

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 5870/Del/2016
(Assessment Year: 2012-13)

Canara Bank, Main Branch, Railway Road, Gurgaon PAN: RTKC01324B	Vs.	DCIT TDS Gurgaon
(Appellant)		(Respondent)

Assessee by :	None
Revenue by:	Shri Mahesh Thakur, Sr. DR
Date of Hearing	17/06/2021
Date of pronouncement	26/07/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the Assessee against the order of the Id CIT(A)-I, Gurgaon dated 08.12.2015 for Assessment Year 2012-13.
2. The assessee has raised the following grounds of appeal:-
 - “1. The learned CIT(Appeals) did not took the facts and law of the case while rejecting the application for condonation of delay.
 2. The learned CIT(Appeals) has erred the law and facts of the case while rejecting the appeals.”
3. Brief facts of the case shows that the Assessee is a tax deductor, is a bank. A TDS inspection was conducted on 28.01.2014. During inspection statement of Chief Manager and Manager were recorded wherein, they have accepted that TDS on interest of term deposit is being made on annual basis and not on quarterly basis though such interest is being provided quarterly basis in the balance sheet. The Id AO after examination held that deductor is an “assessee in default’ u/s 201(1) for not making TDS on interest payment of Rs. 14,88,56,291/- and therefore, it was also liable to pay interest u/s 201(1A). Such order was passed on 24.03.2014. The total

amount of tax demand was raised of Rs. 3,74,10,430/- . Against this Assessee preferred an appeal before the Id CIT (A)-I, Gurgaon.

4. Subsequently, the Id AO passed an order u/s 154 of the Act on 18/09/2019 wherein, demand of only Rs. 21,28,983/- was found to be correctly raised. The above demand was pertaining to tax liability u/s 201(1) of Rs. 17,01,770/- and interest u/s 201(1A) of Rs. 4,27,213/-. The order u/s 154 was passed for the reason that the Assessee claimed that it has paid interest only of Rs. 38,63,89,663/- for FY. 2011-12 which was found to be correct. The Assessee stated that out of above interest Assessee deducted TDS on interest payment of Rs. 23,47,25,198/- only. Form No. 26Q of all the quarters were examined and found to be correct. The Assessee also submitted that a sum of Rs. 9,84,83,941/- were paid to the cooperative banks on which no tax is required to be deducted in view of the provision of section 194(3) of the Act and same was found to be correct. Further, the Assessee also submitted that it has not deducted tax at source when Form No. 15G and 15H were submitted by the depositor. The Id AO did not accept this issue and therefore, he noted that an interest of Rs. 1,70,17,701/- was paid where the Assessee claimed that it has received Form No. 15G and 15H. The Id AO held that the assessee should have deducted tax @10% of Rs. 17,01,770/- thereon so the Assessee is an “assessee in default u/s 201(1) to that extent and further interest u/s 201(1A) was computed at Rs. 4,27,213/-. Thus, the net demand of Rs. 21,28,983/- remained.
5. On appeal before the LD CIT (A) the Assessee contested the above issue also. The LD CIT (A) mentioned in para 6.2 of his order that the Assessee has taken only general grounds of appeal and there are no addition wise ground of appeal. But in the interest of justice, the entire submission of the appellant was considered in respect of entire demand of Rs. 3,74,10,430/- but at present remaining demand of Rs. 21,28,983/- in default pertaining to non submission of Form No. 15G and 15H accepted by the appellant bank and therefore, the facts and circumstances of the appeal have completely changed.
6. Before the LD CIT (A) the Assessee contested that all the form in Form No. 15G and 15H received by the deductor were also submitted to the department and therefore, tax was not deductible thereon. The Id CIT (A)

noted that the redrafting of ground of appeal after passing of the order u/s 154 of the Act by the ld AO is not acceptable because it amounts to substitution of appeal which was filed against the order dated 24.03.2014 demanding tax of Rs. 3,74,10,430/- that an appeal against the order of ld AO u/s 154 of the Act is not permissible. Further, he held that tax demand of Rs. 1,94,93,106/- which was attributed to non submission of Form No. 15G and 15H, further this is reduced to Rs. 21,28,983/- and according to him both these orders do not clarify as to which part has been accepted by the LD AO. Therefore, he held that the appeal deserves to be dismissed on this account.

7. This appeal has been fixed for hearing on 23.05.2019, 21.08.2019, 29.08.2019, 21.10.2019, 27.11.2019, 10.02.2020, 17.02.2020 and 04.03.2020 as well as on 09.02.2021; none appeared on behalf of the Assessee. Same is the fate on 17.06.2021. In view of this the appeal is decided in absence of the Assessee on the merits of the case as per the facts available on record.
8. The ld Sr. DR reiterated the finding of the ld CIT (A) and stated that the assessee should have filed an appeal against the order u/s 154 of the Act and therefore, this appeal is not maintainable.
9. We have carefully considered the contention of the ld DR and orders of the lower authorities. The fact clearly shows that original order passed u/s 201(1) and 201(1A) of the Act on 24.03.2014 where the Assessee was found to be an assessee in default and also charged interest thereon comprising all the above sum. The appeal before the ld CIT(A) was filed on 23.04.2013, subsequently, on 18.09.2015 the ld AO has rectified the mistake apparent in the order and thereafter reduced the demand from Rs. 3,74,10,430/- to only Rs. 21,28,983/-. Thus, during the pendency of the appeal, the LD AO has rectified his mistake and reduced demand substantially. The LD CIT (A) in fact instead of appreciating that the issue of dispute has reduced to a considerable extent before him took an unacceptable approach and dismissed the appeal of the Assessee on non sustainable ground as stated in para no. 6 of his order. The only issue before him was that the claim of the Assessee that the Assessee obtained Form No. 15G and 15H same were filed before the revenue but the AO did not believe this during the course of

passing of the order u/s 201(1A). The ld AO rejected the claim of the Assessee for the reason that though photocopies of all the form produced during the course of inspection as mentioned by ld AO at para No. 11 were available but claim was rejected only for the reason that no proper documentary evidence in support of having delivered this forms to CIT (A) was produced. So the only dispute was whether those forms were submitted before the ld CIT or not. The ld AO noted that Assessee has obtained form No. 15G and 15H from the depositors and filed though the interest paid to them was higher than the maximum chargeable to tax. But it is not the case that Assessee did not have form available with it. The ld CIT(A) at the time of disposal of the appeal did not appreciate that the first proviso inserted w.e.f. 01.07.2012 u/s 201 (1) of the act is applicable in the case of the Assessee and if the Assessee satisfy certain conditions, then it should not held to be an 'Assessee in default'. In fact this proviso is held to be applicable retrospectively by the Hon'ble Delhi High Court. Therefore, the benefit of this proviso should have been granted by the ld CIT(A) to the Assessee. Further, the ld CT(A) has categorically held that from the orders of the ld AO it is not discernable that how the tax demand of Rs. 3.74 crores was reduced to Rs. 21,28,983/-. In fact that is the error in the order of the ld AO. He should have computed the tax liability of the Assessee with utmost clarity. If the LD AO has not done his duty, the LD CIT (A) ought to have asked the LD AO for the remand report which he did not. Further, the ld CIT(A) in the order was also not correct in holding that the Assessee is not eligible to argue about the reduced demand after passing of the order u/s 154 of the Act and the Assessee should have filed a fresh appeal against the order passed u/s 154 of the Act. We are of the view that approach of the ld CIT(A) is pedantic not correct because it will put additional burden on the Assessee to cross the threshold of the provision of section 154 of the Act of being 'mistake apparent from the record'. By passing an order u/s 154 of the act, in fact ld AO has made the task of ld CIT (A) much simpler. In fact, the mistake is committed by the LD AO who should have charged the right demand of tax from the Assessee. Therefore, it is mistake of the LD AO for which the Assessee cannot be penalized. Looking to the facts and circumstances of the case, as the issue is with respect to non deduction of

tax at source on interest provision where Form No 15G and 15H are available with the Assessee or not available with the Assessee which can be verified by the ld DCIT TDS and correct demand could be raised, if there is any default after applying proviso to section 201(1A) of the Act. Therefore, in the interest of justice we set aside the appeal to the file of the LD AO with a direction to examine the Form No. 15G and 15H of the depositor to whom interest is paid and after the requisite conditions are satisfied, to delete the demand accordingly.

10. In the result appeal filed by the Assessee is allowed for statistical purposes. Order pronounced in the open court on 26/07/2021.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 26/07/2021
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	26.07.2021
Date on which the typed draft is placed before the dictating member	26.07.2021
Date on which the typed draft is placed before the other member	26.07.2021
Date on which the approved draft comes to the Sr. PS/ PS	26.07.2021
Date on which the fair order is placed before the dictating member for pronouncement	26.07.2021
Date on which the fair order comes back to the Sr. PS/ PS	26.07.2021
Date on which the final order is uploaded on the website of ITAT	26.07.2021
date on which the file goes to the Bench Clerk	26.07.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	