

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

**Before Shri George George K., Judicial Member
and
Ms. Padmavathy S., Accountant Member**

ITA Nos. 958 to 961/Coch/2022 & SA Nos. 80 to 83/Coch/ 022 (Assessment Years: 2016-17 to 2019-20)		
M/s. Wayanad District Co-op. Bank Ltd. (now Kerala State Co-op Bank Ltd.) Kalpetta North Wayanad Dist. 673122 PAN – AAAAW0146N	vs	The Income Tax Officer (TDS) 3rd floor, Aayakar Bhavan North Bolck, Mananchira Kozhikode 673001
(Appellant)		(Respondent)

Assessee by:	Shri Joseph Markose, Sr. Advocate
Revenue by:	Smt. J.M. Jammuna Devi, Sr. DR

Date of hearing:	27.02.2023
Date of pronouncement:	28.02.2023

ORDER

Per: George George K., J.M.

These appeals at the instance of the assessee are directed against the four orders of the CIT(A) (all dated 12.07.2022) passed under Section 250 of the Income Tax Act, 1961 (the Act). The orders of the CIT(A) arose out of the orders passed by the Assessing Officer (AO) under Section 201(1) & 201(1A) of the Act. The relevant assessment years are 2016-17 to 2019-20. The assessee has also filed stay applications seeking stay of recovery of the outstanding demand.

2. There is a delay of 65 days in filing all these appeals. The assessee filed a condonation petition and also an affidavit of the DGM of the assessee stating

therein the reasons for the delay in filing the appeal. On perusal of the affidavit giving reasons for late filing of the appeals we are of the view that there is sufficient cause for condonation of delay and no latches can be attributed to the assessee. Hence, we condone the delay in filing these appeals and proceed to disposed off them on merits.

3. Common issues are raised in these appeals, hence they were heard together and are disposed off by this consolidated order. Identical grounds are raised in these appeals. The grounds raised read as follows: -

- “A. The order of the Commissioner (Appeals) of Income Tax is bad in law and on facts.*
- B. The Appellate Authority ought to have found that interest was credited to the depositor's account only on the date of maturity of the deposit and since under Section 194A, TDS is liable to be deducted only at the time of payment or credit, whichever is earlier, the Appellant has deducted TDs and paid the same as and when the same was credited to the customer account. The assessment of TDS shortfall on the entire interest debited to Profit & Loss Account is clearly erroneous.*
- C. In any view of the matter, the Commissioner (Appeals) of Income Tax ought to have found that the Appellant having deducted TDS at the time of maturity/payment to the depositor, credit/adjustment for the same ought to have been granted. The assessment of the whole amount of TDS as an assessee in default is clearly erroneous.*
- D. Since the customers are numerous it was not possible to obtain Certificate in Form 26A. However, the TDS returns filed by the Appellant for subsequent year when TDS was deducted and paid ought to have been considered by the authorities below. Based thereon if at all interest for delayed payment of TDS alone could have been demanded and the assessment under Section 201 is clearly erroneous.”*

4. The brief facts of the case as follows: -

The assessee is a district Co-Operative Bank. Inspection was carried out in the premises of the assessee bank on 28.03,2019. It was noticed that the assessee was liable to deduct tax at source under Section 194A of the Act on

interest payment. The assessee submitted that tax was deducted at source only on maturity of deposits. The AO therefore passed orders under Sections 201(1) & 201(1A) of the Act making the assessee as an assessee in default for AY 2016-17 to 2019-20 and also levied interest on the tax demand.

5. Aggrieved by the order passed under Sections 201(1) & 201(1A) of the Act, the assessee filed appeal before the first appellate authority. The CIT(A) by referring to the Explanation to Section 194A of the Act held that crediting of interest to the interest payable account is deemed to be credit of interest income to the payees' account for the purpose of deduction of tax at source under Section 194A of the Act. Therefore, the CIT(A) concluded that the assessee ought to have deducted tax at source on credit to the account of interest income instead of making deduction of tax at source when interest is paid on maturity. Accordingly the CIT(A) confirmed the view taken by the AO in his orders passed under Sections 201(1) & 201(1A) of the Act.

6. Aggrieved by the orders passed under Sections 201(1) & 201(1A) of the Act for assessment years 2016-17 to 2019-20 the assessee filed the present appeals before the Tribunal. The learned Sr. Counsel, Shri Joseph Markose, by referring to ground C & D submitted that the assessee have deducted TDS at the time of maturity/interest payment to the depositors. Therefore, it was contended that credit/adjustment for the same ought to have been granted.

7. The learned D.R., on the other hand, supported that orders of the AO and the CIT(A).

8. We have heard the rival contentions and perused the material on record. The assessee's contention before the AO and the CIT(A) was that a part of the interest charged to the P&L Account has neither been paid nor credited to the customers account, rather

credited to the interest payable account and therefore the same is not liable to TDS under Section 194A of the Act. The above contention of the assessee is devoid of any merit. Section 194A of the Act mandates that any person responsible for paying to a resident any income by way of interest (other than interest on security) shall at the time of credit of such income to the account of the payee or payment thereon in any mode shall deduct TDS thereon at the rate in force. The Explanation below sub-section (1) of Section 194A of the Act clarifies that where any income by way of interest is credited to any account, whether called "interest payable account" or "suspense account" or any other name in the books of account of the payer, such credit shall be deemed to be credit for the purpose of Section 194A of the Act. Therefore the above contention raised by the assessee is rejected.

9. However, in ground C & D, the assessee contends that it had deducted tax at source on a later point of time, i.e. at the time of maturity of deposit and to such kind of deduction of tax at source, the assessee ought to be granted credit/adjustment for treating the assessee as an assessee in default. This plea of the assessee is justifiable. When the assessee has already deducted tax at source (though at a later point of time) to the same extent assessee cannot be made an assessee in default under Section 201(1) of the Act, as this would amount to collection of tax at source under Section 194A of the Act twice. However, we make it clear that the assessee would be liable for interest under Section 201(1A) of the Act in respect of the said amount. Therefore, it is for the assessee to prove the above contention raised. Hence, we restore grounds C & D to the files of the AO. The assessee shall provide necessary details/proof for the amount of tax that is deducted at source under Section 194A of the Act at a later point of time for claiming credit/adjustment against the

orders passed under Section 201(1) of the Act. Once again we make it clear that the assessee shall be liable for interest as per the provisions of Section 201(1A) of the Act in respect of the tax deducted at source at a later point of time. It is ordered accordingly.

10. The assessee has also filed stay petitions seeking stay of recovery of outstanding demand. Since we have already disposed off the appeals on merits, the stay petitions filed by the assessee has become infructuous and the same are dismissed.

11. In the result, the appeals filed by the assessee are partly allowed for statistical purposes and the stay petitions are dismissed.

Order pronounced in the open Court on 28th February, 2023.

Sd/-
(Padmavathy S.)
Accountant Member

Sd/-
(George George K.)
Judicial Member

Cochin, Dated: 28th February, 2023

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1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -NFAC, Delhi*
4. *The CIT -*
5. *The DR, ITAT, Cochin*
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By Order

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Assistant Registrar
ITAT, Cochin

n.p.