

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

ITA No. 11/2016 c/w
ITA No. 10/2016

Reserved on 09.06.2023.
Pronounced on 14.07.2023.

The Commissioner of Income Tax appellant (s)

Through :- Ms. Pariksha Parmar Advocate
vice
Ms. Aruna Thakur Advocate

V/s

The Jammu and Kashmir Bank Ltd.Respondent(s)

Through :- Mr.Subash Dutt Advocate with
Mr. Sachin Sharma Advocate.

**Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

JUDGEMENT

Sanjeev Kumar, J.

ITA No. 11/2016

1. This appeal under Section 260A of the Income Tax Act, 1961 [‘the Act’] is directed against the order dated 03.12.2015 passed by the Income Tax Appellate Tribunal, Amritsar Bench [‘ITAT’] in ITA No. 145 (Asr)/2015.

2. Briefly put the facts, leading to the filing of instant appeal, are that somewhere in the year 2013, it came to the notice of the Assessing Officer i.e Income Tax Officer, TDS Circle, Aayakar Bhawan, Rail Head Complex, Jammu that during the Assessment year 2009-10, the respondent-Bank [‘the assessee’] was not deducting tax at source under Section 194A of the Act on interest paid/accrued on Term Deposit Accounts under Saving Bank Account No.0110040100015854 of the J&K State Rural Roads Development Agency [‘JKSRRDA’]. After putting the assessee to a show cause notice and

according consideration to the submissions put forwarded by it, an order under Section 201(1) and under Section 201(1A) of the Act was passed by the Assessing Authority for the Assessment year 2009-10 creating a demand of Rs.2,11,19,843/-.

3. On appeal by the assessee, the Commissioner of Income Tax (Appeals) [‘CIT(A)’] deleted the addition made by the Assessing Officer by holding that no tax was required to be deducted by the assessee in respect of JKSRDA being a Society covered by Notification No.3489 dated 22.10.1970. Feeling aggrieved by the order of CIT (A) dated 24.12.2012, the Assessing Authority filed an appeal before ITAT, Amritsar Bench. The ITAT, Amritsar Bench vide its order dated 03.12.2015 confirmed the order of CIT (A) which order of ITAT is called in question by the Commissioner of Income Tax (TDS-I), Chandigarh [‘the appellant’] in this appeal.

4. The substantial question of law, which is a *sine quo non* for maintaining an appeal under Section 260A of the Act, as proposed by the appellant, reads thus:

“Whether for the purpose of obtaining exemption under Section 194A(3)(iii)(f) of the Act, the assessee is required to apply for the exemption and the same could only be granted to the assessee after the Central Government issues a Notification in this behalf in the Government Gazette as has been amply clarified by the CBDT vide its clarification letter issued under F.No. 275/22/2009-IT(B) dated 23.06.2009” .

5. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the substantial question of law, as proposed by the appellant, is not only misconceived, but does not arise out of the pleadings and the controversy that is raised for determination in this appeal. We are, however, in agreement with the learned

counsel appearing for the respondent that the Assessing Authority has proceeded on a wrong premise and has, thus, illegally and contrary to law, raised a demand of more than Rs.2.00 crores on account of failure of the assessee to deduct tax at source under Section 194A of the Act on the interest paid/accrued on the Term Deposit Accounts of the JKSRRA, a society registered under J&K Societies Registration Act, Svt. 1998 [‘the Act of 1998’].

6. Indisputably, JKSRRA is a Society registered under the Act of 1998 and has been appointed as a nodal agency of the Government of Jammu and Kashmir for implementation of *Pradhan Mantri Gram Sadak Yojana* [‘PMGSY’]. The Ministry of Rural Development, Government of India funds this society for implementation of PMGSY. As per the Memorandum of Understanding [‘MoU’] of Banking arrangements of the funds released by the Government of India under PMGSY, entered on 05.04.2005 between the National Rural Road Development Authority [‘NRRDA’], JKSRRA and the J&K Bank Ltd., the entire funds received from the Government of India through NRRDA are deposited in an account called as “Programme Fund/Account” maintained with Moving Secretariat Branch of Jammu and Kashmir Bank Ltd. As per the stipulation in the MOU, the assessee/Bank is under an obligation to convert the balance in excess of Rs.20.00 lac in this account into fixed deposit receipts in the units of Rs.15.00 lacs . During the financial year 2008-09, the Fixed Deposit Receipts earned a sum of Rs.12,59,50,261/- as interest. The assessee/Bank did not deduct the tax at source as is mandated by Section 194A of the Act. The Assessing Authority, therefore, raised a demand under Section 201(1) for failure of the assessee to make deductions at source while releasing the interest component of the FDRs.

7. The Assessing Authority relied upon Para (xii) of Chapter 13 of

Accounts Manual circulated by NRRDA, Ministry of Rural Development, Government of India, New Delhi and came to the conclusion that the gross amount of interest received from the Bank, where the amount is deposited in the shape of FDRs, is to be taken as receipt in bank column of the cash book indicating therein separately the amount of tax deducted at source on the payment side in the Bank column. The Assessing Authority, however, missed Chapter 10 of the Accounting Manual of PMGSY which was fully attracted in the case. The Assessing Authority read the Manual and, in particular its Chapter 13, Para (xii) in isolation and came to the conclusion that even the Finance and Account Manual circulated by the Ministry of Rural Development was indicative of the fact that the Bank was under an obligation to deduct tax at source while crediting the interest accrued on the FDRs converted out of the funds released by the Central Agency in favour of the State Agency.

8 The Assessing Authority also rejected the claim of the assessee for exemption under Section 194A (3)(iii)(f) of the Act read with Notification No. 3489 dated 22.10.1970 on the ground that the SRRDA, a society registered under the Act of 1988 Act was not duly notified in the official Gazette. The order of Assessing Authority was flawed on both the counts and, therefore, was set aside by the CIT (A) vide its order dated 24.12.2012. The CIT (A), on facts, found that the entire funding for implementation of PMGSY in the State of Jammu and Kashmir was made by the Ministry of Rural Development, Government of India. The funds released by the Ministry as provided in the MoU, were to be deposited in an account known as “Programme Fund/Account”, to be maintained with Moving Secretariat Branch, J&K Bank, Civil Secretariat, Jammu with a stipulation that the assessee/bank will convert funds in excess of Rs.20.00 lacs lying in the account into fixed deposits for one

year in the units of Rs.15.00 lacs. The assessee/Bank, as per the MoU, was bound by the PMGSY Guidelines and the orders regulating the use of funds issued by the Ministry of Rural Development/NRRDA. The MoU as also the Accounting Manual of PMGSY further provided that whatever interest would accrue on the fixed deposits would also be included in the funds transferred by the Ministry of Rural Development. The CIT (A) relied upon Chapter 10 of the Accounting Manual of PMGSY to come to the conclusion that the funds lying in the Programme Fund/Account released by the Government of India was the money belonging to the Government of India and, therefore, interest, if any, accrued on the FDRs converted out of the aforesaid funds was exempted from TDS. The CIT (A) did not agree with the Assessing Authority that in terms of Chapter 13 of the Finance and Accounts Manual of the NRRDA, it was obligatory on the assessee/Bank to deduct tax at source while paying/releasing the interest on the amount lying in the FDRs. The CIT (A) has very ably explained the distinction between Chapter 13 of the Finance and Accounts Manual of the NRRDA and Chapter 10 of the Accounting Manual of PMGSY. While Chapter 13 only lays down a general procedure for treatment of gross interest and the tax to be deducted at source wherever applicable/attracted.

9. It is true that SRRDA is an assessee and liable to file return of income. It is also true that SRRDA is not an organization notified for exemption in terms of a Notification No.3489 dated 22.10.1970. This is so, because, in terms of S.O No. 3489 dated 22.10.2010 issued in pursuance of Section 194A (3)(iii)(f) of the Act, a society registered under the Societies Registration Act, 1860 financed wholly by the Government of India is exempted from the operation of sub-section (1) of Section 194A of the Act, but JKSRDA is not a society registered under the Societies Registration Act,

1860. It is a society registered under the Act of 1998 which, so far, has not been notified by the Central Government for the purpose of Section 194A(3)(iii)(f) of the Act. The Assessing Authority was not factually incorrect when it held that JKSRDA was a society not notified separately and specifically under Section 194A(3)(iii)(f) of the Act.

10. We may clarify that in terms of S.O. 3489 dated 22.10.1970, all the societies registered under the Societies Registration Act, 1960 (the Central Act) which are financed wholly by the Government, have already been notified and are entitled to the benefit of exemption in terms of Section 194A(3)(iii)(f) of the Act. However, since J&K SRRDA is a society registered under the Act of 1998 (State Act), therefore, unless, there is a specific notification issued by the Central Government under Section 194A(3)(iii)(f) of the Act, there would be no automatic exemption in favour of JKSRDA. We will still uphold the order of CIT (A) confirmed by the ITAT, Amritsar Bench on the sole ground that, both the Forums below i.e CIT (A) and ITAT Amritsar have, on facts found that the money/funds, which as per the MoU were converted into FDRs, were the funds/money belonging to the Government of India and, therefore exempt from the operation of sub-section (1) of section 194A of the Act. That apart, the J&KSRRDA may not be a society registered under the Societies Registration Act, 1860 (the Central Act) but would still fall within the ambit of clause (iii) of S.O 3489 dated 22.10.1970 which reads as under:

“(iii) Any undertaking or body, including a society registered under the Societies Registration Act, 1860 (21 of 1860) financed wholly by the Government”.

11. From a reading of clause (iii), it clearly transpires that, what is included in the exemption notification is any undertaking or body which is

financed wholly by the Government. The definition is inclusive in nature and includes specifically a society registered under the Societies Registration Act, 1860. We would like to clarify at the cost of repetition that JKSRDA is a society registered under the State Act i.e J&K Societies Registration Act, Svt., 1998, but that shall not denude it of the status of being an undertaking or a body which is wholly financed by the Government.

12. Since both the Forums below i.e CIT (A) and ITAT have concurrently found that the JKSRDA was a body wholly financed by the Central Government and, therefore, even if we were to assume that the income in the shape of interest on FDRs lying with the assessee/Bank accrued to JKSRDA, yet it would be exempt under S.O 3489 of 1970 being a body wholly financed by the Government.

13. For the aforesaid reasons, we uphold the order of ITAT Amritsar Bench impugned in this appeal, though for slightly different reasons. As held above, the substantial question of law proposed by the appellant does not arise out of the controversy presented before us in this appeal. The JKSRDA being a body wholly financed by the Government was covered by S.O 3489 dated 27.10.1970 and, therefore, no separate notification in the official Gazette was required to be issued by the Central Government to include JKSRDA specifically within the ambit of exemption provided under Section 194A (3)(iii)(f) of the Act. That apart, once the two Forums below have returned concurrent findings of fact that the funds released for implementation of PMGSY by JKSRDA and deposited in the account known as "Programme Fund/Account" were the funds/money belonging to the Central Government, there should be no dispute that, in terms of Section 196 of the Act, no deduction of tax is to be made by any person from any sum payable to the

Government. It is, thus, abundantly clear that the interest paid or accrued on the Term Deposit Accounts under Saving Bank Account No.0110040100015854 of JKSRDA was the money belonging to the Central Government and, therefore, exempted from deduction of income tax at source under Section 194A of the Act. For facility of reference, Section 196 of the Act is reproduced hereunder:

“196. Interest or dividend or other sums payable to Government, Reserve Bank or certain corporations—Notwithstanding anything contained in the foregoing provisions of this Chapter, no deduction of tax shall be made by any person from any sums payable to:

- (i) the Government, or*
- (ii) the Reserve Bank of India, or*
- (iii) a corporation established by or under a Central Act which is, under any law for the time being in force, exempt from income-tax on its income, or (iv) a Mutual Fund specified under clause (23D) of section 10, where such sum is payable to it by way of interest or dividend in respect of any securities or shares owned by it or in which it has full beneficial interest, or any other income accruing or arising to it”*

14. From the foregoing discussion, it is crystal clear that the order passed by the Assessing Authority dated 18.03.2013 in respect of assessment year 2009-10 raising a demand of Rs.2,11,19,843/- on account of failure of the assessee/Bank to deduct tax at source under Section 194A of the Act on the interest income accrued on the Term Deposit Accounts of the JKSRDA was legally and factually flawed for the following two reasons:

- (a.) that the interest income accrued on Term Deposit Accounts under the Saving Bank Account No. 0110040100015854 of the JKSRDA was the income of the Government of India and,

therefore, exempt from TDS in terms of Section 196 of the Act; and,

(b) that JKSRDA is a society registered under the Act of 1998 is a body wholly financed by the Central Government for implementation of PMGSY and, therefore, exempt from TDS in terms of Notification No.3489 dated 22.10.1970 issued by the Central Government under Section 194A(3)(iii)(f) of the Act.

15. That being the clear position emerging from the discussion made hereinabove, the orders passed by the CITA (A) and ITAT Amritsar Bench cannot be held to be bad in law and, therefore, upheld, though for slightly different reasons. Be that as it may, the dispute raised in this appeal was more or less turning on the factual aspects and, therefore, raising no substantial question of law for determination in this appeal filed by the appellant under Section 260A of the Act.

16. For the foregoing reasons, this appeal is found to be without merit and the same is, accordingly, dismissed.

ITA No. 10/2016

In view of the order passed in ITA No. 11/2016, this appeal also fails and is, accordingly, dismissed.

(PUNEET GUPTA)
JUDGE

(SANJEEV KUMAR)
JUDGE

Jammu
14.07.2023
Sanjeev

Whether order is speaking: Yes

Whether order is reportable: Yes