

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "E" NEW DELHI]

BEFORE SHRI G. S. PANNU, PRESIDENT
A N D
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No. 3038/Del/2019
निर्धारणवर्ष/Assessment Year: 2015-16

ACIT (OSD) (E) Ward : 2 (4) New Delhi.	<u>बनाम</u> Vs.	National Co-operative Union of India, 3 - Sri Institutional Area, Panchshila Marg, New Delhi - 110 016.
		PAN : AAACN2696Q
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारितकीओरसे / Assessee by :	Shri Anurag, Assistant Director;
राजस्वकीओरसे / Department by :	Ms. Garima Sharma, Sr. D.R.;

सुनवाईकीतारीख/ Date of hearing :	08/06/2022
उद्घोषणाकीतारीख/Pronouncement on :	08/06/2022

आदेश / O R D E R

PER C. N. PRASAD, J. M. :

1. This appeal is filed by the Revenue against the order of the Id. Commissioner of Income Tax (Appeals)-40 [hereinafter referred to as CIT (Appeals)] New Delhi, dated 21.01.2019 for assessment year 2015-16.

2. The only grievance of the Revenue in its appeal is that the Id. CIT (Appeals) erred in allowing credit for TDS on interest paid by banks to the assessee.

3. Brief facts are that the assessee is a society registered under Registrar of Co-operative Societies and also registered under Section 12A of the Income Tax Act, 1961 (the Act). In the course of assessment proceedings the Assessing Officer required the assessee to explain why Education Fund contribution to Education Fund is not routed through income and expenditure account. The assessee made elaborate submissions as to why Education Fund and the contribution credited to Education Fund is not income of the assessee and such Corpus Education Fund is to be utilized on educational activities carried out by contributors/members to such fund. It was explained that assessee is one amongst such members and the fund which pertains to assessee or has been distributed to the assessee was already shown as income in the income and expenditure account. It was explained that the remaining fund is to be kept in Corpus Education Fund till the same is distributed to eligible funds out of 177 participating members/contributors. Upon satisfaction of terms and conditions and requisite compliances as per the Act it was explained that National Co-operative Union of India (NCUI) the assessee is acting only in the capacity of trustee or custodian and any incremental addition to Corpus Education Fund is not the income of the assessee. It was explained that even though banks have deducted TDS on interest on fixed deposits such interest is not the income of the assessee as the assessee does not have any control over the fund. It was further explained that the Co-operative Education Fund is being collected and maintained by the assessee as a separate fund on behalf of Government of India and the Government of India is competent authority over the fund. It was also explained that the Co-operative Fund is wholly owned by Government of India and assessee does not have any authority to control the usage of the fund. It was explained that the fund is part of the balance sheet of the assessee and, therefore, cannot be considered as income of the assessee. The Assessing Officer accepted the stand of the assessee that the Education Fund and the interest accrued thereon is not part of income assessable under the Act in the

hands of the assessee. Accordingly, the income declared by the assessee in its return of income was accepted. However, the Assessing Officer denied credit for TDS on the interest income received from banks on the fixed deposits observing that as per Section 199 of the Act credit for tax deducted can be given only for the assessment year for which such income is assessable to tax. In the case of the assessee since the Education Fund is never assessable to Income Tax, credit for TDS was denied.

4. On appeal the ld. CIT (Appeals) directed the Assessing Officer to allow credit for TDS on interest component of the Education Fund after due verification.

5. The ld. DR strongly supported the order of the Assessing Officer. She submits that the Assessing Officer has rightly invoked the provisions of Section 199 of the Act in denying the credit for TDS since the interest component was not assessed to tax for the year under consideration.

6. On the other hand, Shri Anurag, Assistant Director of the assessee, relied on the orders of the ld. CIT (Appeals).

7. We have heard the rival submissions perused the orders of the authorities below. It is not in dispute that the Education Fund and interest accrued thereon is not the income of the assessee, but belongs to Government of India and is not assessable to tax in the hands of the assessee. This position was accepted by the Assessing Officer himself. Having accepted this position the Assessing Officer denied credit for TDS made by the bank on the interest component on the fixed deposits made out of Education Fund for the reason that since this income is not assessable to tax in the hands of assessee the assessee is not entitled to credit for TDS in view of the provisions of Section 199 of the Act. The ld. CIT (Appeals) on considering the rival contentions held that the interest received on the FDRs, which was part of the Education Fund has to be credited back to the Education Fund and is not to be considered as income of the assessee. This position was also accepted by the Assessing

Officer. The Id. CIT (Appeals) held that tax, if any, deducted on interest has to be refunded since the said amount is not to be included in the income of the assessee. This position is not controverted by the Revenue. Therefore, we see no infirmity in the order passed by the Id. CIT (Appeals) in directing the Assessing Officer to allow credit for TDS on the interest component of the Education Fund after due verification. The grounds raised by the Revenue are rejected.

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on : 08/06/2022.

Sd/-
(G. S. PANNU)
PRESIDENT

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 08/06/2022.

MEHTA

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	08.06.2022
Date on which the typed draft is placed before the dictating member	08.06.2022

Date on which the typed draft is placed before the other member	08.06.2022
Date on which the approved draft comes to the Sr. PS/ PS	08.06.2022
Date on which the fair order is placed before the dictating member for pronouncement	08.06.2022
Date on which the fair order comes back to the Sr. PS/ PS	08.06.2022
Date on which the final order is uploaded on the website of ITA	08.06.2022
Date on which the file goes to the Bench Clerk	08.06.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	