

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA Nos. 8, 9, 10 & 11/H/2020 A.Ys.: 2011-12, 2012-13, 2013-14 & 2014-15		
Saptagiri Grameena Bank, Chittoor PAN - AAJ S0279D	Vs.	Income-tax Officer, TDS, Ward - 1, Tirupati.
(Appellant)		(Respondent)
Assessee by:	Shri Sanjeev Aditya	
Revenue by:	Shri Rohit Mujumdar	
Date of hearing:	11/10/2021	
Date of pronouncement:	29/11/2021	

ORDER

PER BENCH:

These appeals filed by the assessee are directed against CIT(A), Tirupati's orders, all dated 05/11/2019 for AYs 2011-12 to 2014-15 involving proceedings u/s 201(1) & 201(1A) of the Income Tax Act, 1961 ; in short "the Act". As facts and grounds are identical in these appeals, they were clubbed and heard together and, therefore, a common order is passed for the sake of convenience.

2. The grounds raised by the assessee are common in all these appeals, which are as under:

"1. The order of the Commissioner of Income Tax (Appeals) is erroneous, against the provisions of law and contrary to the facts and circumstances of the case.

2. The Commissioner of Income Tax (Appeals) failed to note that the entire documents including Form 15G, 15H etc. are with the Income Tax Department itself which had been taken away at the time of Survey and hence, the assessee was hampered from providing any details to the Commissioner of Income Tax (Appeals).

3. The Commissioner of Income Tax (Appeals) erred in upholding the Assessing Officer's order without considering the fact that the bank is a rural bank and most of the depositors being illiterate farmers resulting in incomplete forms that were available.

For these grounds and for any other ground that may be adduced at the time of hearing, it is prayed that the Hon'ble Tribunal may be pleased to set aside the order of the Commissioner of Income Tax (Appeals) as erroneous, against the provisions of law and contrary to the facts and circumstances of the case, and render justice."

3. As the facts and grounds are materially identical in all these appeals, to dispose of these appeals, we refer to the facts from AY 2011-12 and the decision taken in this AY shall mutatis-mutandis apply to the other years as well.

4. Briefly the facts of the case as taken from AY 2011-12 are that M/s Sapthagiri Grameena Bank, a Regional Rural Bank constituted under the Regional Rural Banks Act and is assessable as a cooperative society in terms of the

requirements of RRB Act. A survey was conducted by Income Tax Officer (TDS), Tirupati on 22.10.2013 and impounded the declarations filed by the investors of F.D./Term depositors and observed that the declarations in Form No. 15G and Form No. 15H filed with the bank did not contain the details such as name of the depositor, amount of deposit, date of the deposit, date of maturity, and interest rate. The AO arrived at short deduction of tax at arrived at Rs. 2,09,992/- and interest thereon @ 1.5% per month u/s 201(1A) aggregating to Rs. 1,88,993/- reckoning the period of default as 60 months.

5. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A) and filed written submissions, which were extracted by the CIT(A) in his order at pages 3 to 6.

6. After considering the submissions of the assessee, the CIT(A) confirmed the order of AO by observing as under:

"I have perused the decisions relied upon by the appellant and found that they are not relevant to the issue on hand. Hon'ble ITAT, Mumbai in the case of Karawat Steel Traders held that disallowance u/s 40(a)(ia) is not warranted, where the person responsible to deduct TDS received declarations in Form Nos.15G/15H for non-filing or delayed filing of such forms before Commissioner of Income Tax. In the present case, it is not non-filing or delayed filing of forms before the CIT which prompted the AO to raising demand. It is for the fault of the appellant of not obtaining the forms in proper form the AO levied tax

hence, this ratio is not applicable. Similarly, the appellant also relied on the decision of Hon'ble ITAT, Mumbai in the case of Vipin P.Mehta, which is also not relevant to the facts of the case.

The appellant argued that once Form Nos.15G/15H are obtained there is no obligation on the part of the appellant to make TDS irrespective of the fact whether the forms are properly filled or not. In this connection, as discussed above, Sec.197A of the Act clearly speaks that the forms must be duly filled in and duly verified by the depositor.

The person making payment should obtain the forms in the prescribed form so as not to deduct TDS. In the present case, there is no dispute about obtaining forms which are not duly filled in or duly verified. The AO categorically stated that in no declaration the mandatory fields six in number filled and verified. Obtaining forms without any substance is of no use. The purpose of obtaining forms in the prescribed mode will be lost, if the declarants allowed to file the forms without fulfilling all the columns as applicable. Filing of declarations without fulfilling the mandatory fields is as good as non-filing of declarations. The declarations so filed on which the appellant is harping is as good as a dumb document and has no relevance. In view of this, it is established that the appellant who is duty bound to deduct TDS has failed and hence, the AO is right in invoking the provisions of Sec.201 (1)and Sec.201(1A) of the Act."

7. Aggrieved by the order of CIT(A), the assessee is in appeal before the ITAT.

8. Before us, the ld. AR of the assessee reiterated the submissions made before the CIT(A) and submitted that

once the appellant bank has obtained the declarations forms from the depositors. it has no option but not to deduct the tax at source. The appellant bank has no legal obligation to deduct tax at source on the payments made to depositors. The income tax officer has no authority to verify whether the declaration forms have been filed before the Commissioner of Income or not. He further submitted that the act does not provide such a right to the Income Tax Officer. The issue of filing the forms before the CIT and whether the forms have been filled up In full or not etc. is altogether a different aspect for which the IT Act provides a different set of Penalties and provisions. He, therefore, submitted that the appellant cannot be treated as an assessee in default so as to be fastened with a demand u/s 201 (I) on the ground that the forms obtained by it are not filled in properly, the forms have not been filed before the CIT etc. The question of treating the appellant as an assessee in default in terms of . Sec 201(1). does not arise in the case where the payee is in receipt of the declaration forms contemplated u/s 197(1A) of the Act.

9. The ld. DR, on the other hand, relied on the orders of revenue authorities and submitted that the AO is entitled to verify the details required including the declarations while deciding whether the assessee is an assessee deemed to be in default or not and there are provisions for various set of

default, that does not preclude the AO to examine the details while concluding any proceedings.

10. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. During the course of survey operation, Form No. 15G and 15H maintained in Bank were verified by the AO and found that they did not contain any of the details, such as name of the depositor, amount of fixed deposit, date of said deposit made, date of maturity, interest rate etc. When the above discrepancies were confronted with the Chief Manager of the Bank, he failed to give a convincing reply, hence, the AO treated the assessee as an assessee in default for non-deduction of tax u/s 201 of the IT Act and accordingly, raised demand u/s 201(1) and interest u/s 201(1A). While confirming the order of the AO, the categorical findings of the CIT(A) are that "*The purpose of obtaining forms in the prescribed mode will be lost, if the declarants allowed to file the forms without fulfilling all the columns as applicable. Filing of declarations without fulfilling the mandatory fields is as good as non-filing of declarations. The declarations so filed on which the appellant is harping is as good as a dumb document and has no relevance.*" Before us, the Id. AR of the assessee filed the decision of the coordinate bench of this Tribunal in assessee's own case in ITA Nos. 815 & 1233/Hyd/2015 for AYs 2010-11 & 2011-12 order dated 06/05/2016, in which,

the disallowance made u/s 40(a)(ia) has been allowed by the Tribunal by observing as under:

“8. Before us, the Id. AR submitted that the assessee bank has more than 100 branches in the districts of Chittoor and Krishna and substantially, all the branches are in rural areas including small villages, Panchayats etc. He submitted that the bank has paid interest of Rs. 73.39 Crores during the assessment year 2010-11 and had submitted before the Assessing Authority that the total amount of interest paid, in excess of Rs.10,000/- per depositor which is the threshold limit prescribed under Section 194A, is Rs. 9,49,45,000/-. It is submitted that of the above, in respect of Rs. 2,75,90,000/- tax has been deducted and remitted. The balance amount of interest after this is Rs. 6,73,55,000/- and the assessee had submitted that it had obtained Form 15G/15H from the various parties. The Assessing Authority had, while completing the assessment, disallowed the entire amount of Rs. 6,73,55,000/- on the ground that Forms 15G/15H are not submitted to the Jurisdictional Commissioner and no evidences were produced to prove whether such forms have been obtained. It is submitted that against that, the assessee had filed an appeal before the CIT(A), Tirupathi and the appeal was disposed by the CIT(A), Tirupathi vide order in ITA No. 0035/2014-15/CIT(A)/TPT, dated 20th March, 2015 wherein the CIT(A) after considering various copies of Forms 15G/15H submitted before him as additional evidences and the same were referred to the assessing authority for necessary verification and report. In response, the Assessing Officer furnished the remand report on 13th March, 2015, a copy of which was not provided to the assessee.

8.1 It is submitted that based on such remand report, the Commissioner of Income Tax (Appeal) proceeded to confirm the disallowance to an extent of Rs.1,66,67,602/- and granted relief to the extent of forms furnished aggregating to Rs.5,06,87,398/-. The break-up of the interest paid by the assessee and the disallowance effected by the Assessing Officer is as follows:

Particulars	AY	2010-2011
Interest paid on deposits disallowed by the Assessing Officer (ACIT, Tirupathi)	6,73,55,000	
Of which	Amount	No. of accounts

Interest paid in excess of Rs. 10.00 lakhs	16,17,431	1
Above Rs. 2.00 lakhs & up to 10.00 lakhs	78,65,551	12
Above Rs. 1.00 lakh & up to 2.00 lakhs	28,52,120	23
Above Rs. 50,000/- & up to Rs. 1.00 lakh	55,62,007	83
Above Rs. 20,000 & up to Rs. 50,000/-	1,99,38,285	702
Above Rs. 10,000/- & up to Rs. 20,000/-	2,95,19,496	2078
	6,73,54,890	2899

8.2 From the above, it could be seen that out of the total number of 2899 accounts, 2078 accounts are the accounts for which the interest paid is more than Rs.10,000/- but less than Rs.20,000/- and in respect of 702 accounts, the interest paid is more than Rs.20,000/- but less than Rs.50,000/-. From this, it could be seen that a substantial portion of the parties to whom interest has been paid are parties receiving interest which is less than Rs.50,000/- and parties residing in villages and Panchayats. Assessee is a sponsored bank of Indian Bank and is using the software for compliance with tax deduction requirements. As per the software system, the branch managers are required to update the details of Form 15G/15H and only then, the interest would be paid without deduction of taxes wherever the interest is in excess of Rs. 10,000/-. When the system is in place, it would not be possible

for the branch level officials to update the information without obtaining Form 15G or 15H. It is submitted that the assessee had submitted before the Commissioner that to the extent of what they could collect, they had submitted the forms which constitute more than 75% of the interest paid in excess of Rs.10,000/-. The sample provided by the bank is substantially higher at 75% and generally, it could be relied on the system that has been in place.

8.3 It is submitted, the assessee had substantially demonstrated that it has a proper system in place for collecting and filing Form 15G and 15H and only due to paucity of time, it could not furnish Form 15G or 15H from all the parties. When more than 75% of deductions have been established, it is submitted that the assessee had demonstrated the existence of a regular system for deduction of taxes and in view of this, a view be kindly considered that where Form 15G or 15H have been

confirmed to have been received by the assessee, the provisions of Section 40(a)(ia) are not applicable and the disallowances be deleted.

8.4 The Id. AR submitted that being a regional rural bank and considering the fact that the branches are spread in the small villages and Panchayats, collecting of all the forms which would run to more than 2800 in number from various branches after a period of two years, that is, at the time of finalization of assessment would be too strenuous on the part of the assessee to comply with. Considering the fact that it is possible that old forms have been lost due to various reasons, assessee prays that there are reasonable causes why assessee could not furnish each and every form 15G and 15H obtained.

8.5 It is submitted that the assessee collects Form 15G and 15H in respect of all deposit holders having an interest of Rs. 10,000/- or more, and the failure to furnish copies of Form 15G/15H before the Assessing Authority be considered in the background of the difficulties faced by assessee. Further it is submitted that as the assessee had collected Form 15G/15H, the provisions of Section 40(a)(ia) has no application as was held by this Hon'ble Tribunal in the case of Kumar Enterprises in ITA No.1750/Hyd/2013 following the decision of the Hon'ble High Court of Gujarat in the case of Commissioner of Income Tax vs. Valibhai Khanbhai Mankad.

9. The Learned Departmental Representative, on the other hand, relied on the order of CIT(A).

10. We have considered the rival submissions and perused the material facts on record. Assessee is in a banking business operates as Regional Rural Bank (RRB). Mainly operates in rural areas and its main customers are the agriculturists and small farmers. The assessee had submitted a statement with the breakup of interest on loans payment with account holders. The majority of interest payments were made to in the range of Rs. 20,000 – 50,000 – 702 accounts and between Rs. 10,000 – 20,000 are 2078 accounts. It comprises of 96% of the total payment of interest. As the whole payment of interest was disallowed by the Assessing Officer, the assessee has taken efforts to submit the Form 15G/H with CIT(A), which was confirmed by the Assessing Officer in the remand report. The remaining of Rs. 1.66 crores, which was disallowed to the extent Form 15G/15H were not submitted. Assessee had submitted that it

has full proof system of collecting 15G/15H from the customers through the software available to the assessee as being the sponsored bank of Indian Bank. He submitted that bank had collected all the forms but due to the fact that the branches in rural areas and more than 100 branches are involved, it had faced difficulty in collecting the same from the branches due to efflux of time. Assessee had not submitted the break up of the forms which are not submitted. The majority of the interest payments are in the segment of Rs. 10,000 – 20,000 and Rs. 20,000 – 50,000. It is pertinent to note that the assessee is dealing with small farmers and agriculturist. Even otherwise customers (farmers-income is exempt for Income tax) are having received the interest at the extreme level in this group say Rs. 50,000/-, the income will be exempt automatically due to the fact that the basic exemption level of income tax available to AY 2008-09 was Rs. 1.50 lakh. Assessee had submitted that it had collected the Form 15G/15H from all the customers who are farmers. It had not submitted before the Assessing Officer will not become automatically assessee at default to call for the disallowance u/s 40(a)(ia). Considering the basic exemption limits, category of the customers are farmers and assessee had collected above 75% of the forms and also percentage of forms not submitted compared to total interest disbursal is 2.26% and percentage of interest paid on above Rs. 10,000 is 24.63%, we are of the view that the assessee has complied with the provisions of section 197A. Assessee also submitted that it has placed a system of collecting the forms from rural branches to HO and submitting the same at the time of assessment. Assessee also submitted that in the subsequent assessments, it was properly submitted the forms to Assessing Officer. Considering the above submissions, in our view, assessee is not at default and also as held in the case of Kumar Enterprises (supra) and Hon'ble Gujarat High Court in the case of CIT Vs. Valibhai Khanbhai Mankad, that once the assessee obtained Form 15I from the sub-contractors whose contents are not disputed or whose genuineness is not doubted, then, the assessee is not liable to deduct tax from the payment made to sub-contractor. Once, assessee is not liable to deduct tax u/s 194C then disallowance u/s 40(a)(ia) cannot be made. The assessee's breach of the requirement to furnish details to the income tax authority in the prescribed form within the prescribed time may attract other consequences but cannot result in a section 40(a)(ia) disallowances. Hence, addition made on this count is deleted."

10.1 In the above decision, the facts and findings recorded therein, has substance over the order passed by the ITO(TDS) u/s 201(1) & 201(1A) of the Act. Considering the observations of the Tribunal in the assessee's own case as quoted supra, we allow the grounds raised by the assessee on this issue.

11. As the facts and grounds are identical in AYs 2012-13, 2013-14 & 2014-15 to that of AY 2011-12, following the decision in AY 2011-12, we allow the appeals in these years.

12. In the result, all the appeals of the assessee are allowed in above terms. A copy of this common order be placed in the respective case files.

Pronounced under Rule 34(4) of ITAT Rules, 1963 on 29/11/2021.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER

Hyderabad, Dated: 29th November, 2021.

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Copy to :

1	<i>Saptagiri Grameena Bank, 17, Durga Complex, Naidu Building, Chittoor – 517 001, AP.</i>
2	<i>ITO (TDS), TDS Ward – 1, Tirupati</i>
3	<i>CIT(A), Tirupati</i>
4	<i>CIT (TDS), Vijayawada</i>
5	<i>ITAT, DR, Hyderabad.</i>
6	<i>Guard File.</i>

S.No.	Details	Date
1	Draft dictated on	
2	Draft placed before author	
3	Draft proposed & placed before the Second Member	
4	Draft discussed/approved by Second Member	
5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement	
7	File sent to Bench Clerk	
8	Date on which the file goes to Head Clerk	
9	Date on which file goes to A.R.	
10	Date of Dispatch of order	