

IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR BENCH

(At e- Court, Pune)

BEFORE SHRI R.S.SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

Sl. No.	ITA No.	Name of the Applicant	Name of Respondent	Asst. Year
1	337/Nag/2022	Bank of India, Dongargaon Branch Nagpur Zonal Office, 3 rd Floor, CSD Dept., Kingsways, Nagpur – 440 001 Maharashtra PAN : AAACB0472C	DCIT (TDS), Circle-51(1), Nagpur	2011-12
2	269/NAG/2022	Bank of India, Parsheoni Branch Nagpur Zonal Office, 3 rd Floor, CSD Dept., Kingsways, Nagpur – 440 001 Maharashtra PAN : AAACB0472C	DCIT (TDS), Circle-1, Nagpur	2010-11
3	270/NAG/2022	Bank of India, Medical College Branch Nagpur Zonal Office, 3 rd Floor, CSD Dept., Kingsways, Nagpur – 440 001 Maharashtra PAN : AAACB0472C	DCIT (TDS), Circle-1, Nagpur	2010-11
4	271/NAG/2022	Bank of India, Medical College Branch Nagpur Zonal Office, 3 rd Floor, CSD Dept., Kingsways, Nagpur – 440 001 Maharashtra PAN : AAACB0472C	DCIT (TDS), Circle-1, Nagpur	2011-12
5	272/NAG/2022	Bank of India, Devalamati Branch Nagpur Zonal Office,	DCIT (TDS), Circle-1, Nagpur	2011-12

		3 rd Floor, CSD Dept., Kingsways, Nagpur – 440 001 Maharashtra PAN : AAACB0472C		
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Assessee by : Shri Pratik Sadrani &
Shri Hardik Chordia
Revenue by : Shri Sanjay Agrawal

सुनवाई की तारीख / Date of Hearing : 21.08.2023

घोषणा की तारीख / Date of Pronouncement : 23.08.2023

आदेश / ORDER

PER R.S.SYAL, VP:

These five appeals arise out of the orders dated 22-09-2022 & 31-03-2022 passed by the CIT(A) in National Faceless Appeal Centre (NFAC), Delhi u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment years 2010-11 & 2011-12. Since common issues are raised in these appeals, we are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

2. There is a delay of 99 days in the filing of appeals in ITA Nos. 269 to 272/Nag/2022. The condonation applications have been filed. We are satisfied with the reasons. The delay is condoned and the appeals are admitted for disposal.

3. The only issue raised in these appeals is against the confirmation of the orders passed by the AOs u/s.201(1)/201(1A) of the Act treating the assessee in default for non-deduction of tax at source u/s 194A on interest paid/credited to its customers and also non-condonation of delay by the Id. CIT(A) in presenting the appeals before him.

4. First of all, we are espousing the issue of non-condonation of delay by the Id. CIT(A). The facts for ITA No.337/Nag/2022 are that the order u/s.201(1)/201(1A) of the Act was passed on 21-03-2018. The assessee preferred appeal on 09-01-2021. The Id. CIT(A) noted that there was a total delay of 988 days in the filing of the appeal. He, therefore, called upon the assessee to explain the reasons for such a delay. The assessee submitted the reasons, as have been reproduced in the impugned order. Not convinced, the Id. CIT(A) held that even though the Corona period is excluded, still there was a delay of 688 days. As such, he did not condone the delay. Without prejudice, he took up the issue on merits as well and rejected the assessee's contentions, including, that the order of the AO was time barred. Similar position prevails in other four appeals, in which the delay in filing the appeals before the Id. CIT(A) was not condoned. Aggrieved thereby, the assessee has come up in appeal before Tribunal.

5. Having heard both the sides and gone through the relevant material on record, it is seen that the order u/s.201(1)/201(1A) came to be passed for the failure on the part of the assessee to not deduct tax at source u/s.194A in respect of interest paid to certain customers, which amount exceeded the basic amount not chargeable to tax. The question of failure to deduct tax at source came to light after spot verification in some branches of the assessee bank in March, 2016, when it was found that they were paying/crediting interest into their clients' accounts for a sum in excess and the maximum amount not chargeable to tax on receiving Form Nos.15G/15H. The case of the assessee-branches is that they received notice individually about the default in compliance, but were not technically equipped to handle the issue. Some branches appointed consultants at individual level, who also kept on changing. Thereafter, the Zonal office of Bank of India, Nagpur, took up the matter for all the branches of Nagpur zone by appointing a centralized consultant, who filed the appeals for all the branches in coordination with income-tax department and addressed all the pending disputes anent to this issue. The delay in presenting the appeals was neither deliberate nor an act of negligence, but was caused by genuine difficulty and inability to act promptly at branch level due to reasons adduced above. *Ex consequenti*, we hold that there was a reasonable

and sufficient cause for the delay in presenting the appeals before the Id. CIT(A). We, therefore, condone the delay.

6. Now we take up the limitation issue assailed lock stock and barrel on behalf of the assessee. The facts of the lead case taken up for consideration in ITA No.337/Nag/2022, are that the assessee accepted Form No. 15G/15H from two persons and paid/credited interest exceeding the maximum amount not chargeable to tax without deduction of tax at source. One was Sumita Dilip Pannase to whom interest of Rs.2,04,054/- was credited and the second was Yashwant Tulshiram Dhage, who was credited with interest of Rs.2,00,814/-. It is not disputed that quarter-wise TDS returns in Form No. 26Q were filed by the assessee in time. Considering the fact that no deduction of tax at source to the tune of Rs.40,486/- along with interest thereon totaling to Rs.34,413/- was made, the bank-branch was treated as the assessee in default u/s.201(1)/201(1A) for a total sum of Rs.74,899/-. Similar view was taken in other cases under consideration, to the extent of the germane facts. The Id. CIT(A) did not echo the assessee's contention that the orders passed by the AO were time barred, which has been challenged before the Tribunal.

7. Section 201(3) deals with the time limit for passing of the order under section 201. The relevant part of section 201(3), prior to its

substitution by the Finance (No.2) Act, 2014 w.e.f. 01-10-2014, reads as under :

“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) four years from the end of the financial year in which payment is made or credit is given, in any other case :

Provided that such order for a financial year commencing on or before the 1st day of April, 2007 may be passed at any time on or before the 31st day of March, 2011.”

8. The above provision transpires that the order u/s.201(1), deeming a person to an assessee in default, has two limbs. One where the statement u/s 200 was filed, which is governed by clause (i) and the other where the statement was not filed, which is regulated by clause (ii). We have the first limb applicable before us, where the quarterly statements were filed by the assessee-bank branch but tax was not deducted in the above-referred two cases only on the ground that the customers furnished Form No.15G/Form No.15H in respect of their claims that the interest was not chargeable to tax in their hands. Going with the prescription of clause (i), no order u/s 201(1)/(1A) could be made after the expiry of two years from the end of the relevant

financial year in which the statement was filed. The ld. CIT(A), though admitted that the quarterly statements in Form No. 26Q were filed, but he negated such filing on the *raison d'etre* that if they did not cover the name of customers which ought to have been included, it will be a case of non-filing of the statements and hence governed by section 201(3)(ii) of the Act. The sequitur of his conclusion is that the bank should file individual client-wise statement and if there is something amiss in even one of such client's statement, it would be treated as a case of non-filing of the statement. Opining so, he held that the order passed by the AO was within time limit as the case fell under section 201(3)(ii) of the Act. In our opinion, the ld. CIT(A) has taken a hyper technical view of the provision, which, in fact, contemplates only two situations, viz., where the statement is filed and where it is not filed. Neither the provision provides for filing separate statement for each client, nor the necessary form permits so. The crux is that if the statement is filed, the case falls under clause (i). Simply some mistake, if at all, here and there in the statement does not erase the filing of the statement. To put it simply, once the statement is filed by the bank branch, the same has to be treated as a case falling u/s.201(3)(i) of the Act.

9. Adverting to the facts of the case, it is seen that the assessee branches under consideration filed statements in Form No.26Q for the last quarter of F.Y. 2009-10 in June and July, 2010 and of 2010-11 in April/May, 2011. The financial years in which the statements were filed, therefore, end on 31-03-2011 and 31-3-2012. The period of two years from the end of the relevant financial year comes to an end on 31-03-2013/2014. Thus, the time limit for passing the order for the financial year 2009-10 and 2010-11, in the facts of the instant cases, were latest by 31-03-2013 and 31-3-2014. As against this, the orders u/s 201(1)/(1A) were actually passed in the cases under consideration much later on 27.3.2017, 21.3.2018 and 26.3.2018, making them time barred.

10. The Id. DR vehemently argued that the Finance (No.2) Act, 2014 has substituted sub-section (3) of section 201 w.e.f. 01-10-2014, dispensing with the classification of statement filed and the statement non-filed cases having different time limits, and hence the time limit under the substituted provision should be reckoned for the extant cases. In our opinion, this argument is devoid of merits. Obviously, the time limit for the passing of the order u/s.201(1)/201(1A) for the financial years under consideration came to an end on 31-3-2013 and 31-03-2014. The amendment by the Finance (No.2) Act, 2014 came

into force on 01-10-2014. This shows that on 01-10-2014, the time limit for passing the order u/s.201(1)/201(1A) had already expired *qua* the financial years 2009-10 and 2010-11. A subsequent amendment to the provision cannot give a new lease of life to the time limit which has already exhausted. Hence, for the years under consideration, it is only the sub-section (3) as amended by Finance Act, 2012 with retrospective effect from 01-04-2010, which shall prevail. Resultantly, the orders passed by the AO beyond the stipulated time limit are time barred and hence quashed. In the absence of the existence of any valid orders u/s.201(1)/201(1A), the proceedings flowing therefrom also get annulled. We, therefore, overturn the impugned orders holding the assesseees to be in default in terms of section 201 of the Act.

11. In the result, all the appeals are allowed.

Order pronounced in the Open Court on 23rd August, 2023.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे / Pune; दिनांक / Dated : 23rd August, 2023
Satish

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr.CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “नागपुर” बेंच,
/ DR, ITAT, “Nagpur” Bench
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	21-08-2023	Sr.PS
2.	Draft placed before author	23-08-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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