

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH 'B' LUCKNOW**

**ITA No.11/Lkw/2011
Assessment Year: 2009-2010**

**ICICI BANK LTD
ALIGANJ, LUCKNOW
PAN NO:AAACT7434N**

Vs

**DEPUTY COMMISSIONER OF INCOME TAX
(TDS), LUCKNOW**

H L Karwa, President and N K Saini, AM

Dated: March 23, 2011

ORDER

Per: N K Saini:

This appeal has been filed by the assessee against the order dated 31/08/2010 of CIT(A)-III, Lucknow relating to assessment year 2009-2010. The only grievance of the assessee in this appeal relates to the confirmation of the levy of interest 201(1A) of the I.T. Act, 1961 (in short, the I.T. Act) amounting to Rs.2,15,750/- for alleged delay in depositing the TDS to the credit of the Department within time allowed.

2. The facts related to this issue, in brief, are that the DCIT (TDS), Lucknow issued a show cause notice u/s 201(1) and 201(1A) of the I.T. Act to the assessee by pointing out following short deductions on the basis of e-TDS return filed by the assessee:

Short deduction u/s 194A	Rs.40,266/-
Short deduction u/s 194J	Rs. 4,334/-
Total	Rs.44,600/-
Interest on late payment	Rs.2,15,750/-
Total	Rs.2,60,350/-

2.1 In response to the said notice the assessee submitted that no TDS was to be deducted on the interest payment of Rs.30,880/- to Hindustan Cooperative Bank. The said reply was found to be correct for the reason that the provisions of section 194A are not applicable on interest payment to bank on which Banking Regulation Act is applicable. The assessee pointed out to the DCIT (TDS) that for the month of June, 2008, amount of TDS deducted was at Rs.2,15,73,701/- which was deposited vide pay order dated 04/07/2008 to Union Bank of India and was collected by the said bank on 07/07/2008 through banker clearing house thus, the payment was made in time. The said submission of the assessee was not accepted by the DCIT

(TDS) by stating that the date of deposit as per VOLTAS was 08/07/2008 so there was a default of one day which was rounded to one month as per rule 119A of the Income Tax Rules. Accordingly, interest on account of late payment was levied at Rs.2,15,750/-.

3. The assessee carried the matter to learned CIT(A) and reiterated the submissions made before the DCIT(TDS). It was further submitted that due date for the payment of the tax deducted at source on the interest paid to the depositors in the month of June, 2008 was 7th July 2008 and the assessee deposited full amount of Rs.2,15,73,701/- vide bank pay order No.831222 dated 4th July 2008 in the account of Union Bank of India, Chandganj, Lucknow which is one of the authorized banks for the payment of tax and the amount was credited in account of Union Bank of India on 07/07/2008 through bankers clearing house so it was the duty of the Union Bank of India to credit the amount of income tax directly on 07/07/2008 which the said bank failed to do so, however, the assessee had discharged its liability within time, therefore, the interest should not be levied. The assessee also furnished copy of the challan vide which payment was made along with the letter of Union Bank of India dated 10/07/2010 addressed to the Branch Head that the assessee had deposited income tax of Rs.2,15,73,701/- and the same had been remitted to the Income Tax Department on 8th July 2010. It was also confirmed in the said letter that the payment was received by the pay order no. 831222 dated 04/07/2008 and collected through clearing on 07/07/2008.

3.1 The Learned CIT(A), after considering the submissions of the assessee, observed that the challan for the TDS with BSR Code No.029137 for Rs.2,15,73,701/- for the assessment year 2008-2009 for the payment made by bank bearing TAN LKNB05007C shows the date of payment as 8th July 2008. According to him there was a delay in depositing the tax to the credit of Central Govt., therefore, the Assessing Officer rightly charged interest on the same. Accordingly, the said action of the Assessing Officer was confirmed. Now the assessee is in appeal.

4. The learned counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the tax deducted at source was deposited within time and also collected by the authorized bank within due time and if there was any delay in crediting the amount to the Income Tax Department, the fault was at the level of the bank and not by the assessee. Therefore, the learned CIT (A) was not justified in confirming the action of the Assessing Officer for levying the interest of Rs.2,15,750/- u/s 201(1A) of the I.T. Act. Reliance was placed on the judgment of the Hon'ble Gujarat High Court in the case of *KANGOLD (INDIA) LTD. vs. CIT [1999] 239 ITR 842*.

5. In his rival submissions the learned D.R. strongly supported the orders of the authorities below.

6. We have considered the rival submissions and carefully gone through the material available on the record. In the present case it is an admitted fact that the assessee deducted a sum of Rs.2,15,73,701/- as TDS on the interest paid to the depositors for the month of June 2008. The due date for depositing the TDS was 7th July 2008 and the assessee deposited the said amount vide bank pay order No. 831222 dated 04/07/2008 in the account of Union Bank of India, Chandganj, Lucknow which is authorized for the purpose of deposition of tax of Income-tax authorities. The said amount was collected from the assessee through banker clearing house on 7th July

2008 i.e. the due date for depositing the TDS in question. The said amount although was collected from the assessee on 07/07/2008, however, it was credited to the Central Government on 8th July 2008 instead of 7th July 2008, therefore, it is clear that there was no fault on behalf of the assessee because the amount was collected by the authorized bank on 7th July 2008 which was the due date for payment of TDS for the month of June 2008. In the present case, when the amount was collected from the assessee it was the duty of the collecting bank to credit the amount in the account of the Central Government on the same date but this has not been done, therefore, there was mistake on the part of the Union Bank of India, Chandganj, Lucknow which is authorized for the purpose of collecting tax on behalf of income-tax authorities. So it cannot be said that the assessee committed any mistake to make it liable for payment of interest on account of delayed payment. In the present case, it is noticed that the certificate issued by the Union Bank of India, Chandganj, Lucknow dated 10/02/2010 clearly mentioned that the assessee deposited income-tax amounting to Rs.2,15,73,701/- vide pay order No. 831222 dated 04/07/2008 which was credited in the account of the bank on 07/07/2008 through bankers clearing house so it is clear that the amount was collected by the authorized bank on behalf of the incometax authorities on 07/07/2008 so there was no default as far as the assessee is concerned. In this regard the CBDT has issued a Circular No. 261 dated 8th August 79 stating therein that in terms of rule 80 of the Compilation of the Treasury Rules, if a cheque or draft is tendered in payment of Government dues and accepted under the provisions of rule 79 (ibid) is honoured on presentation the payment is deemed to have been made on the date on which it was handed over to the Government bankers.

6.1 The Hon'ble Gujarat High Court in the case of *KANGOLD (INDIA) LTD. vs. CIT [1999] 239 ITR 842* has held as under:

"That it is settled legal position that in case of payment by cheque, the payment is deemed to have been made on the date of delivery of the cheque and not on the date of encashment when the cheque was honoured. Though the cheque was encashed on April 3, 1998, the payment must be deemed to have been made on March 30, 1998, when challan dated March 30, 1998, was submitted by the petitioner to the Department along with the cheque. Therefore, the payment of tax was within the period prescribed."

6.2 In the instant case also, the pay order was handed over by the assessee to the Government banker i.e. Union Bank of India, Chandganj, Lucknow on 4th July 2008 i.e. prior to the due date which was 7th July 2008. The said pay order was credited in the account of authorized bank and was not dishonoured. Therefore, the date of payment was deemed to be 4th July, 2008 and not 8th July 2008 i.e. the date on which the authorized bank credited the amount in the account of the Central Government. In the present case, if there was any mistake that was at the level of the authorized bank and the Department could have received the interest for one day from the said bank because the amount ought to have been credited in the account of the Central Government on 7th July 2008 instead of 08/07/2008. Therefore, no interest was to be levied on account of the delayed payment by the assessee. In that view of the matter, we set aside the order of the learned CIT (A) and delete the interest levied by the DCIT (TDS) by invoking the provisions of section 201(1A) of the I.T. Act.

7. In the result, the appeal is allowed.

(The order was pronounced in the open court on 23/03/2011)