IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR BENCH

(At e- Court, Pune)

BEFORE SHRI R.S.SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No.277/Nag/2022
Assessment Year : 2012-13

Bank of India, Hingna Branch, Nagpur Zonal Office, 3rd Floor, CSD Dept., Kingsways, Nagpur – 440 001, Maharashtra PAN : AAACB0472C	Vs.	DCIT (TDS), Circle-1, Nagpur
Appellant		Respondent

Assessee by : Shri Pratik Sadrani &
Shri Hardik Chordia
Revenue by : Shri Sanjay Agrawal

सुनवाई की तारीख / Date of Hearing : 23.08.2023
घोषणा की तारीख / Date of Pronouncement : 28.08.2023

आदेश / ORDER

PER R.S.SYAL, VP:

This appeal by the assessee arises out of the order dated 28-07-2022 passed by the CIT(A) in National Faceless Appeal Centre (NFAC), Delhi u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2012-13.

2. The only issue raised in this appeal is against the confirmation of the order passed by the Assessing Officer (AO) u/s.201(1)/201(1A) of

the Act treating the assessee in default for non-deduction of tax at source u/s 194A on interest paid/credited to its customers along with interest thereon and also non-condonation of delay by the ld. CIT(A) in presenting the appeal before him.

3. Briefly stated, the facts of the case are that the assessee is a Nationalised Bank engaged in the banking business. Section 194A mandates that tax has to be deducted at source in respect of interest paid/credited to the account of the customers. A spot verification in some branches of the assessee bank was conducted in March, 2016 and default in compliance was found anent to the TDS provisions under the section. Information was collected from Zonal office as regards the branches paying/crediting interest to customers' accounts, for an amount in excess of the basic exemption limit, without deduction of tax at source on receiving Form Nos.15G/15H. On perusal of such information, the AO noted four cases, as tabulated on page 4 of his order, where interest paid was more than the basic exemption limit but no deduction of tax at source was made on receiving Form Nos.15G/15H. After considering the reply and getting partially satisfied, the AO held the assessee to be in default u/s.201 to the tune of Rs.1,90,801/-.

4. The assessee filed appeal before the ld. CIT(A) which was delayed by 633 days. After granting credit in respect of Corona period, the ld. CIT(A) observed that still there was delay of 324 days. The assessee tendered explanation in support of the delay, as has been recorded in the impugned order as well. Not satisfied, he did not condone the delay and dismissed the appeal on this score. Without prejudice, he also discussed the issue on merits rejecting the assessee's contention that the order passed by the AO u/s.201(1)/201(1A) was time barred and also that the AO was not right in treating the assessee in default. Aggrieved thereby, the assessee is in appeal before the Tribunal.

5. We have heard the rival submissions and gone through the relevant material on record. The extant appeal came to be dismissed by the ld. CIT(A) primarily on the ground of delay on presentation. He did not agree with the assessee's contention of reasonable cause. The Pune Tribunal has dealt with a similar issue of delay in preferring appeal before the Tribunal in the case of Bank of India, Dongargaon Branch VS. DCIT (TDS) in ITA No. 337/Nag/2022 and others. The delay has been condoned vide order dated 23.08.2023 holding that there was a reasonable cause in presenting the appeal belatedly before the ld. CIT(A). Both the sides are in agreement that the facts and

circumstances of the appeal under consideration are similar to those of the above referred order. Following the similar view, we condone the delay in presenting the appeal before the ld. CIT(A).

6. The next issue raised in this appeal is about the limitation for passing of the order u/s 201(1)/(1A). The claim of the assessee is that the order passed by the AO was time barred in view of the provisions contained in section 201(3)(i) as per which if the statement is filed, then the time limit for passing of the order would be two years from the end of the relevant assessment year in which the statement is filed. For this proposition, he relied on the above Pune tribunal order in its own case holding the order to be barred by limitation. Per contra, the ld. DR contended that the time limit for the year under consideration would be governed by the amendment made to section 201(3) by the Finance (No.2) Act, 2014 w.e.f. 01-10-2014.

7. Section 201(3), prior to its substitution by the Finance (No.2) Act, 2014 w.e.f. 01-10-2014, provided a time limit of two years from the end of the financial year in which the statement referred to in section 200 has been filed. The afore noted order of the Pune Tribunal in the case of the assessee related to the Financial years 2009-10 and 2010-11 and the Tribunal held the orders u/s 201(1) as time barred by noting that the period of two years from the end of the financial year in which the statement for

the last quarter was filed, expired prior to 1.10.2014, being, the date from which the substituted sub-section (3) came into existence. Instantly, we are dealing with the financial year 2011-12. The statement for the last quarter in this case was filed on 15.5.2012. A period of two years from the end of the financial year in which the last statement was filed expires on 31.3.2015. By that time, the substituted sub-section (3) has already come into place. Hence the case gets covered under the substituted provision.

8. The substituted sub-section (3) of section 201 w.e.f. 01-10-2014 has done away with the two classifications in the earlier provision, viz., where the statement is filed by the person responsible and where no such statement is filed. The time limit under the substituted provision is seven years from the end of the financial year in which the payment is made or credit for the income is allowed. The order u/s 201(1)/(1A) came to be passed in this case on 27.3.2019, which is within a period of seven years from the end of the financial year in which the interest income was paid/credited to the customers' accounts. Such an order is clearly within the limitation period. Thus, the ground of limitation raised by the assessee does not stand. The same is, ergo, dismissed.

9. Now we take up the issue on merits about the liability of the assessee to deduct tax at source. The ld. AR contended that the assessee received Form Nos.15G/15H from the customers and as such

it was discharged from deducting tax at source. He relied on Explanation to section 191 to contend that the assessee may be treated as default only where the payees did not pay tax. It was submitted that the submission of Form Nos. 15G/15H by the depositors was sufficient enough to infer by the AO that the no tax was payable by them on the interest income. This was opposed by the ld. DR.

10. Before embarking upon the rival contentions on this score, it would be befitting to reproduce Explanation to section 191 as under :

> *"Explanation.*—For the removal of doubts, it is hereby declared that if any person including the principal officer of a company,—
>
> (*a*) who is required to deduct any sum in accordance with the provisions of this Act; or
>
> (*b*) referred to in sub-section (1A) of section 192, being an employer,
>
> does not deduct, or after so deducting fails to pay, or does not pay, the whole or any part of the tax, as required by or under this Act, and where the assessee has also failed to pay such tax directly, then, such person shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default within the meaning of sub-section (1) of section 201, in respect of such tax."

11. On going through the mandate of this Explanation, it gets overt that the person responsible for deduction of tax at source can be treated as assessee in default section 201(1) *in respect of such tax* only if he does not deduct or fails to pay thereafter AND the recipient *has also failed to pay such tax directly.* It is only upon the cumulative satisfaction of both the conditions that the person responsible can be

treated as assessee in default. If there is failure on the part of the assessee to deduct or pay after deducting the tax at source, but the recipient has paid such tax directly on the income, then the person responsible cannot be treated as an assessee in default. It is the primary responsibility of the deductor to deduct tax at source under the relevant provisions. When the person responsible fails to deduct tax at source or pay after deducting, he is to be treated as an assessee in default. The deductor is relieved from this obligation with the payee including such income in his total income and directly paying tax thereon. In the absence of the recipient paying tax directly, the obligation of the person responsible remains as it is. Another thing which follows from this Explanation is that where the assessee (i.e. the payee) has paid tax directly, the person responsible gets discharged from the obligation *in respect of such tax* u/s 201(1). It has no application *qua* the interest payable in terms of section 201(1A) of the Act.

12. Adverting to the facts of the instant case, it is found as an admitted position that the assessee did not deduct tax source on the interest payment made to its customers in respect of which it has been treated as an assessee in default u/s.201(1). However, there is no

material to show that the recipient also paid such tax directly. The contention of the ld. AR that on receipt of Form No.15G/15H, its obligation is discharged and the assessee cannot be treated as an assessee in default u/s.201(1), in our view, does not pass the scrutiny of the mandate of Explanation to section 191, which clearly provides that the recipient "*has also failed to pay such tax directly*". The requirement is to pay the tax directly and not simply furnish Form No.15G/15H. The bank will be discharged from the obligation of deducting tax at source when Form No. 15G/15H is filed only to the extent of the relaxation given section 197A.

13. At this juncture, it will be appropriate to take note of section 197A with the heading: `No deduction to be made in certain cases'. Sub-section (1) of section 197A provides that where the recipient furnishes a declaration in writing (Form no. 15G) in duplicate that the tax on his estimated total income in which such income is included in computing total income will be Nil, then there will be no obligation to deduct tax at source. Sub-section (1) of section 197A covers certain sections, which does not include section 194A. The latter section was there in sub-section (1) prior to its omission by the Finance Act, 1992 w.e.f. 01-06-1992. Simultaneous with such omission of section 194A

from section 197A(1), sub-section (1A) of section 197A came to be inserted by the Finance Act, 1992 w.e.f. 01-06-1992 including section 194A within its ambit and providing that no deduction of tax shall be made in the case of person (not being a company or firm) if such person furnishes to the person responsible for paying any income referred to in that section a declaration in writing to the effect that tax on his estimated income of the previous year in which such income is to be included in computing his total income, will be Nil. Sub-section (1B) has been inserted by the Finance Act, 2002 w.e.f. 01-06-2002 providing that the provisions of section 197A shall not apply where the amount of any income of the nature referred to in sub-section (1)/sub-section (1A), if the aggregate of the amount of such income credited/paid exceeds the maximum amount chargeable to tax. When we read sub-section (1A) in juxtaposition to sub-section (1B) of section 197A, it transpires that even if the tax on the estimated total income of the recipient including interest other than interest on securities will be Nil, but deduction of tax at source would still be required where the amount of interest income exceeds the basic exemption limit. Thus, on a harmonious construction of the above provisions, it is manifest that a bank can receive form no. 15G and need not deduct tax at source only in the cases, where the declaration is given that the tax liability on total

income including the interest income will be Nil provided the interest income does not exceed the basic exemption limit. But where the interest income exceeds the basic exemption limit, the bank needs to deduct tax at source notwithstanding the furnishing of declaration in Form No. 15G and the bank will be treated as assessee in default u/s 201(1), where not only it failed to deduct tax at source but the customer also failed to pay such tax directly. Reverting to the order u/s.201(1)/201(1A), it is seen that the AO took up only those cases for treating the assessee in default where the customers furnished Form No. 15G and the amount of interest income exceeded the basic exemption limit.

14. Further, sub-section (1C) of section 197A provides that notwithstanding anything contained, *inter alia,* in section 194A, no deduction of tax shall be made in the case of any individual resident in India who is of the age of 60 years or more at any time during the previous year and he furnishes a declaration (in Form No. 15H) to the person responsible that tax on his estimated total income, will be Nil. The age of 60 years has been substituted for the age of 65 years by the Finance Act, 2012 w.e.f. 01-07-2012.

15. The net effect of the Explanation to section 191, section 194A read with section 197A and 201 is that there will be *no obligation* to deduct tax at source on furnishing the necessary declaration by customers where either the interest income does not exceed the basic exemption limit or the depositor is more than the prescribed age and he furnishes the declaration that tax on his total income including interest from the bank will be Nil. In order to treat a person as assessee in default, firstly, there should be an obligation to deduct tax at source and despite such obligation, the person fails to deduct tax at source or pay after such deduction and further the payee has also not paid tax directly.

16. It is pertinent to note that the order has been passed by the AO u/s.201(1)/201(1A). The effect of Explanation to section 191 is that the payer cannot be treated as assessee in default in *respect of such tax* notwithstanding the non-deduction of tax at source, where the payee has paid the tax directly. The immunity on the payment of tax directly by the payee is only anent to default in respect of tax under section 201(1) and not 201(1A). In other words, even if the assessee is not be treated as in default on the recipient paying the tax directly, the assessee bank will still be under an obligation to pay interest

u/s.201(1A) for the period when the tax was deductible up to the time of payment of tax by the payee.

17. We summarize our conclusions in this order as under:

i. Delay in filing the appeal before the ld. CIT(A) is condoned.

ii. The order u/s 201(1)/(1A) is not time barred.

iii. The question whether the assessee is in default in terms of section 201(1) needs to be determined in the light of Explanation to section 191. Howbeit, the cases covered u/s 197A(1A) [i.e. the eligible person furnishing declaration in form No. 15G that his tax liability on total income, including the interest, will be Nil] but not hit by section 197A(1B) [i.e. interest income other than interest on securities as referred to in section 194A does not exceed the basic exemption limit], will at the outset be excluded from consideration as not entailing any obligation to deduct tax at source. Similarly, the cases covered u/s 194A(1C) [i.e. persons exceeding the specified age furnishing form No. 15H to the effect that tax on their total income including such interest will be Nil] will also be excluded.

iv. Interest u/s 201(1A) is payable by the assessee - even w.r.t. the cases where it is not in default in terms of Explanation to section

191 - from the date when the tax was deductible up to the date of filing of return by the payee including the interest income in his total income. However, the cases in which there is no obligation to deduct tax at source will not be considered for interest u/s 201(1A) of the Act.

18. In the ultimate conclusion, we set aside the impugned order and send the matter back to the AO for passing a fresh order u/s 201(1)/(1A) in the light of above directions. In case it is found that the recipients included such amount of interest in their total income, then the assessee should not be treated in default in terms of section 201(1). Needless to say, the assessee will be allowed adequate opportunity of hearing in such fresh proceedings.

19. In the result, the appeal is partly allowed for statistical purposes.

Order pronounced in the Open Court on 28th August, 2023.

Sd/-	Sd/-
(PARTHA SARATHI CHAUDHURY)	(R.S.SYAL)
JUDICIAL MEMBER	VICE PRESIDENT

पुणे / Pune; दिनांक / Dated : 28th August, 2023
Satish

<u>आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :</u>

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr.CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "नागपुर" बेंच, / DR, ITAT, "**Nagpur**" Bench
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	23-08-2023	Sr.PS
2.	Draft placed before author	28-08-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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