

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.295/Bang/2019
Assessment year: 2012-13

The Assistant Commissioner of Income Tax, TDS – Circle, Navanagar, Hubballi – 580 025.	Vs.	M/s. Shimoga District Co- operative Central Bank Ltd., HO Balraj Urs Road, Shimoga – 5600 060.
APPELLANT		RESPONDENT

Appellant by	:	Capt. Pradeep Shoury Arya, Addl.CIT(DR)(ITAT), Bengaluru.
Respondent by	:	Shri L. Bharath, CA

Date of hearing	:	21.12.2021
Date of Pronouncement	:	21.12.2021

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the revenue is directed against the order of the CIT(Appeals) dated 17.12.2018 for the assessment year 2012-13 on the following grounds:-

- “1. CIT(A) has erred in allowing relief to the deductor on issue of non-deduction of tax on interest payment to members without verifying whether the interest payments if any were made to nominal members in light of supreme court decision in the case of Citizen Co-operative Society Limited 397 ITR 1.

2. CIT (A) has ignored the decision rendered by ITAT "B" Bench, Bangalore in the case of M/s The Saraswat Co-operative Bank Ltd in ITA Nos.1246 to 1249/Bang/2017 dated 03.11.2017 on similar issue.
3. The appellant craves leave to add, alter, amend and delete any of the grounds of appeal..”

2. The facts are that the assessee is a Co-operative Bank carrying on the business of banking, providing credit facilities to its members. The AO carried out spot verification on the premises on 19/02/2013 to verify the applicability of the provisions of TDS and compliances. Upon verification of details/information gathered during the time of verification and submissions made during the course of proceedings u/s 201(1) & 201(1A) of the Act, it was found that the assessee had not effected TDS on the interest payments exceeding Rs.10,000/- as required u/s 194A of the Act as declarations vide Form No.15H/15G were not submitted as per the provisions of Sec. 197A(1A) of the Act. The AO opined that, the interest payments made by the assessee does not qualify for exemption u/s 194A(3)(v) of the Act as the assessee is doing the business of Banking. The AO after considering the submissions of the assessee proceeded to declare the assessee as an assessee in default and passed order u/s. 201(1) & 201(1A) of the Act.

3. The CIT(Appeals) deleted the addition by placing reliance on various binding judgments of the Tribunal / High Court holding that the assessee need not deduct tax u/s. 194A of the Act by virtue of exemption granted vide clause (v) of sub-section (3) of the said section. Proviso to clause (viiia) of the said section are applicable only in case of non-member depositor of the co-operative bank who shall receive interest only interest on deposits other than time deposits made on or after 1.7.1995 without TDS u/s. 194 of the Act. Against this, the revenue is in appeal before us.

4. The Id. DR placed reliance on the order of the Tribunal in the case of *The Saraswat C-op. Bank Ltd. in ITA No.1246 to 1249/Bang/2017* dated 3.11.2017 on similar issue.

5. On the other hand, the Id. AR submitted that the issue is squarely covered by the order of the Tribunal in case of *Davangere Urban Co-op. Bank Ltd. in ITA No.1815/Bang/2018*. He also relied on the following judgments of the High Courts and also Memorandum of Finance Bill 2015 and explanatory notes to Provisions of Finance Act 2015 :-

1	Bagalkot District Central Co-operative Bank 48 taxmann.com 117 — Bangalore — Tribunal
2	CIT v. National Co-Operative Bank Ltd 71 taxmann.com 352 — Karnataka High Court
3	The Bailhongal Urban Co-operative Bank Limited v. CIT — Karnataka High Court
4	Coimbatore District Central Co-operative Bank Ltd v. ITO 65 taxmann.com 1 — Madras High Court
5	Mavilayi Service Co-operative Bank Ltd. v, CIT 123 taxmann.com 161 — Supreme Court of India
6	Extract of Memorandum to Finance Bill, 2015
7	Extract of Explanatory notes to Provisions of Finance Act, 2015

6. We have heard both the parties and perused the material on record. In our opinion, the issue is already decided by the jurisdictional High Court in various judgments particularly the latest judgment in the case of *CIT v. National Co-operative Bank Ltd., 71 taxmann.com 352 (Kar)* wherein it was held as follows:-

2. We have heard Mr. Aravind K.V., learned counsel appearing for the appellants. As such, if we see the observations of the Tribunal in this regard, the considerations are at paragraphs 12 to 14 which read as under:

'12. We have heard the rival submissions. At the time of hearing of the appeal, it was brought to our notice by the learned counsel for the assessee that the Bangalore Bench of ITAT in the case of Bagalkot District Central Co-op. Bank v. CIT [2014] 48 taxmann.com 117 (Bangalore - Trib.) held that Co-operative Societies carrying on banking business while paying interest to members on time deposit and deposits other than time deposits need not deduct tax at source u/s 194A of the Act by virtue of exemption granted u/s 194A(3)(v) of the Act. The learned DR relied on the stand taken by the revenue in the grounds of appeal filed before the Tribunal.

13. We have considered the rival submissions. This Tribunal in the case of Bagalkot District Central Co-operative Bank (supra) dealt with identical issue and identical stand taken by the revenue and the Assessee in the case of co-operative society engaged in banking business and have upheld identical order of CIT(A). The relevant observations of the Tribunal in this regard were as follows:

"15. We have given a very careful consideration to the rival submissions. We are of the view that the submissions made by the learned counsel for the Assessee deserves to be accepted. As rightly contended by him Sec. 194A(3)(i)(b) of the Act is a provision which mandates deduction of tax at source by a co-operative society carrying on the business of banking, where the income in the form of interest which is paid by such society is in excess of ten thousand rupees. Sec. 194A(3)(v) of the Act provides that tax need not be deducted at source where the income in the form of interest is credited or paid by a co-operative society to a member thereof or to any other co-operative society. This provision therefore applies to all co-operative societies including co-operative society engaged in the business of banking. It is not possible to exclude co-operative society engaged in the business of banking from the provisions of sec. 194A(3)(v) of the Act on the ground that the same is covered by the provisions of sec. 194A(3)(i)(b) of the Act. Sec. 194A(3)(v) of the Act refers to payment by a co-operative society to a

member and payment by a co-operative society to non-member continue to be governed by the provisions of Sec. 194A(3)(i)(b) of the Act. Similarly u/s 194A(3)(vii)(b) interest on deposits other than time deposits even if the payment is made to a non-member by a co-operative society, the co-operative society need not deduct tax at source. Thus this section carves out another exception to Sec. 194A(3)(i)(b) of the Act. We do not think that any of the above provisions can be called a general provision and other provision called specific provisions. Each provision overlap and if read in the manner as indicated above, there is perfect harmony to the various provisions. We do not agree with the view expressed by the Pune ITAT SMC in the case of Bhagani Nivedita Sahakari Bank Ltd. (supra) when it says that co-operative society as mentioned in cl.(v) is a general species, whereas the other five categories of co-operative societies which are specifically referred to in other provisions are specific co-operative societies. The further conclusion in the said decision that the term 'co-operative society' in cl.(v) of S.194A(3) as to be interpreted as co-operative society other than co-operative bank, is again unsustainable. The law is well settled that by a process of interpretation one cannot add-on words that are not found in the text of the statute. Such a course is permitted only when there is "causes omisus". We do not think that the provisions of Sec. 194A(3)(v) suffers from any causes omisus as has been interpreted by the ITAT Pune Bench SMC.

16. We are also of the view that the decision of the Hon'ble Kerala High Court in the case of Moolamattom Electricity Board Employees Co-op Bank Ltd. (supra) supports the plea of the Assessee before us. The petitioners in that case were primary credit societies registered under the Kerala Co-operative Societies Act. In view of the specific provisions of Sec. 194A(3)(vii)(a) of the Act, they claimed that they need not deduct tax at source on interest paid. It was submitted by the petitioner that

sub-s.194A(3)(v) deals with such income credited or paid by a co-operative society to a member whereas sub.s (3)(vii)(a) provides a total exemption to deposits with the primary credit society. The Hon'ble Kerala High Court accepted their plea and in their judgment have observed that Sec. 194A(3)(i) exemption limit of Rs. 10,000/- to interest paid on time deposits with co-operative societies engaged in carrying on in business of banking is allowed but that does not mean that all co-operative societies who have credited or paid exceeding Rs. 10,000/- are liable to deduct tax at source. The Court held that co-operative society engaged in carrying on business of banking and primary credit societies stand on different footing and belong to different class. That does not mean that Sec. 194A(3)(v) of the Act is applicable only to co-operative societies other than co-operative societies carrying on the business of banking as observed in para 37 of its judgment the Pune ITAT in the case of Bhagani Nivedita Sahakari Bank Ltd. (supra). In fact in para 2 of Circular No. 9 dated 11.09.2002, the CBDT has very clearly laid down that co-operative societies carrying on banking business when it pays interest on deposits by its members need not deduct tax at source in view of the provisions of Sec. 194A(3)(v) of the Act.

17. We also find that the CBDT in Circular No. 9 dated 11.09.2002 clarified certain aspects which are relevant to the present case. The same reads thus:

"Circular No. 9 of 2002

"Sub: Tax deduction at source under section 194A of the Income-tax Act 1961—Applicability of the provisions in respect of income paid or credited to a member of co-operative bank - Reg.

11.09.2002

TDS

194A

Under Section 194A of the Income-tax Act, 1961, Tax is deductible at source from any payment of income by way of interest other than income by way of interest on securities. Clause (V) of Sub-Section (3) of Section 194A exempts such income credited or paid by a co-operative society to a member thereof from the requirement of TDS. On the other hand, clause(viia) of Sub-Section (3) of Section 194A exempts from the requirement of TDS such income credited or paid in respect of deposits (other than time-deposits made on or after 1st July, 1995) with a co-operative society engaged in carrying on the business of banking.

2. Representations have been received in the Board seeking clarification as to whether a member of a co-operative bank may receive without TDS interest on time-deposit made with the co-operative bank on or after 1st July, 1995. The Board has considered the matter and it is clarified that a member of a co-operative bank shall receive interest on both time deposits and deposits other than time-deposits with such co-operative bank without TDS under section 194A by virtue of exemption granted vide clause (v) of sub-section (3) of the said section. The provisions of clause (viia) of the said sub-section are applicable only in case of a non-member depositor of the co-operative bank, who shall receive interest only on deposits other than time deposits made on or after 1st July, 1995 without TDS under section 194A.

3. A question has also been raised as to whether normal members, associate members and sympathiser members are also covered by the exemptions under section 194A(3)(v). It is hereby clarified that the exemption is available only to such members who have joined in application for the registration of the co-operative society and those who are admitted to membership after registration in accordance with the bye-laws and rules. A member eligible for exemption under section

194A(3)(v) must have subscribed to and fully paid for at least one share of the co-operative bank, must be entitled to participate and vote in the General Body Meetings and/or Special General Body Meetings of the co-operative bank and must be entitled to receive share from the profits of the co-operative bank.

[F.No. 275/106/2000-IT(B)] (2002) 177 CTR (St) 1"

18. It can be seen from para 2 of the Circular referred to above that the CBDT has very clearly laid down that co-operative societies carrying on banking business when it pays interest on deposits by its members need not deduct tax at source. The above interpretation of the provision by the CBDT which is in favour of the Assessee, in our view is binding on the tax authorities.

19. In the case decided by ITAT Panaji Bench in ITA No. 85/PN/2013 for AY. 09-10 in the case of the Bailhongal Urban Co-op Bank Ltd. v. JCIT order dated 28.08.2013, the Tribunal proceeded on the footing that the aforesaid Circular has been quashed by the Hon'ble Bombay High Court in the case of the Jalgaon District Central Co-operative Bank Ltd. v. Union of India 265 ITR 423 (Bom.) and therefore choose to follow the decision rendered by Pune ITAT SMC in the case of Bhagani Nivedita Sahakari Bank Ltd. (supra). In our view the Hon'ble Bombay High Court in the case of Jalgaon District Central Co-operative Bank Ltd. was dealing with a case of challenge to para 3 of CBDT Circular No. 9 dated 11.09.2002 which tried to interpret the word "member" as given in sec. 194A(3)(v) of the Act. It is only that part of the Circular that had been quashed by the Hon'ble Bombay High Court and the other paragraphs of the Circular had no connection with the issue before the Hon'ble Bombay High Court. How could it be said that the entire Circular has been quashed by the Hon'ble Bombay High Court? In our view para 2 of the Circular still holds good and the

conclusion of the ITAT Pune Bench in the case of the Bailhongal Uraban Co-op Bank Ltd. (supra) are not factually correct. Consequently, the conclusions drawn in the aforesaid decision also contrary to facts and hence cannot be considered as precedent.

20. The learned counsel for the Assessee as brought to our notice that the ITAT Vishakapatnam Bench in the case of the Vishakapatnam Co-operative Bank ITA No. 5 and 19 of 2011 order dated 29.08.2011 as held that co-operative societies carrying on banking business when it pays interest to its members on deposits it need not deduct tax at source in view of the provisions of Sec. 194A(3)(v) of the Act. Similar view has also been expressed by the Pune Bench of the ITAT in the case of Ozer Merchant Co-operative Bank ITA No. 1588/PN/2012 order dated 30.10.2013. We may add that in both these decisions the discussion did not turn on the interpretation of sec. 194A(3)(i)(b) of the Act vis-à-vis sec. 194A(3)(v) of the Act. It is thus clear that the preponderance of judicial opinion on this issue is that co-operative societies carrying on banking business when it pays interest to its members on deposits need not deduct tax at source in view of the provisions of sec. 194A(3)(v) of the Act.

21. For the reasons given above, we hold that the Assessee which is a co-operative society carrying on banking business when it pays interest income to a member both on time deposits and on deposits other than the deposits with such co-operative society need not deduct tax at source Under Section 194A by virtue of the exemption granted vide Clause (V) of Sub-Section (3) of the said section"

14. In our view the above decision rendered by the co-ordinate bench is squarely applicable to the facts of the present case. In facts the CIT(A) in cancelling the order of the AO has placed reliance on the aforesaid decision. Respectfully following the decision of the co-ordinate bench referred to above, we uphold the order of the CIT(A).'

3. The aforesaid shows that the Tribunal was bound by its earlier decision in case of Bagalkot District Central Co-op. Bank v. Jt. CIT [2014] 48 taxmann.com 117 (Bang.). When we further enquired from the learned counsel for the Revenue as to whether the decision of the Tribunal was carried by the Department before this Court or not and in response thereto, the learned counsel for the appellants has brought to our notice the decision of this Court dated 16.12.2015 in ITA 100116/2014 whereby, the view taken by the Tribunal has not been interfered with. We may record that this Court in the above referred decision observed thus:

'In this appeal by the Revenue, the issue involved is for consideration whether the Co-operative Bank was required to deduct tax while paying interest to its members on time-deposits under Section 194-A of the Income-tax Act.

2. The Ministry of Finance, Government of India vide Circular No. 19/2015 in F.No. 142/14/2015-TPL, has held that the Co-operative Banks are not required to deduct tax at source on time deposits of its members paid or credited on or before 1.7.2015. The relevant portion of the circular reads as under:

"42.5. In view of this, the provisions of the section 194A(3)(v) of the Income-tax Act have been amended so as to expressly provide that the exemption provided from deduction of tax from payment of interest to members by a co-operative society under section 194A(3)(v) of the Income-tax Act shall not apply to the payment of interest on time-deposits by the co-operative banks to its members. As this amendment is effective from the prospective date of 1st June, 2015, the co-operative bank shall be required to deduct tax from the payment of interest on time deposits of its members, on or after the 1st June, 2015. Hence, a co-operative bank was not required to deduct tax from the payment of interest on time deposits of its members paid or credited before 1st June, 2015."

3. In view of the aforesaid circular, this appeal does not survive for consideration and is accordingly dismissed. No costs.'

4. As such, in view of the referred decision of this Court in case of Bagalkot District Central Co-op. Bank (supra) referred when

the question is already covered by the decision of this Court, it cannot be said that any substantial question of law would arise for consideration.

5. However, the learned counsel appearing for the appellants-Revenue made an attempt to contend and reiterate the same contention that in view of special provision section 194A(3)(b), the general exemption as provided under 194A(3)(v), would not be applicable for the Co-operative Banks and he contended that the view taken by the Tribunal cannot be said as correct view and this Court may independently consider the matter and may hold that in view of specific provision, general exemption would not be available to co-operative bank. Hence the TDS from the interest exceeding the amount of Rs. 10,000/- was required to be deducted by the respondent-assessee in the present case which is a co-operative bank.

6. As such, we are not impressed by the submission that there is any specific provision and therefore general exemption would not apply for the simple reason that the word 'Members' is missing in clause (b). Further, in Circular No. 19/2015 dated 27.11.2015 at paragraph 42.5 it has been inter alia mentioned as under:

". Hence, the Co-operative Bank was not required to deduct tax from the payment of interest on the time-deposits of its members paid or credited before first June 2015".

7. Under the circumstances, the question of specific provision as against general provision would not arise for further consideration. Hence, we find that no substantial questions of law would arise for consideration."

7. In view of the above judgment of the jurisdictional High Court, we are inclined to decide the issue in favour of the assessee and against the revenue.

8. In the result, the appeal by the revenue is dismissed.

Pronounced in the open court on this 21st day of December, 2021.

Sd/-

Sd/-

(BEENA PILLAI)
JUDICIAL MEMBER

(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 21st December, 2021.

/Desai S Murthy/

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.