

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI R. K. PANDA ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 6095/DEL/2016 (A.Y 2014-15)

&

**I.T.A. No. 6096/DEL/2016 (A.Y 2015-16)
(THROUGH VIDEO CONFERENCING)**

Allahabad Bank Wright Ganj Branch Ghaziabad MRTA01074D (APPELLANT)	Vs	ITO (TDS) Ghaziabad (RESPONDENT)
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Appellant by	Sh. M. P. Rastogi, Adv
Respondent by	Sh. Ashok Gautam, Sr. DR

Date of Hearing	08.03.2021
Date of Pronouncement	30.03.2021

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee against order dated 20/09/2016 passed by CIT (A)-Ghaziabad for assessment years 2014-15 & 2015-16 respectively.

2. The grounds of appeal are as under:-

I.T.A. No. 6095/DEL/2016 (A.Y 2014-15)

“1. That in the absence of any income-tax demand outstanding against the payee or any action taken against the payee by the Department, the Assessing Officer has no valid jurisdiction u/s 201(1) and u/s 201(1A)

of the Income-tax Act, 1961 (the Act), to hold the appellant as assessee in default and consequently the recovery of amount determined by the Assessing Officer holding the assessee in default on account of non-deduction of TDS, is invalid, unjust and bad in law.

2. *That in the absence of a notice u/s 201 or 201(1A) of the Act, the income-tax demand created as a result of order dated 29th February 2016, thereby treating the assessee in default is arbitrary, against the natural justice and bad in law.*
3. *That the authorities below ought not to have treated the assessee in default u/s 201 read with section 201(1A) of the Act in respect of such payees who had furnished Form No. 15G/15H of the Act and consequently the TDS demand u/s 201 and 201(1A) of the Act is arbitrary, unjust and bad in law.*
4. *That the Assessing Officer ought not to have included such items of interest on which TDS has been deducted and paid by the assessee and explained before the CIT (Appeals) and consequently the TDS demand, as created by the Assessing Officer, is arbitrary, unjust and at any rate very excessive.*
5. *That the Assessing Officer and CIT (Appeals) both ought not to have created the TDS demand u/s 201 and 201(1A) of the Act against the assessee in respect of such items of interest, which have been included by the payees in their respective income-tax returns and have paid the income-tax thereon and accordingly the TDS demand as created by the Assessing Officer is arbitrary, unjust and at any rate very excessive.*

5) The above grounds of appeal are independent and without prejudice to one another.

I.T.A. No. 6096/DEL/2016 (A.Y 2015-16)

1. *That in the absence of any income-tax demand outstanding against the payee or any action taken against the payee by the Department, the Assessing Officer has no valid jurisdiction u/s 201(1) and u/s 201(1A) of the Income-tax Act, 1961 (the Act), to hold the appellant as assessee in default and consequently the recovery of amount determined by the Assessing Officer holding the assessee in default on account of non-deduction of TDS, is invalid, unjust and bad in law.*
2. *That in the absence of a notice u/s 201 or 201(1 A) of the Act, the income-tax demand created as a result of order dated 29th February 2016, thereby treating the assessee in default is arbitrary, against the natural justice and bad in law.*
3. *That the authorities below ought not to have treated the assessee in default u/s 201 read with section 201(1A) of the Act in respect of such payees who had furnished Form No. 15G/15H of the Act and consequently the TDS demand u/s 201 and 201(1A) of the Act is arbitrary, unjust and bad in law.*
4. *That the Assessing Officer ought not to have included such items of interest on which TDS has been deducted and paid by the assessee and explained before the CIT (Appeals) and consequently the TDS demand, as created by the Assessing Officer, is arbitrary, unjust and at any rate very excessive That the Assessing Officer and CIT (Appeals) both ought not to have created the TDS demand u/s 201 and 201(1A) of the Act against the assessee in respect of such items of interest, which have been included by the payees in their respective income-tax returns and have paid the income-tax thereon and accordingly the TDS demand as created by the Assessing Officer is arbitrary, unjust and at any rate very excessive.*

5) *The above grounds of appeal are independent and without prejudice to one another.*

3. Both the appeals are identical, hence we are taking up ITA No. 6095/Del/2016 Assessment Year 2014-15 as the lead case. The assessee is a bank, which has now been merged with Indian Bank, having a branch at Wright Ganj, Ghaziabad. During the course of its financial business, the assessee having deposits on which the interest is paid. As per the provisions of Section 194A of the Income-tax Act, 1961 (the Act), interest on TDS has been deducted from time to time and deposited with the Government account. However, in some of the cases, various persons have filed Form No. 15G/ 15H in accordance with the provisions of Section 197A of the Act which makes them eligible to receive interest without deduction of TDS prescribed u/s 194A of the Act. During the course of enquiry made u/s 133(6) of the Act, the AO came to know that out of the persons, who have filed Form No. 15G/ 15H, are enjoying interest more than the taxable limit prescribed under the IT Act and accordingly the Bank authorities should not accept Form No. 15G/15H and then thereafter, without issuing a proper notice u/s 201 of the Act, passed the order u/s 201 and held the bank as assessee in default in terms of Section 201(1) of the Act in relation to the persons who were enjoying interest on their deposits more than the taxable limit, the list whereof has been given itself in the combined order passed u/s 201/201(1A) of the Act for the Financial Years 2013-14 and 2014-15., thereby ordering to recover the following demand from the assessee vide order dated 29th February 2016:

Financial Year 2013-14

Amount of TPS to be deducted	Interest u/s 201(1A)	Total
Rs.8,29,582/-	Rs. 1,90,804/-	Rs. 10,20,386/-

Financial Year 2014-15

Amount of TPS to be deducted	Interest u/s 201(1 A)	Total
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Rs 12,21,894/-

Rs.1,34,408/-

Rs.13,56,302/-

4. Being aggrieved by the order u/s 201/2019A), the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR has given the written submissions and the same are as under:-

The assessee explained before the CIT (Appeals) that for the purpose of invoking the provision of Section 201 of the Act, as observed and explained by the Allahabad High Court, which is a Jurisdictional High Court, in 345 ITR 288 at pages 335 onwards, while dealing with the provision of Section 201 of the Act, held that as per the provisions of Section 191 of the Act read with its explanation, the prime responsibility is of the recipient assessee to pay the tax directly and unless and until the Department pointed out that any tax liability is pending before the recipient assessee, the provision of Section 201 of the Act cannot be invoked because the provision of Section 201 of the Act is a recovery provision. The Hon'ble Allahabad High Court observed that provision of Section 191 of the Act read with its Explanation and the provision of Section 201 of the Act has to be construed harmoniously and the provision of Section 201 cannot be interpreted independently keeping in mind the purpose for which Section 201 has been enacted. So before invoking the provision of Section 201 of the Act, the AO has to bring on record that the tax demands against the recipient assessee are pending which has not been paid by the said assessee directly and thus the jurisdictional fact of invoking the provision of Section 201 of the Act and in the absence of such jurisdictional fact, the provision of Section 201 cannot be invoked and the deductor cannot be treated as assessee in default. In Assessment Years 2002-03 to 2004-05, in the case of the assessee itself in the same branch, the Delhi ITAT in ITA Nos. 5992 to 5994/Del/2012 dated 4th March 2016, after following the judgment of the Jurisdictional Allahabad High Court in the case of the assessee itself, has quashed the proceedings u/s 201

of the Act on the similar lines. In Assessment Years 2002-03 to 2004-05, in the case of the assessee itself in the same branch, the Delhi ITAT in ITA Nos. 5992 to 5994/Del/2012 dated 4th March 2016, after following the judgment of the Jurisdictional Allahabad High Court in the case of the assessee itself, has quashed the proceedings u/s 201 of the Act on the similar lines. The Delhi Bench of the ITAT, while holding so, has also referred to the judgment of the Agra Bench in the case of Allahabad Bank (Aligarh Branch), wherein the Agra Bench also followed the judgment of the Jurisdictional Allahabad High Court in the case of Jagaran Prakashan Ltd. in 345 ITR 288. In the instant case also, though the AO mentioned the name of the persons who had submitted Form No. 15G/15H to the Allahabad Bank, Wright Ganj Branch and to whom the interest has been paid by the Bank without deduction of tax, but the AO has not given any finding about the pendency of demand against the payees and in the absence of such jurisdictional fact, the AO cannot treat the deductor as assessee in default in terms of Section 201 of the Act. In the order, the AO has simply stated that the figure of interest paid to those very persons shows that the recipient income would be taxable because the interest is more than the taxable limit and on such basis the bank should not have accepted Form 15G/15H meant for non-deduction of tax. It is not out of place to mention that the interest figure itself is not the criteria to prove that the recipient income is taxable or not because the taxability of income ultimately depends upon the claim of various deduction in the hands of the payee as available under the law and the assessee bank has no microscopic vision to find out about the taxable income of the recipient assessee and has to depend upon the declaration of the payee to deduct or not to deduct the tax. In such circumstances, keeping into consideration the totality of the fact as well as in the absence of jurisdictional fact, the assessee-bank cannot be treated in default as also held by the Coordinate Bench in earlier years in the case of the assessee-bank itself. Therefore, the order passed u/s 201 of the Act, which too invoked on account of non-issuance of any proper notice, deserves to be quashed. In the alternative, the demand raised by the AO on account of non-deduction of TDS

from the interest paid to various persons in terms of Section 194A of the Act is very excessive because neither the AO nor the CIT (Appeals) has given the benefit of the interest paid to certain persons from whom either the TDS was deducted or the interest paid was less than the taxable limit, the details whereof have been given in the submissions filed by the assessee and which have been reproduced by the CIT (Appeals) in his order itself. As far as the interest charged u/s 201(1A) of the Act by the AO from the date of deductibility till the date of its order, it is submitted that the interest chargeable u/s 201(1A) is compensatory in nature and can be charged only when the deductor-assessee is declared as assessee in default u/s 201(1) of the Act. In the instant case, the same is lacking as explained above and accordingly till the deductor bank is declared as assessee in default in-terms of Section 201(1) of the Act, no interest u/s 201(1A) can be charged because the interest charged u/s 201(1A) is compensatory in nature. However, without prejudice to above, in the alternative, the interest charged u/s 201(1A) is very excessive and should be charged from the date of deductibility to the date of actual payment. In the case of TDS, the actual date of payment is the date on which the payee paid the tax directly as held in the following cases:

- i) 312 ITR 225 (S.C) CIT Vs. Eli Lilly & Co. (India) Pvt. Ltd.
- ii) 155 Taxman 447 (Del) CIT Vs. Majestic Hotel Ltd.

In the instant case, the AO has charged the tax arbitrarily without finding out the actual date of payment by the recipient assessee and accordingly the interest charged by the AO deserves to be deleted. All the persons to whom the interest has been paid by the bank are assessed to tax and a chart showing the name and address of the recipient assessee along with their PAN and the compilation is attached herewith.

6. The Ld. DR relied upon order u/s 201(1)/201(A) of order of CIT(A). The

Ld. DR relied upon following decision:

❖ Arihant Invest Vs. Income Tax Officer, TDS-2, Guwahati (ITAT, Guwahati) Income Tax Appeal No 73 of 2012/27-01-2015.

7. The Ld. AR in rejoinder submitted that the Department is relying upon the judgment of Gauhati Bench of the ITAT in the case of Arihant Invest vs. ITO-TDS in ITA No. 73/2012 dated 27th January 2015. The facts of the case of Gauhati Bench are different from the assessee-bank. Moreover, the assessee-bank is governed by the Jurisdictional High Court of Allahabad who is having a superior authority than the Gauhati Bench. Accordingly, the principle as enunciated by the Allahabad High Court in the case of Jagaran Prakashan Ltd. in 345 ITR 288 has to be followed. As far as the judgment of the Kerala High Court as referred by the Gauhati Bench reported in 245 ITR 13 in case of CIT vs. Dhanalakshmy Weaving Works is concerned, the same deals only with the levy of interest u/s 201(1A) of the Act on account of non-deductibility of TDS. The Kerala High Court had no occasion to consider the judgment of the Hon'ble Supreme Court in the case of CIT vs. Eli Lilly and Co. (India) Pvt. Ltd. and the judgment of Delhi High Court in the case of CIT vs. Majestic Hotel Ltd. in 155 Taxman 447. The Hon'ble Supreme Court in the case of Eli Lilly (supra) held that the interest u/s 201(1A) is compensatory in nature and has to be charged from the date of deductibility till the date of actual payment and in the case of TDS, the date of actual payment is the date on which the tax has been paid by the payee directly.

8. We have heard both the parties and perused the material available on record. The assessee bank has not deducted TDS in respect of customers who have provided Form No. 15G and 15H of the Act under the statute as provided by the Income Tax Act. The customers who have provided Form No. 15G/15H has specifically requests through these forms that TDS should not be deducted

on their FDs/respective withdrawals. The prime responsibility relating to TDS deduction u/s 201 is of the recipient assessee to pay the tax directly once they filed Form No. 15G/15H and any tax liability will be held as pending in recipient assessee's cases and hence Section 201 of the Act cannot be invoked as it is a recovery provision as submitted by the Ld. AR. The decisions given by the Ld. AR also reiterates similar facts. Besides this, in Assessment Years 2002-03 to 2004-05, in the case of the assessee itself in the same branch, the Delhi ITAT in ITA Nos. 5992 to 5994/Del/2012 dated 4th March 2016, after following the judgment of the Jurisdictional Allahabad High Court in the case of the assessee itself, has quashed the proceedings u/s 201 of the Act on the similar lines. Further, for Assessment Year 2014-15 and 2015-16 also the issue is identical and no distinguishing feature was pointed out by Ld. DR at the time of hearing. Since, both the assessment years i.e. A.Y. 2014-15 and 2015-16 are identical, therefore, we are allowing both the appeals.

9. In result, both the appeals of the assessee are allowed.

Order pronounced in the Open Court on this 30th Day of MARCH, 2021

Sd/-

**(R. K. PANDA)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated : 30/03/2021

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

