

आयकर अपीलीय अधिकरण
मुंबई पीठ "डी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री राजेश कुमार, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
आअसं.1024 से 1031/मुं/2019 (नि. व. 2011-12 & 2012-13)
ITA NO. 1024 TO 1031/MUM/2019 (A.Y.2011-12 & 2012-13)

M/s. Municipal Corporation of Greater Mumbai,
Room No.300, 3rd Floor,
Mahapalika Annexe Bldg,
Mahapalika Marg, CST Fort,
Mumbai 400 001.

PAN: **AAALM 0042L**

..... अपीलार्थी /Appellant

बनाम Vs.

The Deputy Commissioner of Income Tax (TDS)-1(3),
Mumbai 400 002

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Rushabh Mehta

प्रतिवादी द्वारा/Respondent by : Shri Vijay Jaiswal

सुनवाई की तिथि/ Date of hearing : 10/02/2021

घोषणा की तिथि/ Date of pronouncement : 06/05/2021

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

These bunch of eight appeals have been filed by the assessee against the order of Commissioner of Income Tax (Appeals)-59, Mumbai [in short 'the CIT(A)'] dated 26/12/2018. The CIT(A) vide aforesaid single order has decided eight appeals of the assessee, assailing charging of interest under section

201(1A) of the Income Tax Act,1961 (in short 'the Act') for the quarters falling in assessment years 2011-12 and 2012-13. Since, identical grounds have been raised by the assessee in all these eight appeals, the appeals are taken up together for adjudication and are decided by this common order.

2. The appeal of assessee in ITA No.1024/Mum/2019 for assessment year 2012-13 (26Q-Q2) is taken as the lead case. The effective grounds requiring adjudication in the appeal are reproduced herein below:

"1 (a) The Id. Commissioner of Income Tax (Appeals) - 59, Mumbai ("the Id. CIT (A)") erred in facts and law in confirming the action of the Id. Assessing Officer and/or CPC (TDS), Ghaziabad in not rectifying the mistake apparent from record u/s. 154 of the Act.

(b) The Id. CIT (A) erred in facts and law in treating the subject matter of rectification u/s. 154 of the Act as debatable one with two views possible.

2 The Id. CIT(A) erred in facts and law in confirming the action of the Id. Assessing Officer and/or CPC (TDS), Ghaziabad of imposing interest of Rs.12,49,461/- u/s. 201(1A) of the Act by considering the date of realisation as the date of payment, instead of the date of tender / presentation of cheque."

3. Shri Rushabh Mehta appearing on behalf of the assessee, narrating the facts of case submitted, that the assessee is an autonomous body established under Mumbai Municipal Corporation Act, 1888, to administer civic affairs of Mumbai city. During the period relevant to assessment years under appeal, the assessee had made payments to contractors and employees after deducting tax at source under section 194C and 194J of the Act. The assessee tendered Tax Deducted at Source (TDS) for each quarter to the Government Exchequer by way of cheque. The TDS amounts were deposited before the due date. Later, the assessee discovered from TRACES Portal that demands were raised for different quarters falling in Financial Years 2010-11 and 2011-12. The assessee did not receive original intimations, under section 200A of the Act for

the quarters under dispute, barring few. The intimation received from the DCIT (TDS)-1(3), Mumbai (Assessing Officer) were not the original intimations but were the rectified orders. After examining intimations, it transpired that interest under section 201(1A) of the Act has been levied for delay in deposit of TDS amounts. The assessee filed rectification petition under section 154 of the Act to delete the interest as the payments were made through cheque before due date. It was specifically urged that as per CBDT Circular, the date of deposit of cheque was the date of payment and not the date of encashment of the cheque. The Assessing Officer rejected assessee's petition for rectification vide order dated 14/06/2017. Aggrieved by rejection of petition under section 154 of the Act, the assessee filed appeal against charging of interest under section 201(1A) for delay in deposit of TDS amounts. The CIT(A) dismissed the appeal of the assessee on two counts i.e. (1) the rectification petition filed by the assessee under section 154 of the Act is not maintainable; and (2) On merits the CIT(A) rejected the appeal holding that the date of actual realization of the cheque is the date of payment and not the date of tendering of the cheque.

3.1. The Id. Authorized Representative of the assessee submitted that undisputedly in the impugned assessment years the assessee had tendered TDS amounts to the Government exchequer by way of cheques before the due date in each of the quarter, however, the cheques were realized after the due date. No cheque tendered by the assessee was dishonoured. The Id. Authorized Representative of the assessee placed reliance on CBDT Circular No.261 dated 08/08/1979 to contend that it is the date of tendering cheque which should be considered as the date of payment and not the date of its

realization. The Id. Authorized Representative of the assessee to further support his contentions placed reliance on the following decisions:

- (1) ONGC vs. DCIT, 103 taxamann.com 396(Mum);
- (2) Moody's Analytics Knowledge Services India Pvt. Ltd. vs. ITO(TDS), 113 taxamman.com 448 (Bang);
- (3) Sahara Airlines Ltd. vs. Commissioner of Customs, 110 Taxman 378 (GOI); and
- (4) P L Haulwel Trailers Ltd. vs. DCIT, 100 ITD 485 (Chennai)

3.2. The Id. Authorized Representative of the assessee submitted that in the aforesaid decisions, after considering CBDT Circular No.261 (supra) it has been held that the date of tendering cheque be considered as the deemed date of payment and not the date of realization of cheque. The Id. Authorized Representative of the assessee further pointed that in the case of Sahara Airlines Ltd. (supra) the Government of India, Ministry of Finance, Department of Revenue has reiterated that upon tendering of a cheque, if it is not dishonoured later, it shall be deemed that payment has been made on the date when it was handed over to the Government's bankers. The above decision was rendered after considering Compilation of the Treasury Rules (in short 'CTR') and the Central Government Account (Receipts & Payment) Rules 1983 (in short 'the R&P Rules'). Sh. Mehta asserted that Circular No. 261 (supra) is still effective as the same has not been withdrawn by the CBDT till date. The CIT(A) has erred in holding that after introduction of R&P Rules w.e.f. 01/6/1983, CTR and Circular No.261 would no longer be applicable.

3.3. The Id. Authorized Representative of the assessee submitted that the CIT(A) has erred in holding that rectification petition filed by assessee under section 154 was not amenable. The CIT(A) has erred in recording that the application under section 154 was made by the assessee for seeking

rectification in the date of challan. The Id. Authorized Representative of the assessee pointed that the rectification petitions filed under section 154 of the Act are at page 1 to 25 of the Paper Book. It has been categorically stated in the petition that the assessee is seeking rectification in the date for considering date of payment/deposit of TDS. It was pointed that the date of tendering cheque should be considered as date of payment/deposit of TDS amount instead of date of realization of the cheque. Reliance was placed on CBDT guidelines. Rectification petition filed before the Assessing Officer was supported by an affidavit tabulating date of deposit of TDS along with the amount.

4. Per contra, Shri Sushil Kumar Mishra representing the Department vehemently defended the impugned order and prayed for dismissing the appeal by assessee. The Id. Departmental Representative submitted that the rectification petition filed by assessee under section 154 of the Act is not maintainable as the issue, whether date of tendering cheque or the date of realization of cheque should be considered as the 'actual date' of payment, is debatable. The Id. Departmental Representative contended that the CIT(A) after considering the decision in the case of ICICI Bank Ltd. vs. DCIT(TDS) in ITA No.661 & 772/LKW/2011 decided on 25/04/2013 by Lucknow Bench of the Tribunal and decision in the case of GM,MPRRDA, PIU Shivpuri vs. ITO(TDS) in ITA No.370 & 371/Agra/2011 decided on 08/06/2012 by Agra Bench of the Tribunal has held, that date of realization of cheque is material for considering 'actual date' of deposit of TDS under section 200A of the Act. The Id. Departmental Representative further asserted that after introduction of R & P Rules w.e.f. 01/6/1983, CTR has become redundant. Circular 261 (supra) was

issued with reference to CTR, once CTR ceases to be operative, the circular has become ineffective.

5. We have heard the submissions made by opposing sides and have examined the orders of authorities below. We have also considered the decisions on which the rival sides have placed reliance to buttress their respective arguments. The two issues that have emerged for adjudication before us are:

(i) Whether rectification petition filed by the assessee under section 154 of the Act is maintainable in the facts and circumstances of the case?

(ii) Whether the date of deposit of TDS amount through cheque is, the date of tendering cheque or the date of realization of cheque?

6. Before we proceed to decide above issues, it would be imperative to highlight the undisputed facts in this case. The assessee has not received original intimation under section 200A /201(1A) of the Act for the impugned quarters. The assessee has only received orders under section 154 of the Act for some of the quarters. It is an accepted fact that the assessee had tendered cheques for deposit of TDS collected under section 194C and 194J of the Act on or before the due date. The cheques deposited by the assessee were duly realized on presentation. For the sake of completeness the relevant dates are tabulated herein below:

Section	Tax Deducted (in Rs.)	Date of Deposit of Cheque	Due Date	Date of realization of Cheque
194J	3,34,815/-	06/8/2011	08/8/2011	09/8/2011
194C	1,63,55,074/-	06/8/2011	08/8/2011	09/8/2011

7. The first issue for our consideration is maintainability of rectification petition filed by the assessee under section 154 of the Act. The assessee had filed rectification petition seeking correction in the date of tendering/deposit of challans along with cheque. The prayer of the assessee was to consider date of tendering/deposit of cheque in the bank as deemed date of payment of TDS amount instead of date of realization of the cheque. Reference was made to CBDT Circular No.261 (supra). The relevant extract of the circular on which reliance was placed 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...."

The contention of the assessee is that the said Circular has not been withdrawn by the Department till date. The Revenue has not placed on record any document to controvert this submission of the assessee. It is no more res-integra that the Board's Circulars are binding on the Department so long as they are not withdrawn. It is not open to the Department to raise contentions contrary to circulars issued by the Board. The Hon'ble Supreme Court of India in the year 1981 in the case of K.P. Varghese vs. ITO, 131 ITR 597 held that CBDT Circulars are binding on the Department. The Hon'ble Apex Court in the case of Commissioner of Customs vs. Indian Oil Corporation Ltd., 267 ITR 272 again reiterated that circulars issued by the Board are binding on the Revenue, and the Department cannot contend otherwise.

In the instant case, the argument raised on behalf of Revenue that 'the date of deposit of cheque or the date of realization of cheque is to be considered as the date of payment of TDS' is disputed/debatable issue, is untenable. The Department is bound by Circular No.261 (supra). The said

circular in an unambiguous manner states that if the cheque is honoured, the date of tendering the cheque to Government's banker shall be the date of making the payment. In so far as the Department is concerned there is no ambiguity or element of vagueness on the issue. There may have been divergent views on this issue by the Appellate Forum, it is a settled legal position that the Board Circulars are not binding on the Appellate Tribunal or the Hon'ble High Courts. In so far as the Department is concerned, the Department cannot take a plea contrary to the circular issued by the Board that has not been withdrawn. Hence, the findings of the CIT(A) that the rectification petition under section 154 of the Act is not maintainable being a debatable issue is unsustainable.

8. The CIT(A) has relied on the decisions of Tribunal in the case of ICICI Bank Ltd. (supra), and GM, MPRRDA, PIU, Shivpuri vs. ITO(TDS) (supra) to hold that the date of realization of cheque is the date of payment. The CIT(A)'s reliance on the aforesaid decisions to conclude that the issue is debatable is misplaced. We observe that in both aforesaid cases, ostensibly, CBDT Circular No.261 (supra) was not brought to the notice of Bench. Thus, while rendering aforesaid decisions, the Bench was oblivious to Board Circular binding on the Department.

9. We further observe that the CIT(A) in impugned order has only referred to the title (subject) of rectification petition and has not examined the contents of the petition. Para 2 of the petition clearly states the reason for seeking rectification based on CBDT Circular. Therefore, the CIT(A) has erred in not examining the petition of assessee in entirety. We hold that the rectification petition under section 154 of the Act for seeking correction in the

date of deposit of TDS amounts was maintainable in its present form. **The ground No.1 raised in appeal by the assessee, is thus, allowed.**

10. The second issue in appeal before us is, where the TDS amount has been deposited to the Government Exchequer thorough cheque, whether the date of tendering cheque to the Government's Banker or the date of realization of the cheque is the date of actual payment. To decide this question, it would be relevant to refer to some decisions rendered over the period of time on this issue.

11. The Hon'ble Supreme Court of India in the case of CIT vs. Ogale Glass Works Ltd., (1954) 25 ITR 529 held that where the payment is made by cheque, the date of payment would be date of delivery of cheque, provided the cheque is honoured on presentation to the bank. The relevant extract of the judgement reads as under:

"In the case before us none of the cheques has been dishonoured on presentation and payment cannot, therefore, be said to have been defeated by the happening of the condition subsequent, namely, dishonour by non-payment and that being so there can be no question, therefore, that the assessee did not receive payment by the receipt of the cheques. The position, therefore, is that in one view of the matter there was, in the circumstances of this case, an implied agreement under which the cheques were accepted unconditionally as payment and on p another view, even if the cheques were taken conditionally, the cheques not having been dishonoured but having been cashed, the payment related back to the dates of the receipt of the cheques and in law the dates of payments were the dates of the delivery of the cheques."

12. The Hon'ble Apex Court in the case of Director of Income Tax (Exemption) vs. Raunaq Education Foundation, 350 ITR 420 was considering the issue in the back drop of the provisions of section 13(2)(b) of the Act. The Hon'ble Court held that where the cheque was received on 22/04/2202 and the receipt was issued on that date, however, the cheque was realized in the

next financial year, the assessee was eligible for benefit under section 80G of the Act i.e. on the date of deposit of the cheque.

13. Similar view was taken by the Hon'ble Madras High Court in the case of CIT vs. REPCO Home Finance Ltd. 53 taxmann.com 47. In the aforesaid case the issue was with regard to charging of interest under section 234C of the Act. The question of law before the Hon'ble High Court for consideration was:-

"Whether under the facts and circumstances of the case, the Tribunal was right in holding that the date of presentation of cheque in the bank is to be reckoned as the date of payment of advance tax and not the date on which the cheque is cleared and entered in the receipt roll as required under Rule 20 of the Central Government Account (Receipts and Payments) Rules 1983, for the purpose of calculating interest under Section 234C of the Income Tax Act?"

The Hon'ble High Court after considering the judgment rendered in the case of CIT vs. Ogale Glass Works Ltd. (supra) and Raunaq Education Foundation (supra) held that once cheque issued by the assessee is encashed, the payment relates back to the date of receipt of cheque. Here it would not be out of place to mention that the Hon'ble High Court decided the issue of date of payment of advance tax after considering R & P Rules, 1983.

14. The Co-ordinate Bench of Tribunal in the case of ONGC vs. DCIT (supra) after considering CBDT Circular No.261 (supra) and the Central Government Account (Receipts & Payments) Rules 1983 and catena of judgments on this issue held that the date of tendering cheque shall be deemed to be the date of deposit. The relevant extract of the Tribunal order read as under:-

"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-TT(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 (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."**

[Emphasized by us]

The Tribunal after considering CTR, R&P Rules, 1983 and Circular No.261 (supra) concluded that the Department is bound by Board Circular. Since, the

said circular has not been withdrawn, it is still valid and holds the ground. Thus, the date of deposit of cheque in the bank is the date of payment.

Similar view has been expressed in the case of Moody's Analytics Knowledge Services India Pvt. Ltd. vs. ITO (TDS) (supra), P L Haulwel Trailers Ltd. vs. DCIT (supra) and in the recent decision by the Co-ordinate Bench in the case of Standard Chartered Bank vs. DCIT, in ITA No. 2153/Mum/2018, A.Y.2008-09 decided on 21/08/2020.

15. In the case of Sahara Airlines Ltd. vs. Commissioner of Customs (supra) the adjudicating authority after considering Central Government Account (Receipts & Payments) Rules 1983 and the Treasury Rules concluded as under:

"A harmonious reading of the provisions makes it clear that Government dues can be presented in the form of cheque into the accredited bank. Upon tendering of a cheque, if it is not dishonoured later, it shall be deemed that payment has been made on the date when it was handed over to the Government's bankers."

De-hors circular No. 261 (supra), the Department of Revenue held that harmonious reading of the provisions of both the Rules takes to inescapable conclusion that upon tendering cheque, if it is not dishonoured on presentation, the payment shall be deemed to have been made on the date of handing over cheque to the Government's Bankers.

16. As has been observed earlier by us, the reliance placed by CIT(A) on the decisions in the case of ICICI Bank Ltd. (supra), and GM, MPRRDA, PIU, Shivpuri (supra) to take a contrary view is misdirected, as the CBDT Circular No.261 was not considered in the said decisions. Therefore, the said decisions does not support the cause of Revenue.

17. From the analyses of decisions referred above, it can be securely deduced that the **'date of payment'** to Government exchequer through cheque shall be the date of tendering/depositing the cheque, subject to cheque being honoured on presentation. After taking into consideration the facts of instant case and the decisions discussed above, we hold that the TDS deducted under section 194C and 194J of the Act was deposited by the assessee through cheque to the Government's Banker before the due date. Hence, no interest under section 201(1A) of the Act for alleged delay in deposit of TDS amount is chargeable to the assessee. The interest levied under section 201(1A) of the Act is directed to be deleted. **The assessee succeeds on ground no.2 of the appeal.**

18. **In the result, impugned order is set aside and the appeal of assessee is allowed.**

ITA No. 1025 TO 1031/Mum/2019

Appeal ITA No.	Assessment Year/Quarter
1025/Mum/2019	2012-13 – (26Q-Q2)
1026/Mum/2019	2012-13 – (26Q-Q3)
1027/Mum/2019	2012-13 – (26Q-Q3)
1028/Mum/2019	2012-13 – (26Q-Q4)
1029/Mum/2019	2011-12 – (26Q-Q4)
1030/Mum/2019	2012-13 – (26Q-Q3)
1031/Mum/2019	2012-13 – (26Q-Q2)

19. We find that identical grounds have been raised by the assessee in all these appeals. Both sides are unanimous in stating that facts germane to the issue in all these appeals are identical to the facts in ITA No. 1024/Mum/2019 for assessment year 2012-13 (QR.2), except for the amount of interest charged under section 201(1A) of the Act. Since, the facts in all these appeals are

admittedly identical, the findings given by us while adjudicating the appeal of assessee in ITA No. 1024/Mum/2019 would *mutatis mutandis* apply to the present set of appeals. As a result, all these appeals by the assessee are allowed for parity of reasons.

20. To sum up, ITA Nos.1024 to 1031/Mum/2019 by the assessee are allowed.

Order pronounced in open Court on **Thursday** the **06th** day of May, 2021.

Sd/-

(RAJESH KUMAR)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 06/05/2021

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)

ITAT, Mumbai