

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'A' JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 434/JP/2019
निर्धारण वर्ष/Assessment Year :2010-11

Bank of India, A-11, Ganpati Paradise, Central Spine Scheme, Vidhyadhar Nagar, Jaipur	बनाम Vs.	The JCIT Range-TDS, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: JPRB02731B		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Pankaj Kumar Garg (CA)
राजस्व की ओर से/ Revenue by : Ms. Chanchal Meena (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 25/09/2020
उदघोषणा की तारीख/Date of Pronouncement: 29/09/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-3, Jaipur dated 28.01.2019 wherein the assessee has taken the following grounds of appeal:-

- "1. That the CIT(A)-III has grossly erred in dismissing the appeal when assessee had already filed appeal against order u/s 201 before the CIT (A)-III, Jaipur and the same is pending for disposal before the appellate authority.*
- 2. That addl. CIT has not levied penalty u/s 271C within the prescribed time limit."*

2. During the course of hearing, the Id. AR submitted that the assessee bank has paid interest of Rs. 1,79,252/- on fixed deposits placed with it by one of its customers, Jaipur School Samiti on which no TDS was deducted on account of submission of Form 15G by the said Samiti. However, the Assessing Officer passed the order u/s 201(1) read with 201(1A) dated 17.03.2017 holding the assessee bank to be in default for non deduction of TDS on interest on FDR amounting to Rs. 1,79,252/-. It was further submitted that the assessee moved an appeal against the said order before the Id. CIT(A) who has since decided the matter in favour of the assessee and has allowed the appeal so filed by the assessee. It was accordingly submitted that where the order passed u/s 201(1) read with 201(1A) has been held null and void being barred by limitation by the Id CIT(A), the consequent levy of penalty u/s 271C deserves to be set aside.

3. Per contra, the Id. DR is heard who has relied on the order of the lower authorities.

4. We have heard the rival contentions and perused the material available on record. In this case, the Assessing Officer passed the order u/s 201(1) read with 201(1A) dated 17.03.2017 holding the assessee to be in default for non-deduction of TDS on interest paid to Jaipur School Samiti. The said order has been challenged by the assessee before the Id. CIT(A) who has decided the matter vide order dated 01.04.2019 holding that the order so passed by the Assessing Officer is time barred and therefore, null and void and the appeal of the assessee has been allowed. The relevant findings of the Id. CIT(A)-3, Jaipur read as under:-

"4.3 I have carefully considered the observation made by the Assessing Officer and submission filed by the A/R of the appellant. Therefore in view of the submission filed by the A/R of the appellant this order is time barred. Accordingly, I treat this order is null and void. This additional ground is allowed.

5. There is no need to adjudicate the other grounds because the order has been treated as null and void."

5. Apparently, the Id CIT(A) has confirmed the levy of penalty u/s 271C vide the impugned order dated 28.01.2019 and didn't have the benefit of order passed in the appellate proceedings u/s 201(1) read with 201(1A) which has been disposed off subsequently on 01.04.2019.

6. In view of the above, we find that the order of the Assessing officer u/s 201(1) read with 201(1A) holding the assessee to be in default for non-deduction of TDS has been held as null and void and has attained finality and thus, in effect, there is no order where the assessee has been held guilty of non-deduction of TDS. Even in the penalty order so passed by the Add. CIT(TDS), he has relied on the findings of the AO in the order passed u/s 201(1) read with 201(1A) while levy the penalty. Further, we find that the assessee has relied on Form 15G filed by the Jaipur School Samiti and basis the same, has not deducted the TDS. In light of the aforesaid facts and circumstances of the present case, we therefore find that there was reasonable cause for non-deduction of TDS and the levy of penalty u/s 271C deserves to be set aside. We accordingly set aside the penalty u/s 271C of the Act and Ground No. 1 is decided in favour of the assessee.

7. Ground No. 2 is dismissed as not pressed by the assessee.

In the result, appeal of the assessee is allowed.

Order pronounced in the Open Court on 29/09/2020.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 29/09/2020

*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Bank of India, Vidhyadhar Nagar, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 5(5), Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 434/JP/2019}

आदेशानुसार / By order,
सहायक पंजीकार / Asst. Registrar