

IN THE INCOME TAX APPELLATE TRIBUNAL,  
AGRA BENCH, AGRA

BEFORE : SHRI BHAVNESH SAINI, JUDICIAL MEMBER AND  
SHRI A.L. GEHLOT, ACCOUNTANT MEMBER

ITA No. 370 /Agra/2011  
Asstt. Year : 2008-09

G.M., MPRRDA, PIU,  
Shivpuri.  
(TAN : BPLM 06235 F)

vs.

Income-tax Officer(TDS)  
Gwalior.

ITA No. 371 /Agra/2011  
Asstt. Year : 2008-09

G.M., MPRRDA, PIU, No. 2,  
Shri Ram Colony, Shivpuri.  
(TAN : BPLG 03088 B)  
(Appellants)

vs.

Income-tax Officer(TDS)  
Gwalior.

(Respondent)

Appellants by : Shri Rajendra Sharma, Advocate  
Respondent by : Shri Ateshan Ansari, Jr. D.R.

Date of hearing : 28.05.2012  
Date of pronouncement of order : 08.06.2012

**ORDER**

Per Bhavnesh Saini, J.M.:

Both the appeals by the above assesseees are directed against different orders of the ld. CIT(A), Gwalior dated 22.07.2011 for the assessment year 2008-09, challenging the demand of interest u/s. 201(1A) of the IT Act amounting to Rs.69,810/- and Rs.42,258/- respectively.

2. Both the assessee challenged the order of the AO passed u/s. 201(1A) of the IT Act before the Id. CIT(A), whereby the interest has been charged on the assessee on account of late deposit of TDS for different quarters of the financial year under consideration. During the course of proceedings before the AO, the assessee has submitted explanation for late deposit of TDS on account of time involved in bank clearing, government holidays etc., which has not been accepted by the AO. It was submitted before the Id. CIT(A) that the assessee are societies and do not fall in Government Department category and it was also explained that as per the Govt. Scheme, the assessee is developing roads and the entire amount is given by the Central Government through the authorized banks. Therefore, there was no *mala fide* intention of not depositing the tax deducted at source within time. The assessee tried to deposit the amount of tax deducted within the prescribed limit of 7 days and cheques were deposited in the drop box, but due to delay in clearing there was delay in depositing the tax deducted at source. It was further submitted that there is not much delay in depositing the TDS as is noted by the AO. The assessee prepared a chart of every month along with due date of depositing of tax and actual amounts of deposits and the delay in making the deposits. The chart of the assessee is reproduced at page 3 of the appellate order in which the assessee highlighted that the delay is from one day to 12 days at the most, which was mainly on account of clearing time taken of cheques and the government holidays

etc. It was submitted that the AO was not justified in taking the delay in depositing the tax deducted at source for two months instead of one month. The Id. CIT(A) considering the submissions of the assessee and the material on record, noted that the AO has submitted that the assessee is a government deductor who has not deposited the TDS within the time prescribed as per Rule 30. It was, therefore, noted that there is no denying fact that the TDS deducted has been deposited late in the government account. The Id. CIT(A), therefore, noted that the assessee is liable to pay interest on the amount of such tax from the date on which such tax was deductible to the date when such tax was actually paid. Further, with regard to the plea that there was no *mala fide* intention in not depositing the TDS within the time, the Id. CIT(A) noted that where the tax deducted at source is not deposited, the levy of interest is mandatory u/s. 201(1A) of the IT Act and it can neither be waived nor the rate can be reduced, as held by Hon'ble Calcutta High Court in the case of West Bengal State Electricity Board vs. DCIT, 278 ITR 218. The Id. CIT(A) also noted that existence of good and sufficient reasons for not deducting tax or if deducted, but not deposited within time prescribed is not germane for the purpose of levy of interest because it may be a relevant consideration for levy of penalty only u/s. 271C of the IT Act. The Id. CIT(A) accordingly, confirmed the order of the AO and dismissed both the appeals of the assessees.

3. The ld. counsel for the assessee submitted that the ITO (TDS), Gwlaior has erred in computing the amount of interest payable by considering the delay in deposit of payment of TDS for two months instead of one month. Consequently, the demand of excess interest is raised. Therefore, the excess demand of interest is unjustified under law. He has referred to page 3 of the appellate order of both the impugned orders and highlighted that the due date of deposit of tax for May, 2007 was 07.06.2007 and the amount of tax was deposited on 18.06.2007. Therefore, the delay in deposit of tax was only 11 days, but the AO took it as 60 days and the ld. CIT(A) wrongly confirmed the order of the AO. He has submitted that though the ground of appeal is not properly worded, but the assessee challenged the order of the ld. CIT(A) in confirming the order of the AO for excess demand of interest for two months instead of one month. He has further submitted that the ld. CIT(A) has not discussed this issue in the appellate order. In principle, he has admitted that the assessee is in default of payment of taxes within the time as per law, but submitted that due to clearing time of cheques and government holidays, there was delay in deposit of TDS. Therefore, the assessee is not liable for excessive interest and recalculation of charging of interest is necessary and the ld. CIT(A) has not given any finding on the same. He has filed application for admission of additional ground in both the cases, which reads as under :

*“That no interest is chargeable on the amount (payment of TDS) for which the cheques were delivered to the Banking Authority*

*within due time, which were realized by the bank authorities after due date, date of presentation of cheque is to be considered as date of payment of the amount, as held by Hon'ble Supreme court in the case of CIT vs. Ogale Glass Works Ltd., 25 ITR 529 and also clarified in rule 80 treasury rule.”*

3.1 The ld. counsel for the assessee relied upon the following decisions :

(i). The decision of Hon'ble Supreme Court in the case of CIT vs. Ogale Glass Works Ltd., 25 ITR 529 in which it was held –

*“Assessee having requested to remit the amount of income by cheque such request amounted to a request for sending the cheque through post and the cheque having been posted at Delhi, income was received by the assessee in Delhi, i.e., British India even though the cheque was received by the assessee in Indian State.”*

(ii). Decision of Hon'ble Andhra Pradesh High Court in the case of K. Venkata Reddy vs. CIT and Anr. 250 ITR 147, in which it was held –

*“Date of presentation of the cheque and not the date of realization of the amount has to be treated as date of payment of amount paid under the Kar Vivad Samadhan Scheme for the purpose of applying the time limit prescribed under s. 90(2) of the Finance (No. 2) Act, 1998.”*

(iii). Order of Agra Bench in the case of DCIT vs. Shri Pooran Chand Dawar in ITA No. 83/Agra/2008 dated 18.05.2009, in which it was held that exemption u/s. 54EC was denied to the assessee because the investment was beyond the statutory period. Since the cheque was realized later on in respect of investment,

therefore, it was held that the payment should be deemed from the date of presentation of the cheques.

4. On the other hand, the Id. DR relied upon the orders of the authorities below and submitted that charging of interest u/s. 201(1A) is mandatory in nature and since the assessee did not deposit the TDS with the Government of India within time, therefore, charging of interest is justified in the matter.

5. We have considered the rival submissions. It would be appropriate to reproduce some of the relevant provisions of IT Act and Rules dealing with the aforesaid subject :

5.1 Section 201(1A) of the IT Act provides as under :

“[(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,—

(i) at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and

(ii) at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid,

and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of section 200:]

**[Provided that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default under the first proviso of sub-section (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident.]**

## 5.2 Section 200 of the IT Act provides as under :

“200. (1) Any person deducting any sum in accordance with [the foregoing provisions of this Chapter] shall pay within the prescribed time, the sum so deducted to the credit of the Central Government or as the Board directs.

(2) Any person being an employer, referred to in sub-section (1A) of section 192 shall pay, within the prescribed time, the tax to the credit of the Central Government or as the Board directs.]

(3) Any person deducting any sum on or after the 1st day of April, 2005 in accordance with the foregoing provisions of this Chapter or, as the case may be, any person being an employer referred to in sub-section (1A) of section 192 shall, after paying the tax deducted to the credit of the Central Government within the prescribed time, prepare such statements for such period as may be prescribed] and deliver or cause to be delivered to the prescribed income-tax authority or the person authorised by such authority such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed.]

## 5.3 Rule 30 of the IT Rules provides as under :

“30. (1) All sums deducted in accordance with the provisions of Chapter XVII-B by an office of the Government shall be paid to the credit of the Central Government—

(a) on the same day where the tax is paid without production of an income-tax challan; and

(b) on or before seven days from the end of the month in which the deduction is made or income-tax is due under sub-section (1A) of section 192, where tax is paid accompanied by an income-tax challan.

(2) All sums deducted in accordance with the provisions of Chapter XVII-B by deductors other than an office of the Government shall be paid to the credit of the Central Government—

(a) on or before 30th day of April where the income or amount is credited or paid in the month of March; and

(b) in any other case, on or before seven days from the end of the month in which—

(i) the deduction is made; or

(ii) income-tax is due under sub-section (1A) of section 192.

(3) Notwithstanding anything contained in sub-rule (2), in special cases, the Assessing Officer may, with the prior approval of the Joint Commissioner, permit quarterly payment of the tax deducted under section 192 or section 194A or section 194D or section 194H for the quarters of the financial year specified to in column (2) of the Table below by the date referred to in column (3) of the said Table:—

TABLE

<i>Sl. No.</i>	<i>Quarter of the financial year ended on</i>	<i>Date for quarterly payment</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
1.	30th June	7th July
2.	30th September	7th October
3.	31st December	7th January
4.	31st March	30th April



## **B. Mode of payment**

(4) In the case of an office of the Government, where tax has been paid to the credit of the Central Government without the production of a challan, the Pay and Accounts Officer or the Treasury Officer or the Cheque Drawing and Disbursing Officer or any other person by whatever name called to whom the deductor reports the tax so deducted and who is responsible for crediting such sum to the credit of the Central Government, shall—

(a) submit a statement in Form No. 24G within ten days from the end of the month to the agency authorised by the Director General of Income-tax (Systems) in respect of tax deducted by the deductors and reported to him for that month; and

(b) intimate the number (hereinafter referred to as the Book Identification Number) generated by the agency to each of the deductors in respect of whom the sum deducted has been credited.

(5) For the purpose of sub-rule (4), the Director General of Income-tax (Systems) shall specify the procedures, formats and standards for ensuring secure capture and transmission of data, and shall also be responsible for the day-to-day administration in relation to furnishing the information in the manner so specified.

(6)(i) Where tax has been deposited accompanied by an income-tax challan, the amount of tax so deducted or collected shall be deposited to the credit of the Central Government by remitting it within the time specified in clause (b) of sub-rule (1) or in sub-rule (2) or in sub-rule (3) into any branch of the Reserve Bank of India or of the State Bank of India or of any authorised bank.

(ii) Where tax is to be deposited in accordance with clause (i), by persons referred to in sub-rule (1) of rule 125, the amount deducted shall be electronically remitted into the Reserve Bank of India or the State Bank of India or any authorised bank accompanied by an electronic income-tax challan.

(7) For the purpose of this rule, the amount shall be construed as electronically remitted to the Reserve Bank of India or to the State

Bank of India or to any authorised bank, if the amount is remitted by way of—

(a) internet banking facility of the Reserve Bank of India or of the State Bank of India or of any authorised bank; or

(b) debit card.

(8) Where tax is deducted before the 1st day of April, 2010, the provisions of this rule shall apply as they stood immediately before their substitution by the Income-tax (Sixth Amendment) Rules, 2010.”

5.4 The facts noted above are not in dispute that the assessee is liable to deduct the tax at source on the payments made to the contractors etc. The assessee has also deducted tax at source as per Chapter XVII of the IT Act and the liability of assessee to deduct tax at source has also not been disputed. It is also not in dispute that after deducting the TDS, the assessee also made deposit of the tax that with the Central Government, but it was paid belatedly. The assessee in its appeals before the Id. CIT(A) also only challenged the interest payable for two months instead of one month. Therefore, in principle, it is admitted fact that the assessee was liable to deduct tax at source and since the assessee did not deposit the TDS within time, therefore, the interest was levied against the assessee u/s. 201(1A) of the IT Act, which is mandatory in nature as is also held by the Hon'ble Calcutta High Court in the case of West Bengal Electricity Board (supra). The provisions of section 201(1A)(ii) of the IT Act, as reproduced above, also put the assessee on liability

for payment of interest at the specified rate on the amount of such tax from the date on which such tax was deducted to the date on which such tax is **actually paid**. Similarly, according to section 200 of the IT Act, the assessee shall have to pay and deposit the amount of TDS at the credit of Central Government, as the Board may prescribe. Rule 30 of the IT Rules noted above, also provides the modes of payment of tax deducted with the provisions of Chapter XVII by paying the amount of tax to the credit of the Central Government within the time prescribed. The cumulative effect of all the above provisions and Rules clearly provide that the assessee has to deposit the tax with the government of India of the amount deducted at source and such tax shall be deemed to be paid to the Government when actual payment of tax has been brought to the Government by crediting the amount of taxes to the Central Government. The word “credit” and “actual amount paid to the Government of India” as prescribed in the above provision clearly denotes that the payment would be treated as made to the Government when the amount is actually credited and actually paid to the Government of India. Since the assessee has not deposited the amount of tax within the prescribed time, therefore, the assessee was liable for interest as per the above provisions. The time taken for clearing of cheques and government holidays and reasonable cause etc. are not the reasons, which could be considered while levying the interest against the assessee. Such reasons are irrelevant and alien to the above provisions. Therefore, the

contention of the ld. counsel for the assessee cannot be accepted and is, accordingly, rejected. The ld. counsel for the assessee relied upon the decision in the case of Ogale Glass Works Ltd. (supra), in which the issue was relating to taxability of income, profits and gains earned by the assessee in India. In the case of K. Venkata Reddy vs. CIT(supra), the issue was regarding payment of tax by cheque under KVSS under section 90(2) of Finance (No. 2) Act, 1998 and it was noted that no such scheme was prescribed in the Act for making payment by cheque. In the case of Shri Pooran Chand Dawar (supra), the issue of investment u/s. 54EC was considered. Therefore, in none of the above decisions, the issue of chargeability of interest u/s. 201(1A) has been considered. Since section 201(1A) of the IT Act and relevant rules have specific provision of law and put the assessee in liability to pay mandatory interest for delay in depositing TDS within time, therefore, the provision of law shall have to be read as it is and cannot be stretched to give different meaning under the law. The decision cited by the ld. counsel for the assessee are, therefore, not applicable to the present controversy. Therefore, the assessee has not made out any case for admission of the additional ground of appeal. Application for admission of additional ground is, accordingly, rejected. However, on consideration of the submissions of the ld. counsel for the assessee that excessive interest has been charged, we find that the contention of the ld. counsel for the assessee have some points to argue because as per the schedule

noted at page 3 of the appellate orders, we find that there may be some mistake in calculating the excessive interest as is demonstrated by the Id. counsel for the assessee on examining the payment of tax for the month of May, 2007 because the delay is apparently of 11 days but the AO treated the default for 60 days. This was the only submission made by the assessee in the grounds of appeal, which has not been addressed by the Id. CIT(A) while deciding the appeals of the assessee. Therefore, to that extent, the matter requires reconsideration at the level of the Id. CIT(A).

6. Considering the above discussion, we confirm the orders of the authorities below in levying interest against the assessee u/s. 201(1A) of the IT Act, which is mandatory in nature for violation to deposit TDS with the Government of India within the prescribed time. However, the matter relating to charging of excessive interest is restored to the file of the Id. CIT(A) for reconsideration. Therefore, we set aside the order of the Id. CIT(A) to the extent of charging of excessive interest as argued by the Id. counsel for the assessee and restore this issue to his file with the direction to re-decide the issue of charging of excessive interest, if any, by giving reasonable and sufficient opportunity of being heard to the assessee and the Id. CIT(A) shall give specific finding if there is excessive charging of interest in

the matter and for that purpose, he will also give opportunity of being heard to the AO or may call for remand report from the AO.

7. In the result, the appeals of the assessee are partly allowed for statistical purposes to the extent noted above.

Order pronounced in the open court.

Sd/-  
**(A.L. GEHLOT)**  
Accountant Member

Sd/-  
**(BHAVNESH SAINI)**  
Judicial Member

\*aks/-

Copy of the order forwarded to :

1. Appellant
2. Respondent
3. CIT(A), concerned
4. CIT, concerned
5. DR, ITAT, Agra
6. Guard file

By order

Sr. Private Secretary

True copy