

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted Through Virtual Court)  
**Before: Ms. Annapurna Gupta, Accountant Member  
And Shri TR Senthil Kumar, Judicial Member**

**ITA No. 266/Rjt/2018  
Assessment Year 2008-09**

Dena Gujarat Gramin Bank (Bhuj Branch), Station Road, Bhuj- 370001 PAN No. AAAJD0596Q  (Appellant)	Vs	The Income Tax Officer TDS-4, Gandhidham- Kutch (Respondent)
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**Appellant by : Shri Vimal Desai, A.R.  
Respondent by : Shri B.D. Gupta, Sr.D.R.**

Date of hearing : 20-06-2022  
Date of pronouncement : 29-06-2022

**आदेश/ORDER**

**PER : ANNAPURNA GUPTA, ACCOUNTANT MEMBER:-**

The present appeal has been filed by the Assessee against the order passed by the Commissioner of Income Tax (Appeals)-1, Rajkot, (in short referred to as CIT(A)), dated 02-04-2018, u/s. 250(6) of the Income Tax Act, 1961(hereinafter referred to as the "Act") pertaining to Assessment Year (A.Y) 2008-09.

2. At the outset, it was pointed out that the solitary issue in the present appeal relates to holding the assessee as an assessee in default for

non-deduction of tax at source and charging interest on the tax not so deducted as per the provisions of Section 201(1) & 201(1A) of the Act.

2.1. The grounds raised by the assessee reads as under:

*The Grounds of appeal mentioned herein below are without prejudice to one another.*

*1. The order u/s. 201(1) & 201(1 A) of the Act is bad in law.*

*2. The order u/s. 201(1) & 201(1 A) of the Act is bad in law as it was barred by limitation.*

*3. The learned Assessing Officer has erred in law as well as on facts in holding the appellant as 'assessee in default' u/s. 201(1) in respect of alleged non-deduction of tax at source on payments of interest to its customer and thereby raising liability of Rs.2,52,084/-. The learned CIT(A) erred in confirming the same.*

*4. The learned Assessing Officer has erred in law as well as on facts in charging interest u/s. 201(1A) of Rs.2,42,000/- on account of above alleged non-deduction of tax at source on payment of interests. The learned CIT(A) erred in confirming the same.*

3. At the outset itself, Ld. Counsel for the assessee pointed out that ground no. 1 & 2 are legal grounds challenging the validity of the order passed u/s. 201(1) & 201(1A) of the Act and have been raised for the first time before us, he contended that being legal grounds need to be admitted as per the order of the Hon'ble Apex Court in the case of NTPC Ltd. vs CIT (1998) 229 ITR 383(SC)

4. Ld. D.R. did not object to the same.

Since ground nos. 1 & 2 are legal grounds, the same are being admitted for adjudication as per the Hon'ble Apex Court in the case of NTPC Ltd.(supra)

5. Taking up ground no. 1 & 2 first Id. Counsel for the assessee contended that the challenge to the order passed in the present case u/s. 201(1) to the validity order passed u/s. 201(1A) in the present case on the ground of limitation. Ld. Counsel for the assessee pointed out that as per the provisions of law governing the limitation of the order passed under the sections provided in section 201(3), the time limit was two years from the end of the financial year in which the statement of tax deducted at source is filed. He drew our attention to the relevant provisions as under:

*201. (1) Where any person, including the principal officer of a company,—*

*(a) who is required to deduct any sum in accordance with the provisions of this Act; or*

*(b) referred to in sub-section (1A) of section 192, being an employer,*

*does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:*

.....

*(3) No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of-*

*(i) two years from the end of the financial year in which the statement is filed in a case where the statement referred to in section 200 has been filed;*

*(ii) six years from the end of the financial year in which payment is made or credit is given in any other case:*

6. He thereafter pointed out that in the present case the statement u/s. 200(3) was filed by the assessee in the financial year 2007-08 and therefore the limitation for passing order u/s. 201(1) was on 31.03.2010, while the impugned order has been passed on 20.03.2015, that is beyond the limitation prescribed under the Act and therefore the order passed u/s. 201(1) & 201(1A) is time barred and thus invalid in the eyes of law.

7. Ld. D.R. on the other hand though did not controvert the legal and factual position as pointed out by the Ld. Counsel for the assessee. He however contended that the provisions applied only to holding the assessee as an assessee in default u/s 201(1) of the Act and not for the purpose of charging interest for non-deduction /delay deduction tax at source u/s. 201(1A) of the Act. His pleading therefore was that the interest to be charged on the assessee u/s. 201(1A) was not barred by limitation and therefore the order passed to that extent needed to be upheld.

8. We have heard the contentions of both the parties and have also gone through the relevant provisions of the Act. It is not denied that as per law the limitation prescribed for passing order u/s. 201(1) of the Act holding assessee as an assessee in default was two years from the end of the financial year in which the statement of tax deducted at source was filed by the assessee as per Section 200(3) of the Act. As per the facts of the present case, the statement u/s. 200(3) of the Act was filed by the assessee in the financial year 2007-08 and the limitation for passing the order u/s.

201(1), accordingly expired on 31.03.2010 as per law. The order however was passed on 20-03-2015.

9. The facts as stated above by the Id. Counsel for the assessee have not been controverted by the Id. D.R. Therefore clearly the order passed in the present case holding the assessee as an assessee in default for non-deduction/short deduction tax at source u/s. 201(1) of the Act is barred by limitation. The same is therefore invalid in the eyes of law and is accordingly cancelled.

10. As far as the issue of charging of interest for non-deduction/short deduction tax at source u/s. 201(1A) of the Act, we find that the interest so charged is for compensating the delay in depositing the TDS and since the very basis of charging interest therefore rests on holding the assessee as assessee in default by way of order passed u/s. 201(1) of the Act, the same having been held to be invalid by us above, the order passed u/s. 201(1A) also logically does not survive. The arguments of the Id. D.R. to the contrary merit no consideration.

11. In view of the above, the order passed u/s. 201(1) & 201(1A) of the act is cancelled as being invalid in the eyes of law being barred by limitation.

12. Ground no. 1 & 2 of the assessee are allowed.

13. The remaining grounds relating to the merits of the case need no adjudication since the order passed u/s 201(1) & 201(1A) has been cancelled by us by above.

14. In effect, appeal of the assessee is allowed in above terms.

Order pronounced in the open court on 29 -06-2022

**Sd/-**  
**(TR SENTHIL KUMAR)**  
**JUDICIAL MEMBER True Copy**  
**Ahmedabad : Dated 29/06/2022**

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
राजकोट