

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.250/Jodh/2018
(ASSESSMENT YEAR- 2009-10)**

Punjab National Bank, R.R. Singhvi, Advocate, "RAJHANS" 1 st A Road, Sardarpura, Jodhpur	Vs	ITO, TDS (II), Jodhpur (Rajasthan)
(Appellant)		(Respondent)
PAN No. JDHPO2161F		

Assessee By	None
Revenue By	Shri S.M.Joshi, JCIT DR
Date of hearing	20/03/2023
Date of Pronouncement	21/03/2023

ORDER

PER KUL BHARAT, J.M.:

The assessee has filed this appeal challenging the order dated 21.03.2018 passed by the Ld. CIT(A)-1, Jodhpur for the assessment year 2009-10. The assessee has raised following grounds of appeal:-

1. *"That the Learned CIT(A) has grossly erred in law as well as on facts of the case in sustaining the alleged levy of interest u/s 201(1A) even after categorically holding the failure to deduct the tax assessed u/s 201(1), the learned CIT(A) observed that the recipient of income being an approve educational institute was enjoying its full income as exempt u/s 10(23C)(vi) of the IT Act and therefore had the tax been so deducted, the same would have been fully refunded to the deductee school. Therefore in this view of the matter it was hold to be a case of*

no violation under the law in non deduction of tax at source. Hence the sustaining of interest u/s 201(1A) of Rs.181385/- on such deleted tax is highly unjustified.

2. *That the appellant craves leave to amend alter or to add any of grounds of appeal herein above, at the time hearing of this appeal or before such hearing as the circumstances may require to doing so.”*

2. At the time of hearing, no one attended the proceedings on behalf of the assessee. However, written submission has been filed by Ld. Authorized Representative of the assessee. For the sake of clarity, the relevant contents of the written submission are reproduced as under:-

“This appeal has been filed by the assessee bank against the appellate order Dt.21-03-2018 passed by the respondent learned CIT(A)-1, Jodhpur in ITA No.35/2016-17 vide which the default of TDS U/s 194A assessed by the learned assessing officer U/S 201(1) at Rs.189413/- has been deleted and interest charged thereon at Rs.190021/- (para No.4 at page 6 of impugned appellate order) is sustained.

The brief facts of the case rise are that the appellant bank, since received form 15G from the depositor school/trust, as they were/are enjoying tax exemption u/s 10/11 on their income, has not deducted any tax at source u/s 197A. The respondent learned A.O. was of the view that since the total interest paid by way of income to the school/trust was more than the income not liable to tax i.e. Rs.150000/- and as such according to the A.O. appellant bank was liable to deduct tax at source. Accordingly an order u/s 201(1)/201(1A) was passed for the F.Y. 2008-09 and assessed the levy of tax of Rs.189413/- and interest thereon at Rs.181835/-. However a further interest Rs.8186/- was also levied in the case of trust having exemption u/s 11 on the ground that since the trust has filed its return of income for the year under consideration on 16-09-2009 and

therefore the interest for the period April 2008 to September 2009 was levied. The appellant bank challenged this order in an appeal before the learned CIT (A), who vide an impugned order Dt. 21-03-2018, though had deleted the tax but maintained the levy of interest ignoring the plea of appellant that interest being consequential of the tax, should also be deleted. While sustaining the levy of interest u/s 201(1A) of Rs.190021/-, the respondent learned CIT(A) hold that "the CBDT vide its circular No. 275/20/95/IT(B) dated 29-01-1997 declares that no demand visualized u/s 201(1) should be enforced after the tax deductor has satisfied the officer-in-charge of TDS that taxes due has been paid by the deductee assessee. However, this will not alter the liability to charge interest u/s 201(1A) till the date of payment of taxes by the deductee assessee or the liability for penalty u/s 271C of the IT Act". This kind of appellate findings clearly go to show that the levy of interest U/s 201(1A) is compensatory of nature and as such it has to be levied for the period for which the payment of tax is deferred on account of non deduction of the same at source. This plea of the appellant gets full support from the judicial pronouncement in the case of CIT vs Adidas India Marketing Pvt. Ltd. (2007) 288 ITR 379 (Del) wherein it is held that "where there was a failure to deduct or pay tax, interest can be charged from the date on which such tax was deductible, to the date on which such tax is actually paid by the assessee or the deducted". Thus it is clear beyond any doubt that where in the case, no tax liability is found at all, the liability to interest will also not be there. It is seen from the impugned order of A.O. that interest has been levied for the period from the date of commencement of the financial year to the date of passing of impugned order in the case of school and interest for the period commencing of F.Y, to the date of filing of return by the trust, in another case.(Rs.181835+8186), whereas both the said entities were having no tax liability for the year in question. Therefore it is also clear beyond any doubt that there was no revenue loss on account of non deduction of tax by the appellant in the present case and as such the levy of interest is not attracted u/s 201(1A). Hence the present appeal on the following among the other grounds:-

1]. The main grievance of the appellant is in respect of levy of interest of Rs.191021/-. The appellant submits that as stated hereinabove in the facts of the case, that interest u/s 201(1A) is a compensatory levy and therefore the same can be levied only when the revenue is caused a loss on account of deferment of the payment of tax. There is a finding of respondent learned CIT (A) in the impugned appellate order at page-5 in last lines of para 3.3 that "in the instant case, it is also an established fact that income of both the educational institution were exempt from tax as they were enjoying benefit of section 12A and 10(23C)(vi). In the instant case, had the TDS been deducted, still the same would have been claimed as refund by the deductee. Thus a lenient view can be taken in favor of the appellant for non deduction of TDS u/s 194A keeping in view the ratio laid by the Hon'ble Apex court in the case of Hindustan Coca Cola (supra), which also holds good in appellant's case". Thus from these findings also the fact of tax liability in the instant case is crystal clear and no loss to the revenue is caused is also well proved. Therefore in this view of the matter couple with the fact that levy of interest u/s 201(1A) is a compensatory in nature, no interest can be charged in the present case. Therefore the appellant humbly prays that the present appeal on this ground may very kindly be allowed.

2] The next grievance of the appellant is in respect of quantum of interest. Without prejudice to the above claim and without admitting any thing contrary to such claim, as an alternative plea, the appellant submits that the period taken into consideration for working out the quantum of interest, from the date of commencement of the year and ending with the date of passing the impugned order is highly unjustified. It is clear beyond any doubt that at no stretch of imagination it can be presumed that an yearly interest income can be due or received at the immediate beginning of such year. Therefore the period as reckoned by the respondent learned A.O. is highly unjustified. In this view of the matter, it is submitted that if the liability of interest U/s 201(1A) is sustained in the instant case, at least the respondent learned A.O. be directed to work out the period of interest for which the tax is deferred.

The appellant therefore prays that keeping in view the said provisions of law and the law settled by judicial pronouncements, the present appeal may very kindly be accepted and the orders passed by the lower authorities to this effect may kindly be quashed. Any other relief as may be deemed proper and legal may also be allowed.”

3. Facts giving rise to the present appeal are that the assessee is a nationalised bank and is engaged in the business of banking. The Assessing Officer (“AO”) issued notice u/s 133(6) of the Income Tax Act, 1961 (“the Act”) to the assessee, seeking certain clarification regarding tax deducted at source. The assessee was required to furnish the details of tax deducted at source in respect of the fixed deposits wherein the interest paid/credited to its customers was about Rs.1,50,000/- on FDRs. The AO after providing adequate opportunity to the assessee, concluded that the assessee was liable to deduct TDS u/s 194A of the Act which has not been deducted. Considering the facts, the AO raised demand u/s 201(1) and 201(1A) of the Act that worked out to Rs.3,79,434/- in respect of the Assessment Year 2009-10.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, also sustained the addition made by the AO and partly allowed the appeal of the assessee. He deleted the addition of Rs.1,89,413/- made u/s 201

of the Act however, in respect of interest amounting to Rs.1,90,021/-, the same was sustained.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before this Tribunal.

6. We have heard Ld. JCIT DR and perused the material available on record. We find that Ld.CIT(A) has given a finding on fact by observing as under:-

4. *“The next issue to be decided is regarding the AO's action in levying interest of Rs. 1,90,021/- (Rs. 1,81,835/- + Rs. 8,186/-). In support of this ground, the appellant submitted that interest to the tune of Rs. 1,81,835/- being relating to the alleged short deduction of tax of Rs. 1,89,413/- being consequential in nature and the same may also be quashed and deleted. As regards the liability of interest Rs.8,186/-, the appellant submitted that delay in filing of statement being not covered under these relevant provisions also stands liable to be quash a deleted. However, I am not inclined to accept these arguments of the appellant in the light of decision of the Hon'ble Supreme Court as well as the decision of Hon'ble Rajasthan High Court in CIT v. Rathi Gum Industries (1995) 213 ITR 98. The boards circular no. 275/20/95/IT(B) dated 29.01.1997 declares that no demand visualized u/s 201(1) should be enforced after the tax deductor has satisfied the officer -in- charge of TDS that taxes due has been paid by the deductee assessee. However, this will not alter the liability to charge interest u/s 201(1A) till the date of the payment of taxes by the deductee assessee or the liability for penalty u/s 271C of the I. T. Act. Considering the overall facts and legal precedents, the demand raised u/s. 201(1A) is upheld. The appellant fails on this ground.”*

7. The above finding on facts is not rebutted by the assessee by giving any contrary material on record. Therefore, we do not see any reason to interfere in the findings of Ld.CIT(A). However, the AO is hereby directed to work out to correct the interest in respect of which the tax was deferred. Thus, grounds raised by the assessee are partly allowed.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 21.03.2023.

Sd/-

**(MANISH BORAD)
ACCOUNTANT MEMBER**

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Amit Kumar

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
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Asstt. Registrar
Jodhpur Bench