IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, CHANDIGARH

BEFORE SHRI GEORGE GEORGE K. JUDICIAL MEMBER
AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.97 /Chd/2016
(Assessment Year: 2012-13)

The Punjab State Coop Bank Ltd., SCO 175-187, Sector 34-A, Chandigarh. PAN No. PTLT10607C	Vs.	The Income Tax Officer(TDS-II), Chandigarh.

And

ITA No.279 /Chd/2016
(Assessment Year: 2012-13)

The Income Tax Officer(TDS-2), Chandigarh.	Vs.	The Punjab State Coop Bank Ltd., SCO 175-187, Sector 34-A, Chandigarh. PAN No. PTLT10607C
(Appellant)		(Respondent)

Assessee by	:	Shri M.R. Sharma
Department by	:	Shri S.K. Mittal, DR
Date of hearing	:	29.06.2016
Date of Pronouncement	:	01.07.2016

O R D E R

PER GEORGE GEORGE K., J.M. :

These cross appeals are directed against the order of the Commissioner of Income Tax (Appeals)-2, Chandigarh dated 5.1.2016. The relevant assessment year is 2012-13.

2. We shall first take up for adjudication assessee's appeal in ITA No.97/Chd/2016.

ITA No.97/Chd/2016 (Assessee's Appeal):

3. The revised grounds raised in assessee's appeal read as follows :

"1. That the order of the Income Tax Officer (TDS-II), Chandigarh as upheld by the Commissioner of Income Tax (Appeals)-2, Chandigarh is bad in law and is beyond all the cannons of law and justice.

2. That the order of the Income Tax Officer (TDS-II), Chandigarh as upheld by the Commissioner of Income Tax (Appeals)-2, Chandigarh upholding the levy of interest u/s 201(1A) at Rs.9,11,428/- in respect of trusts which are regular assessee and have filed return declaring Nil income being exempt under the provision of section 10(25) and section 10(23AAA) of the Income Tax Act is bad in law and needs to be deleted in view of the Judicial Decisions in this behalf.

3. That the order of the Income Tax Officer (TDS-II), Chandigarh as upheld by the Commissioner of Income Tax (Appeals)-2, Chandigarh upholding the levy of Tax u/s 201(1) at Rs.3645715/- in respect of trusts which are regular assessee and have filed return declaring Nil income being exempt under the provision of section10(25) and section 10(23AAA) of the Income Tax Act is bad in law and needs to be deleted in view of the Judicial Decisions in this behalf.

4. That the appellant craves leave to add, delete, alter any of the grounds of appeal before the same is heard finally.

It is therefore humbly prayed that the levy of tax under section 201(1) and interest u/s 201(1A) amounting to Rs 36,45,715/- and Rs. 9,11,428/- respectively may kindly be deleted."

4. The brief facts in relation to assessee's appeal are as follows :

The assessee is a cooperative society registered under the Punjab Cooperative Societies Act, 1961. It is engaged in the business of banking. For the relevant assessment year, the assessee had paid interest on term deposits to Punjab State Cooperative Bank Pension Fund amounting to Rs.2,23,34,880/- and to Board of Trustee, Provident Fund, amounting to Rs.1,41,22,274/-. The assessee had not deducted tax at source when it had made payment of interest to Punjab State Cooperative Bank Pension Fund and Board of Trustee, Provident Fund. The ITO(TDS-II) had passed orders under sections 201(1) and 201(1A) of the Act treating the assessee as an assessee in default for non-deduction of tax at source and also making it liable for consequent interest.

5. Aggrieved by the orders passed under sections 201(1) and 201(1A) of the Act, the assessee preferred appeal before the First Appellate Authority. Before the CIT (Appeals), it was contended that the Punjab State Cooperative Bank Pension Fund and Board of Trustee Provident Fund are approved under section 10(23AAA) and

under section 67 of the Act and its income was exempt under section 10 of the Act. It was contended that the interest that was received by these two entities was duly credited in their books of accounts and return of income was filed declaring nil income, since it was exempt under sections 10(25) and 10(23AAA) of the Act. The assessee had relied on the judgment of the Hon'ble Apex Court in the case of Hindustan Coca-cola Beverages (P) Ltd. Vs. CIT (2007) 293 ITR 226 (SC) and contended that when the deductee has filed return and paid the tax, no tax can be demanded under section 201(1) of the Act against the deductor. The CIT (Appeals), however, rejected the contention raised by the assessee and confirmed the order passed by the ITO (TDS-II) under sections 201(1) and 201 (1A) of the Act. The relevant findings of the CIT (Appeals) read as follows :

> *"5.3(d) M/s Punjab State Coop Bank Pension Fund and M/s Board of Trustee Provident Fund are the trust and the appellant relied on the apex court decision in the case of Hindustan Coco cola Beverages Pvt Ltd. Vs. Commissioner of Income Tax, 293 ITR stating that the recovery of the tax cannot be made from the deductor when the deductee has filed the return and paid the tax. The contention of the appellant is misplaced as in the case of Hindustan Coca Cola Beverages Pvt Ltd. it is the situation in which tax cannot be recovered from deductor in case the deductee has shown the payment as its income in its books of accounts and paid the tax due on such payment. The applicant has not produced the books of accounts of the deductee before the assessing officer evidencing that the deductee has included this payment as its income in the books of accounts and no*

evidence/ledger also produced before the undersigned during appellate proceeding. The trusts i.e. M/s Punjab State Coop Bank Pension Fund and M/s Board of Trustee Provident Fund in case they have included the payment as their income and is exempt from taxation being trust, the appellant was required to obtain certificate of non deduction/lower deduction from the Assessing Officer u/s 197 of the Act, but no such certificate was obtained. Therefore appellant as held by the Assessing Officer is liable u/s 201(1) as person-in-default for not deducting the tax at source u/s 194A(1) of the IT Act, 1961 and is also liable to pay interest u/s 201(1A) of the IT. Act, 1961. Therefore demand created by the Assessing Officer on the appellant with regard to the default in respect of payments made to M/s Punjab State Coop Bank Pension Fund and M/s Board of Trustee Provident Fund is confirmed."

6. The assessee being aggrieved, is in appeal before us. The learned counsel for the assessee submitted that the CIT (Appeals) has erred in holding that the assessee had not produced books of account of the deductee before the Assessing Officer evidencing that the deductee has included the interest received as its income in the books of account. It was submitted by the learned counsel for the assessee that the copy of certificate issued by the payee trust showing that the amount of interest received from the assessee was duly accounted in its books of account, was enclosed in the Paper Book filed before the CIT (Appeals). It was further submitted that since the income of the assessee is exempted under sections 10(25) and 10(23AAA) of the Act, there was no point in deducting tax at source, since the recipient of the interest income would have claimed refund

of the same.

7. Per contra, the learned D.R. relied on the orders of the Income Tax Authorities.

8. We have heard the rival submissions and perused the material available on record. The Punjab State Cooperative Bank Pension Fund and Board of Trustee Provident Fund are approved trusts created by assessee for the purpose of pension fund and Provident Fund respectively. A copy of the approval of the same is enclosed at pages 1 and 7 of the Paper Book filed by the assessee. Further, the assessee has also enclosed copies of returns filed for assessment year 2012-13 in the case of Punjab State Cooperative Bank Pension Fund and Board of Trustee, Provident Fund. These entities have duly filed returns of income under section 139(1) of the Act. On perusal of the same, it is evident that whole of their income was exempt under sections 10(25) and 10(23AAA) of the Act. Therefore, there was no liability in respect of these trusts, warranting tax deduction at source under section 194A of the Act. Consequently, the orders passed under sections 201(1) and 201(1A) of the Act are liable to quashed in the facts and circumstances of the case.

9. Further, assessee had furnished a certificate issued by the Chairman of Board of Trustees, Punjab State Cooperative Bank Ltd., Pension Fund, stating that they are in receipt of an amount of Rs.2,23,34,880/- as interest on

term deposit with the assessee bank and the same was duly accounted in its books of account and the return of income has been filed for the relevant assessment year. Similar certificate is also issued by Punjab State Cooperative Bank, Provident Fund Trust. Therefore, it is evident from the certificates that these two entities who are in receipt of interest income from the assessee had duly accounted the same in their books of account and filed their return of income for the concerned assessment year. The Hon'ble Apex Court in the case of Hindustan Coca-cola Beverages (P) Ltd. (supra) had held that the recovery of tax cannot be made from the deductor when the deductee had filed the return and paid the tax on the same. The Hon'ble Jurisdictional High Court in the case of CIT (TDS) Vs. Assistant Manager (Accounts) Food Corporation of India, reported in 326 ITR 106 had held on identical facts, that the TDS was not required to be deducted by the deductor, since the deductee has disclosed the income in its books of account and filed the return of income, evidencing the receipt of such income. In view of the fact that the recipient of interest has disclosed the same in its books of account and filed the return of income, we are of the view the judgment of the Hon'ble Apex Court in the case of Hindustan Coca-cola Beverages (P) Ltd. (supra) is applicable to the facts of the instant case. Therefore, we hold that the assessee is not liable to deduct tax at source, in respect of interest paid on term deposits received from Punjab State Cooperative Bank Pension Fund and Board of Trustee,

Provident Fund. It is ordered accordingly.

10. Therefore, the appeal of the assessee is allowed.

ITA No.279/Chd/2016 (Revenue's Appeal):

11. The grounds raised in Revenue's appeal read as follows :

> *"The Ld. CIT(A) erred in law and facts by considering the appellant is cooperative society and not liable to deduct TDS in accordance to section 194A(3)(v) of the I.T. Act, 1961.*
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> 1. *The Ld. CIT(A) erred in law and facts by ignoring the fact that though appellant is Co-operative Society but engaged in the business of banking and therefore not exempt u/s 194A (3) (v) and thus the Ld. CIT(A)-2,Chandigarh nab erred in deleting the demand of Rs.33,57,00//- raised on account of non deduction of TDS on amount of interest paid on deposit.*
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> 2. *The appellant craves leave to amend, add, alter or delete any of the aforesaid grounds till the disposal."*

12. The assessee had received term deposits from Housefed Punjab and KRIBHCO. On these term deposits, the assessee during the relevant assessment year had paid interest to Housefed Punjab amounting to Rs.13,40,476/- and KRIBHCO amounting to Rs.2,55,15,595/-. Since the assessee had not deducted the tax at source on these interest payments, the ITO (TDS) treated the assessee, as 'an assessee in default' and passed the order under section 201(1) of the Act. The ITO(TDS) also levied interest under section 201(1A) of the Act.

13. Being aggrieved, the assessee preferred appeal before the CIT (Appeals). The CIT (Appeals) for his elaborate reasoning mentioned in paras 5.3 to 5.3(c) decided the issue in favour of the assessee.

14. The Revenue being aggrieved, is in appeal before us. The learned D.R. relied on the assessment order. On the other hand, the learned counsel for the assessee reiterated the submissions made before the Income Tax Authorities and relied on the findings of the CIT (Appeals). In furtherance, the learned counsel relied on the recent order of the Bangalore Bench of the Tribunal in the case of DCIT (TDS) Vs. Sree Thyagaraja Co-op Bank Ltd. in ITA Nos.856 to 860/Bang/2015, (order dated 10.11.2015).

15. We have heard the rival submissions and perused the material available on record. The CIT (Appeals) had considered the amended provision of section 194A(3)(v) of the Act (w.e.f. 1.6.2015). The CIT (Appeals) has also considered various orders of the Tribunal on this aspect and has given a very elaborate findings, which read as follows:

> *'5.3 The submission of the appellant have been considered. The amended provisions of section 194A(3)(v) are effective from 01.06.2015 . The relevant portion of the chapter on "rationalization of provision relating to deduction of tax on interest (other than interest on securities)" in the Finance Bill, 2015 is as under:*
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> > *"Section 194A(1) read with section 194A(3)(i) of the Act provide for deduction of tax on interest (other than interest on securities) over a specified threshold, i.e. Rs.10,000 for*

interest payment by banks, co-operative society engaged in banking business (cooperative bank) and post office and Rs.5,000 for payment of interest by other persons. Further, sub-section (3) of section 194A inter alia also provides for exemption from deduction of tax in respect of following interest payments by co-operative society: (i) Interest payment by a co-operative society to a member thereof or any other co-operative society. [Section 194A(3)(v) of the Act] (ii) Interest payments on deposits by a primary agricultural credit society or primary credit society or co-operative land mortgage bank or co-operative land development bank. [Section 194A(3)(viia)(a) of the Act] (Hi) Interest payment on deposits other than time deposit by a co-operative society engaged in the business of banking other than those mentioned in section 194A(3)(viia)(a) of the Act. [Section 194A(3)(viia)(b) of the Act] Therefore, as per the provisions of section 194A(1) read with provisions of sections 194A(3)(i)(b) and 194A(3)(viia)(b), co-operative bank is required to deduct tax from interest payment on time deposits if the amount of such payment exceeds specified threshold of Rs.10,000/-. However, as the provisions of section 194A(3)(v) of the Act provide a general exemption from making tax deduction from payment of interest by all co-operative societies to its members, the co-operative banks tried to avail this exemption by making their depositors as members of different categories. This has led to dispute as to whether the co-operative banks, for which the specific provisions of tax deduction exist in the form of section 194A (1), section 194A(3)(i)(b) and section 194A(3)(viia)(b) of the Act, can take the benefit of general exemption provided to all co-operative societies from deduction of tax on payment of interest to members. The matter has been carried to judicial forums and in some cases a view has been taken that the provisions of section 194A(3)(viia)(b) of the Act makes no distinction between members and non-members of co-operative banks for the purposes of deduction of tax, hence, the co-operative banks are required to deduct tax on payment of interest on time deposit

and cannot avoid the same by taking the plea of the general exemption provided under section 194A(3)(v) of the Act. This is because the specific provision of tax deduction provided under section 194A(3)(i)(b) and 194A(3)(viia)(b) of the Act for co-operative banks override the general exemption provided to all co-operative societies for non-deduction of tax from interest payment to members under section 194A(3)(v) of the Act. As there is no difference in the functioning of the co-operative banks and other commercial banks, the Finance Act, 2006 and Finance Act, 2007 amended the provisions of the Act to provide for co-operative banks a taxation regime which is similar to that for the other commercial banks. Therefore, there is no rationale for treating the co-operative banks differently from other commercial banks in the matter of deduction of tax and allowing them to avail the exemption meant for smaller credit cooperative societies formed for the benefit of small number of members. However, as mentioned earlier, a doubt has been created regarding the applicability of the specific provisions mandating deduction of tax from the payment of interest on time deposits by the co-operative banks to its members by claiming that general exemption provided is also applicable for payment of interest to member depositors. In view of this, it is proposed to amend the provisions of the section 194A of the Act to expressly provide from the prospective date of 1st June, 2015 that the exemption provided from deduction of tax from payment of interest to members by a co-operative society under section 194A(3)(v) of the Act shall not apply to the payment of interest on time deposits by the cooperative banks to its members. However, the existing exemption provided under section 194A(3)(viia)(a) of the Act to primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank from deduction of tax in respect of interest paid on deposit shall continue to apply. Therefore, these co-operative credit societies/banks referred to in said clause (viia)(a) would not be required to deduct tax on interest payment to depositors even after the proposed amendment

Further, the existing exemption provided under section 194A(3)(v) of the Act from deduction of tax from interest paid by a cooperative society to another co-operative society shall continue to apply to the co-operative bank and, therefore, a co-operative bank shall not be required to deduct tax from the payment of interest on time deposit to a depositor, being a co-operative society."

5.3(a) In a recent judgment of Hon'ble ITAT, Bangalore Bench in the case of M/s The Raddi Sahakara Bank, Niyamitha, it is held that the cooperative societies carrying on banking business is not liable to deduct tax at source for the payment of interest on deposits by its members. In the said judgement, the decision in the case of Bhagani Nivedita Sahakari Bank Ltd has been considered. It is discussed in the case of Raddi Sahakara Bank (supra) that Hon'ble ITAT Bangalore Bench in the case of Bagalkot District Central Cooperative Bank has dealt with identical issue wherein the Hon'ble Tribunal did not agree with the view expressed by the Hon'ble Pune ITAT (SMC Bench) in the case of Bhagani Nivedita Sahakari Bank Ltd. It was held by the Hon'ble ITAT, Bangalore Bench in the case of Bagalkot District Central Cooperative Bank that "we hold that the Assessee which is a co-operative society carrying on banking business when it pays interest income to a member both on time deposits and on deposits other than time deposits with such co-operative society need not deduct tax at source under section 194A by virtue of the exemption granted vide clause (v) of sub-section (3) of the said section." Relying upon the above decision, Hon'ble ITAT, Bangalore Bench decided in the case of M/s Raddi Sahakara Bank as "In our view, the above decision rendered by the co-ordinate bench is squarely applicable to the facts of the present case. Respectfully following the decision of the co-ordinate bench referred to above, we set aside the orders of the lower authorities and hold that to the extent interest is paid to members of the society there is no obligation to deduct tax at source."

5.3(b) There were conflicting decisions of various Tribunals on applicability of the specific provisions mandating deduction of tax

from the payment of interest on time deposits by the co-operative banks to its members by claiming that general exemption provided is also applicable for payment of interest to member depositors, provisions of the section 194A of the Act is amended to expressly provide from the prospective date of 1st June, 2015 that the exemption provided from deduction of tax from payment of interest to members by a co-operative society under section 194A(3)(v) of the Act shall not apply to the payment of interest on time deposits by the co-operative banks to its members. While proposing amendment in section 194A(3)(v) of the Act, legislature was aware of the fact that the matter has been carried to judicial forums and in some cases a view has been taken that the provisions of section 194A(3)(viia)(b) of the Act makes no distinction between members and non-members of co-operative banks for the purposes of deduction of tax, hence the co-operative banks are required to deduct tax on payment of interest on time deposit and cannot avoid the same by taking the plea of the general exemption provided under section 194A(3)(v) of the Act. This is because the specific provision of tax deduction provided under section 194A(3)(i)(b) and194A(3)(viia)(b) of the Act for co-operative banks override the general exemption provided to all co-operative societies for non-deduction of tax from interest payment to members u/s 194A(3)(v) of the Act. However, it is made clear in the chapter on "Rationalisation of provisions relating to deduction of tax on interest (other than interest on securities) in the Finance Bill, 2015 that the "the existing exemption provided under section 194A(3)(v) of the Act from deduction of tax from interest paid by a cooperative society to another co-operative society shall continue to apply to the co-operative bank and, therefore a co-operative bank shall not be required to deduct tax from the payment of interest on time deposit to a depositor, being a co-operating society."

5.3(c) It is therefore clear from the above memorandum of Finance Bill, 2015 that exemption provided under section 194A(3)(v) of the Act from deduction of tax from interest paid by a co-operative society to another co-operative society existed

before the amendment and shall continue to apply to the co-operative bank even after the amendment. It was made clear further that such exemption to co-operative bank is available only when the depositor is a co-operative society. In the instant case M/s Housefed & M/s KRIBHCO are members who has deposited the amount with the appellant Co-operative bank are co-operative societies only. Therefore in view of the above discussion it is held that the appellant, a cooperative society, is not required to deduct tax from the payment of interest on time deposit to its members being cooperative societies or other cooperative societies. Hence, the appellant is not liable under section 201(1) as person in-default for not deducting tax at source under section 194A(1) of the Act and also not liable for interest u/s 201 (1 A) of the Act and therefore the demand created in respect of M/s Housefed and M/s KRIBHCO is deleted.

16. On reading the memorandum of Finance Bill, 2015, it is clear that the exemption provided under section 194A(3)v) of the Act with regard to deduction of tax at source from interest payment by a cooperative society to another cooperative society existed before the amendment, and continue to apply to the cooperative bank even after the amendment. It was made further clear that such exemption to cooperative bank is available only when the depositor is a cooperative society. In the instant case, Housefed Punjab and KRIBHCO are cooperative societies who are members with the assessee society and interest received by them was exempted for tax deduction at source under section 194A(3)(v) of the Act. Hence, as rightly pointed out by the CIT (Appeals), the assessee was not liable under section 201(1) of the Act as an assessee in default for not deducting the tax under section 194A of the Act and consequently,

interest under section 201(1) of the Act cannot also be levied. It is ordered accordingly.

17. In the result, the appeal of the assessee in ITA No.97/Chd/2016 is allowed and the appeal of the Revenue in ITA No.279/Chd/2016 is dismissed.

Order pronounced in the open court on this 1st day of July, 2016

Sd/-	Sd/-
(ANNAPURNA GUPTA)	**(GEORGE GEORGE K.)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated : 1st July, 2016

Rati

Copy to: The Appellant/The Respondent/The CIT(A)/The CIT/The DR.

Assistant Registrar,
ITAT, Chandigarh