular was framed no longer existed, the continuation of the said circular would fall. Regarding



assessee's reliance on Circular No. 676 dated 14/01/1994, it was held that the same was in the context of Section 234B and Section 234C of the Act and therefore, would not apply. Finally, it was held that the tax shall be deemed to have been paid to the government when the actual payment of tax has been brought to the credit of government. The time taken for clearing of cheques was not to be considered while levying interest u/s 201(1A). Accordingly the levy of interest was held to be justified.

Aggrieved as aforesaid, the assessee is in further appeal before us.

4. The Ld. Authorized Representative for assessee, Shri Madhur Aggarwal, besides submissions made before Ld. CIT(A), drew our attention to the fact that identical issue is covered in assessee's favor by the decision of a coordinate bench of this Tribunal rendered in **Oil and Natural Gas Corporation Ltd. V/s DCIT (103 Taxmann.com 396 30/11/2018)**. A copy of the order has been placed on record. On the other hand, Ld. DR, Shri V.Vinod Kumar, submitted that the order of Ld. CIT(A) was well reasoned and a speaking order and therefore, the same was to be upheld. However, no contrary decision has been placed on record.

5. We have carefully considered the rival arguments and perused relevant material on record including judicial pronouncements as cited and relied upon during the course of hearing before us. After going through the cited order of this Tribunal in **Oil and Natural Gas Corporation Ltd. V/s DCIT (103 Taxmann.com 396 30/11/2018)**, we find that identical factual matrix as well as controversy has been dealt by the Tribunal and ultimately the issue has been decided in assessee's



favor. The operative part of the decision, for convenience and ease of reference, could be extracted as follows: -

6. We have heard the authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record. The issue involved in the present appeal lies in a narrow compass. We find that our indulgence in the present appeal has been sought by the assessee to adjudicate as to whether the CIT(A) is right in law and the facts of the case in treating the assessee as being in default for delay in deposit of TDS, though the cheque towards the amount of TDS was tendered by the assessee to the government bank within the stipulated time period. We have deliberated at length on the issue under consideration, and find that that as per CBDT Circular No. 261 [F.No. 385/61/79-IT (B)], dated 08.08.1979, it has been clarified that the date of tendering of cheque for payment of government dues shall be deemed to be the date of payment of such taxes. We find that the aforesaid CBDT circular is applicable to all government dues, and makes no distinction whether the payment is by way of TDS, advance tax, self-assessment tax etc. The relevant extract of the aforesaid CBDT Circular No. 261, dated 08.08.1979 reads as under:

"In terms of Rule 80 of the Compilation of the Treasury Rules, if a cheque or draft tendered in payment of Government dues and accepted under the provisions of Rule 79 is honoured on presentation, the payment is deemed to have been made on the date on which it was handed over to the Government banker...."

On a perusal of the order of the CIT(A), we find that he had declined to accept the aforesaid CBDT Circular No. 261, dated 08.08.1979, for the reason that as per him the "Central Treasury Rules (Old rules)" had been substituted by the "Central Government Account (Receipts and Payments) Rules, 1983" which therein governed the provisions of payment of government dues. The CIT(A) drawing support from the Central Government Account (Receipts and Payments) Rules, 1983, had therein concluded that as per the amended rules the government dues tendered in form of a cheque or draft shall be deemed to have been paid on the date on which it is cleared and entered in the receipt of scroll. Admittedly, we are in agreement with the view taken by the CIT(A) that the "Central Treasury Rules (Old Rules)" had been substituted by the "Central Government Account (receipts and payments) Rules, 1983", as per which the date on which a cheque or a draft is cleared is to be deemed as the date of making of the payment by a person towards government dues etc. However, at the same time we cannot remain oblivious of the fact that the CBDT Circular No. 261[F.No.385/61/79-IT(B)], dated 08.08.1979 had not been withdrawn, and as such holds the ground as on date. Rather, it would be relevant to point out that the CBDT in all its wisdom had not even modified the Circular No. 261, dated 08.08.1979 which was issued prior to the "Central Government Account



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(Receipt and Payments) Rules, 1983". Be that as it may, the aforesaid 'benevolent circular' viz. Circular No. 261, dated 08.08.1979 issued by the CBDT on the date of tendering of the cheque by the assessee towards the amount of TDS to the government bank, did hold the ground and was thus binding on the revenue. We are unable to persuade ourselves to subscribe to the observations of the CIT(A), that as the Central Treasury Rules (Old Rules) had been rendered as redundant, therefore, the CBDT Circular No. 261, dated 08.08.1979 would therein follow and also has to be taken as having been rendered as otiose.

7. We shall now advert to certain judicial pronouncements which fortifies the claim of the Id. A.R that the assessee stood discharged of its liability of depositing the TDS on the date on which it had tendered the cheque with the government bank. We find that that Hon'ble Supreme Court in the case of *K. Kaplana Saraswathi (supra)* has held that payment by cheque should be taken to be due payment, if the cheque is subsequently encashed in the ordinary course. Further, the Hon'ble High Court of Madras in *CIT v. Kumudam Publications (P) Ltd.* [1981] 128 ITR 617 after deliberating on the Treasury Rules, had therein concluded that in view of Treasury Rules when cheques are handed over to the government officials or to the government officer authorised to received payment on behalf of the government, payment would be deemed to have been made on the date the cheque was handed over. We find that a coordinate bench of the Tribunal viz. ITAT Chennai in the case of *P.L. Haulwel Trailers Ltd. v. Dy. CIT* [2006] 100 ITD 485 (Chennai) while deliberating on the levy of interest under Sec. 234C of the Act, had observed that as the assessee had paid 'Advance Tax' by depositing the cheques with the authorized banks within the 'due date', therefore, the date of payment was to be taken as the date of presentation of the cheques by the assessee. The Tribunal had arrived at the aforesaid view after considering viz. (i) CBDT Circular No. 261, dated 08.08.1979; (ii) Central Government Account (Receipts & Payments) Rules, 1983; and (iii) the judgment of the Hon'ble Supreme Court in the case of *K. Kaplana Saraswathi (supra)*. Still further, the ITAT, Bangalore in *ITO v. Bradcom Communication Technologies (P) Ltd.* [ITA No. 895 & 900/2014] had observed that where the assessee had made the payment before the 'due date', it was thereafter beyond its control to ensure the transmission of the amount to the government account within the stipulated 'due date'. On the basis of the aforesaid observations, it was held by the Tribunal that the assessee could not be faulted for delay on the part of the bank or the clearing house, whatever may be the rules governing receipts and payments into the Central Government Account. We find that a similar view was also taken by the ITAT, Kolkata in *NHAI, PIU Siliguri v. ACIT* [ITA No. 2296/Kol/2013]. In the said case though the assessee had deposited the TDS amount before the 'due date', but credit was given by the bank after the said 'due date'. On the basis of the said facts, the A.O considering the delay in depositing of the TDS charged interest under Sec. 201(1A). On appeal, the Tribunal after considering the Central Government Account (Receipts and Payments) Rules, 1983 and the CBDT Circular No. 261,



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dated 08.08.1979, concluded that where the cheque was deposited with a bank before the 7th day of the month following the month in which TDS was deducted, no interest could be charged.

8. We have deliberated at length on the issue under consideration before us in the backdrop of the facts and the aforesaid judicial pronouncements. In terms of our aforesaid observations, we are of the considered view that as the assessee had admittedly tendered the cheque with the bank i.e. State Bank of India, Branch: Bandra Kurla Complex, Mumbai well within the stipulated 'due date', therefore, it cannot be held as being in default for the delay on the part of the bank or the clearing house in making the remittance of the said amount to the Government Account. We thus in the backdrop of our aforesaid deliberations, not being able to persuade ourselves to subscribe to the view taken by the lower authorities that the assessee was to be treated as being in default for delay in deposit of the amount of TDS, thus set aside the order of the CIT(A) and delete the interest of Rs. 37,510/-levied by the A.O under Sec. 201(1A) of the Act.

9. The appeal of the assessee is allowed.

Upon perusal, we find that it was held by the bench that Circular No. 261, dated 08/08/1979 issued by the CBDT, unless withdrawn or amended, would hold the ground and would be binding on the revenue. Further, the payment would be deemed to have been made on the date the cheque was handed over to the banker and the date of payment was to be taken as the date of presentation of the cheques by the assessee. It also supports the proposition that the payment would relate back to the date of presentation of cheque unless the cheque is dishonored. The binding decisions cited by the assessee before Ld. CIT(A) also supports the said proposition. Similar view has been taken by Bangalore Tribunal in **ITO V/s Broadcom Communication Technology Pvt. Ltd. (ITA Nos. 895 & 900/ Bang/2014 dated 11/09/2015)**. No contrary decision is on record. Respectfully following the ratio of all these decisions, we hold that payment of TDS by the assessee would relate back to the date of presentation of cheques by the assessee to the banker. Accordingly, TDS-CPC, Ghaziabad is directed to revise the aforesaid intimation by



taking the date of tender of cheques by the assessee as the actual date of payment and re-compute interest payable by the assessee, if any. The interest demand u/s 220(2) being consequential in nature, may also be recomputed. Resultantly, the appeal stands allowed to the extent indicated in the order.

ITA No.2156/Mum/2018, Quarter-2 of Financial Year 2007-08

6. Facts are pari-materia the same in this appeal. The assessee has been saddled with interest u/s 201(1A) for Rs.47,47,081/- for alleged late payment of TDS vide intimation u/s 200A of the Income Tax Act, 1961 dated 20/06/2015, Communication Reference No. TDS/0708/24Q/D/100015357410. The Ld. CIT(A) has upheld the levy of interest on similar reasoning vide order dated 31/01/2018. Aggrieved, the assessee is in further appeal before us with similar grounds. Facts being identical as in ITA No. 2155/Mum/2018, our adjudication as well as directions therein shall *mutatis-mutandis* apply to this appeal also. Resultantly, the appeal stands allowed to the extent indicated in the order.

ITA No.2154/Mum/2018, Quarter-3 of Financial Year 2007-08

7. Facts are pari-materia the same in this appeal. The assessee has been saddled with interest u/s 201(1A) for Rs.49,06,781/- for alleged late payment of TDS vide intimation u/s 200A of the Income Tax Act, 1961 dated 20/06/2015, Communication Reference No. TDS/0708/24Q/D/100015357438. The Ld. CIT(A) has upheld the levy of interest on similar reasoning vide order dated 31/01/2018. Aggrieved, the assessee is in further appeal before us with similar grounds. Facts being identical as in ITA No. 2155/Mum/2018, our adjudication as well as



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directions therein shall *mutatis-mutandis* apply to this appeal also. Resultantly, the appeal stands allowed to the extent indicated in the order.

ITA No.2153/Mum/2018, Quarter-4 of Financial Year 2007-08

8. Facts are pari-materia the same in this appeal. The assessee has been saddled with interest u/s 201(1A) for Rs.1,80,27,395/- for alleged late payment of TDS vide intimation u/s 154 of the Income Tax Act, 1961 dated 20/06/2015, Communication Reference No. TDS/0708/24Q/D/100015357470. The Ld. CIT(A) has upheld the levy of interest on similar reasoning vide order dated 31/01/2018. Aggrieved, the assessee is in further appeal before us with similar grounds. Facts being identical as in ITA No. 2155/Mum/2018, our adjudication as well as directions therein shall *mutatis-mutandis* apply to this appeal also. Resultantly, the appeal stands allowed to the extent indicated in the order.

Conclusion

9. All the appeals stand partly allowed to the extent indicated in the order.

Order pronounced on 21st August,2020.

Sd/-
(C.N. Prasad)

न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 21/08/2020
Sr.PS, Jaisy Varghese



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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

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