

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1133/Chny/2025, Assessment Years: 2014-15
आयकर अपील सं./ITA No.1134/Chny/2025, Assessment Years: 2014-15
आयकर अपील सं./ITA No.1135/Chny/2025, Assessment Years: 2017-18

Tamilnad Mercantile Bank Ltd,
No.57, VE Road, Tuticorin Central Bus
Stand, S.O, Thoothukudi, Tuticorin,
Tamil Nadu-628 002.
[PAN: AA ACT5558K]

Assistant Commissioner of
Income Tax,
TDS Circle,
Madurai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by
प्रत्यर्थी की ओर से /Revenue by

: Shri N.Arjun Raj, Advocate
: Ms.R.Anitha, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 09.07.2025
घोषणा की तारीख /Date of Pronouncement : 18.07.2025

आदेश / O R D E R

PER AMITABH SHUKLA, A.M :

The below mentioned three appeals have been filed by the appellant Revenue for AY-2014-15 to AY-2017-18 contesting the order of Ld. First Appellate Authority indicated Column-E, herein below:-

| S. No. | Appeal Nos. | AYs | Appellant | CIT(A) Order Details | Respondent |
|--------|----------------------------|---------|--|---|--|
| A | B | C | D | E | F |
| 1 | ITA No. 1133 / Chny / 2025 | 2014-15 | Tamilnad Mercantile Bank Ltd, No.57, VE Road, Tuticorin Central Bus Stand, S.O, Thoothukudi, Tuticorin, Tamil Nadu-628 002. [PAN: AA ACT5558K] | DIN & Order No. ITBA / APL / S / 250 / 2024-25 / 1074551072(1) dated 17.03.2025 | Assistant Commissioner of Income Tax, TDS Circle, Madurai.] |
| 2 | ITA No. 1134 / Chny / 2025 | 2014-15 | | DIN & Order No. ITBA / APL / S / 250 / 2024-25 / 1074552655(1) dated 17.03.2025 | |
| 3 | ITA No. 1135 / Chny / 2025 | 2017-18 | | DIN & Order No. ITBA / APL / S / 250 / 2024-25 / 1074551532(1) dated 17.03.2025 | |

All the three appeals are centering around common issue of non-deduction of TDS and the corresponding addition to the returned income and hence for the purposes of convenience were heard and are adjudicated together. We have taken ITA No.1134 for AY-2014-15 as lead year to consider facts and figures. The decision taken in ITA No.1134 qua order u/s 201(1) and 201(1A) qua order dated 17.03.2025 of CIT(A) vide DIN & Order No. ITBA / APL / S / 250 / 2024-25 / 1074552655(1) dated 17.03.2025 shall apply mutatis mutandis in ITA No.1133 for AY-2014-15 and ITA No.1135 for AY-2017-18.

2.0 The only issue raised by the appellant assessee through its grounds of appeal is regarding the addition of Rs.52,78,280/- made by the Ld.AO for non-deduction of tax u/s 194J in respect of amounts paid to M/s.Clearing Corporation of India Limited on account of clearing charges or professional charges. The Ld.Counsel for the assessee explained us the following brief factual matrix of the case. It was submitted the Appellant is a bank and for the above assessment year consequent to the surveys conducted on 22.01.2015 and on 20.03.2019, a show cause notice dated 09.09.2019 was issued u/s 201(1) and u/s 201(1A) of the Act to explain the failure if any to deducted tax at source u/s 194A of the Act for the payments made through M/s Clearing Corporation of India Limited (CCIL). The appellant, in response to AO's show cause notice had submitted that it participated periodically in the online platform maintained

by Clearing Corporation of India Limited (CCIL), monitored by Reserve Bank of India for borrowing money in a fully collateralized environment inasmuch as CCIL is the central counter party for the online platform for borrowing and repayment including interest and charges while CCIL was setup by Reserve Bank of India in identifying six core promoters comprised of banks and LIC of India. It was stated that the appellant bank is one of the members of the online platform operated by CCIL and having complied with the threshold conditions for becoming a member, the Appellant bank by virtue of the arrangement has given collateral in the form of government securities in order to participate in the said online platform for borrowing and offered surplus funds for lending for the other participating members. The Ld.AO had made additions to the total income of the assessee upon the interest which was paid by the appellant assessee for non-deduction of tax. Upon consideration, the Ld.CIT(A) had concluded, as per para 5.8 of his order that there was no requirement for any TDS liability qua interest payments for the reasons extensively dealt in the appellant order. The Ld.Counsel submitted that in addition to the interest payment to respective lending parties, the appellant also to be required to pay clearing charges or professional charges to CCIL for using their Online platform as well as for availing various online services. The Ld.Counsel submitted that the Ld.AO had also made addition of Rs.52,78,280/- on account of professional charges

being clearing charges which were paid to CCIL. The Ld.CIT(A) confirmed the order of the Ld.AO on the premise of absence of specification submissions. The Ld.CIT(A) had however directed that if the appellant submits Form-26A from CCIL to the Ld.AO then the impugned addition would stand deleted. Per contra, the Ld. DR vehemently argued in favour of the order of lower authorities.

3.0 We have heard rival submissions in the light of material available on records. The Ld. Counsel for the assessee has argued before us the non-deduction of TDS by it on account of three main points. The first and foremost is the issue of impossibility of the action to deduct TDS. It has been submitted that within the meanings of understanding, arrangements and agreement with the CCIL, which have been duly vetted and approved by the RBI, the appellant does not have any active role in the online transactions taking place on the CCIL platform. It has been stated that responsibility rests upon the shoulder of a person as a tax deductor u/s194J, in cases where the amount of money is traveling from the deductor to the deductee. Thus it was argued that the law mandates that when a deductor makes any payment to a deductee, including by way of credit to the account of the deductee, then the deductor is required to make deduction of TDS under TDS provisions including those mandated u/s 194J. The important thing is the amount of money should travel from deductor to the deductee. It is the case of the appellant that

the transactions between CCIL and its members (appellant being one) are so designed that there is no role of member in transactions undertaken. Entire activity takes place electronically. As per the agreed scheme of things, the amounts due to CCIL are automatically deducted and charged to appellant's account. Thus, in the case of professional or clearing charges also the CCIL deducts the due amounts from the accounts of its members and informs them accordingly. The appellant has no control over the same. True, professional or clearing charges due to CCIL from appellant are paid by the appellant but they do not travel from appellant to CCIL but are rather auto deducted electronically by CCIL. The appellant has argued that consequently, the appellant cannot be held guilty for non-deduction of TDS on professional or clearing charges paid by it to CCIL.

4.0 The next argument raised by the appellant for non-deduction of TDS is that the CCIL has paid taxes on the clearing charges / professional charges received from the appellant and hence no blame of non-deduction of TDS can be rested on it. In support of its contentions, the appellant has placed a voluminous paper book. At pages 27, 28 & 29 it has placed on record communication with CCIL regarding the auto debit of transaction to be made by CCIL. The appellant has also placed on record on page no.139 and 140 communication from CCIL stating that wherever required it has paid taxes on transaction charges received from

its members. Upon consideration of the same we have noted that CCIL has unequivocally confirmed about the payment of taxes on clearing charges / professional charges received from its members including the appellant.

5.0 The next argument given by the appellant for non-deduction of TDS is regarding the application of notification no. 47/2016 dated 17/6 / 2016 issued by the Ministry of Finance, Department of Revenue , Central Board of Direct Taxes mandating non deduction taxes on clearing charges wherein such payments is made by a person to any payment system company authorized by the RBI. It was contended that CCIL is payment system company duly authorized by the RBI and therefore appellant is excluded from the purview of tax deduction. The Ld. DR argued that acceptance of appellant's arguments would mean retrospective application of the impugned notification dated 17.06.2016 and since the notification is prospective in nature appellant does not get any benefit. The Ld. Counsel for the assessee submitted that the impugned notification of CBDT is merely clarificatory in nature and that therefore is to be construed as retrospective in nature. In support of its contentions, the Ld. AR drew our attention to the decision of Hon'ble Supreme Court in the case of Suchitra Component Limited in Civil Appeal No.3596 of 2005 dated 17.01.2007. It was urged that the impugned decision though passed w.r.t. customs and central excise levies would

still hold true in the present case as far as, principles enunciated therein are concerned. It was submitted that in the impugned case Hon'ble Supreme Court had held that “....***a beneficial circular has to be applied retrospectively while oppressive circular has to be applied prospectively. Thus, when the circular is against the assessee, they have right to claim enforcement of the same prospectively.....***”. Thus seen it is trite law that orders of superior court are to be understood in terms of principle laid down by them and it is immaterial as to which statute they refer to. We are of the considered view that the ratio laid down by Hon'ble Supreme Court in the impugned order are applicable to the facts of the present case.

6.0 The next argument taken by the applicant is that the direction given by the Ld.CIT(A) to the Ld.AO regarding submission of Form-26A and consequently deleting the impugned addition is ipso facto non-maintainable. The Ld.Counsel has argued that it had requested CCIL for issuance of 26A certificate to it however, CCIL through their email communicated that the assessee may issue a 26A Certificate and file it before the department. The Ld.Counsel argued that the responsibility to issue 26A Certificate is on the deductee and not on deductor and that consequently CCIL has misplaced understanding of the matter. It was argued that to comply with the requirement of the Ld.CIT(A) it is required to be obtain a 26A Certificate from CCIL, which has been declined by

them. Therefore the assessee can never get the addition deleted from the assessing officer. The appellant assessee has placed on record page 190 to 192 of its paper book in support of its above contentions.

7.0 Upon consideration of the arguments tendered by the appellant assessee (supra) we are of the considered view that no case of any tax deduction u/s 194J is made out qua the appellant assessee upon clearing / professional charges paid to CCIL. We therefore set aside the order of lower authorities and direct the Ld.AO to delete the impugned addition of Rs.52,78,280/-. Accordingly, all the grounds of appeal raised in this issue are allowed.

8.0 As both the parties have agreed that facts of the case of all the three appeals vide ITA No.1133 to 1135 are identical and no distinguishment could be pointed out, the decision taken in ITA No.1134 (supra) shall apply mutatis mutandis to ITA Nos.1133 and 1135 also. Accordingly, all the grounds of appeal raised in ITA Nos.1133 and 1135 are allowed.

9.0 In the result, the appeal is allowed.

Order pronounced on 18th July-2025 at Chennai.

Sd/-

(एबी टी. वर्की)

(ABY T VARKEY)

न्यायिक सदस्य / Judicial Member

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 18th , July-2025.
KB/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT - Chennai/Coimbatore/Madurai/Salem.
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF