

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं
श्री मंजूनाथा.जी, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI MANJUNATHA.G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.605/Chny/2020
निर्धारण वर्ष /Assessment Year: 2013-14

M/s.Tamilnadu Mercantile Bank Ltd., v. The Income Tax Officer,
280, Madurai Road, TDS Ward,
Virudhunagar-626 001. Virudhunagar.

[PAN: AAAC 5558 K]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr. G.Sekar, FCA
प्रत्यर्थी की ओर से /Respondent by : Mr. AR.V.Sreenivasan,
Addl.CIT
सुनवाई की तारीख/Date of Hearing : 09.03.2023
घोषणा की तारीख /Date of Pronouncement : 31.03.2023

आदेश / ORDER

PER MANJUNATHA.G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-2, Madurai, dated 30.01.2020 and pertains to assessment year 2013-14.

2. The assessee has raised the following grounds of appeal:

- 01. The learned Commissioner of Income-tax (Appeals)-1, Madurai has erred in partly allowing the Appeal for the Assessment Year 2013-14.*
- 02. The reasons given by the Commissioner of Income-tax (Appeals)-1, Madurai are not tenable.*

:: 2 ::

03. From the TABLE given in the Order u/s.201(1) r.w.s. 201(1A), it can be discerned that there are 3 categories of Depositors:

- a) Depositors who had given Form 15G;
- b) Depositors who had given Form 15H; and
- c) A Depositor, who had filed his Return of Income.

04. Both Form 15G and Form 15H had been filed by Deductees, whose estimated total income were NIL.

05. According to the provisions of Section 197A(1A), no deduction of tax shall be made, if a person furnishes to the person responsible for paying interest u/s.194A, a declaration in writing.

No time limit has been specified by the Section.

06. The Appellant strongly relies on the Supreme Court decision reported in HINDUSTAN COCA COLA BEVERAGE (P.) LTD. vs. COMMISSIONER OF INCOME-TAX, reported in (2007) 293 ITR 226 (SC), decided on 16-08-2007.

The Apex Court went into the contention in the instant case, which was that since the tax to be recovered by the department on the income has already been paid by the assessee, no further tax should be recovered from the appellant on the same income.

Be that as it may, the Circular No. 275/201/95- IT(B) dated 29-01-1997 issued by the Central Board of Direct Taxes, in our considered opinion, should put an end to the controversy.

The CBDT has issued Instruction No. 275/201/95-IT(B), dated 29-1-1997, under which it is stated that the demand for non/short deduction of tax should not be enforced against the Payer if he satisfies the Income-tax Authority that such taxes have been paid by the Payee.

SECTION 201 - CONSEQUENCE OF FAILURE TO DEDUCT OR PAY

07. Where taxes have been paid by deductee-assessee

The Board is of the view that no demand visualized under section 201(1) of the Income-tax Act should be enforced after the tax deductor has satisfied the officer in charge of TDS that taxes have been paid by the deductee-assessee.

Instruction: F. No. 27 5/201/9 5-IT(B) on 29-1-1997. JUDICIAL ANALYSIS

Explained in - In HINDUSTAN COCA-COLA BEVERAGES (P.) LTD. V. JOINT CIT [2004] 90 ITD 720 (Delhi) with the following observations:

"We. have also carefully examined the Circular No.275, dated 29-1-1997, which was relied on by the assessee and appearing at page No.1 of the compilation and we find that through, this circular it has been clarified by the Board that no demand visualized under section 201(1) of the Act should be enforced after the tax depositor has satisfied the official in-charge of the TDS that tax due had been paid by the deductee-assessee. The Board has further clarified that non-enforcement of demand would not alter the liability

:: 3 ::

to change interest under section 201(1a) of the Act till the date of payment of taxes by the deductee-assessee or liability for the penalty under section 271C of the Act. Nowhere, it has been stated or clarified either in the Act or by the CBDT that once the short deducted tax has been paid by the deductee-assessee, no penalty under section 271 C can be levied..." (pp. 729, 7 30).

08. The Appellant submits that filing of Form 15G has not being considered at any stage.

09. The Appellant submits Tax was Deducted at Source on the interest paid to Senior Citizens. They filed Form 15H belatedly. On receipt of the Forms, the TDS was reversed.

The Appellant brings to your notice the ITAT Mumbai Bench "A" decision in KARWAT STEEL TRADERS dated 10-07-2013. The ITAT opined that late filing of Forms is merely a procedural delay.

10. The Appellant also brings to your notice the ITAT Mumbai Bench "F" decision in Shri. VIPIN P. MEHTA vs. THE INCOME TAX OFFICER dated 27-12-2008. The ITAT has opined.

"the assessee cannot be blamed because at the time of paying the interest to the loan creditors, he has to perforce rely upon the declarations filed by the loan creditors and he was not expected to embark upon an enquiry as to whether the loan creditors really and in truth have no taxable income on which tax is payable".

11. For these and other grounds that may be raised at the time of hearing, the appellant prays that the Order of the Commissioner of Income-tax (Appeals)- 1, Madurai, be reconsidered.

3. A TDS inspection was conducted in the premise of M/s.Tamilnadu Mercantile Bank Ltd., Virudhunagar, on 07.06.2013. During the course of inspection, it was noticed that in respect of 22 payees, interest payment was more than Rs.2 lakhs, on which, the deductor bank has not deducted TDS. The AO worked out total TDS deductible amounting to Rs.7,00,072/- . The assessee explained that in respect of senior citizens, the bank will deduct TDS as and when payment is made. However, when parties submit Form Nos.15G/15H, the same is reversed. The AO did not accept the plea of the deductor having received Form Nos.15G/15H in those cases. The AO further was of the view that once TDS has been deducted, it cannot be reversed or retained, but it can only be remitted to the account of the

:: 4 ::

central government. Therefore, computed short deduction of TDS in respect of interest payment to depositors amounting to Rs.11,43,976/-. The assessee carried the matter in appeal before the First Appellate Authority, and the Ld.CIT(A)-1, Madurai, upheld the view of the AO on the issue of filing of Form Nos.15G/15H. The assessee carried the matter in further appeal before the Tribunal and the ITAT 'D' Bench, Chennai, in its order in ITA No.3093/Chny/2014 dated 19.02.2016 directed the AO to examine whether the recipients have any taxable income or not in light of Form Nos.15G/15H. The AO in compliance with the order of the Tribunal verified Form Nos.15G/15H filed by the assessee and allowed relief in respect of short deduction of TDS to the tune of Rs.3,23,816/- wherever the assessee has submitted relevant Forms. In respect of balance amount of Rs.4,43,904/-, the assessee could not submit necessary details. Therefore, computed short deduction of TDS. The assessee carried the matter in appeal before the Ld.CIT(A), who in turn confirmed the additions made by the AO on the ground that the assessee could not justify non-deduction of TDS and reversal of TDS on interest payments. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

4. The Ld.AR for the assessee submitted that the bank has deducted TDS wherever interest payment exceeds prescribed limit, but as and when parties submitted Form Nos.15G/15H, then, TDS deduction has been reversed and this fact has been explained to the AO. However, the AO ignored details filed by the assessee and computed short deduction of TDS

:: 5 ::

only on the ground that there is no provision to reverse TDS deducted on submission of relevant Forms.

5. The Ld.DR, on the other hand, submitted that the assessee could not explain with necessary details why TDS deduction has been reversed. Therefore, the matter may be set aside to the file of the AO for further verification.

6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. It is a common practice in banking sector that wherever senior citizens submit declaration in Form Nos.15G/15H, TDS is not deducted on interest payments even if such payment is in excess of threshold limit. In this case, there is no dispute with regard to the fact that the assessee has deducted TDS wherever interest payments exceed threshold limit, but reversed such TDS deduction on interest payment as and when the parties submit Form Nos.15G/15H within the same financial year. In our considered view, when the assessee has submitted necessary declaration in Form Nos.15G/15H for non-deduction of TDS and also for reversal of TDS deduction on interest payment, then, in our considered view, the AO ought to have accepted the claim of the assessee, because, as per law, if relevant declaration in Form Nos.15G/15H is submitted before the end of the relevant financial year, then, the question of deduction of TDS on interest payments does not arise. Therefore, we are of the considered view that the AO is required to re-examine the claim of the assessee in light of relevant Forms submitted by

:: 6 ::

the assessee. Thus, we set aside the order of the Ld.CIT(A) and restore the issue back to the file of the AO and direct the AO to re-verify the claim of the assessee and decide the issue in accordance with law.

7. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on the 31st day of March, 2023, in Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(मंजूनाथा.जी)
(MANJUNATHA.G)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 31st March, 2023.
TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF