

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW 'B' BENCH, LUCKNOW**

**BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.346/Lkw/2019
A.Y. 2012-13

M/s District Cooperative Bank Limited, Near Civil Court Road, Shahjahanpur, U.P.	vs.	Deputy Commissioner of Income Tax, Circle-I, Bareilly
PAN:AAAAD8759N		
(Appellant)		(Respondent)

Assessee by:	Sh. B.P. Yadav, Adv
Revenue by:	Sh. Amit Singh Chauhan, JCIT
Date of hearing:	13.08.2024
Date of pronouncement:	30.09.2024

ORDER

PER SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER:

This is an appeal filed against the order of ld. CIT(A)- Bareilly, dated 14.03.2019 passed under section 250 of the Income Tax Act, 1961. The grounds of appeal preferred are as under:-

"1. That the learned CIT (Appeals) erred in upholding the order of the Assessing Officer without considering our 15G/15H collected from the respective depositors.

2. That the learned CIT (Appeals) agreed that the assessee had collected required form 15H/15G from the respective depositors but erred by not appreciating the same and disallow us the benefit of section 197A by sustaining the addition made by ld. AO on the basis of non-delivering the same to the prescribed authority under section 197A(2).

3. That the assessee relied on the similar case law in ITA No.1854/Bang/2016 The Karur Vysya Bank Limited, ... vs Acit- Tds Circle, Hubli on 9 August, 2017 paid the interest on term deposits without deducting TDS on the basis of Form 15G/15H collected from the respective bank customers under section 197A (1A) however failed to deliver the same to the prescribed authority under section 197A(2).

In the mentioned case law the appeal of assessee was allowed for statistical purposes as per para 9 of the order:

"Turning to the facts of the case, we find that undisputedly assessee has submitted the Forms 15G/15H before the AO, but it was not considered on account of its non-submission in time before the jurisdictional CIT and the AO passed an order u/s. 201(1) & 201(1A) of the Act raising a demand therein. The assessee again filed the said Forms before the CIT(Appeals), but he did not take cognizance of the same and confirmed the order of AO. Since the assessee has filed the Forms 15G/15H on account of which TDS was not deducted, the lower authorities should have examined the same. Since the assessee has already filed the Forms 5G/15H before the lower authorities, we are of the view that the said Forms be examined by the AO and if the said Forms are found to be correct on verification, the assessee cannot be held to be in default and no demand should be raised u/s. 201(1) & 201(1A) of the Act. Otherwise, the AO may act in accordance with the law. Accordingly, the order of CIT(Appeals) is set aside and the matter is restored to the file of Assessing Officer to readjudicate the issue afresh in the terms indicated above, after affording opportunity of being heard to the assessee."

2. The facts of the case are that the assessee is a District Cooperative Bank which paid interest to its depositors without deducting interest. The ld. Assessing Officer required the assessee to furnish complete details of interest paid above Rs. 10,000/- and the assessee furnished these details in respect of all 21 branches of the bank. It claimed that it had obtained declaration in Forms 15G/15H from the depositors in each and every case. However, the ld. AO held that the assessee could not substantiate its claim as to how these Forms 15G/15H had been procured and how and when these had been sent to the jurisdictional Commissioner / Chief Commissioner of Income Tax. Therefore, he rejected the plea of the assessee and, in view of the fact that the assessee had not deducted tax at source on these interest payments, he disallowed a sum of such interest payments amounting to Rs.1,01,60,707/- under section 40(a)(ia) of the Income Tax Act.

3. Aggrieved with the said order, the assessee went in appeal before the ld. CIT(A). Before the ld. CIT(A), it was submitted that all the branches of the bank were situated in remote rural areas and required Forms 15G/15H from the depositors for non-deduction had been collected in each case. However, the ld. CIT(A) noted that the assessee had not fulfilled the condition of delivering one copy of Forms 15G/15H to the Income tax authorities, as mentioned above and

since this essential condition had not been fulfilled by the appellant, there were fair chances that the appellant may have manipulated Forms 15G/15H. He held that it could be a strategy of the bank to solicit more customers, by simply obtaining the forms towards the end of the year as a mere formality without any due diligence, otherwise there could not be any reason for not delivering one copy of the declaration to the Income tax authorities, in view of the express provisions of sub section (2) of section 197A. Therefore, since the essential condition had not been fulfilled by the appellant, the benefit of section 197A could not be availed and hence the addition made by the Id. Assessing Officer was sustained and the appeal was dismissed.

4. Aggrieved with the said dismissal of its' appeal, the assessee is before us. It was submitted that the assessee did not deduct the tax at source under section 194A, on the basis of Forms 15G/15H deposited by the customer under section 197A(1A). However, the Id. Assessing Officer and the Id. CIT(A) erred by not appreciating that the branches had obtained Forms 15G/15H as applicable and only because the assessee had not delivered the same to the prescribed authority under section 197A(2), they had rejected the fact of obtaining these Forms 15G/15H and made an addition against the assessee under section 40(a)(ia). The learned AR, Shri. B.P. Yadav, submitted that the case of the assessee was covered by the judgment of Hon'ble ITAT in the case of ***The Karur Vysya Bank Limited, Bellary vs. ACIT-Tds Circle, Hubli*** in ITA No. 1854/Bang/2016. It was pointed out that in the said case, the Forms 15G/15H were produced before the Id. Assessing Officer and the Id. CIT(A), but were not considered by either because of their non-submission in time before the jurisdictional Commissioner of Income Tax, resulting in the AO passing an order under section 201(1) and 201(1A) of the Act against that assessee. The Hon'ble Tribunal held that since the assessee had filed the forms, the lower authorities should have examined the same. It, therefore, restored the matter back to the file of the Id. Assessing Officer and directed that the said forms be examined by the Id. Assessing Officer and, if the said forms were found to be correct on verification, the assessee should not be

held to be an assessee in default. Otherwise, the Id. Assessing Officer may act in accordance with law.

5. On the other hand, the Id. Sr. DR, Shri. Amit Singh Chauhan submitted that the assessee was not only to collect the Forms 15G/15H, but also to submit the same on time to the prescribed authority for verification. Since the assessee had not done so, the interest paid without deduction of tax, was liable to be added back under section 40(a)(ia).

6. We have duly considered the facts and circumstances of the case. We find that it is not in dispute that the assessee has collected the Forms 15G/15H from the depositors, to whom it has paid interest. However, on account of the fact that the assessee had not deposited the same before the concerned CIT, the Id. Assessing Officer and the Id. CIT(A) have refused to consider this and the Id. CIT(A) has gone on to hold that these forms may be manipulated. It is observed that the Id. Assessing Officer has not examined or verified any of the Forms 15G/15H and therefore, such a conclusion, without examination, is not warranted. In the case of ***The Karur Vysya Bank Limited, Bellary vs. ACIT-Tds Circle, Hubli*** in ITA No. 1854/Bang/2016, the Hon'ble ITAT referred to various judgments wherein it had been held that wherever there is any irregularity in the submission of forms for non-deduction of tax at source, the proper course of action is for the Id. Assessing Officer to verify the correctness of the forms and if the forms are found to be correct, the assessee cannot be held to be in default and no demand can be raised under section 201(1) and 201(1A) of the Act. The cases referred to by the Id. ITAT in coming to such a conclusion, read as under:-

"1. DCIT v. Vijaya Bank, 2014 (11) TMI 717-ITAT Vishakapatnam.

2. Narasu's Spinning Mills v. ACIT, 2015 (12) TMI 1553 - ITAT Chennai.

3. Malineni Babulu (HUF) v. ITO, 2015 (8) TMI 705 - ITAT Hyd.

4. Vijaya Bank v. ITO, 2014 (3) TMI 539-ITAT Del

5. DCIT (TDS) v. Jai Prakash Associates Ltd., 2015 (5) TMI 356-"

7. In view of the aforesaid legal precedents and after considering the facts of the case, we feel the failure to submit the form 15G/H to the Commissioner is a technical breach and the assessee cannot be saddled with a tax liability, only on this account. We observe that the basic purpose of submission of these forms to the Commissioner, is to enable verification of the same. In view of this, we deem it appropriate, that the ld. Assessing Officer should verify the correctness of the Forms 15G/15H and if the forms are found to be correct, the assessee should be granted the relief under section 197A. If however, the forms are not verifiable, the ld. Assessing Officer may act, in accordance with law. Accordingly, we set aside the orders of the ld. CIT(A) and we restore the matter back to the file of the ld. Assessing Officer. The assessee is directed to produce the Form 15G/15H and all details for verification and the ld. Assessing Officer is directed to make a fresh assessment, after conducting such verification.

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

Order pronounced on 30.09.2024 at Lucknow, U.P.

Sd/-

**[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER**

Sd/-

**[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER**

DATED:30/09/2024

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Copy forwarded to:

1. Appellant -
2. Respondent -
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

By order

Sr. P.S.