IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri A. Mohan Alankamony, Accountant Member

ITA Nos.714 & 485/Hyd/2018		
Assessment Years:2008-09 & 2009-10		
Asstt. Commissioner of Income Tax, Circle 9(1) Hyderabad	Vs.	Telangana Grameena Bank, Hyderabad PAN:AAAAD3893M
(Appellant)		(Respondent)
C.O.Nos.27 & 28/Hyd/2018 (Arising out of ITA Nos.714 & 485/Hyd/2018)		
Assessment Years:2008-09 & 2009-10		
Telangana Grameena Bank, Hyderabad PAN:AAAAD3893M	Vs.	Asstt. Commissioner of Income Tax, Circle 9(1) Hyderabad
(Appellant)		(Respondent)
Revenue by:	Smt. Nivedita Biswas, DR	
Revenue by:	Sri Laxmi Niwas Sharma	
Date of hearing:	04/09/2019	
Date of pronouncement:	04/10/2019	

ORDER

Per Smt. P. Madhavi Devi, J.M.

The above appeals are filed by the Revenue, while the Cross Objections are filed by the assessee for the respective A.Ys.i.e. 2008-09 and 2009-10.

2. Brief facts of the case are that the assessee is a Regional Rural Bank promoted by the State Bank Group, engaged in the activity of banking. It came into existence on 24.03.2006 due to amalgamation of four Regional Rural Banks. The assessee

filed a return of income for the A.Y 2008-09 on 26.09.2008. Subsequently, the case was reopened by issuance of a notice u/s 148 on 27.03.2015, pursuant to the directions of CIT's u/s 263 of the Act, that the interest paid on deposits attracts TDS provisions and it was required to see whether the assessee has complied with the TDS provisions or not. On verification of the submissions of the assessee and also on verification of the assessments for the A.Ys 2010-11 and 2011-12, the AO observed that the assessee has failed to categorise the interest paid as above Rs.10,000/- and below Rs.10,000/- per year of a particular investor. He also observed that the assessee has failed to furnish Form Nos.15H/15G to substantiate the interest payments without making the TDS. Therefore, he applied the provisions of section 40(a)(ia) of the Act to Rs.67,09,48,000/- i.e., the interest paid without making TDS and brought it to tax.

3. Aggrieved, the assessee preferred an appeal before the CIT (A) who granted partial relief to the assessee by holding that during the relevant A.Y, there was no requirement to make any TDS in respect of interest payment of not exceeding Rs.10,000/- u/s 194A of the Act. However, with regard to the interest payment above Rs.10,000/-, the CIT (A) observed that the assessee did not furnish any Form Nos.15H/15G. Thus, the CIT (A) confirmed the disallowance of interest of Rs.1,42,25,510/- u/s 40(a)(ia) of the Act. Against this order of the CIT (A), the Revenue is in appeal before us by raising the following grounds of appeal:

> *"1. The learned CIT (A) erred on facts and law of the case.*
>
> *2. The learned CIT (A) erred in concluding that the AO accepted the claim of the appellant in respect of interest paid below Rs.10,000/- to the tune of Rs.10,77,80,328/-, since the complete depositor details were not produced to the AO for verification.*

3. The CIT (A) ought to have considered the sum of Rs.10,77,80,328/- for disallowance since the assessee bank has not complied with the TDS.

4. Any other ground(s) that may be urged at the time of hearing".

4. The learned DR supported the orders of the AO while the learned Counsel for the assessee supported the order of the CIT (A).

5. Having regard to the rival contentions and the material on record, we find that the question before us is whether TDS is to be made on payment of interest not exceeding Rs.10,000/-. For this purpose, it is necessary to consider the relevant provision. We accordingly reproduce section 194A of the Act for ready reference:

"***Interest other than "Interest on securities".***

194A. *(1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force :*

Provided *that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this section.*

Explanation.—For the purposes of this section, where any income by way of interest as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(2) [Omitted by the Finance Act, 1992, w.e.f. 1-6-1992.]

(3) The provisions of sub-section (1) shall not apply—

(i) where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the person referred to in sub-section (1) to the account of, or to, the payee, does not exceed—

(a) [41][forty] thousand rupees, where the payer is a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution, referred to in section 51 of that Act);

(b) [41][forty] thousand rupees, where the payer is a co-operative society engaged in carrying on the business of banking;

(c) [41][forty] thousand rupees, on any deposit with post office under any scheme framed by the Central Government and notified by it in this behalf; and

(d) five thousand rupees in any other case:

***Provided** that in respect of the income credited or paid in respect of—*

(a) time deposits with a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act); or

(b) time deposits with a co-operative society engaged in carrying on the business of banking;

(c) deposits with a public company which is formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes and which is eligible for deduction under clause (viii) of sub-section (1) of section 36

the aforesaid amount shall be computed with reference to the income credited or paid by a branch of the banking company or the co-operative society or the public company, as the case may be :

***Provided further** that the amount referred to in the first proviso shall be computed with reference to the income credited or paid by the banking company or the co-operative society or the public company, as the case may be, where such banking company or the co-operative society or the public company has adopted core banking solutions:*

*[42][**Provided also** that in case of payee being a senior citizen, the provisions of sub-clause (a), sub-clause (b), and sub-clause (c) shall have effect as if for the words "[43][forty] thousand rupees", the words "fifty thousand rupees" had been substituted.*

Explanation.—For the purposes of this clause, "senior citizen" means an individual resident in India who is of the age of sixty years or more at any time during the relevant previous year;]

6. We find that u/s 194A, sub-section 3 provides the exceptions to the application of sub-section (1) of section 194A and provides the monetary limit of the aggregate of the amounts for the application of the exception. The relevant A.Ys before us are 2008-09 and 2009-10 and during the relevant period, the sum mentioned in clause 1, was “ten” while it was substituted with “forty” vide Finance Act of 2019 w.e.f. 1.4.2019. Therefore, where the aggregate of the interest credited or paid or likely to be credited or paid during the relevant financial year, does not exceed Rs.10,000/-, where the payer is a Banking company to which the Banking Regulations Act apply, the

provisions of sub-section (1) of section 194A do not apply. Thus, the provision of law which is applied by the CIT (A), in giving relief to the assessee is very clear. Therefore, we see no merit in the appeals filed by the Revenue. Accordingly, Revenue's appeals are dismissed.

7. In the Cross Objections of the assessee, the assessee has raised the following grounds:

> *"1. The learned CIT (A) erred in rejecting the ground of assessee on reopening u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 since the AO cannot reopen the assessment to re-verify the details.*
>
> *2. The learned CIT (A) erred in disallowing the expenditure incurred on account of interest on deposits due to non availability of Form 15G/15H ignoring that the branches are in rural areas and more than 100 branches are involved, it had difficulty in collecting the same as date pertains almost prior to 8 years.*
>
> *3. For these and any other grounds which may be raised on or before hearing of the appeal".*

8. The learned Counsel for the assessee submitted that for the A.Y 2008-09, reopening of the assessment is initiated after six years from the end of the relevant A.Y. We find that the assessee had raised this ground before the CIT (A) also, and the CIT (A) has recorded that the notice was issued within six years from the end of the relevant A.Y and that cl.(b) of section 149(1) is applicable in the instant case, and the explanation (1) to section 147 is also applicable to the facts of the case. He accordingly upheld the order of the AO in reopening of the assessment. The learned Counsel for the assessee has not been able to rebut this finding of the CIT (A) with any corroborative evidence. Further, we find that the relevant A.Y ends on 31.03.2009 and the notice u/s 148 is issued on 27.03.2015 which is clearly within the period of 6 years from the end of the relevant A.Y. Therefore, the

assessee's ground of appeal No.1 against the validity of the re-assessment proceedings is rejected.

9. As regards the Grounds 2 & 3 with regard to the applicability of TDS provisions made to payments of interest exceeding Rs.10,000/- is considered, the learned Counsel for the assessee submitted that in the re-assessment proceedings, the AO had required the assessee to produce or furnish the copies of Form No.15G/15H and Form 60/61 submitted by various parties in order to verify the allowability of claim of deduction of interest paid and non-applicability of provisions of section 40(a)(ia) of the Act to the said payments. The learned Counsel for the assessee submitted that under Sub Rule (6) of Rule 29C of the I.T. Rules, the AO can require the assessee to produce for verification Forms 15G/15H within a period of 7 years from the end of the financial year, in which the declaration referred to in sub-rule(1) of Rule 29C has been received. He submitted that in the case before us, the relevant financial year ended on 31.03.2008, whereas the assessment has been reopened by issuance of a notice dated 27.03.2015 and by notices u/s 143(2) and 142(1) thereafter, which clearly are beyond the period of 7 years from the end of the relevant financial year in which form 15G/15H has been received by the assessee bank. The relevant financial year ends on 31.3.2008 during which the assessee had made the payments without making TDS and could have obtained forms 15G/15H. He therefore, prayed for deleting the additions confirmed by the CIT (A). The learned DR however, supported the order of the AO and also relied upon the order of the CIT (A).

10. Having regard to the rival contentions and the material on record, we find that Rule 29C of I.T. Rules reads as under:

"[Declaration by person claiming receipt of certain incomes without deduction of tax.

29C. *(1) A declaration under sub-section (1) or under sub-section (1A) of section 197A shall be in Form No.15G and declaration under sub-section (1C) of section 197A shall be in Form No.15H.*

(2) The declaration referred to in sub-rule (1) may be furnished in any of the following manners, namely:—

(a) in paper form;

(b) electronically after duly verifying through an electronic process in accordance with the procedures, formats and standards specified under sub-rule (7).

(3) The person responsible for paying any income of the nature referred to in sub-section (1) or sub-section (1A) or sub-section (1C) of section 197A, shall allot a unique identification number to each declaration received by him in Form No.15G and Form No.15H respectively during every quarter of the financial year in accordance with the procedures, formats and standards specified by the Principal Director-General of Income-tax (Systems) under sub-rule (7).

(4) The person referred to in sub-rule (3) shall furnish the particulars of declaration received by him during any quarter of the financial year along with the unique identification number allotted by him under sub-rule (3) in the statement of deduction of tax of the said quarter in accordance with the provisions of clause (vii) of sub-rule (4) of rule 31A.

(5) The person referred to in sub-rule (3) shall furnish the statement of deduction of tax referred to in rule 31A containing the particulars of declaration received by him during each quarter of the financial year along with the unique identification number allotted by him under sub-rule (3) in accordance with the provisions of clause (vii) of the sub-rule (4) of rule 31A irrespective of the fact that no tax has been deducted in the said quarter.

(6) Subject to the provisions of sub-rules (4) and (5), an income-tax authority may, before the end of seven years from the end of the financial year in which the declaration referred to in sub-rule (1) has been received, require the person referred in sub-rule (3) to furnish or make available the declaration for the purposes of verification or any proceeding under the Act in accordance with the procedures, formats and standards specified by Principal Director General of Income-tax (Systems) specified under sub-rule (7).

(7) The Principal Director General of Income-tax (Systems) shall specify the procedures, formats and standards for the purposes of furnishing and verification of the declaration, allotment of unique identification number and furnishing or making available the declaration to the income-tax authority and shall be responsible for the day-to-day administration in relation to the furnishing of the particulars of declaration in accordance with the provisions of sub-rules (4) and (5).

(8) The Principal Director General of Income-tax (Systems) shall make available the information of declaration furnished by the person referred to in sub-rule (3) to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner to whom the Assessing Officer having jurisdiction to assess the person who has furnished the declaration under sub-section (1) or under sub-section (1A) or under sub-section (1C) of section 197A is subordinate.]"

11. We find that the sub-rule 6 to Rule 29C has come in to the statute book only w.e.f. 1.10.2015 whereas the relevant A.Ys before us are 2008-09 and 2009-10. Therefore, the application of this rule has to be examined. We find that the assessment of the assessee for the relevant A.Ys were reopened for verifying the compliance of TDS provisions and therefore, the assessments were pending when Sub Rule (6) to Rule 29C was brought into the statute book. Rules being formulated for regulating the procedure for collection of taxes, we are inclined to agree with the learned Counsel for the assessee that Sub Rule (6) of Rule 29C would be applicable and the AO could not have required the assessee to produce Form 15G/15H and form 60/61 beyond 7 years from the end of the relevant financial year. However, this argument or the ground has not been raised by the assessee before the lower authorities. But, since the relevant information is already on record, we hold that the AO could not have required the assessee to file the forms after a period of 7 years from the end of the relevant A.Y. Thus, in these circumstances, we hold that the provisions of section 40(a)(ia) shall not be applied and the ground is accordingly allowed.

12. In the result, C.Os filed by the assessee are partly allowed.

13. For the A.Y 2009-10, the grounds raised by the Revenue are exactly the same as in the A.Y 2008-09 except for the quantum. Respectfully following the reasons given in the A.Y 2008-09, the Revenue's appeal is dismissed.

14. We find that the grounds in the Cross Objections filed by the assessee for the A.Y 2009-10 are exactly the same as in the A.Y 2008-09 including the ground on reopening u/s 147. With regard to the

reopening of the assessment, the learned Counsel for the assessee submitted that proviso to section 147 would apply to the case before us, since reopening of the assessment is made beyond the period of 4 years from the end of the relevant A.Y. We find that from the reasons recorded for reopening of the assessment, the AO was satisfied that the income of the assessee had escaped the assessment as Forms 15G/15H were not available on record. Thus, the condition for applying the provision of section 147 are satisfied and for this reason, we are not inclined to interfere with the order of the CIT (A) who has confirmed the validity of the re-assessment. Accordingly, Ground No.1 is rejected.

15. As regards Ground No.2 for the detailed reasons given in the A.Y 2008-09, we have held the issue in favour of the assessee. Therefore, C.O filed by the assessee for the A.Y 2009-10 is allowed.

16. The assessee had raised an alternate argument for both the A.Ys that if the issue as to whether the AO could have called for Form 15G/15H after a period of 7 years is held against the assessee, then the disallowance u/s 40(a)(ia) would have to be only of 30% of interest payment which is paid without TDS and not the disallowance of whole of the amount as made by the AO and the CIT (A). We find that this issue is not arising at this stage, because, we have held that the AO could not have required the assessee to file Form No.H and G after the period of 7 years. Therefore, the appeals filed by the Revenue are dismissed and the assessee's C.Os are partly allowed for statistical purposes.

17. In the result, appeals filed by the Revenue are dismissed and the assessee's C.Os are partly allowed for statistical purposes.

Order pronounced in the Open Court on 4th October, 2019.

Sd/-	Sd/-
(A. MOHAN ALANKAMONY) **ACCOUNTANT MEMBER**	**(P. MADHAVI DEVI)** **JUDICIAL MEMBER**

Hyderabad, dated 4th October, 2019.
Vinodan/sps

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6 Guard File

By Order