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Reserved on 29.10.2018

Delivered on 20.11.2018

Case :- INCOME TAX APPEAL No. - 225 of 2017

Appellant :- Union Bank Of India Ada Branch Jaipur House Agra

Respondent :- The Additional Commissioner Of Income Tax (Tds) Kanpur

Counsel for Appellant :- Suyash Agarwal

Counsel for Respondent :- C.S.C.,S.S.C. I.T.,Shubham Agarwal

And

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Appellant :- Union Bank Of India Ada Branch Jaipur House Agra

Respondent :- The Additional Commissioner Of Income Tax (Tds)

Counsel for Appellant :- Suyash Agarwal

Counsel for Respondent :- C.S.C.,Shubham Agrawal

Hon'ble Pankaj Mithal,J.

Hon'ble Ashok Kumar,J.

The assessee in these two appeals is the Union Bank of India, ADA Branch, Jaipur House, Agra.

The assessee Bank had various fixed deposits of the Agra Development Authority under different IDs for many years. It failed to deduct tax at source (TDS) and deposit the same with the Central Government for the financial years 2012-13 and 2013-14. Accordingly, penalty under Section 271 C of the Income Tax Act, 1961 (in short of the Act) amounting to Rs. 6,84,167/- and Rs. 13,23,794/-was imposed for the assessment years 2012-13 and 2013-14 respectively.

The aforesaid penalty for the year 2012-13 was affirmed and that of the assessment year 2013-14 was deleted by the CIT (Appeals).

In appeals to the Income Tax Appellate Tribunal, Agra Bench, Agra preferred by the assessee Bank for the assessment year 2012-13 and by the Additional Commissioner, Income Tax (TDS) Kanpur for the assessment year 2013-14, the tribunal dismissed the appeal of the assessee Bank and allowed that of the revenue.

In the net result, the order of penalty passed under Section 271 C of the Act for both the assessment years 2012-13 and 2013-14 stood affirmed.

Thus, aggrieved the assessee Bank has preferred these two appeals.

Both the appeals were admitted vide order dated 1.8.2017. The appeal in relation to the assessment year 2012-13 was admitted on the following two substantial questions of law:-

(i) *Whether the Tribunal was correct to confirm the penalty under Section 271 C of the Act in not deducting TDS on two ID's out of 9 ID's which has not found to be false or frivolous by the authority below when the error was bonafide not intentional; and*

(ii) *Whether the appellant having deposited the TDS on 01.03.2013 as soon as mistake was noticed and also the interest under Section 201 (1 A) of the Act having paid for delayed payment prior to the passing of the assessment order dated 15.03.2015under Section 201 (1)/201(1A) of the Act having paid for delayed payment prior to the passing of the assessment order dated 15.03.2015 under Section 201 (1)/201 (1A) of the Act, penalty was sustainable.*

The appeal for the assessment year 2013-14 was admitted on the following substantial questions of law:-

(i) Whether the ITAT was correct to restore the penalty of Rs. 13,23,794/- for the F.Y. 2012-13 and A.Y. 2013-14 when the appellant has deducted and deposited Rs. 5,86,720/- on 11.01.2013 and Rs. 7,73,075/- on 01.03.2013 totaling Rs. 13,23,794/- within the same financial year in view of sub-section (4) of Sectin 194 A of the Act; and

(I) Whether survey having taken place under Section 133A of the Act on 10.01.2013 can be presumed it that

TDS was deducted by the assessee on account of survey only ignoring that the TDS and deducted and deposited in the same financial year as such the penalty under Section 271C of the Act cannot be attracted and the penalty imposed was saved by the provision of section 273 B of the Act.

We have heard Sri Suyash Agrawal, learned counsel for the assessee Bank and Sri Subham Agrawal, learned counsel appearing for the revenue ie. Additional Commissioner of Income Tax (TDS) Kanpur.

Sri Suyash Agrawal argued that in respect of the assessment year 2013-14 tax at source on the FDRs of the Agra Development Authority was deducted before the close of the relevant financial year and was deposited on 1.3.2013 and the interest for the delayed payment was deposited on 15.3.2013. Therefore, in view of Sub-section (4) of Section 194 A of the Act there is no default which may attract penalty provision. Moreover, the Agra Development Authority had furnished certificates of exemption under Section 197 of the Act upto the financial year 2010-11 and as the assessee Bank had not been deducting tax at source on the interest income on its FDRs it bonafidely due to technical fault or error in programming of the computer system could not deduct tax for the relevant year in time. Thus, no penalty was leviable in view of Section 273 B of the Act.

In respect for the assessment year 2012-13 he submitted that though in this year tax at source was deducted and deposited a little later but as the said delay was bonafide in view of earlier certificates submitted under Section 197 of the Act by the Agra Development Authority, there was a reasonable cause for not deducting tax at source. Thus, no penalty could have been levied in view of Section 273 B of the Act.

Sri Subham Agrawal to counter the above submissions had argued that deduction and deposit of tax within the financial year concerned under Section 194 A (4) of the Act would not absolve the assessee Bank from its liability to pay interest and penalty for not

deducting and paying the tax in time. The deduction of tax at source in time and its payment under Section 194 A (1) of the Act is a distinct act then that of deduction of tax for adjustment under Section 194 A (4) of the Act. Since admittedly tax at source was not deducted and deposited within time, the assessee Bank is liable for interest as well as penalty both. The tribunal as of fact has not accepted the cause for the failure or delay in making deduction of tax at source to be reasonable. Therefore, Section 273 B of the Act has rightly not been applied.

In view of the respective submissions of the parties and in the light of the substantial questions of law on which the appeals were admitted, only the following two substantial questions of law actually arise in these appeals and it is on these two questions that the counsel for the parties have addressed the Court:-

(i)Whether in view of deduction and deposit of tax by the assessee Bank on the interest income of FDRs by adjustment under Section 194 A (4) of the Act before the close of the financial year relevant for the concerned assessment year, penalty under Section 271C of the Act could have been imposed on the appellant assessee ; and

(ii) Whether under the facts and circumstances of the case, as the Agra Development Authority for the earlier years had submitted certificates under Section 197 of the Act, there was a reasonable cause for the delay/failure to deduct tax at source on part of the assessee Bank so as to absolve it from penalty under Section 271 C of the Act in view of of Section 273 B of the Act?

Section 194 A of the Act provides that any person who is responsible for paying to a resident any income by way of interest shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash/cheque or draft whichever is earlier deduct income tax thereon at the rates in force.

The relevant part of Section 194 A (1) is reproduced herein below:-

> "**194 A (1)** *Any person, not being any individual 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."*

The expression ***at the time of credit of such income to the account of the payee*** used above are most relevant and material. It castes upon the person responsible for paying interest to deduct income tax thereon at the time of credit of such income to the account of the payee.

The aforesaid provision thus specifically stipulates that tax at source on interest has to be deducted at the time of credit of such income to the account of the payee. The time of crediting interest income to the account of the payee is the point of time for deducting tax at source on such income.

On the other hand, sub-section 4 of Section 194 A of the Act reads as under:-

> ***"194 A (4)*** *The person responsible for making the payment referred to in sub-section (1) may, at the time of making any deduction, increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year."*

The aforesaid sub-section enables the person responsible for making payment of interest as provided under Sub-section 1 of Section 194 A of the Act to make necessary adjustments for any excess or deficiency arising out of previous deduction or failure to deduct it during the financial year before the close of the relevant financial year. This is an enabling provision to adjust any discrepancy or shortcoming in deduction of tax on interest income during the year,but it does not shifts the time/point of deduction and

payment of such tax. In other words, the person responsible to make the payment of interest has been given latitude to adjust any short fall in previous deduction or failure in deduction to be adjusted by making appropriate deduction in the financial year.

The aforesaid provision does not envisage any shifting or change of time for making deduction of tax at source on the income of interest payable by the person concerned provided under Sub-section (1) of Section 194 A of the Act . The time for deduction of tax on interest income remains the same as contemplated under Section 194 (1) of the Act, ie, when the interest income is to be credited in the account of the payee or at the time of payment in cash/cheque or draft. Therefore, even if the assessee Bank makes any deduction in the financial year concerned by adjustment as provided under Sub-section (4) of Section 194 A (1) of the Act, it in no way legitimize the failure or shortage of not deducting the tax at source at the time it ought to have been deducted in accordance with Section 194 A (1) of the Act.

Section 201 of the Act provides for payment of interest on the delayed period on account of failure to deduct tax at source on interest income or for delay in making such deduction, whereas Section 271 C of the Act provides for imposition of penalty for such default.

In the instant case, we are not much concerned with the payment of interest on account of delay in deducting the tax at source on interest income but are only concerned with the imposition of penalty under Section 271 C of the Act due to non deduction of tax at source on interest income as contemplated by Section 194 A (1) of the Act.

Section 271 C of the Act provides that if any person fails to deduct whole or any part of the tax as required, then he shall be liable to pay by way of penalty a sum equal to the amount of tax which he has failed to deduct.

A bare reading of the aforesaid provision would reveal that the penalty is imposable where there is failure to deduct tax as required

to be deducted under section 194 (1) of the Act on interest income. The time of deduction of such tax is undisputedly the time at which interest is to be credited to the account of the payee or when it is paid in cash/cheque or draft.

In the present case it is not disputed that tax at source was not deducted by the assessee Bank at the time interest income was credited to the income of the payee ie., Agra Development Authority but was deducted and deposited subsequently though before the close of the financial year. Thus, apparently on account of non deduction of the tax at source at the time stipulated under Section 194 (1) of the Act, the assessee Bank became liable for penalty under Section 271 C of the Act.

Now the other aspect is if the assessee Bank could be exempted from penalty by applying the provision of Section 273-B of the Act provided the assessee Bank is able to satisfy that there was a reasonable cause for failure to deduct tax at source on the interest income.

Section 273 B of the Act provides that notwithstanding the provisions contained under Section 271 C of the Act no penalty shall be imposable upon the person or the assessee for any failure referred to in the aforesaid provision if the person or the assessee concerned proves there was reasonable cause for the said failure.

In this regard the assessee Bank contends that the failure to deduct tax at source on interest income in time was due to the fact that the Agra Development Authority had obtained certificates under Section 197 of the Act permitting the assessee Bank not to deduct tax at source on its interest income. It is in view of the above and the improper feeding in the computer system or updation of the software that the authorization was for limited period and not for the financial/assessment years concern that the assessee Bank could not deduct tax at source on interest income in the relevant period.

The tribunal has not found the aforesaid cause to be reasonable as in the earlier year no certificate under Section 197 of the Act was submitted by the Agra Development Authority and in that

year necessary feeding was done in the computer system and the deduction of tax at source was made on the interest income. Thus, there was no occasion to commit the mistake of not deducting tax at source on interest income in time in the relevant years.

It is pertinent to point out that due to certificates under Section 197 of the Act furnished by the Agra Development Authority no tax was deducted at source on the interest income in the Financial Year 2010-11 . The software was updated in the subsequent year with the result tax at source on interest income was deducted in the year 2011-12. Once the software was updated, there was no reason for any error in the subsequent year ie. 2012-13 and 2013-14.

The finding of the tribunal on the above aspect is a finding of fact and when the cause shown has not been found to be reasonable by the tribunal, it does not *inhers* this Court to take a contrary view and to accord the benefit of Section 273 B of the Act.

The various authorities cited by Shri Suyash Agrawal are not of any help in the facts and circumstances of the case and we do not consider it necessary to burden our judgment by discussing them as the appeals at hand can conveniently be decided on their own facts.

In view of the aforesaid facts and circumstances of the case, the two questions raised in these appeals are answered against the assessee Bank and it is held that deduction of tax at source on interest income before close of the financial year concerned as provided under Section 194 A (4) of the Act would not absolve the assessee Bank from penalty for not deducting the tax at source from the interest income of the Agra Development Authority at the time of credit of the said income in its account and that there was no reasonable cause on part of the assesee Bank for not deducting tax at source on the interest income of the Agra Development Authority so as to permit any benefit of exemption from penalty as envisaged under Section 273 B of the Act.

The appeals have no merit and are dismissed.

Order Date :- 20.11.2018
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