

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, KOLKATA

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 459 & 460/Kol/2022
Assessment Years: 2016-17 & 2017-18

The Murshidabad District Central Co. Op. Bank Ltd. 48 & 49, B.B. Sen Road Berhampore - 742101 (Murshidabad) [PAN : AABAT2105M]	Vs	Asstt. Commissioner of Income Tax, (TDS), Cir-1, Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Soumitra Choudhury
Revenue by :	Shri Ranu Biswas, Addl. CIT D/R

सुनवाई की तारीख/Date of Hearing : 01/03/2023
घोषणा की तारीख /Date of Pronouncement: 17/03/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeals are directed at the instance of the assessee against the separate orders of the National Faceless Appeal Centre, Delhi (hereinafter the "Id. CIT(A)") even dated 16/03/2022, passed u/s 250 of the Income Tax Act, 1961 ('the Act'), for Assessment Years 2016-17 & 2017-18.

2. The Registry has pointed out that there is a delay of eighty seven (87) days in filing of this appeal in time before the Tribunal. The assessee has filed a petition for condonation of delay stating the reasons of delay. After perusing the same, we find that the assessee was prevented by sufficient cause from filing the appeal in time before the Tribunal. Hence, the delay is condoned and the appeal is admitted.

3. On perusal of the grounds, we find that the common issue for our consideration is that whether the Id. CIT(A) has erred in sustaining the action of the Id. Assessing Officer of treating the assessee in default u/s 201(1)/201(1A) of the Act for non-deduction of tax at source u/s 194A of the

Act on account of non-furnishing of Form 15G/15H of the depositors and further charging interest u/s 201(1)/201(1A) of the Act. Addition for Assessment Year 2016-17 and 2017-18 which are in challenge before us are as follows:-

<i>Assessment Year</i>	<i>Short deduction of tax</i>	<i>Interest levied</i>
2016-17	Rs.19,69,867/-	Rs.5,31,864/-
2017-18	Rs.35,61,523	Rs.5,69,843/-

4. Brief facts are that the assessee bank was subject to survey u/s 133A(2A) of the Act carried out on 08/11/2017 followed by serving of statutory notice. From perusal of the books it was noticed that on the payments of interest to persons other than societies amounting to Rs.1,96,98,676/-, tax at source @ 10% was not deducted u/s 14A of the Act and thus was treated as assessee in default and was held liable to pay short deduction of tax at Rs.19,69,867/- coupled with interest at Rs.5,31,864/. Similar action was taken for Assessment Year 2017-18 thereby raising demand for non-deduction of tax u/s 194A of the Act, at Rs.35,61,523/- and interest of Rs.5,69,843/-.

4.1. When the assessee carried the matter in appeal before the Id. CIT(A), it was submitted that Form No. 15G and 15H were duly received form the depositors and the same were uploaded on the Income-tax portal but due to some technical difficulty, the uploaded filed could not be opened. Before Id. CIT(A), copies of Form 15G & 15H were filed but Id. CIT(A) was of the view that since the assessee failed to upload the Form No. 15G & 15H on the Core Banking Solution (CBS) system, it is default on part of the assessee for which the Id. AO has rightly held the assessee responsible.

5. Aggrieved, now the assessee is in appeal before the Tribunal.

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6. The Id. Counsel for the assessee, took us through the relevant pages of the paper book which contains details of the 15G & 15H forms submitted by various depositors. Our attention was also drawn to the complete list of the said details of the interest paid to such depositors who have filed Form 15G & 15H. Reference was also made to page 64 of the paper book in support of the arguments that Form 15G & 15H were uploaded on the website and, there was further communication between the Income-tax Department and the assessee. Further reliance was placed on certain decisions in support of the contention that even if such Forms 15G & 15H are submitted by the assessee during the course of assessment proceedings, then the same should be entertained and assessee should not be treated as an assessee in default.

7. We have heard rival contentions and perused the material placed on record before us. Common issue in dispute before us raised by the assessee is that the Id. CIT(A) erred in confirming the action of the Id. AO in treating the assessee in default for non-deduction of tax at source on interest paid on deposit to persons other than co-operative societies and also levying interest thereon. The assessee is a co-operative bank and received deposits from various persons in the form of fixed deposits and other deposits on which interest is paid. The dispute before us pertains to assessment year 2016-17 and 2017-18 for which the demand for non-deduction of tax and interest has been levied. The crux of the arguments of the Id. Counsel for the assessee is that the assessee bank regularly deducts tax at source on the deposits which are above the permissible limits u/s 194A of the Act. But in those cases for which Form 15G & 15H are received from the depositors tax at source is not deducted. The assessee bank regularly receives Form 15G & 15H and submits the same to the jurisdictional officer in charge of TDS. For the year under appeal there was a change in systems and the assessee was required

to upload all the Forms 15G & 15H on the Income Tax portal, copy of which are placed at page 64 of the paper book. But thereafter, due to technical problem, the attachments uploaded, could not be opened. The assessee bank was unable to upload it again even though it had physical copies of Form 15G & 15H, which contains details of the investors, the amount of sum given on deposit, the date of investment and period of such investments and most important in the declaration given by the depositors of not having taxable income. Copies of these Forms 15G & 15H were placed before the ld. CIT(A) also but he ignored the physical copies and pressed upon online filing of the same.

9. It is an admitted fact that the assessee has procured the Form 15G & 15H, from all those depositors who have stated on the Form that tax should not be deducted on the interest paid/credited to them as their income is below taxable limit. Such forms are filed as per provisions of Income Tax Act and Income Tax Rules. Once such declaration is received by the bank, then, it is not required to deduct tax at source and in case any inconsistency is found in the declaration given by such depositors, then the remedy is available under the Act with the concerned officer to take action against such declarants.

So far as the assessee is concerned, he has acted within the four corners of law and did not deduct tax on such interest for which the depositors have filed Form 15G & 15H. Though the assessee is required to uphold the same in a proper format, but it failed to do so due to some technical defect but since the physical copies are available, revenue authorities should not have treated the assessee in default. Under similar set of facts, the Co-ordinate Bench of ITAT Delhi in the case of *Allahabad Bank vs ITO in ITA Nos. 6095 & 6096/Del/2016; order dt. 30/03/2021*, decided in favour of the assessee as follows:-

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“8. We have heard both the parties and perused the material available on record. The assessee bank has not deducted TDS in respect of customers who have provided Form No. 15G and 15H of the Act under the statute as provided by the [Income Tax Act](#). The customers who have provided Form No. 15G/15H has specifically requests through these forms that TDS should not be deducted on their FDs/respective withdrawals. The prime responsibility relating to TDS deduction u/s 201 is of the recipient assessee to pay the tax directly once they filed From No. 15G/15H and any tax liability will be held as pending in recipient assessee's cases and hence [Section 201](#) of the Act cannot be invoked as it is a recovery provision as submitted by the Ld. AR. The decisions given by the Ld. AR also reiterates similar facts. Besides this, in Assessment Years 2002-03 to 2004-05, in the case of the assessee itself in the same branch, the Delhi ITAT in ITA Nos. 5992 to 5994/Del/2012 dated 4th March 2016, after following the judgment of the Jurisdictional Allahabad High Court in the case of the assessee itself, has quashed the proceedings u/s 201 of the Act on the similar lines. Further, for Assessment Year 2014-15 and 2015-16 also the issue is identical and no distinguishing feature was pointed out by Ld. DR at the time of hearing. Since, both the assessment years i.e. A.Y. 2014-15 and 2015-16 are identical, therefore, we are allowing both the appeals.

10. Similar view was also taken by the Co-ordinate Bench of ITAT Bangalore in the case of *The Karur Vysya Bank Ltd. Vs. ACIT in ITA No. 1854/Bang/2016; order dt. 09/08/2017*. Therefore, respectfully following the decisions referred hereinabove and considering the fact that the assessee has not deducted tax at source u/s 194A of the Act after receiving the physical copies of Form 15G & 15H, it should not be considered as an assessee in default. Therefore, we delete the demand raised by the ld. AO for non-deduction of tax at source u/s 194A of the Act as well as interest levied thereon for AY 2016-17 and 2017-18 for non-submission of Form 15G & 15H, and allow the grounds raised by the assessee.

11. In the result, both the appeals of the assessee are allowed.

Order pronounced in the Court on 17th March, 2023 at Kolkata.

Sd/-

(RAJPAL YADAV)
VICE PRESIDENT

Sd/-

(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 17/03/2023

SC S.P.

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata