

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष  
BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JM &  
HON'BLE SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 573/JP/2023  
निर्धारण वर्ष/Assessment Year : 2010-11.

Oriental Bank of Commerce, Rajasthan Khadi & Gram Board, J.L.N. Marg, Jaipur.	बनाम Vs.	Income Tax Officer (TDS-2) Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. JPRO01657F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mukesh Sharma, CA

राजस्व की ओर से / Revenue by : Shri A.S. Nehra, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 19/10/2023  
उदघोषणा की तारीख / Date of Pronouncement: 30/10/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 18.07.2023 of Id. CIT (A), National Faceless Appeal Centre, Delhi passed under section 250 of the IT Act for the assessment year 2010-11. The assessee has raised the following grounds :-

1. Under the facts and circumstances of the case, the Id. CIT (Appeals) NFAC has erred in law and on facts in passing order under section 250 of the Income Tax Act, 1961 without giving an adequate opportunity of being heard and by not observing the principles of natural justice.
2. Under the facts and circumstances of the case, the Id. CIT (Appeals) NFAC has erred in not allowing relief against order passed by AO under section 201(1) of the Income Tax Act, 1961

and imposing a demand of Rs. 15,52,358/- towards Non deduction and short deduction of TDS.

3. Under the facts and circumstances of the case, the Id. CIT (Appeals) NFAC has erred in not allowing relief against order passed by AO under section 201(1A) of the Income Tax Act, 1961 and imposing a demand of Rs. 13,99,332/- towards interest on Non deduction and short deduction of TDS.
4. Under the facts and circumstances of the case, the Id. CIT (Appeals) NFAC has erred in not allowing relief against initiating penalty proceedings under section 271C in the assessee case for failure to deduct tax at source.
5. The assessee craves right to add, alter or amend any of the grounds of appeal.

2. The brief facts of the case are that the assessee is a public sector bank engaged in banking activities. The bank accepts deposits from customers and also provides loans and other banking services to its customers. The assessee filed its returns of TDS on quarterly basis. Information under section 133(6) of the IT Act, 1961 was called vide issue of notice dated 04.07.2016. The AO completed assessment by passing order dated 29/03/2017 u/s 201(1) & 201(1A) of the I.T. Act, 1961 treating the assessee in default for (i) non/short deduction of TDS on interest payment and (ii) interest for non deduction or short deduction of TDS and raised total demand of Rs.29,51,690/-. Aggrieved by the assessment order, the assessee preferred appeal before Id. CIT (A). Notices for hearing u/s 250 were issued to the appellant on 09.02.2021, 08.11.2021, 11.11.2021, 26.11.2021, 15.12.2021, 19.01.2022, 18.02.2022, 11.03.2022 and 05.07.2023. In response to the said notices, the assessee bank did not file any submission. A reference was made to the AO for verification of particulars of appeal. In the absence of any adverse report

from the AO, the Id. CIT (A) considered the appeal particulars to be in order and proceeded to decide the appeal on merit. Thus, in the absence of written submission/evidences from the side of the assessee bank, the Id. CIT (Appeals) passed ex parte order by confirming the assessment order.

Now the assessee is in appeal before us.

3. Before us, the Id. A/R for the assessee filed ground-wise written submissions which are reproduced as under :-

- 1. Ground 1. Under the facts and circumstances of the case, the Ld. CIT (Appeals)-NFAC, has erred in law and on facts in passing order under section 250 of the income tax act 1961 without giving an adequate opportunity of being heard and by not observing the principles of natural justice.**

The learned CIT(A) passed ex-parte order due to the non-appearance of/on behalf of the assessee. In this regard we would like to submit that Notice Under Section 250 was issued on 13/07/2023 fixing the date of hearing on 28/07/2023. The Id. CIT(A) passed the order u/s 250 on 18/07/2023, without waiting for the date of hearing. It is against the principle of Natural Justice.

In a similar case Madras High Court in the case of **Antony Alphonse Kevin Alphonse vs. The Income Tax Officer, Non Corporate Ward 4(1), Coimbatore No. W.P.No. 8379 of 2021 And W.M.P.Nos. 8932 & 8934 of 2021 Dated April 1, 2021**— Held that :- Since the impugned order has been passed before the time prescribed for filing the reply, it is evident that the impugned order has been passed with pre-set mind. In any event, the order has been passed without considering the reply received from the petitioner. Therefore, this Court is inclined to grant the relief sought for by the petitioner as there is a manifest violation of business of justice while passing the impugned order. Under these circumstances, the impugned order stands quashed and the case is remitted back to the second respondent to pass a speaking order on merits in accordance with law after considering the reply filed by the petitioner on 15.03.2021.

The AP High Court in the case of **Thakur V. Hariprasad v. CIT [1987] 32 Taxman 196** has held that where the principles of natural justice are not followed, the order is only voidable and it can be cured with a direction to afford opportunity to the assessee of being heard. The decision in the case of **Grindlays Bank Ltd. v. ITO [1980] 3 Taxman 38 (SC)** is also to the same effect.

The order passed in violation of the principles of natural justice is of no value as held by the Supreme Court in **R. B. Shreeram Durga Prasad and Fatechand Nursing Das v. Settlement Commission [1989] 43 Taxman 34 (SC)**.

**Ground No2.** Under the facts and circumstances of the case, the Ld. CIT (Appeals)-NFAC, has erred in not allowing the relief against order passed by AO under section 201(1) of the Income Tax Act 1961 and imposing a demand of Rs. 15,52,358/- towards Non deduction and short deduction of TDS.

**Ground No 3.** Under the facts and circumstances of the case, the Ld. CIT (Appeals)-NFAC, has erred in not allowing the relief against order passed by AO under section 201(1A) of the Income Tax Act 1961 and imposing a demand of Rs. 13,99,332/- towards interest on Non deduction and short deduction of TDS.

**Ground No 4.** Under the facts and circumstances of the case, the Ld. CIT (Appeals)-NFAC, has erred in not allowing the relief against initiating penalty proceedings under section 271C in the assessee case for failure to deduct tax at source.

### **Submission**

we may submit our party-wise reply as under:-

#### **A.DIRECTOR SARVA SHIKSHA ABHIYAN NECULEUS CELL**

The AO created a demand of Rs.2,57,508/- under section 201(1) and 201(1A) for non deduction of TDS on interest paid to the above mentioned Government Department.

Director Sarva Shiksha Abhiyan (Samagra Shiksha Abhiyan ) is a State Government Department working under the Ministry of School

Education Government of Rajasthan. Therefore, as per Section 196 of The Income Tax Act, 1961 no TDS is required to be deducted.

Further we would like to submit that the AO has considered **DIRECTOR SARVA SHIKSHA ABHIYAN NECULEUS CELL** as Government Department while passing the order under section 201(1) and 201(1A) for the AY 2011-12.

Therefore, no tax is required to be deducted at source at the time of paying interest to **DIRECTOR SARVA SHIKSHA ABHIYAN NECULEUS CELL, JAIPUR.**

#### **B.INDIRA GANDHI PANCHAYATI RAJ SANSTHAN**

The AO created a demand of Rs.2,12,446/- under section 201(1) and 201(1A) for non deduction of TDS on interest paid to the above mentioned Government Department.

We would like to submit that the AO has considered **INDIRA GANDHI PANCHAYATI RAJ SANSTHAN** as Government Department while passing the order under section 201(1) and 201(1A) for the AY 2011-12.

We would like to submit that **INDIRA GANDHI PANCHAYATI RAJ SANSTHAN** is a Corporation constituted under Rajasthan SocietiesRegistration Act, 1958 and covered under one of such items notified : *“Any Corporation established by a Central, State or Provincial Act”* u/s 194A(3)(iii)(f).

Therefore, no tax is required to be deducted at source at the time of paying interest to **INDIRA GANDHI PANCHAYATI RAJ SANSTHAN.**

#### **C.RAJASTHAN STATE POLLUTION CONTROL BOARD**

The AO created a demand of Rs.90,946/- under section 201(1) and 201(1A) for non deduction of TDS on interest paid to the above mentioned Government Department.

We would like to submit that the AO has considered **RAJASTHAN STATE POLLUTION CONTROL BOARD** as Government Department while passing the order under section 201(1) and 201(1A) for the AY 2011-12.

We would like to submit that **RAJASTHAN STATE POLLUTION CONTROL BOARD** is a Corporation constituted under Section 4 of Water (Prevention and Control of Pollution Act, 1974) and covered under one of such items notified : “Any Corporation established by a Central, State or Provincial Act”u/s 194A(3)(iii)(f).

Therefore, no tax is required to be deducted at source at the time of paying interest to RAJASTHAN STATE POLLUTION CONTROL BOARD.

#### **D.Rajasthan State Bharat Scout and Guide Training Centre**

The AO created a demand of Rs.9,74,950/- under section 201(1) and 201(1A) for non deduction of TDS on interest paid to the above mentioned customer.

it is a society registered under Societies Registration Act, 1860 and it is exempted from tax u/s 10(23C)(iv).

Therefore, no tax is required to be deducted at source at the time of paying interest to Rajasthan State Bharat Scout and Guide Training Centre.

#### **E. Rajasthan State Cooperative Oil Seeds Growers Federation (popularly known as Tilam Sangh)**

The AO created a demand of Rs.91,542/- under section 201(1) and 201(1A) for non deduction of TDS on interest paid to the above mentioned Government Department.

We would like to submit that Rajasthan State Cooperative Oil Seeds Growers Federation (Tilam Sangh) is a Corporation constituted under Rajasthan Societies Registration Act, 1985 and covered under one of

such items notified : “Any Corporation established by a Central, State or Provincial Act”u/s 194A(3)(iii)(f).

Therefore, no tax is required to be deducted at source at the time of paying interest to Rajasthan State Cooperative Oil Seeds Growers Federation (Tilam Sangh).

#### **F. Rajasthan State Text Book Board**

The AO created a demand of Rs.13,24,298/- under section 201(1) and 201(1A) for non deduction of TDS on interest paid to the above mentioned Government Department.

We would like to submit that the AO has considered **Rajasthan State Text Book Board** as Government Department while passing the order under section 201(1) and 201(1A) for the AY 2011-12.

We would like to submit that **Rajasthan State Text Book Board** is a Corporation constituted under Rajasthan Societies Registration Act, 1958 and covered under One of such items notified : “Any Corporation established by a Central, State or Provincial Act”u/s 194A(3)(iii)(f).

Therefore, no tax is required to be deducted at source at the time of paying interest to **Rajasthan State Text Book Board**.

Reliance is placed on the order of the ITAT, Jaipur, 'B' Bench in the case of **Income Tax Officer, Ward TDS-2 Vs. Branch Manager, State Bank of Bikaner and Jaipur (2012) 19 Taxmann. Com 221.** and decision of the Supreme Court in the case of **Hindustan Coca-Cola(P) Ltd. Vs. CIT 293 ITR 226.**

In view of above legal position and the facts of the case, Id. CIT (A)-NFAC is not justified in not allowing relief to the assessee against order passed under section 201/201(1A).”

4. On the other hand, the Id. D/R supported the orders of the revenue authorities.

5. We have heard the rival contentions, perused the material on record and gone through the orders of the lower authorities. The AO while completing the assessment, taking into consideration the details furnished by the assessee as not fully acceptable, treated the appellant bank as an assessee in default for non deduction of tax in respect of the various depositors to whom interest was paid quarterly without making the TDS.

5.1 At the appellate proceedings, the Id. CIT (A) issued various hearing notices under section 250 of the IT Act, 1961 for providing written submissions vide notices dated 09.02.2021, 08.11.2021, 11.11.2021, 26.11.2021, 15.12.2021, 19.01.2022, 18.02.2022, 11.03.2022 and 05.07.2023. But neither any of the above notices were responded to by the assessee nor filed written submission. Thereafter, the Id. CIT (A) decided the appeal of the assessee on the basis of material available on record by confirming the assessment order vide his ex-parte order dated 18.07.2023 by observing in para 7, 7.1, 7.2 & 7.3 as under :-

*"7. The appellant bank being aggrieved by the decision of the AO has instituted the present appeal, and accordingly it was issued notices for the hearing of the appeal u/s. 250 of the Act, followed by a number of re-fixation of notices by this office. The appellant despite getting several opportunities of being heard did not bother to pursue the appeal. There is nothing on record to suggest that the appellant bank ever asked for adjournment and no pleadings in this regard have been made by the appellant bank before the undersigned either.*

7.1 *It has been held by several courts that the law assists those who are vigilant and not those who sleep over their rights as found in the Maxim "Vigilantibus Non Dormientibus Jura Subveniunt". The maxim refers to the obligation of individuals to not only be aware of their rights under the law, but also to be vigilant while exercising or using the same. Hence, as an aware citizen, it was incumbent upon the appellant bank to be aware of the statutory provisions, to simultaneously comply with the requirements of law, and that it should pursue the legal remedies available diligently. The Hon'ble Delhi High Court in the case of Moddus Media Pvt. Ltd. Vs. M/s Scone Exhibition Pvt. Ltd. (RFA 497/201dated 18 May 2017), while holding that the appellant bank ought to be vigilant and pursue the appeal filed by it, had observed as under:*

*"11. The litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance.....After filing the civil suit or written statement, the litigant cannot go off to sleep and wake up from a deep slumber after passing a long time as if the court is storage of the suits filed by such negligent litigants....."*

7.2 *It is a settled proposition of law that an appellant bank has to plead the case and produce/adduce sufficient evidence to substantiate its grounds of appeal and in the event of non-compliance from the end of the appellant bank in availing of the opportunities provided during the course of appeal proceedings, the appellate authority is under no obligation to continue the case to remain undecided endlessly. The fact that the appellant bank did receive the assessment order and filed the present appeal, but chose not to respond to any notices issued by the appellate authority clearly establish the assessee's total disregard to the due process of law. Hence, keeping in view the above mentioned facts and circumstances, I am satisfied that the appellant bank was provided sufficient opportunities to plead its case and contest the matter, but the appellant bank chose to let the case proceed ex-parte. The appellant bank has failed to make out any credible or cogent ground for not to decide the appeal ex-parte despite getting adequate and sufficient opportunities of being heard.*

7.3 *In view of the discussion made above, I do not find any reasons to interfere with the findings given by the AO in his order."*

6. Since the impugned order of the Id. CIT (A) was passed ex parte by upholding the assessment order passed under section 201(1) and 201(1A) of the IT Act and thereby sustained the demand of Rs. 29,51,690/-, therefore, in the totality of facts and circumstances of the case and in the interest of justice, we are of the view that it will be reasonable to afford one more opportunity to the assessee to represent its case before the lower authorities. We, therefore, set aside the ex-parte order of the Id. CIT (A) and restore the matter back to the file of the Id. CIT (A) for fresh adjudication after providing a reasonable opportunity of being heard to the assessee. The assessee is granted one more opportunity to represent his case before the Id. CIT (A) and directed to file necessary documents/evidences as required by him. In case the assessee fails to appear before the Id. CIT (A), the Id. CIT (A) may decide the appeal on the basis of the material available on record.

7. In the result, this appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 30/10/2023.

Sd/-

( राठौड़ कमलेश जयंतभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)  
(SANDEEP GOSAIN)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 30/10/2023.

Das/

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

1. अपीलार्थी / The Appellant- Oriental Bank of Commerce, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO (TDS-2), Jaipur.

3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 573/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar