

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM
ITA Nos.246 & 323/SRT/2019
(Assessment Year: 2009-10)
(Physical Court Hearing)

Bank of India, Surat Ghod Dod Road Branch, Ground Floor, Nr. BSNL Office, Ghod Dod Road, Opp. Panjarapole, Surat-395001	Vs.	Deputy Commissioner of Income-tax, TDS Circle, Surat, Room No.401, 4 th Floor, Anavil Business Center, Adajan-Hazira Road, Surat-395009 Income Tax Officer (TDS-1), Surat, Room No.402, 4 th Floor, Anavil Business Center, Adajan-Hazira Road, Surat- 395009
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAACB 0472 C		
(Appellant)		(Respondent)

ITA Nos.247 & 248/SRT/2019
(Assessment Years: 2010-11 & 2011-12)

Bank of India, Surat Ghod Dod Road Branch, Ground Floor, Nr. BSNL Office, Ghod Dod Road, Opp. Panjarapole, Surat-395001	Vs.	Deputy Commissioner of Income-tax, TDS Circle, Surat, Room No.401, 4 th Floor, Anavil Business Center, Adajan-Hazira Road, Surat-395009
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAACB 0472 C		
(Appellant)		(Respondent)

निर्धारिती की ओर से /Assessee by : Shri Pankaj R Gupta, CA

राजस्व की ओर से / Revenue by : Shri Vinod Kumar, Sr. DR

सुनवाईकीतारीख/ **Date of Hearing** : 11/11/2022

घोषणाकीतारीख/**Date of Pronouncement:** 21/11/2022

आदेश / ORDER

PER BENCH:

1. Captioned four appeals filed by the assessee, pertaining to Assessment Years (AYs) 2009-10 to 2011-12, are directed against the separate orders passed

by the Learned Commissioner of Income Tax (Appeals)-3, Surat [in short “Ld. CIT(A)”] dated 12.10.2017 and 15.06.2018, in which in turn arise out of separate assessment orders passed by the Assessing Officer under section 201(1) r.w.s 201(1A) of the Income Tax Act, 1961, (hereinafter referred to as “the Act”) dated 30.03.2016, 31.03.2016, 30.03.2017 & 14.03.2017 respectively.

2. Since, the issues involved in all the appeals are common and identical except variance of amount; therefore, these appeals have been heard together and a consolidated order is being passed for the sake of convenience and brevity. The grounds as well as facts narrated in ITA No.246/SRT/2019 for assessment year 2009-10 have been taken into consideration for deciding these appeals *en masse*.
3. The grounds of appeal raised by the assessee in “**lead**” case in ITA No.246/SRT/2019, are as follows:

“1. Whether, on facts and in circumstances of the case and in law, Ld. Assessing Officer has erred in levying demand of tax and interest of Rs.1,54,368/- u/s 201(1) r.w.s. 201(1A) of the Act?”

4. The assessee vide its application dated 04.11.2022 has raised additional grounds, on legal issue, which are reproduced below:

“1. Para 1 request for admitting the new ground of appeal, if any:

For the grounds of appeal, we understand that the same are covered by the grounds which were raised earlier in the first appeal, thus, the same can be heard by the Hon'ble ITAT also.

Para 1.1 judicial discipline for admitting question of law as additional ground of appeal-

Without prejudice to what has been stated above and also as abandon caution, we also would like to request your honor that otherwise also if facts are available on record then question of law can be raised at any stage of appeal.

Thus, the ground of appeal is purely a question of law and the material for the same is already available on record. In this regards, on background of many judicial pronouncements, we understand that Hon'ble Income Tax Appellate Tribunal has vide power to entertain the additional ground though not raised earlier.

For our above contention that the additional ground can be entertained by the Hon'ble ITAT though not raised earlier, we rely on the following judgments:

- (i) *Jute Corporation of India vs. CIT [1991] 187 ITR 688 (SC)*
- (ii) *CIT vs. Nirbheram Daluram [1997] 91 Taxman 181 (SC)*
- (iii) *CIT vs. Gokuldas & Commission. [2002] 122 Taxman 849*

With this background, we humbly request your honour to entertain the ground for the sake of the justice to the assessee."

5. On perusal of records, we find that impugned orders were passed by Ld. CIT(A) on 12.10.2017 and 15.06.2018 respectively. However, assessee's two appeals in ITA No.246 and 247/SRT/2019 filed on 15.05.2019, thus there was delay of 505 days and 258 days respectively. The assessee has filed an affidavit of Branch Manager of Bank of India, Surat. In the application of condonation of delay, the applicant / assessee has contended that assessee is a Public Sector Bank and all the branches are entrusted power relating to that banking business only. The power relating to income tax proceedings and taxation matter are not delegated at the branch level. The Branch Manager has to follow the proper channel for approval and to send the request to Chief Manager / General Operations Department / Zonal Office at different places. The taxation matters are approved by Zonal Office at Vadodara which in turn required further approval from Head Office at Mumbai. In seeking such approval there were certain delays in getting the proper approval which are based on legal advice. The assessee stated that delay in filing both appeals were neither intentional nor deliberate but due to the administrative approval at different levels.

6. The Ld. Authorized Representative (AR) for the assessee made his submission on similar line as contended in the application for condonation of delay. The Ld. AR for the assessee submits that the delay was neither intentional nor deliberate. The assessee is a Public Sector Bank and it has a good case on merit and is likely to succeed in case both the appeals are admitted for consideration on merit. The assessee suffers irreparable loss if the assessee will not get any benefit in filing the appeals rather there is always chance of dismissal of appeal for technical reasons. The Ld. AR for the assessee submits that considering the aforesaid factual backgrounds and keeping in view that delays were neither intentional nor deliberate therefore, the same may be condoned. To support his submission, Ld. AR for the assessee relied upon the following decisions of Hon'ble Supreme Court and the order of co-ordinate Bench of this Tribunal:

- (i) *N. Balakrishnan Vs. M. Krishnamurthy* AIR [1998] 7 SC 124 (SC)
- (ii) *Collector, Land Acquisition vs. Mst. Katji* [1987] 167 ITR 471 (SC)
- (iii) *State Bank of India vs. JCIT(TDS), Surat* [ITA No.50-58 and 73-77/SRT/2019]

7. On the other hand, Ld. Senior Departmental Representative (Sr.DR) for the Revenue strongly objected against the submissions made by Ld. AR for the assessee. Ld. Sr-DR for the Revenue submits that if the assessee could file both the appeals before Ld. CIT(A)/First Appellate Authority after taking all similar approval from their senior officers then why such delay for filing both the appeals occurred, when the appeals were filed before Tribunal. The assessee-bank has not explained the proper delay in filing its both appeal and no specific reasons are disclosed in the respective application for

condonation of delay. The delay is inordinate and therefore should not be condoned.

8. We have considered the rival submission of both the parties and have gone through the application of condonation of delay, which is supported by an affidavit of Bank Manager. It is admitted fact that appellant is a Public Sector Bank and it is also a matter of fact that each and every Branch Manager is not delegated power by Board of Directors to take appropriate steps for filing appeal before various statutory authorities in tax matters. It is the case of assessee-bank that they obtained approval from Zonal Office which was further approved by Head Office of Mumbai. The assessee-bank has also contended that delay in seeking approval was neither intentional nor deliberate. Considering the aforesaid fact and keeping in view that assessee is a Public Sector Bank and interest of public as well as Central Government is involved, therefore taking a liberal approach that delay occurred in seeking the appropriate approval at different levels of hierarchy in the assessee's banking system. Further we are of the view that when technical consideration and cause of substantial justice are fitted against each other the cause of substantial justice must prevail. Therefore, in view of the aforesaid discussion, we are of the view that where technical consideration are pitted against the cause of substantial justice, the cause of substantial justice must be prevailed as held by Hon'ble Apex Court in the case of Collector of Land Acquisition vs. Mst. Katiji and Others reported in (1988) 167 ITR 471 (SC) and the delay in filing both the appeals are condoned and both the appeals are accepted for adjudication on merits.

9. Now adverting to consideration of additional ground of appeal. The assessee filed application dated 04.11.2022 and has raised the additional ground of appeal that the order passed by the Assessing Officer is barred by limitation. The Ld. AR for the assessee submits that no additional facts are required to bring on record for adjudicating of additional ground of appeal. The facts in leading to adjudication of additional grounds are emanating from the various dates and facts available in the orders of lower authorities. The additional ground of appeal is legal in nature.
10. On the other hand, Ld. Sr-DR for the Revenue submits that no such ground of appeal was raised by assessee before First Appellate Authority / Ld. CIT(A), therefore such additional ground of appeal may not be admitted.
11. In short rejoinder submission, Ld. AR for the assessee submits that additional ground of appeal goes to the root of the case and as such no new fact is required to be brought on record. The legal plea can be raised at any stage if it goes to the root of the case.
12. We have considered the submission of both the parties and perused the nature of additional ground of appeal. We find that the assessee has raised purely legal issue, which goes to the root of the matter and no further facts are to be brought on record and all the facts are emanating from the record of lower authority. Therefore, in the light of ratio laid down by the judgment of Hon'ble Apex Court in the case of *National Thermal Power Corporation vs. CIT* (1998) 229 ITR 382 (SC), we admit the additional ground raised by the assessee emanating from the orders of lower authorities.

13. Now adverting to the facts of the case. As we have recorded above facts in assessee's appeal in **ITA No.246/SRT/2019** which is treated as "**lead**" case, we are referring the facts of that case. Brief facts of the case are that assessee is a Government Bank engaged in banking activities.
14. The Assessing Officer / ITO (TDS-DCIT) made a spot verification in the office of Deputy Zonal Manager, Bank of India, Surat on 29.02.2016. During the course of such verification, the Assessing Officer found certain anomalies relating to acceptance of Form 15H / 15G by the bank branches from their customers. The Assessing Officer noted that Tax Deducted at Sources (TDS) was not being deducted under section 194A where Form No. 15G / 15H were submitted by such customers irrespective of payment of interest involved being more than basic exemption limit for respective years. The Assessing Officer found that interest of more than Rs.1.50 lakhs for normal citizens and Rs.2.25 lakhs for senior citizens were paid to various customers but tax was not deducted. The Assessing Officer identified that on the Ghod Dod Road branch, the TDS were not deducted from the interest amount of the following persons:-

Customer ID	Customer Name	PAN No.	Interest Amount	TDS
7634478	Ashish Varma	ABCPV1708R	200094	NIL
7630261	Kunjgali Trust	AAATK6189J	250929	NIL
121496103	Revaben Ramanbhai Patel	AAMPP3108Q	222525	Nil
7631781	Sanskriti	AABKS2613Q	160865	Nil
	GRAND TOTAL		834412	

15. On the basis of such discrepancies, the Assessing Officer issued show cause notice as to why order under section 201(1) r,w,s, 201(1A) for recovery of tax and interest on TDS amount should not be passed. The Assessing Officer

noted that no compliance was made against such show cause notice. The Assessing Officer accordingly passed order under section 201(1) for non-deduction of tax and created a demand of Rs.83,442/- in the following manner:-

Sr. No.	Payee of interest	Amount of interest paid	TDS to be deducted @ 1%	TDS deducted	Demand u/s 201(1)
1	Ashish Varma	200094	20009	0	20009
2	Kunjgali Trust	250929	25093	0	25093
3	Revaben Ramanbhai Patel	222525	22253	0	22253
4	Sanskriti	160865	16087	0	16087
	Total	83413	83442	0	8342

16. The Assessing Officer also worked out the interest @ 1% per month till passing the order and worked out interest of Rs.70,926/-. Thus total demand of Rs.1,54,368/- was credited vide order dated 30.03.2016.

17. Aggrieved by the order of Assessing Officer / DCIT(TDS), the assessee filed an appeal before Ld. CIT(A). Before Ld. CIT(A) the assessee filed its written submission, which recorded in **page-6** of the order of Ld. CIT(A). In the submission, the assessee stated that assessee is a Government Public Sector Bank, engaged in the banking activities. The assessee-bank takes deposits from its customers and also provided loan and other banking services to its customers. The Assessing Officer / DCIT(TDS) done a spot verification on Deputy Zonal Manager Office, Bank of India, Ghod Dod Road, Surat on 29.02.2016. During the course of verification various anomalies from the record, it was found that the bank statement as taken fixed deposits interest from any customers and has not deducted TDS in the financial year exceeding the basic exemption. The assessee further stated

that at the time of deposits, the customers filed Form 15G / 15H for non-deduction of TDS up to basic exemption limit. Further there was no interest payment being exceeded the basic exemption in case the assessee-bank is using finacle software system and did not deduct the TDS on interest payment. The assessee-bank also furnished the party-wise details.

18. The Ld. CIT(A) after considering the submission of assessee upheld the order of Assessing Officer / DCIT(TDS) with the direction to verify the Form-15G / 15H and in case where the interest payment is below Rs.1.80 lakhs, the assessee should not be treated as default and in the case where the depositors of senior citizens, in their case the exemption limit for assessment year 2009-10 is Rs.2.25 lakhs. Hence, the assessee-bank cannot be held in default. Further in the cases wherein payees had filed their income tax return and included the interest income in their taxable income and the assessee-bank is seeking benefit of First proviso of Section 201(1) of the Act and provided certificate from accountant in the prescribed Form 26A. As such proviso was inserted by Finance Act, 2012 with effect from 01.07.2012. Therefore, in such cases, the assessee will not get benefit of this proviso and in such cases, the demand was confirmed. In other category of case, whereas the certificate under section 197 for lower deduction or nil deduction is submitted no liability can be fastened on them. The Ld. CIT(A) also in other / 5th category of cases held wherein more than basic exemption limit and the payees have furnished more than one Form 15-G / 15-H and due to some lacunae in software of the assessee-bank, the system allotted different Customer Identification Folio No. (CIF in short). The Ld. CIT(A) held that

such explanation cannot be a reason for exemption from liability of deducting tax. Thus, in case where interest payment is more than basic exemption limit, the action of Assessing Officer / DCIT(TDS) was confirmed. Further aggrieved the assessee has filed present appeal before this Tribunal.

19. We have heard the submission of Ld. Authorized Representative (AR) for the assessee and the Ld. Senior Departmental Representative (Sr-DR) for the Revenue and have gone through the orders of lower authorities carefully. The Ld. AR for the assessee submits that assessee furnished the statement of different quarters in Form No.26Q for assessment year in the following manner: -

Financial year	Quarter	Form No.	Provisional receipt No.	Date of filing
2008-09	Q1	26Q	023550200027340	15.07.2008
2008-09	Q2	26Q	023550200054356	27.10.2008
2008-09	Q3	26Q	023550200074553	30.10.2009
2008-09	Q4	26Q	023550200102262	22.05.2009

20. On the basis of aforesaid detailed contention, the Ld. AR for the assessee submits even for the purpose of collecting tax at source, the time period for passing order under section 201, the limitation period is prescribed under section 201(3) of the Act, at the relevant time, wherein statement in the prescribed form was furnished, the time limit was two years from the end of financial year in which statement under section 200 was furnished. The assessee-bank furnished last statement of TDS other than salary for financial year 2008-09 is on 22.05.2009. Thus Assessing Officer / DCIT(TDS) was required to pass order on or before 31.03.2012. The Assessing Officer /

DCIT(TDS) has passed order under section 200(1) on 30.03.2016, which is apparently beyond the time limit prescribed under 200(3)(i). The Ld. AR for the assessee submits that details of statement of all quarters are filed at pages-7 to 10 of the paper book. The Ld. AR for the assessee submits that the order was passed beyond the time limit. Therefore, the assessee is liable to succeeds on additional / legal grounds of appeal. To support his contention, the Ld. AR for the assessee relied upon the decisions of Co-ordinate bench of this Tribunal in case of State Bank of India, Vyara Branch vs. ACIT (CPC) Ghaziabad in ITA Nos. 3419-3420/AHD/2016 and in the case of State Bank of India, Ahwa Branch vs. ACIT (CPC) Ghaziabad in ITA Nos 3421-3423/Ahd/2016 dated 03.02.2020; ITAT Mumbai Benches in the case of Sodexo SVC India Pvt. Ltd. vs. DCIT (TDS) 2(2), Mumbai dated 06.03.2019; Hon'ble jurisdictional High Court in the case of Tata Teleservices vs. Union of India [2016] 66 taxmann.com 157 (Guj); in the case of Troikaa Pharmaceuticals Ltd. vs. Union of India [2016] 68 taxmann.com 229 (Guj) and decision of Co-ordinate Benches of this Tribunal in the case of State Bank of India Administrative Office, Surat vs. ITO (TDS-2) Surat in ITA No.881-883/Ahd/2016/SRT dated 20.03.2018.

21. On the other hand, Ld. Sr-DR for the Revenue submits that the submission of Ld.AR for the assessee is misplaced, the assessee after filing quarterly statement, has revised their statement on different dates as evident from the submission of assessee filed on 31.08.2022, wherein the assessee-bank itself has given the details on the following manner:-

FY	Period	Form	PR No.	Date of filing
2008-09	Q4	26Q	080640200028124	19.12.2012
2008-09	Q4	26Q	080640200028135	19.12.2012
2008-09	Q4	26Q	080640200038650	08.06.2013
2008-09	Q4	26Q	091379600068385	05.06.2014
2008-09	Q4	26Q	091379600225605	14.08.2015
2008-09	Q4	26Q	091379600225616	14.08.2015
2008-09	Q3	26Q	091379600226073	18.08.2015
2008-09	Q3	26Q	091379600226084	18.08.2015
2008-09	Q2	26Q	067959600292990	30.04.2021
2008-09	Q2	26Q	067959600296070	04.05.2021

22. The Ld. Sr.DR for the Revenue while inviting our attention on such revised statement submits that assessee-bank itself is revising their statement upto 4th May, 2021. Thus, the time period for passing assessment order under 201(3) may be counted for the last revised statement, since the assessee-bank is revising its own statement and it was lastly revised on 04.05.2021. Therefore, the assessment order passed by the Assessing Officer / DCIT(TDS) in the year 2016 is well within the time and cannot be treated as barred by period of limitation.
23. In rejoinder, the Ld. AR for the assessee submits that assessee-bank made a minor rectification in such statement which has no material bearing on the amount of tax liability or TDS with the Revenue which are the amount of correction carried out is also not the material and are quite negligible. Such fact is asserted by assessee-bank itself while making such submission. The Ld. AR for the assessee further submits that ITAT Mumbai Benches in the

case of Sodexo SVC India Pvt. Ltd (supra) while considering the similar submission of Revenue has held that such corrections are minor negligible and definite period passing the order under section 201(1) / 201(1A) cannot be revised.

24. We have considered the rival submission of both the parties and have gone through the orders of lower authorities carefully. We have also deliberated on various case law relied by the Ld. AR for the assessee. We find that statement of quarterly Nos.1 to 4 for assessment year 2008-09 is filed by assessee on 15.07.2008, 27.10.2008, 30.01.2009 and 22.05.2009 respectively. Admittedly, the last statement of last quarter (Q4) was furnished by assessee on 22.05.2009 a time period for passing assessment order under section 201(1A) as per the time period for passing order at the relevant period, was two years from the end of financial year in which statement under section 200 was filed. Since the last statement was filed by assessee on 22.05.2009, the Assessing Officer / DCIT(TDS) could pass the order upto 31.03.2012. However, the Assessing Officer / DCIT(TDS) passed assessment order on 30.03.2016, which is apparently barred by period of limitation.

25. We find that similar view was taken by Co-ordinate Bench of this Tribunal in the case of State Bank of India Vyara Branch (supra) and ITAT Mumbai Benches in the case of Sodexo SVC India Pvt. Ltd. (supra). So far as objection of Ld. Sr-DR for the Revenue is concerned that assessee was revising their statement and the time period prescribed under section 201(3) has to be calculated from the last revised statement, we find that on similar

submission, the Hon'ble ITAT Mumbai Benches in the case of Sodexo SVC India Pvt. Ltd. (supra) while considering the similar objection of Revenue held that such correction was in the form of rectification was very meager which were pitted in the information like PAN or the details of authorized signatory or details of CFO of the assessee. Such changes have no bearing on the amount on TDS / or deposited or likely to be deposited with this Revenue. Such correction made by way of rectification re negligible. Therefore, we do not find any substance in the submission made by Ld. Sr-DR for the Revenue. Therefore, the appeal of assessee is allowed on legal position / additional ground of appeal.

26. Considering the fact that we have allowed the appeal of assessee on legal / additional ground of appeal, therefore adjudication on merit of the addition have become academic.

27. In the result, assessee's appeal in ITA No.246/SRT/2019 is allowed.

Coming to assessee's appeals ITA No.247 & 248/SRT/2019 (A.Y 2010-11 & 2011-12)

28. In both assessee's appeals has raised similar additional grounds of appeals. For appreciation of fact, we have already narrated above in para-8 to 10 of this order which are not repeated here for the sake of brevity.

Date of filing last quarter petition	AO should have passed order u/s 201(1)/201(1A)	Order passed by AO which is time barred
22.05.2009	31.03.2012	30.03.2016
06.09.2010	31.03.2013	14.03.2017

29. Taking a principle of consistency, both appeals of assessee are allowed with similar observation in assessee's appeal ITA No.246/SRT/2019, we allow both the assessee's appeals.

30. In the result, assessee's both appeals are allowed.

Coming to assessee's appeal in ITA No.323/SRT/2019 A.Y. 2009-10.

31. The assessee has filed additional evidence with the plea to admit the additional evidence with regard to Form 26A on the issue that as per the First proviso to Section 201(1) of the Act, the recipient of interest income has included the interest income in their income and has paid the tax thereon. Therefore, no liability may be settled on the assessee-appellant. Considering the principles of consistency we have allowed the appeals of assessee in ITA No.246 to 248/SRT/2019 on additional / legal ground of appeals, therefore considering the fact and adjudication of additional evidence filed by assessee have become academic. And this appeal is also allowed on legal / additional ground of appeal as the order under section 201(1) & 201(1A) was also passed on 31.03.2016, which was passed beyond the time limit applicable at the relevant period.

32. In the result, assessee's appeal is allowed.

33. In combined result, all the four appeals filed by the assessee are allowed.

A copy of the instant common order be placed in the respective case files.

Order is pronounced on 21/11/2022 by placing result on Notice Board.

(PAWAN SINGH)
JUDICIAL MEMBER

(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सुरत /Surat

दिनांक/ Date: 21/11/2022

Dkp Outsourcing Sr.P.S

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS
ITAT, Surat