

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

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER  
[Through Video Conferencing]**

ITA Nos.1381 & 1382/Del/2018  
Assessment Years: 2014-15 & 2015-16

Allahabad Bank, Wright Ganj, Ghanta Ghar, Clock Tower, Ghaziabad	<b>Vs.</b>	ITO (TDS), Ghaziabad
<b>PAN :AACCA8464F</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. M.P. Rastogi, Adv & Sh. Rajeev Kumar, CA
Respondent by	Sh. Bhopal Singh, Sr.DR

Date of hearing	04.08.2021
Date of pronouncement	10.08.2021

**ORDER**

**PER O.P. KANT, AM:**

These two appeals by the assessee, i.e., the Allahabad bank, Ghaziabad, have been preferred against two separate orders, both dated 30/11/2017 passed by the Learned Commissioner of Income-tax (Appeals)-Ghaziabad [in short 'the Ld. CIT(A)'] for assessment years 2014-15 and 2015-16 respectively. In both these appeals, common issue-in-dispute has been challenged,

therefore, same were heard together and disposed off by way of this consolidated order for convenience.

**2.** In both these appeals identical grounds have been raised. For the sake of brevity, the grounds raised in ITA No. 1381/Del/2018 for assessment year 2014-15 are reproduced as under:

1. *That the penalty as levied by AO and sustained by the CIT(Appeals) u/s 271C of the IT Act is arbitrary, unjust and illegal on various factual and legal grounds.*
2. *That in the absence of any demand outstanding against the payee, the assumption of jurisdiction by AO u/s 201 and 201(1A) of the IT Act is arbitrary, unjust and illegal and consequently the penalty as levied by the AO u/s 271C of the IT Act and sustained by the CIT(Appeals) in furtherance of such invalid jurisdiction is also invalid.*

**3.** Briefly stated facts of the case are that the assessee is engaged in banking activity and during the year under consideration, no tax was deducted at source on interest in bank deposits in respect of the customers who provided Form No. 15G and 15H, i.e., the form prescribed by the Central Board of Direct Taxes (CBDT) to be filed by the customers whose total income was below taxable limit. The Assessing Officer on an examination of the complete details of the persons (customers) found that they were having income more than taxable limit. The Assessing Officer further observed that in the Tax Deducted at Source (TDS) return also, the assessee did not file complete detail in respect of the deductees. According to the Assessing Officer, the Form No. 15G and 15H had been accepted from the persons having income more than the exemption limit prescribed under the Act, which was in complete violation of procedure prescribed. The assessee relied on the decision of the Hon'ble Allahabad High Court in the

case of **Jagran Prakashan Ltd. Vs. DCIT, 345 ITR 288** and submitted that the customers have already paid the tax liability directly. The Assessing Officer, however, held that bank was liable for deduction of the tax at source under section 194A of the Act on interest payments and failed to substantiate before the Assessing Officer that deductee directly made the payment of the taxes and, therefore, he raised liability u/s 201(1) and 201(1A) of the Act on the assessee. In view of the default of non-deduction of tax at source on interest payment, the Assessing Officer initiated penalty under section 271C of the Act and after considering submission of the assessee, he levied penalty of ₹ 10,20,386/- for assessment year 2014-15 and Rs.12,21,894/- for assessment year 2015-16. On further appeal, the Ld. CIT(A) upheld the penalty in view of liability raised by the Assessing Officer under section 201(1) and 201(1A) of the Act.

**4.** Before us, the parties appeared through Video Conferencing facility. The learned Counsel of the assessee filed through email a copy of the order of Tribunal relied upon.

**5.** The learned Counsel of the assessee submitted that the Tribunal in ITA No. 6095/Del/2016 and 6096/Del/2016 for assessment year 2014-15 and 2016-17 respectively has deleted the liability raised under section 201(1) and 201(1A) of the Act and, therefore, the very basis of levying penalty under section 271C has been deleted, the said penalty levied cannot be sustained.

**6.** The Learned DR, on the other hand, relied on the order of the lower authorities.

**7.** We have heard rival submission of the parties on the issue in dispute. In the instant appeals, penalty under section 271C of the Act has been levied by the Joint/Additional Commissioner of Income-tax having administrative control over the Assessing Officer, in view of non-deduction of tax at source on the interest accrued on bank deposits of the customers. This penalty has been levied in view of liability raised under section 201(1) and 201(1A) of the Act by the Assessing Officer for holding assessee in default for non-deduction of tax at source on interest paid/accrued on bank deposits of customers. This liability raised by the Assessing Officer has been deleted by the Tribunal(supra) observing as under:

*“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 From 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.”*

**7.1** In view of the finding of the Tribunal (supra), we are of the opinion that when the foundation of levy of penalty under section

271C has been demolished, the penalty levied under section 271C cannot survive. Accordingly, we cancel the penalty levied by Joint/Additional Commissioner of Income-tax, in both the assessment years, i.e., AY 2014-15 and 2015-16. The grounds of the appeal of the assessee raised in both appeals are accordingly allowed.

**8.** In the result, both appeals of the assessee are allowed.

***Order pronounced in the open court on 10<sup>th</sup> August, 2021.***

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Sd/-  
(O.P. KANT)  
ACCOUNTANT MEMBER**

Dated: 10<sup>th</sup> August, 2021.

RK/-<sup>(DTDC)</sup>

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi