

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH : "E" NEW DELHI]

BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER
AND

SH. YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 6104/DEL/2019 (A.Y 2012-13)

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| <p>M/s. Natma Securities Limited [Now M/s. Natma Securities Pvt. Ltd.] 811-812, Aggarwal Cyber Plaza-I, Pitampura, Delhi - 110 034. PAN No. AAACN2260N (APPELLANT)</p> | Vs. | <p>ACIT, Circle : 76 (1) New Delhi. (RESPONDENT)</p> |
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| Appellant by | N o n e; |
| Respondent by | Shri Amit Shukla, Sr. D. R.; |

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| Date of Hearing | 28.11.2022 |
| Date of Pronouncement | 30.11.2022 |

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee for assessment year 2012-13 against the order of the ld. Commissioner of Income Tax (Appeals)-30, New Delhi, dated 19.04.2019.

2. The assessee has raised the following substantive ground of appeal:-

“On the facts and in the circumstances of the case and in law the Id. CIT (Appeals) erred in confirming the action of the AO refusing the cancel interest charged u/s 201 of the Act on the delay in deposit of TDS caused by negligence on the part of the Bank.”

3. The assessee Company is a non-banking Finance Company, engaged in acceptance of inter-corporate deposits. During the Financial Year 2012-13, the assessee Company has accepted inter-corporate deposits to the tune of Rs. 363 crores upon which provision for interest was made for Rs. 31,62,69,531/- against which the TDS for Rs. 3,16,26,953/- was provided @ 10% u/s 194A of the Act. The assessee has deposited TDS amount on 31/07/2013 for Rs. 3,39,98,973/- which included an amount of Rs. 23,72,020/- on account of interest for 5 months starting from 01/03/2013 to 31/07/2013 against the same TDS return was filed on 27/08/2013. A demand u/s 201/201(1A) has been generated by the CPC which has been sought for rectification u/s 154 of the Act by the assessee and the Ld. Assistant Commissioner of Income Tax has dismissed the application for rectification filed u/s 154 of the Act vide order dated 31/03/2017.

4. As against the order dated 31/03/2017, the assessee has preferred an appeal before the CIT(A) and the Ld.CIT(A) vide order dated 19/04/2019, dismissed the appeal filed by the assessee.

5. Aggrieved by the order dated 19/04/2019 passed by the Ld. CIT(A) the assessee has preferred the present appeal on the grounds mentioned above.

6. The Ld. Counsel for the assessee vehemently submitted that the TDS has been deposited to the bank well within the time i.e. on 31/07/2013 itself, but due to the negligence of the bank the same has not been credited on the very same day but the same has been credited on 01/08/2013. Therefore contended that, non-crediting the TDS amount due to the negligence of the bank, the assessee should not be penalized. Therefore, sought for cancellation of interest charged u/s 201 of the Act.

7. Per contra, the Ld. DR has relied on the orders of the Lower Authorities.

8. There is no dispute that the assessee had deposited an amount of Rs. 3,39,98,973/- vide Challan Serial No. 01003 which included an amount of Rs. 23,72,020/- on account of interest for 5 months starting from 01/03/2013 to 31/07/2013 against the same the TDS return was filed on 27/08/2013. The said amount has been tendered on 31/07/2013 by way of cheque by the assessee, which has not been credited by debiting the bank account of the assessee. But the amount has been debited from the account of the assessee on the very next day i.e. 01/08/2013. The Ld.CIT(A) was of the opinion that there is no provision in law which provide any leniency with regard to the working out of interest and interest u/s 201(1)/201(1A) of the Act is mandatory in nature.

9. We have heard the parties perused the material on record and gave our thoughtful consideration. The question as to 'whether the payment would be deemed to have been made on the date of handing over of cheque to the banker or on the date of clearance of cheque by debiting the Assessee's account for the purpose of tendering the TDS' has been dealt by the Mumbai Bench of the Tribunal in ITA No. 2153 to 2156/Mum/2018 for Assessment Year 2008-09 vide order dated 21/08/2020 wherein it is held as under:-

“5. We have carefully considered the rival arguments and perused relevant material on record including judicial pronouncements as cited and relied upon during the course of hearing before us. After going through the cited order of this Tribunal in Oil and Natural Gas Corporation Ltd. V/s DCIT (103 Taxmann.com 396 30/11/2018), we find that identical factual matrix as well as controversy has been dealt by the Tribunal and ultimately the issue has been decided in assessee's favor. The operative part of the decision, for convenience and ease of reference, could be extracted as follows: -

6. We have heard the authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record. The issue involved in the present appeal lies in a narrow compass. We find that our indulgence in the present appeal has been sought by the assessee to adjudicate as to whether the CIT(A) is right in law and the facts of the case in treating the assessee as being in default for delay in deposit of TDS, though the cheque towards the amount of TDS was tendered by the assessee to the government bank within the stipulated time period. We have deliberated at length on the issue under consideration, and find that that as per CBDT Circular No. 261 [F.No. 385/61/79-IT (B)], dated 08.08.1979, it has been clarified that the date of tendering of cheque for payment of government dues shall be deemed to be the date of payment of such taxes. We find that the aforesaid CBDT circular is applicable to all government dues, and makes no distinction whether the payment is by way of TDS, advance tax, self-assessment tax etc. The relevant extract of the

aforesaid CBDT Circular No. 261, dated 08.08.1979 reads as under:

"In terms of Rule 80 of the Compilation of the Treasury Rules, if a cheque or draft tendered in payment of Government dues and accepted under the provisions of Rule 79 is honoured on presentation, the payment is deemed to have been made on the date on which it was handed over to the Government banker....."

On a perusal of the order of the CIT(A), we find that he had declined to accept the aforesaid CBDT Circular No. 261, dated 08.08.1979, for the reason that as per him the "Central Treasury Rules (Old rules)" had been substituted by the "Central Government Account (Receipts and Payments) Rules, 1983" which therein governed the provisions of payment of government dues. The CIT(A) drawing support from the Central Government Account (Receipts and Payments) Rules, 1983, had therein concluded that as per the amended rules the government dues tendered in form of a cheque or draft shall be deemed to have been paid on the date on which it is cleared and entered in the receipt of scroll. Admittedly, we are in agreement with the view taken by the CIT(A) that the "Central Treasury Rules (Old Rules)" had been substituted by the "Central Government Account (receipts and payments) Rules, 1983", as per which the date on which a cheque or a draft is cleared is to be deemed as the date of making of the payment by a person towards government dues etc. However, at the same time we cannot remain oblivious of the fact that the CBDT Circular No. 261[F.No.385/61/79-IT(B)], dated 08.08.1979 had

not been withdrawn, and as such holds the ground as on date. Rather, it would be relevant to point out that the CBDT in all its wisdom had not even modified the Circular No. 261, dated 08.08.1979 which was issued prior to the "Central Government Account (Receipt and Payments) Rules, 1983". Be that as it may, the aforesaid 'benevolent circular' viz. Circular No. 261, dated 08.08.1979 issued by the CBDT on the date of tendering of the cheque by the assessee towards the amount of TDS to the government bank, did hold the ground and was thus binding on the revenue. We are unable to persuade ourselves to subscribe to the observations of the CIT(A), that as the Central Treasury Rules (Old Rules) had been rendered as redundant, therefore, the CBDT Circular No. 261, dated 08.08.1979 would therein follow and also has to be taken as having been rendered as otiose.

7. We shall now advert to certain judicial pronouncements which fortifies the claim of the Id. A.R that the assessee stood discharged of its liability of depositing the TDS on the date on which it had tendered the cheque with the government bank. We find that that Hon'ble Supreme Court in the case of K. Kaplana Saraswathi (supra) has held that payment by cheque should be taken to be due payment, if the cheque is subsequently encashed in the ordinary course. Further, the Hon'ble High Court of Madras in [CIT v. Kumudam Publications \(P\) Ltd.](#)[1981] 128 ITR 617 after deliberating on the Treasury Rules, had therein concluded that in view of Treasury Rules when cheques are handed over to the government officials or to the government officer authorised to received payment on

behalf of the government, payment would be deemed to have been made on the date the cheque was handed over. We find that a coordinate bench of the Tribunal viz. ITAT Chennai in the case of [P.L. Haulwel Trailers Ltd. v. Dy. CIT](#)[2006] 100 ITD 485 (Chennai) while deliberating on the levy of interest under Sec. 234C of the Act, had observed that as the assessee had paid 'Advance Tax' by depositing the cheques with the authorized banks within the 'due date', therefore, the date of payment was to be taken as the date of presentation of the cheques by the assessee. The Tribunal had arrived at the aforesaid view after considering viz. (i) CBDT Circular No. 261, dated 08.08.1979; (ii) Central Government Account (Receipts & Payments) Rules, 1983; and (iii) the judgment of the Hon'ble Supreme Court in the case of K. Kaplana Saraswathi (supra). Still further, the ITAT, Bangalore in [ITO v. Bradcom Communication Technologies \(P\) Ltd.](#) [ITA No. 895 & 900/2014] had observed that where the assessee had made the payment before the 'due date', it was thereafter beyond its control to ensure the transmission of the amount to the government account within the stipulated 'due date'. On the basis of the aforesaid observations, it was held by the Tribunal that the assessee could not be faulted for delay on the part of the bank or the clearing house, whatever may be the rules governing receipts and payments into the Central Government Account. We find that a similar view was also taken by the ITAT, Kolkata in [NHAI, PIU Siliguri v. ACIT](#) [ITA No. 2296/Kol/2013]. In the said case though the assessee had deposited the TDS amount before the 'due date', but credit was given by the bank after the said 'due date'. On the basis of the said facts, the A.O considering the delay in depositing of the TDS charged interest under Sec. 201(1A). On appeal, the

Tribunal after considering the Central Government Account (Receipts and Payments) Rules, 1983 and the CBDT Circular No. 261, dated 08.08.1979, concluded that where the cheque was deposited with a bank before the 7th day of the month following the month in which TDS was deducted, no interest could be charged.

8. We have deliberated at length on the issue under consideration before us in the backdrop of the facts and the aforesaid judicial pronouncements. In terms of our aforesaid observations, we are of the considered view that as the assessee had admittedly tendered the cheque with the bank i.e. State Bank of India, Branch: Bandra Kurla Complex, Mumbai well within the stipulated 'due date', therefore, it cannot be held as being in default for the delay on the part of the bank or the clearing house in making the remittance of the said amount to the Government Account. We thus in the backdrop of our aforesaid deliberations, not being able to persuade ourselves to subscribe to the view taken by the lower authorities that the assessee was to be treated as being in default for delay in deposit of the amount of TDS, thus set aside the order of the CIT(A) and delete the interest of Rs. 37,510/-levied by the A.O under Sec. 201(1A) of the Act.

9. The appeal of the assessee is allowed.

Upon perusal, we find that it was held by the bench that Circular No. 261, dated 08/08/1979 issued by the CBDT, unless withdrawn or amended, would hold the ground and would be binding on the revenue. Further, the payment would be deemed to have been made

on the date the cheque was handed over to the banker and the date of payment was to be taken as the date of presentation of the cheques by the assessee. It also supports the proposition that the payment would relate back to the date of presentation of cheque unless the cheque is dishonored. The binding decisions cited by the assessee before Ld. CIT(A) also supports the said proposition. Similar view has been taken by Bangalore Tribunal in ITO V/s Broadcom Communication Technology Pvt. Ltd. (ITA Nos. 895 & 900/ Bang/2014 dated 11/09/2015). No contrary decision is on record. Respectfully following the ratio of all these decisions, we hold that payment of TDS by the assessee would relate back to the date of presentation of cheques by the assessee to the banker. Accordingly, TDS-CPC, Ghaziabad is directed to revise the aforesaid intimation by taking the date of tender of cheques by the assessee as the actual date of payment and re-compute interest payable by the assessee, if any. The interest demand u/s 220(2) being consequential in nature, may also be recomputed. Resultantly, the appeal stands allowed to the extent indicated in the order.”

10. In the instance case, there is One day delay in debiting the amount from the Assessee's bank account which is apparently due to the mistake to the banker. Further by relying on the ratio laid down in the case of Standard Chartered Bank (Supra) we are of the opinion that the payment of TDS by the assessee would relate back to the date of presentation of the cheque i.e. on 31/07/2013 by the assessee to the banker.

11. Therefore, the interests levied by the Revenue authorities are deserves to be waived off. Accordingly, we allow the Grounds of Appeal of the assessee.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Open Court on : 30.11.2022.

Sd/-
(B. R. R. KUMAR)
ACCOUNTANT MEMBER
Dated : 30/11/2022

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

R.N, Sr. PS

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT NEW DELHI