

IN THE INCOME TAX APPELATE TRIBUNAL
DELHI BENCH "SMC-3": NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 706/Del/2015

A.Y. : 2011-12

DCIT(TDS), GURGAON

(Appellant)

vs. THE SONIPAT CENTRAL COOP
BANK LIMITED,
TIKA RAM ROAD,
SONIPAT (HARYANA)
(PAN: RTKT01805G)
(Respondent)

Department by : Sh. A Srinivasa Rao, Sr. DR

Assessee by : Sh. Gautam Jain, CA

Date of Hearing : 11-07-2016

Date of Order : 02-08-2016

ORDER

PER H.S. SIDHU, JM

This appeal is filed by the Revenue is directed against the Order dated 25.11.2014 of the Ld. CIT(A)-, Rohtak relevant to assessment year 2010-11 on the following grounds:-

- "1. That the Ld. CIT(A), Rohtak has erred in deleting the demand raised on account of short deduction of TDS of Rs. 26,59,099/- and interest thereon of Rs. 3,42,527/- with respect to cases where Form No. 15G/15H were late submitted in violation of provisions of section 194A read with section 197A.

2. *The Ld. CIT(A), Rohtak has erred in accepting the contentions of the assessee that it had not wilfully or contumaciously acted in disregard of law and the mistake was bonafide, and giving relief accordingly to the assessee because assessee had not deducted the TDS in the cases where interest paid / credited during the year under consideration was in excess of maximum amount which is not chargeable to income tax. As discussed in the para 8 of the AO's order, the assessee did not reply in this regard which shows that the conduct of the assessee is not acceptable.*
3. *That the appellant craves for permission to add, delete or amend the grounds of appeal before or at the time of hearing of appeal.*

2. The brief facts of the case are that a TDS Inspection u/s 133A was conducted on the assessee PR on 01/09/2011. During the course, of inspection, part information and the documents were furnished by the assessee PR. The summon u/s 131 of the I. T. Act, 1961 were issued to the P.R. for furnishing the. remaining information on 06/09/2011. The proceedings were attended from time to time by the P.R. or its representative. Later on, the final show cause notice dated 24.1.2012 was served upon the P.R. requiring it to furnish reply by 13/02/12. The assessee PR attended the office on 21.2.2012 & again on 28.2.2012 and furnished reply on 28.02.2012. From the perusal of details and

documents submitted by the assessee PR it was noticed by the AO that that the assessee PR has not deducted tax at source on the interest to its depositors as and when the amount of interest credited/paid on their time deposits/FDRs/MMCs alcs exceeded Rs. 10000/-. From the details submitted by the Assessee PR, AO further observed that the assessee PR has credited /paid interest on time deposits/FDRs/MMCs a/cs in excess of Rs. 10000/- as on 30.09.2009, but no deduction of tax at source has been made by the assessee PR on these interest payments as per the provision of section 194A of the I.T. Act, 1961. During the course of inspection proceeding on 01/09/2011, the statement of Shri Puran Singh, Branch Manager, was recorded on oath and was asked to explain as to why no TDS has been deducted in all cases where interest exceeding Rs, 10,000/- has been paid/credited. The assessee PR replied that TDS has not been deducted in all the cases as they have furnished them Form No. 15G/15H. Further he submitted that he will produce the copies of Form No. 15G/15H for the year under consideration on 6.9.2011. It was also submitted that Form No. 15G/15H for the Financial year 2010-11 were submitted to the O/o CIT, Rohtak in April, 2011 Vide show cause notice No. ITO/TDS/Survey/2011-12/2702 dated 24.1.2012, the assessee PR was again asked to show cause as to why he may not be treated as an assessee in default u/s 201 (1) of the I. T. Act 1961 for non-deduction of tax at source on interest payments to different persons for violation of provisions of section 194A of the I.T. Act, 1961. In response to the same, assessee filed his reply. After considering the reply of the assessee, AO

observed that assessee PR has failed to deduct tax at source on the interest payments made to its depositors as per the provisions of section 194A of the I.T. Act 1961. The AO further observed that neither the PAN of the depositors were mentioned on the Form No. 15G/15H submitted by the assessee PR nor photocopies of the PANs were attached alongwith form No. 15G/15H . Further, no cognizance of the fresh Form No. 15G/15H submitted by the assessee PR now can be taken. Further the assessee PR has neither submitted its 26QA e-TDS return nor its 26QA e-TDS return on NSDL site. Hence, the assessee PR is treated to be an assessee-in-default u/s 201(1) & 201(IA) of the I.T. Act 1961 for violating the provisions of section 194A read with section 206AA of the I.T. Act 1961. Hence the assessee PR is treated to be an assessee-in-default under section 201(1) & 201(IA) of the I.T. Act 1961 for its violation of the provisions of the section 194A of the I.T. Act 1961. Thereafter, the AO passed the order u/s. 201(1) & 201(IA) of the Income Tax Act, 1961 and made the following additions:-

Short Deduction of tax u/s. 201(1) : Rs. 36,29,547/-

Of the I.T. Act, 1961

Interest u/s. 201(IA) : Rs. 4,52,013/-

Total tax and interest payable : **Rs. 40,81,560/-**

3. Aggrieved by the aforesaid addition, assessee appealed before the Ld. CIT(A), Rohtak vide his impugned order dated 25.11.2014 has partly allowed the appeal of the assessee.

4. Against the order of the Id. CIT(A), Revenue is in appeal before the Tribunal.

5. During the hearing, Ld. DR relied upon the order passed by the AO and reiterated the contentions raised in the grounds of appeal filed by the Department and requested that the Appeal of the Revenue may be allowed.

6. On the contrary, Ld. Authorised Representative of the Assessee relied upon the order of the Ld. CIT(A) and stated that the issue in dispute is squarely covered by the following cases and requested that by following the same, the Appeal of the Revenue may be dismissed.

- 145 ITD 370 (Mum) Karwat Steel Traders vs. ITO
- 46 SOT 71 (Mum) Vipin P. Mehta vs. ITO
- 66 SOT (Del) Vijaya Bank vs. ITO
- 152 ITD 497 (Bang.) Capital Pharma vs. ITO
- 157 ITD 512 (Chennai) Narasu's Spinning Mills vs. ACIT
- CIT vs. State Bank of Patiala reported in 277 ITR 315 (P&HC).

7. I have heard both the parties and perused the records available with us, especially the order of the Ld. First Appellate Authority. After perusing the impugned order of the Ld. CIT(A), I find that Ld. CIT(A) has

elaborately discussed the issues in dispute vide his impugned order dated 25.11.2014 vide para no. 3 & 4 at page no. 6 and held as under:-

"3. The submissions made by the appellant, the facts on record and the remand report reveal that the issues in this case are twofold. Firstly, the income from FDR is covered by the Circular No. 699 dated 30.01.1995 and Circular No. 4/2002 dated 16.07.2002. The first circular refers to entries whose income is exempt from income tax u/s 10(20) & (20A) of the IT Act. In this case income from interest on FDR is squarely covered as income from other sources. Circular No.4 (dated 16.07.2012) lays down that no TDS was required on interest paid to municipal committees. The second issue relates to the fact that the appellant did not submit Form No. 15G/ 15H on time.

The AO has, in his remand report objected to the admission of additional evidence on the ground that the circular was not submitted at the time of assessment proceedings. The appellant had been prevented by reasonable cause from producing the same and that cannot be taken as a ground not to admit the same. I, therefore, admit the additional evidence filed by the appellant in the interest of justice.

As far as late submissions of Form No 15G/15H is concerned, it is apparent that in the present case, the appellant did not wilfully or contumaciously act in disregard of its objection 'under law. The mistake was bonafide and no loss to revenue occurred for failure to file the same.

However, a perusal of the list of interest payments reveals that the appellant was liable for payment of Rs 1,88,250/- plus interest of Rs. 23444.10 on A/c of Form No.

15G/H obtained in cases where interest paid was in excess of amount not chargeable to tax. The addition is restricted to Rs. 1,88,250/- on account of short deduction of tax u/s 201 (1) and Rs 23444.10 being interest u/s 201 (A).

4. In the result, the appeal is partly allowed."

7.1 After going through the records, I am of the view that Revenue has disputed the deletion of liability of Rs. 30,01,627/- (correct figure Rs. 29,90,256) on account of TDS of interest paid in respect of depositors for whom Form 15G and 15H were not furnished at the time of survey but certainly made available during the appellate / assessment proceedings for which, no adverse observations made in the Remand Report of the AO. Moreover, there is no loss to the Revenue. I further find that the Hon'ble Punjab & Haryana High Court in the case of CIT vs. State Bank of Patiala reported in 277 ITR 315 has dealt the similar and identical issue and held as under:-

"Penalty proceedings had been initiated by the AO for delay in furnishing the declarations in Form No. 15H furnished by various depositors within the time stipulated under section 197 A(1A) of the Act. The Tribunal has found that the assessee was not required to deduct any tax at source under section 194A of the Act as in none of the cases. Interest payable exceeded Rs. 10,000 and, thus, even Form No. 15H was not required to be filed. The Tribunal also noticed that even

the departmental representative admitted that there was no loss of revenue involved in the matter. The Tribunal, therefore, held that since the assessee was neither required to deduct tax at source nor any loss of revenue had occurred on this account the default committed by the assessee in not filing Form No. 15H received by it from various depositors within the stipulated period, was only of technical nature for which no penalty under section 272A(2)(f) of the Act was leviable. In support of its conclusions, the Tribunal placed reliance on the judgment of the Supreme Court in Hindustan Steel Ltd. v State of Orissa [1972] 83 ITR 26. Having perused the order of the Tribunal, we are satisfied that in the light of the factual position stated by the Tribunal, no case for interference is made out. It is clear that the default in the present case is merely of technical or venial in nature."

7.2 I also find that Revenue has not challenged the admission of additional evidence before the Tribunal and therefore, once the admission of additional evidence has not been challenged, the solitary issue which remains for consideration is whether delay in furnishing of Form 15G to the Department can be a ground to impose liability under section 201(1) of the Act on account of alleged default for non-application of TDS under section 194A read with section 197 of the Act, which as submitted above

in light of the judgment is absolutely not tenable. In view of the aforesaid discussions and precedent relied upon, as aforesaid, I am to the considered view that the Ld. CIT(A) has passed a well reasoned and speaking order and rightly held that assessee did not wilfully or contumaciously act in disregard of its objection under the law and the mistake was bonafide and no loss to revenue occurred for failure in submission of the Form 15G/15H in time. Hence, the order of the Ld. CIT(A) does not require any interference on my part, therefore, I uphold the order of the Ld. CIT(A) and dismiss the Appeal filed by the Revenue.

8. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced in the Open Court on 02-08-2016.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date: 02/08/2016

SRBhatnagar
Copy forwarded to: -

1. Appellant	2. Respondent	3. CIT	4. CIT (A)	5. DR, ITAT
		TRUE COPY		By Order,

Assistant Registrar, ITAT, Delhi Benches