

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

Before Sh. Kul Bharat, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 3594/Del/2018 : Asstt. Year : 2007-08

ITA No. 3595/Del/2018 : Asstt. Year : 2008-09

ITA No. 3596/Del/2018 : Asstt. Year : 2009-10

The Kangra Co-operative Bank Ltd., Jain Khandelwal & Co., CA, 510, New Delhi House, 27, Barakhamba Road, New Delhi-110001	Vs	ACIT, Circle-62(1), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AAATT0361M		

Assessee by : Sh. S. L. Gupta, CA

Revenue by : Ms. Alka Gautam, Sr. DR

Date of Hearing: 25.08.2021

Date of Pronouncement: 01.09.2021

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee against the orders of Id. CIT(A)-20, New Delhi dated 28.02.2018 and 28.03.2018.

A.Ys. 2007-08 & 2008-09

2. As per the revenue, the assessee has paid advance tax on 18th September, 18th December and 17th March whereas the due date for payment of advance tax was 15th September and 15th

March. Accordingly, the revenue charged interest u/s 234B and 234C for default in payment of advance tax.

3. The assessee contended that the amounts have been indeed paid on 15th September, 14th December and 14th March. The assessee has submitted certificate from the Punjab National Bank that the cheques issued by the assessee have been deposited and sent for clearing on the same date (i.e. before 15th) but were cleared after the due date (17th and 18th). Hence, he argued that the assessee was not liable to pay interest for default of payment of advance tax. The Id. AR also relied on the Circular No. 676 of CBDT dated 14.01.1994.

4. We have gone through the circular which is reproduced as under:

"SECTION 211 INSTALMENTS OF ADVANCE TAX

1197. Whether, in case last day for payment of any installment of advance tax is day on which receiving bank is closed, assessee can make payment on next immediately following working day, and in such cases mandatory interest leviable under sections 234B and 234C would not be charged.

1. Representations have been received by the Board seeking waiver of interest chargeable under sections 234B and 234C of the Income-tax Act, 1961 for default in payment of installments of advance tax by the due dates which are prescribed under section 211 of the Income-tax Act. In cases where the last date for making payment of such installments (i.e., 15th September, 15th December and 15th March) happens to be a holiday and the assessee pays the due amount of advance tax on the next working day.

2. The matter has been carefully considered by the Board and it is felt that in such cases section 10 of the General Clauses Act, 1897 will be

applicable. This section lays down that where any Act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office (in the present case the bank which is authorized to receive payment of advance tax from the assessee) is closed on that day or on the last day of the prescribed period, the Act or proceeding shall be considered as done or taken in due time after it is done or taken on the next day, afterwards, on which the Court or office (or the bank) is open.

In view of this provision, it is hereby clarified that if the last day for payment of any installments of advance tax is a day on which the receiving bank is closed, the assessee can make the payment on the next immediately following working day, and in such cases, the mandatory interest leviable under sections 234B and 234C of the Income-tax Act, 1961 would not be charged.

Circular : No. 676, dated 14-1-1994.

5. A collecting banker acts as an agent of the customer if he credits the latter's account with the amount of the cheque after the amount is actually realized from the drawee banker. Thereafter the customer is entitled to draw the amount of the cheque. The banker thus acts as an agent of the customer and charges from him a commission for collecting the amount from outstation banks.

6. As an agent of his customer, the collecting banker does not possess title to the cheque better than that of the customer. If the customer has no title thereto, or his title is defective, the collecting banker cannot have good title to the cheque. In case the cheque collected by him did not belong to his customer, he will be held liable for conversion of money, i.e., illegally interfering with the rights of true owner of the cheque.

7. From the concurrent reading of the above, it can be said that the assessee is deemed to have paid the advance tax within the due date of payment. Hence, not liable to be charged any interest u/s 234B and 234C.

A.Y. 2007-08

8. The Assessing Officer denied grant of interest u/s 244A on the grounds that the refund determined doesn't exceed 10% of the total tax payable. Since, the issue of interest u/s 234B and 234C has been adjudicated in favour of the assessee, there would be upward revision of the interest receivable. The Assessing Officer is hereby directed to re-compute the interest payable and issue the same at the earliest as per Section 244A(1)(a).

A.Y. 2009-10

9. The Assessing Officer has added back Rs.3,54,385/- on account of difference in income reported in AIR.

10. In the original assessment order passed u/s 143(3) the Ld. Assessing Officer has added a sum of Rs.7,03,654/- on account of difference in interest income shown by the assessee from various banks, (ICICI Bank Rs.70,396/-, Vijaya Bank Rs.9,575/- and HDFC Bank Rs.6,23,683/-) while comparing the same from data received through AIR.

11. It was argued that during the year under appeal, the accounts of the assessee were finalized and signed on 18.05.2009 and interest receivable on deposits with other banks for the year was provided on provisional/approximate basis as

till that date Interest/TDS certificate were not received from the banks who has deducted the Tax at Source.

12. It was argued that if there is any difference in the interest provided by the assessee and the interest provided by other banks on which Income Tax at source is deducted, the same is accounted for in the next financial year and ultimately there is no income which is not accounted for in the books of the assessee bank. All the receipts/income of the assessee bank is routed only through its Profit & Loss a/c. If there is any excess/shortfall in interest in two figures in one financial year, the same is taken care of in the next period and there is no tax avoidance/deferment as there is same income tax slab.

13. Accordingly, in case of interest received from ICICI Bank, Vijaya Bank & HDFC Bank, the difference of interest in two figures in the A.Y. 2009-10 is accounted for in the next period/maturity of deposit, as it is a routine feature in case of interest on deposits with banks. Actual figure of interest cannot be accounted for till the receipt of TDS certificate and accounts cannot be held pending till the receipt of TDS certificate, as the difference is minor and also the same is being taken care of in the next financial year. Accordingly, all the income is included in its return of income on which due income tax is paid. The assessee is following the same accounting policy and procedure since long and there is no change in this regard.

14. Detail of Interest included in the total income is as follows:

A.Y.	HDFC Bank	ICICI Bank	Vijaya Bank
2008-09	23,94,320/-	-----	-----
2009-10	34,11,239/-	27,96,713/-	2,05,479/-
2010-11	7,68,357/-	39,92,463/-	3,70,942/-
2011-12	10,54,110/-	25,73,380/-	12,36,829/-
Total Int. Income	76,28,026/-	93,62,556/-	18,13,250/-

15. Details of interest as per Certificate issued by them is as follows:

A.Y.	HDFC Bank	ICICI Bank	Vijaya Bank
2008-09	22,41,903/-	-----	-----
2009-10	36,85,653/-	-----	2,15,054/-
2010-11	6,46,360/-	-----	4,99,674/-
2011-12	10,54,110/-	31,69,178/-	12,25,702/-
Total Int. Income	76,28,026/-	31,69,178/-	19,40,430/-
As per 26AS	76,28,026/-	71,44,823/-	18,74,430/-

16. From the above, it is clear that while checking the total interest during the period from AYs 2008-09 and 2009-10, interest shown as income by the bank as a whole is much higher than the interest shown in the 26AS and interest certificates. So the data provided in AIR is variable, hence the additions deserves to be deleted.

17. We find that the mismatch arose due to difference in the TDS deducted, the receipt of TDS certificate and the interest earned. The assessee has been continuously following the same system of accounting and found to be accounting for the interest rightly more than which has been reflected in the 26AS.

18. Keeping in view, the similar rate of tax for all the years, it is a revenue neutral exercise and no disallowance on account of mismatch is called for.

19. In the result, all the appeals of the assessee are allowed.
Order Pronounced in the Open Court on 01/09/2021.

Sd/-

(Kul Bharat)
Judicial Member

Dated: 01/09/2021

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR