

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH : NAGPUR

[THROUGH VIRTUAL HEARING AT PUNE]

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

I.T.A No.159/NAG./2022
Assessment Year 2010-2011

Bank of India, Midcorporate, Nagpur Zonal Office, 3 rd Floor, CSD Depot, Kingsways, Nagpur PIN 440 001. State of Maharashtra.	vs	The JCIT (TDS), Range-1, Aayakar Bhavan, Civil Lines, Nagpur. Maharashtra.
Appellant		Respondent

For Assessee :	Shri Pratik Sadrani
For Revenue :	Shri Abhay Y. Marathe, Sr.DR

Date of Hearing :	30.11.2023
Date of Pronouncement :	11.12.2023

ORDER

PER DR. DIPAK P. RIPOTE, A.M. :

This is an assessee's appeal arises against the order of the learned Commissioner of Income Tax (Appeals) [National Faceless Appeal Centre] Delhi's Order dated 28.04.2022, for assessment year 2010-11, u/sec.250 of the Income Tax Act, 1961 emanating from order of the Addl. Commissioner of Income Tax (TDS), Nagpur u/sec.271C of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The assessee pleads the following grounds in the instant appeal :

GROUND OF APPEALS

We are hereby submitting Concise Grounds of Appeals. We will submit Detailed Grounds of appeals along with Detail Written Submissions.

GROUND NO 1: REQUEST FOR CONDONATION OF DELAY IN FILING OF APPEAL BEFORE CIT(A):

The Id. CIT(A) has erred and not considered that Delay in filing appeal was not deliberate and rejected the appeal filed by the appellant treating the appeal as time barred without going into merits of the case. The Appellant Bank relies on various Judgements of Hon'ble Courts related to Condonation of Delay in filing appeals and requests Hon'ble ITAT to consider the appeal and set aside the order of Id. CIT(A).

GROUND NO 2: THE ORDER PASSED BY LD. DCIT, NAGPUR IS BEYOND THE TIME LIMIT SPECIFIED U/S 201(3) AND SO THE APPELLANT BANK PLEADS THAT THE PROCEEDINGS UNDER SECTION 201(1) AND 201(1A) BE QUASHED AND ORDER UNDER SECTION 201(1) AND 201(1A) OF LD. DCIT BE REVOKED:

The Id. CIT(A) has erred and not considered that the Order passed by Ld. DCIT Nagpur is beyond time limit specified u/s 201(3) and hence same shall be revoked and proceedings under 271C shall be treated as TIME BARRED as it is initiated on Time Barred order. Hence the appellant Bank requests the Hon'ble ITAT to consider the appeal and prays that the proceedings under section 271C be quashed and order of CIT(A) shall be set aside.

GROUND NO. 3: THE APPELLANT BANK PLEADS THAT OFFICERS OF BANK WERE UNDER BONAFIDE BELIEF THAT IF CUSTOMER SUBMITS FORM 15G OR 15H, BANK NEED NOT HAVE TO DEDUCT TDS ON INTEREST PAYMENTS TO THAT CUSTOMER. SO THE OFFICERS OF BANK MISCONSTRUED THE PROVISIONS RELATED TO ACCEPTANCE OF FORM 15G OR 15H. THEREFORE BANK PLEADS THAT THE ORDER UNDER SEC 271C OF LD. JCIT (TDS) SHOULD BE REVOKED AS NON-DEDUCTION OF TDS WAS ON ACCOUNT OF BONAFIDE MISTAKE WHICH IS REASONABLE CAUSE FOR FAILURE TO DEDUCT TDS ON INTEREST PAYMENTS:

The Id: CIT (A) has erred and not considered that officers of bank were under bonafide belief that if customer submits form 15g or 15h, bank need not have to deduct tds on interest payments to that customer. so the officers of bank misconstrued the provisions related to acceptance of form 15g or 15h. therefore bank pleads that the order under sec 271c of Id. CIT(A) should be revoked as non-deduction of tds was on account of bonafide mistake which is reasonable cause for failure to deduct tds on interest payments and hence prays the Hon'ble ITAT that the proceedings under section 271C be quashed and order under 271C be revoked and order of CIT(A) shall be set aside.

GROUND NO.4: THE BANK SUBMITS THAT IT IS NOT RESPONSIBLE TO FIND OUT THE TRUTH AND VERACITY OF THE DECLARATIONS FILED BY THE PAYEE IN FORM 15G/FORM 15H [VIPIN P. MEHTA, MUMBAI VS. INCOME TAX OFFICER [2011] 46 SOT 71 (URO)/11 (MUMBAI – TRIBUNAL)] . SO THE BANK SHALL NOT BE CONSIDERED AS ASSESSEE IN DEFAULT AND ORDER FOR PENALTY UNDER SEC 274C SHALL BE REVOKED



The Id. CIT (A) has erred and not considered that bank is not responsible to find out the truth and veracity of the declarations filed by the payee in form 15g/form 15h [vipin p. mehta, mumbai vs. income tax officer [2011] 46 sot 71 (uro)/11 (mumbai -tribunal)] . So the bank shall not be considered as assessee in default and order for penalty under sec 271c shall be revoked. Hence the Bank pleads before Hon'ble ITAT that the proceedings under section 271C be quashed and order under 271C be revoked and order of CIT(A) shall be set aside.

GROUND NO-5: THE APPELLANT BANK PLEADS THAT PENALTY UNDER SEC 271C CANNOT BE LEVIED IF THERE WAS NO CONTUMACIOUS CONDUCT ON PART OF BANK. FURTHER THE BANK PLEADS THAT IT HAS ACTED IN GOOD FAITH, BONAFIDE BELIEF AND WITHOUT MALE FIDE INTENTION IN RELYING ON THE DECLARATIONS SUBMITTED BY THE DEPOSITORS IN FORM NO 15G/15H:

The Id. CIT (A) has erred and not considered that penalty under sec 271c cannot be levied if there was no contumacious conduct on part of bank. The Id. CIT (A) has erred and not considered that bank has acted in good faith, bonafide belief and without male fide intention in relying on the declarations submitted by the depositors in form no 15H/15H. Hence the Bank pleads before Hon'ble ITAT that the proceedings under section 271C be quashed and order under 271C be revoked and order of CIT(A) shall be set aside.

GROUND NO-6: THE APPELLANT PLEADS THAT PENALTY UNDER SEC 271C SHALL BE DROPPED SINCE UNDER SIMILAR FACTS AND CIRCUMSTANCES IN CASES OF OTHER BRANCHES OF SAME BANK, PENALTY U/S 271C THOUGH INITIATED BUT WAS DROPPED BY THE CIT (APPEALS-2) NAGPUR:

The Id. CIT (A) has erred and not considered that where the CIT(A)-Nagpur has dropped the penalty proceedings in case of other Branches of same Bank, there is no basis to levy the penalty in the case of Appellant where the facts and circumstances are exactly identical. Hence the Bank pleads before Hon'ble ITAT that the proceedings under section 271C be quashed and order under 271C be revoked and order of CIT(A) shall be set aside.

GROUND NO-7: WEAK SYSTEM SOFTWARE AND POOR INTERNET CONNECTIVITY:

The Id. CIT (A) has erred and not considered that Non deduction of TDS was due to inadequate system software and honest mistake which is **Reasonable Cause** for failure to deduct TDS on interest payments. Hence the Bank pleads before Hon'ble ITAT that the proceedings under section 271C be quashed and order under 271C be revoked and order of CIT(A) shall be set aside.

GROUND NO.8: RESIDUARY CLAUSE:

The Appellant Bank reserves the right to add, alter, amend or delete any of the grounds before or during the course of the hearing, with prior approval.

Considering all the above grounds, the Hon'ble ITAT is requested to not treat the Appellant Bank as an assessee-in-default u/s. 201(1) and 201(1A) of the Act and pleads that the proceedings under section 271C be quashed and order under section 271C be revoked and order of Ld. CIT(A) be set aside.

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3. It is observed that the learned Commissioner of Income Tax (Appeals) has dismissed the appeal of assessee only on one ground i.e., there was no sufficient cause for delay of 1248 days in filing the appeal. We have perused the reasons given by Bank of India. It was pleaded that there was continuous changes of Branch Managers and not centralized of handling of notices issued by Income Tax Department and hence, lost the track of notices. The assessee i.e., Bank of India realised when Zonal Office at Nagpur took-up the matter for all the branches of Nagpur Zone and appointed a centralized Consultant. From careful perusal of the order of the learned Commissioner of Income Tax (Appeals) [NFAC], Delhi, it is noticed that the appeal of the assessee was instituted before the learned Commissioner of Income Tax (Appeals) on 09.01.2021 which is falling under Covid-2019 pandemic outbreak period between 15.03.2020 to 28.02.2022 and as per Hon'ble Apex Court's directions in *Cognizance for Extension of Limitation, In re 438 ITR 296 (SC)* read with judgment in *Cognizance for Extension of Limitation, In re 432 ITR 206 (SC)* dated 08-03-2021 and 421 ITR 314, excluding the covid-19 pandemic outbreak period from for all intents and purposes under the limitation law. Further, in order to condone the delay in filing the appeal before the learned Commissioner of Income Tax (Appeals), we take strength from

the Hon'ble Apex Court's landmark decision Collector, Land Acquisition vs., MST Katiji [1987] 167 ITR 471 (SC) wherein their Lordships has settled the law long back that all such technical aspects must make way for the cause of substantial justice. We, therefore, condone the impugned delay and deem it appropriate to set aside the order of the learned Commissioner of Income Tax (Appeals) with a direction for *de novo* adjudication on merits, after affording reasonable opportunity of being heard to the assessee. Needless to say, the assessee shall file all necessary documents before the learned Commissioner of Income Tax (Appeals). Ordered accordingly.

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

Order pronounced in the open Court on 11.12.2023.

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

Pune, Dated 11th December, 2023

VBP/-

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The NFAC, Delhi.
4. The Pr. CIT , Nagpur concerned.
5. DR, ITAT, "Nagpur" Bench, Nagpur.
6. Guard File.

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BY ORDER,

Senior Private Secretary, ITAT, Pune.