

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER

I.T.A. Nos.335&336/Coch/2016
Assessment Years : 2007-08 & 2008-09

M/s. Kodakkad Service Co-operative Bank Ltd., Kannadipara, Cheruvathur, Kasaragod-671 313. [PAN: AAAAK 4345B]	Vs.	The Income Tax Officer (TDS), Kannur.
(Assessee-Appellant)		(Revenue-Respondent)

I.T.A. No.337&338/Coch/2016
Assessment Years : 2007-08 & 2008-09

M/s. Kinanur Service Co-operative Bank Ltd., Chayyom,Choimkode, Nileshwar, Kasaragod-671 313. [PAN: AAAAK2 668K]	Vs.	The Income Tax Officer (TDS), Kannur.
(Assessee-Appellant)		(Revenue-Respondent)

Assessee by	Shri N. Ramanatha Prabhu, CA
Revenue by	Shri A Dhanaraj, Sr. DR

Date of hearing	02/03/2017
Date of pronouncement	03/03/2017

ORDER

Per GEORGE GEORGE K., JUDICIAL MEMBER:

These are appeals of two assessees against two orders of the CIT(A), Kozhikode both dated 22/04/2016. The relevant assessment years are 2007-08 and 2008-09. The orders of the CIT(A) arise out of the orders passed u/s. 201(1) and 201(1A) of the I.T. Act.

2. Since common issues are involved in these appeals, they were heard together and are being disposed of in this consolidated order.

3. Identical several grounds are raised in these appeals. All the grounds relate to the issue whether the orders passed u/s. 201(1) and 201(1A) are valid or not?

4. The brief facts of the case are as follows:

For the assessment years 2007-08 and 2008-09, the Assessing Officer noticed that the assessees while making TDS on salaries u/s. 192 of the Act, there were short deductions of tax. The reason for short deductions of tax was that while computing taxable salary, the assessees were deducting u/s. 80C of the Act, contributions to unrecognized Provident Fund. According to the Assessing Officer, the contributions to unrecognized Provident Fund were not eligible for deduction u/s. 80C of the Act. Further, the Assessing Officer held

that interest accrued on employees' contribution to unrecognized Provident fund is also taxable under the head 'Income from other sources'. The Assessing Officer passed orders u/s. 201(1) and 201(1A) of the Act, making the assessee in default for the above two short deductions and making it liable for interest.

5. Aggrieved by the orders passed u/s. 201(1) and 201(1A) of the Act, the assessee filed appeals before the first appellate authority. The CIT(A), after an elaborate analysis of the relevant provisions, decided the issues against the assessee and dismissed the appeals.

6. Aggrieved by the orders of the CIT(A), the assessee has preferred the present appeals before the Tribunal.

7. The Ld. Counsel for the assessee reiterated the submissions made before the I.T. authorities. Further, by relying on the order of the Delhi Bench of the Tribunal in the case of DCIT vs. HCL Infosystems Ltd. (24 June, 2004), it was contended that the requirement of section 192 stands complied if the assessee had made an honest and bonafide estimation of salary income. Hence, the provisions of section 201(1) and 201(1A) of the Act cannot have application.

8. On the other hand, the Ld. DR submitted that the Assistant Commissioner of Provident Fund, Kannur had categorically stated that the contributions made by

the assessees to the Provident fund are not established under a scheme framed under the Employees' Provident Funds Act, 1952 (19 of 1952).

9. I have heard the rival contentions and perused the material on record. The assessees while making TDS on salaries u/s. 192 of the Act had claimed contributions to the Provident Fund as eligible deduction u/s. 80C (2) (vi) of the Act. The Assessing Officer held that the contributions to Provident Fund are not recognized u/s. 2(38) of the Act and were not eligible for deduction u/s. 80C of the Act, hence, there were short deductions u/s. 192 of the Act. Further, it was held by the Assessing Officer that interest on the Provident Fund was liable to be taxed under the head 'Income from other sources'. To understand the issue in a correct perspective, the relevant provisions namely, sections 80C (2) (vi), 2(38) and 192 of the I.T. Act need to be analysed.

"80C(1) In computing the total income of an assessee, being an Individual or a Hindu undivided family, there shall be deducted, in accordance with and subject to the provisions of this section, the whole of the amount paid or deposited in the previous year, being the aggregate of the sums referred to in sub-section (2), as does not exceed one lakh rupees.

(2) (i)xxxx-

.....

(vi) as a contribution by an employee to a recognized provident fund."

9.1 Section 2(38) of the Income Tax Act which defines a recognized provident fund reads as follows:-

"recognized provident fund" means a provident fund which has been and continues to be recognized by the Chief Commissioner or Commissioner in accordance with the rules contained in the Part A of the Fourth Schedule, and includes a provident fund established under a scheme framed under the Employees' Provident Funds Act, 1952 (19 of 1952)."

9.2 Admittedly, the assessee's contributions to the Provident Fund are not recognized by the Chief Commissioner or Commissioner in accordance with the rules contained in the Part A of the Fourth Schedule. It is to be further examined whether the Provident Fund is established under a scheme framed under the Employees Provident Fund Act, 1952 (19 of 1952) or not.

9.3 In the instant case, the Assistant Commissioner of Provident Fund vide his letter dated 14/02/2017 (which is placed on record) very categorically states that the Provident Fund of the assessee is not established as per the scheme framed under the Employees Provident Funds Act, 1952. Assessee also does not have case that its PF is established under a scheme framed under the Employees Provident Fund Act, 1952 (19 of 1952). That being the case, admittedly, the assessee's contributions to the Provident Fund are not recognized Provident Fund u/s. 2(38) of the Act and the contributions are not entitled to deduction u/s. 80C (2)(vi) of the I.T. Act. If the contributions are not eligible for deduction u/s. 80C of the Act, there are resultant short deductions of tax u/s. 192 of the Act. Consequently, the interest accrued on the Provident Fund is also liable to be taxed as 'Income from other sources'.

9.4 Section 192(1) of the Income Tax Act states that *"Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income tax on the amount payable at the average rate of income-tax computed on the basis of the rates in force for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year"*. The above section makes abundantly clear that the employees are bound to deduct tax at source at the time of payment of salaries. Since admittedly, the contributions of the assessees to the Provident Fund are not a recognized Fund, the same are not eligible for deduction u/s. 80C (2) (vi) of the I.T. Act. Therefore, the estimations made by the assessees are not correct and since there were short deductions of tax, the Assessing Officer had rightly passed the orders u/s. 201(1) and 201(1A) of the I.T. Act.

9.5 It is also to be noted that the assessees were not able to show that any of the employees of the assessee-society had filed returns and had paid tax correctly to the Government account. Therefore, the case laws relied on by the assessees cannot come to their aid.

9.6 Further, the order passed by the Delhi Bench of the Tribunal in the case of DCIT vs. HCL Infosystems Ltd. (supra) relied on by the assessees is of no help since in the instant case it cannot be stated that assessee's estimation is bonafide or honest estimation of salary income of its employees. Admittedly, the

contributions made by the assesseees to the Provident Fund were not a recognized Fund and were not eligible for deduction u/s. 80C of the Act which had resulted in short deductions of tax. For the above said reasons, I reject the contentions raised by the assesseees and dismiss the appeals of the assesseees. It is ordered accordingly.

10. In the result, the appeals of the assesseees are dismissed.

Pronounced in the open court on 03-03-2017.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Place: Kochi

Dated: 3rd March, 2017

GJ

Copy to:

1. M/s. Kodakkad Service Co-operative Bank Ltd., Kannadipara, Cheruvathur, Kasaragod-671 313.
2. M/s. Kinanur Service Co-operative Bank Ltd., Chayyom, Choimkode, Nileshtar, Kasaragod-671 313.
3. The Income Tax Officer (TDS), Kannur.
4. The Commissioner of Income-tax(Appeals) Kozhikode.
5. The Commissioner of Income-tax (TDS), Kochi.
6. D.R., I.T.A.T., Cochin Bench, Cochin.
7. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin