

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.632 of 2013

Bank Of Baroda, Having its Office at Fraser Road, P.O. G.P.O., P.S. Kotwali, Patna through its Asst. General Manager, Lalit K Joshi, Son of Shri Karuna Shanker Joshi. Resident of Shanti Vihar Apartments, Fraser Road Patna, P.O.- G.P.O., P.S.- Kotwali, District - Patna.

... .. Appellant

Versus

1. Commissioner of Income Tax, TDS having its Office at 6th Floor, Central Revenue Building (Annexe), Beerchand Patel Marg, Patna
2. Addl. Commissioner of Income Tax, TDS Range, Patna having its office at 6th Floor, Central Revenue Building (Annexe), Beerchand Patel Marg, Patna
3. Asstt. Commissioner of Income Tax, TDS Circle having its office at 6th Floor, Central Revenue Building (Annexe), Beerchand Patel Marg, Patna

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. D.V.Pathy, Adv. Ms. Manju Jha, Adv.
For the Respondent/s	:	Ms. Archana Sinha, Sr.S.C. Mr. Alok Kumar, Jr. S.C.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 14-08-2019

This appeal filed under Section 260A of the Income Tax Tax, 1961 (hereinafter referred to as 'the Act') is directed against the order dated 24.2.2012 passed by the Income Tax Appellate Tribunal, Patna Bench, Patna (hereinafter referred to as 'the Tribunal') in ITA No. 48 (Pat) of 2011 for the assessment year 2008-09, whereby 'the Tribunal' has dismissed the appeal of the appellant to confirm the order passed by the Commissioner of Income Tax (Appeals) dated 3.3.2011 who in turn has confirmed the order passed by the Assessing Officer for levy of interest on the default by the appellant in deduction of tax at source on the interest paid by the appellant on



the deposits made by the Official Liquidator appointed by the Patna High Court on behalf of the Company in liquidation, namely, Rohtas Industries Limited in exercise of powers vested under Section 201 of 'the Act'.

The appellant is a nationalized Bank whose business premises was surveyed by the respondent authorities under Section 133 of 'the Act' on 18.12.2007 and in which course documents relating to Tax Deducted at Source (hereinafter referred to as 'the TDS') were examined. It is in course of survey of such documents that it transpired that the appellant Bank had failed to deduct tax at source in respect of interest generated on the deposits made by the Bihar Industrial Area Development Authority (BIADA), the Infrastructure Development Authority (IDA), the Bihar State Housing Board and the Official Liquidator of Patna High Court. A demand was raised which was inclusive of tax as well as interest payable thereon to the tune of Rs.48,89,749/- which demand was subsequently modified on an application filed under Section 154 of 'the Act' to exclude such demand in respect of 'the BIADA' and 'IDA'. A copy of the order is at Annexure 1 to the appeal. The respondent Assessing Authority, however, confirmed the demand in respect of the Bihar State Housing Board as well as the Official Liquidator of Patna High Court by the order dated 9.11.2010, a copy of which is at Annexure 2 to the appeal. It is feeling aggrieved by the



order dated 9.11.2010 of the Assessing Officer that the appellant filed an appeal before the Commissioner of Income Tax (Appeals) who on consideration of facts accompanying the appeal, allowed the same to the extent of the liabilities attributable to the Bihar State Housing Board. However, in so far as non-deduction of tax at source on interest generated on the deposits made by the Official Liquidator of Patna High Court is concerned, the order of the Assessing Officer was upheld. The appeal was allowed in part by the order passed on 3.3.2011 enclosed at Annexure 3.

In view of the position so settled under the orders of the statutory authorities referred to above that a demand for Rs.12,63,589/- was raised which was inclusive of the element of tax as well as interest, a copy of which is at Annexure 5 to the appeal. The appellant feeling aggrieved moved in second appeal before the Income Tax Appellate Tribunal which appeal has been dismissed by the judgment and order impugned dated 24.2.2012 confirming the order passed by the Commissioner of Income Tax (Appeals) and feeling aggrieved the appellant is before this Court.

By the order dated 24.2.2014 a Co-ordinate Bench allowed the petition filed for condonation of delay bearing I.A.No. 6504 of 2013 and the appeal was put for admission hearing. The appeal with the consent of the parties has been heard for final disposal at the admission stage on the following substantial question of law:



“Whether the appellant is an assessee in default in terms of Section 201 of the Income Tax Act, 1961 on its failure to deduct TDS in respect of a company in liquidation.”

Mr. D.V.Pathy, learned counsel for the appellant, has argued at length and has also filed his written submissions to canvass the case of the appellant whether the interest generated on the fixed deposits made by the Official Liquidator appointed by the High Court was liable for deduction of tax at source and whether there is a failure on the part of the appellant in discharge of such obligation. Although exhaustive arguments have been advanced by Mr. Pathy, learned counsel appearing for the appellant, who has also filed written submissions in support of his contentions and in which process he has referred to the provisions of Section 194A of ‘the Act’ which deals with the issue of interest other than the interest on securities as well as definition of ‘income’ present at Section 2(24) of ‘the Act’ to persuade this Court that since there was no commercial transaction in the process rather the Official Liquidator had only sold some of the assets of the company in liquidation for its distribution pari passu amongst the creditors, the company in liquidation running huge losses was not liable to tax. According to learned counsel, even if the interest earned on the fixed deposit was to be included in the income of the company in liquidation, there yet would be no liability



to pay tax as the interest element would be set off with the losses present and carried forward.

In this context learned counsel has referred to the provisions of Section 197A of 'the Act' to submit that a person would not be liable to tax if his total income is NIL. Learned counsel in support of his submissions has relied upon the judgment of Allahabad High Court rendered in the case of **Commissioner of Income Tax (TDS) Lucknow vs. M/s Sahara India Commercial Corpn. Ltd.** (Income Tax Appeal No. 58 of 2015) to submit that if there is no liability of payment of tax by the recipient assessee, the question of deduction of tax by the assessee in default would not arise and the question of payment of tax by such recipient assessee also would not arise and thus the interest also could not have been charged. According to Mr. Pathy, since the appellant Bank had taken notice of fact that the money deposited by the Official Liquidator on behalf of the Company in liquidation which had run into losses, had no positive income, it was of the view that no tax was deductible on such interest generated on deposits which was a bona fide belief and neither wilful nor deliberate. According to Mr. Pathy, since no tax was payable on such interest generated, the revenue had no reason to complain.

The argument of Mr. Pathy has been contested by Ms. Sinha in reference to the judgment reported in (1991) 191 ITR 641



(Vijaya Laxmi Sugar Mills Ltd. vs. Commissioner of Income Tax). Ms. Sinha while accepting the fact that the money in fixed deposits was of a Company in liquidation submitted that it was no concern of the appellant Bank to adjudicate whether or not the Company was in losses or had an income in positive rather if an onus was cast on the Bank of deducting the tax on the interest generated on the fixed deposits, the Bank had to discharge this obligation instead of examining the liability at their level and their failure to do so has classified them as assessee in default to face the consequences as present in Section 201 of 'the Act'. In reference to the judgment of the Supreme Court in the case of **Vijaya Laxmi Sugar Mills Ltd.** (supra) it was submitted that a similar issue fell for consideration before the Supreme Court and the interest generated on the fixed deposits was treated as income from the other sources for being taxed under Section 56 of 'the Act'. According to Ms. Sinha, had it been a case where the Official Liquidator had filed a certificate under Section 197A of the Act informing the Bank of NIL income, the appellant had reasons for such non-deduction as happened in the case of BIADA and IDA. In reference to the case of the Bihar State Housing Board, she submits that the Commissioner of Income Tax (Appeals) while upholding the interest charged on the appellant under Section 201(1A) of 'the Act', waived of deduction of tax element. According to Ms. Sinha, there had to be sufficient



documents in possession of the Bank to justify the non-deduction and even if the Bank has escaped default in the case of BIADA and IDA on production of the certificate under section 197A, the default has been partially upheld in the case of the Bihar State Housing Board and in so far as the case of the Official Liquidator is concerned, the default is in its entirety because there is nothing in possession of the Bank to justify the non-deduction.

We have heard learned counsel for the parties and have perused the records and while there is no dispute that the interest on fixed deposit are chargeable to tax, the appellant was under duty to deduct the same in absence of any returns filed by the Official Liquidator declaring losses and/or filing of a certificate under section 197A to declare NIL income. That the fixed deposits generated an interest of Rs.44,76,182/- which constituted income of the company in liquidation and deductible to tax in absence of the documents/certificate present to justify the non-deduction, the Bank was legally bound to discharge the obligation.

The pleadings on record confirm that the appellant Bank was held the assessee in default in respect of the four depositors, namely, BIADA, IDA, the Bihar State Housing Board and the Official Liquidator of Patna High Court. The order of the Assessing Officer, the Assistant Commissioner of Income Tax at Annexure 1 passed in purported exercise of jurisdiction under sections 201(1) and



201(1A) of 'the Act' gives the details of interest generated on deposits in each case as well as the tax deductible against the same. The statutory ladder through which the case has moved confirms that while a demand in its entirety on default of such deduction was raised by the Assistant Commissioner of Income Tax, the same was modified by the order passed under section 154 of 'the Act' in view of the certificates of exemption submitted under section 197A by M/s BIADA and by M/s IDA. The matter moved in appeal as against the remaining two depositors i.e. the Bihar State Housing Board and the Official Liquidator and the Commissioner of Income Tax (Appeals) having noted the losses returned by the Bihar State Housing Board has interfered with the default of the appellant in not deducting tax and thus while modifying the demand in so far as tax element was concerned, the Commissioner of Income Tax (Appeals) upheld the interest chargeable thereon. The order passed by the assessing authority as it stood modified by the order passed under section 154 stood further modified but in so far as the issue in hand is concerned, the appellate authority bearing note of the interest generated of Rs.44,76,182/- and in absence of any document or a certificate under section 197A found no infirmity in the order passed by the assessing authority and which view of the Commissioner of Income Tax (Appeals) has been affirmed by the Appellate Tribunal as well which in our considered opinion does not require any interference because



in our opinion the appellant was definitely an assessee in default in not having deducted tax at source on the interest generated on the fixed deposits made by the Official Liquidator, Patna High Court in respect of the company in liquidation with the appellant Bank.

The argument advanced by Mr. Pathy that the company in liquidation was in losses, is an argument only taken for rejection for in absence of any returns filed by the Official Liquidator to canvass as such and/or in absence of any certificate filed by the Official Liquidator under section 197A, it was not within the jurisdiction of the Bank to adjudicate on the admissibility of tax or on its deduction at source. In so far as the reliance on the judgment of the Allahabad High Court in the case of **M/s Sahara India Commercial Corpn. Ltd.** (supra) is concerned, Mr. Pathy has missed to take note of the fact that the conclusion drawn by the Allahabad High Court is on the foundation where, the recipient assessee has either paid tax or is not liable to pay any tax and in which circumstance no interest under section 201(1A) could have been recovered by the assessee in default.

In so far as the case in hand is concerned, there is absolutely nothing on record in form of return filed by the Liquidator or a certificate to such effect under section 197A of 'the Act' which would justify the default by the appellant in deduction of tax at source on the interest generated on the deposits made by the Official



Liquidator on behalf of the company in liquidation. The substantial question of law is answered accordingly.

The appeal is accordingly dismissed.

(Jyoti Saran, J)

Anjani Kumar Sharan,J.
I agree.

(Anjani Kumar Sharan, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.08.2019
Transmission Date	NA

