HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

ITA No. 6/2017 c/w
ITA No. 4/2017

Reserved on 08.06.2023.
Pronounced on 13.07.2023.

Pr. Commissioner of Income Tax ..... appellant (s)
Pr. Commissioner of Income Tax

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

V/s

M/S The J&K Bank Ltd. .....Respondent(s)
M/S The J&K Bank Ltd.

Through :- Mr.Subash C. Dutta Advocate

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGEMENT

Sanjeev Kumar, J.

1. These two appeals filed by the Revenue under Section 260A of the Income Tax Act, 1961 ['the Act'] are directed against a common order dated 28.02.2017 passed by the Income Tax Appellate Tribunal, Circuit Bench at Jalandhar ['ITAT'] in ITA No. 74(Asr)/2015 for the assessment year 2010-11 and ITA No. 137 (Asr)//2015 for the assessment year 2011-12. Both the appeals have been admitted by this Court on the following substantial question of law:

> "Whether the ITAT committed an error of law in confirming the order passed by the Commissioner of Income Tax (Appeals) deleting the non deduction of TDS on account of interest paid to the Jammu Development Authority even when the same is taxable entity and as such the assessee-Bank was under an obligation to deduct the TDS on interest payment to Jammu Development Authority under Section 194A of the Income Tax Act, 1961"

2. For both the assessment years i.e 2010-11 and 2011-12, the Joint Commissioner of Income Tax, Range-1 Jammu ['the Assessing Authority'] decided the issue in favour of the Revenue and held that the Jammu Development Authority ['JDA'] is a Local Authority which is not exempt from payment of tax and, therefore, the assessee-Bank was under an obligation to deduct the TDS on the deposits of JDA. Reliance was placed by the Assessing Authority on the judgment of Hon'ble Supreme Court rendered in the case of **Adityapur Industrial Area Development Authority vs. Union of India and others, (2006) 283 ITR 97 (SC).** On appeal by the assessee-Bank against the order of assessment passed by the Assessing Authority, the Commissioner of Income Tax (Appeals), Jammu ['CIT(A)'] accepted the plea of the assessee-Bank and held that, it was not required to deduct any tax at source on its interest payments made to the JDA. The CIT (A) relied upon an earlier judgment of ITAT, Amritsar Bench passed in respect of the assessee-Bank in respect of its Shalamar and Gandhi Nagar, Jammu Branches.

3 The issue, *inter alia*, fell for consideration before the ITAT, Amritsar Bench in the appeals filed by the Revenue as well as the assessee-bank. While dealing with the issue in question, the ITAT upheld the decision of the CIT (A), relying upon its earlier decision passed in the case of assessee for the assessment years 2007-08 and 2008-09. The ITAT had upheld the deletion of addition for those years by holding as under:

> *"It has not been disputed that Jammu Development Authority stands incorporated by the J&K Development Act, 1970. CBDT Notification No. 3489 dated 27.10.1970 issued in pursuance of the provisions of Section 194A(3)(f) of the Act, provides that no tax was required to be deducted on interest on deposit paid to a Corporation incorporated under a State Act. The position is not*

any different so far as regards JDA incorporated under the State Act, too. Therefore, the provisions of section 194A of the Act are not applicable due to which the provisions of Section 40(a)(ia) are also not attracted."

4 This is how the plea of the bank came to be finally accepted by the ITAT while deciding the appeals vide its order dated 28.02.2017. It is this order of the ITAT which is subject matter of challenge in these appeals.

5 The appeals have been preferred on multiple grounds, but this Court, after hearing both the sides, has found only one substantial question of law involved for adjudication in these appeals which we have already reproduced hereinabove.

6 Having heard learned counsel for the parties and perused the material on record, it is necessary to first set out Section 194A of the Act.

"194A. ***Interest other than interest on securities***—

(I) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force :

Provided that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44-AB during the financial year immediately proceeding the financial year in which such income by way of rent is credited or paid, shall be liable to deduct income-tax under this section..

Explanation.--For the purposes of this section, where any income by way of interest as aforesaid is credited to any account, whether called 'Interest payable account' or 'Suspense account or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such

income to the account of the payee and the provisions of this section shall apply accordingly.

(3) The provisions of Sub-section (1) shall not apply--

(i) where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the person referred to in Sub-section (1) to the account of, or to, the payee,does not exceed-

(a) forty thousand rupees, where the payer is a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution, referred to in Section 51 of that Act).

(b) forty thousand rupees, where the payer is a cooperative society engaged in carrying on the business of banking;

© forty thousand rupees, on any deposit with post office under any scheme framed by the Central Government and notified by it in this behalf; and

(d) five thousand rupees in any other case.

Provided that in respect of the income credited or paid in respect of--

(a) time deposits with a banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in Section 51 of that Act) ; or

(b) time deposits with a co-operative society engaged in carrying on the business of banking ;

(c) deposits with a public company which is formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes and which is for the time being approved by the Central Government for the purpose of Clause (viii) of Sub-section (1) of section 36.

Provided further that the amount referred to in the first proviso shall be computed with reference to income credited or paid by the banking company or the cooperative society or the public company as the case may be, where such banking company or the cooperative society or the public company has adopted core banking solutions

Provided also that in case of payee being a senior citizen, the provisions of sub clauses (a),(b) and (c) shall have effect as if for the words forty thousand rupees, the words fifty thousand rupees had been substituted.

Explanation- For the purposes of this clause, senior citizen means an individual resident in India who is of the age of sixty years or more at any time during the relevant previous year.

(iii) to such income credited or paid before to-

(a) any banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies, or any co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank), or

(b) any financial corporation established by or under a Central, State or Provincial Act, or

(c) the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or

(d) the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963), or

(e) any company or co-operative society carrying on the business of insurance, or

(f) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette ;

(iv) to such income credited or paid by a firm to a partner of the firm;

(v) to such income credited or paid by a co-operative society to a member, thereof or to any other co-operative society ;

(vi) to such income credited or paid in respect of deposits under any scheme framed by the Central Government and notified by it in this behalf in the Official Gazette ;

(vii) to such income credited or paid in respect of deposits (other than time deposits made on or after the 1st day of July, 1995) with a banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in Section 51 of that Act) ;

(viia) to such income credited or paid in respect of,--

(a) deposits with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a cooperative land development bank ;

(b) deposits (other than time deposits made on or after the 1st day of July, 1995) with a co-operative society, other than a co-operative society or bank referred to in sub-Clause (a), engaged in carrying on the business of banking ;

(viii) to such income credited or paid by the Central Government under any provision of this Act or the Indian Income-tax Act, 1922 (11 of 1922), or the Estate Duty Act, 1953 (34 of 1953), or the Wealth-tax Act, 1957 (27 of 1957), or the Gift-tax Act, 1958 (18 of 1958), or the Super Profits Tax Act, 1963 (14 of 1963), or the Companies (Profits) Surtax Act, 1964 (7 of 1964), or the Interest-tax Act, 1974 (45 of 1974).

Explanation.--For the purposes of Clauses (i), (vii) and (viia), 'time deposits' means deposits (excluding recurring deposits) repayable on the expiry of fixed periods.

(4) The person responsible for making the payment referred to in subsection (1) may, at the time of making any deduction, increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year".

7 From a plain reading of sub-section (1) of Section 194A of the Act, it clearly transpires that any person except when he is an individual or Hindu undivided family who is responsible for paying to a resident any income by way of interest, other than the income by way of interest on securities is under an obligation to deduct income tax at source at the time of credit of such income to the account of payee. The provisions of sub section (1) of Section 194A, however, shall not apply to interest income credited or paid amongst others to the following:

(a) any banking company to which the Banking Regulation Act, 1949 applies, or any co-operative society engaged in carrying on the business of banking;

(b) any financial corporation established by or under a Central, State or Provincial Act, or

(c) the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956, or

(d) the Unit Trust of India established under the Unit Trust of India Act, 1963 or

(e) any company or co-operative society carrying on the business of insurance, or

(f) **such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the official Gazette**.

8 In the exercise of powers conferred upon the Central Government under Section 194A(3)(iii)(f) of the Act, the Central Government has issued a Notification SO 3489 dated 22.10.1970 which reads thus:

"In pursuance of sub-clause (*f*) of clause (*iii*) of sub-section (3) of section 194A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the following for the purposes of the said sub-clause:-

(*i*) ***any corporation established by a Central, State or Provincial Act;***

(ii) any company in which all the shares are held (whether singly or taken together) by the Government or the Reserve Bank of India or a Corporation owned by that Bank; and

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

9 From a conjoint reading of Section 194A of the Act and SO 3489 dated 22.10.1970, it becomes abundantly clear that, apart from others, a corporation established by a Central, State or Provincial Act is exempt from the

operation of sub section (1) of Section 194A of the Act and such corporation is, thus, not obliged to deduct TDS on the interest payment made by it to the payee.

10 If we could conclude that JDA is a corporation established by the State Act, then inescapable conclusion would be that the assessee-bank shall not be obliged to deduct TDS from the interest payments made to the JDA on its amount kept in FDRs. We could have ventured into a detailed discussion as to whether the JDA is a corporation established by or under the State Act, but we would refrain from doing so, for the simple reason that the issue raised before us is no longer *res integra*. Hon'ble Supreme Court of India has dealt with the similar issue in the case of **Commissioner of Income Tax (TDS), Kanpur vs. Canara Bank, (2018) 9 SCC 322**.

11 In the aforesaid case, the Apex Court was dealing with New Okhla Industrial Development Authority ['NOIDA'], constituted by a Notification dated 17.04.1976 issued under Section 3 of the Uttar Pradesh Industrial Area Development Act, 1976. The Canara Bank was the banker of the Authority. The Bank made a payment of Rupees Twenty cores ten lacs as interest to NOIDA on fixed deposits for the financial year 2005-06. The Canara Bank, however, did not deduct TDS in terms of Section 194A of the Act. The notices were issued by the Assessing Authority to Canara Bank to show cause for not deducting the TDS. The ITAT held that the payment of interest by the bank to the NOIDA did not require any TDS in terms of section 194A(3)(iii)(f). The order of the ITAT was not accepted by the revenue and the same was taken in an appeal before the Division Bench of High Court of Allahabad under Section 260A of the Act. The Division Bench dismissed the appeal. This is how the

matter landed before the Hon'ble Supreme Court. The Hon'ble Supreme Court, after elaborate discussion as to what constitute a corporation and how the same can be said to have been established by or under an Act of Legislature, concluded that NOIDA was a corporation established by or under the Act of State Legislature and, therefore, exempt from the provisions of Section 194A (1) of the Act. Hon'ble Supreme Court ruled that the Canara Bank was under no obligation to deduct the TDS form the interest income paid by it to NOIDA on its fixed deposits lying with the Bank. The Supreme Court strongly relied upon the judgment of **Dalco Engineering Private Limited vs. Satish Prabhakar Padhye and Others (2010) 4 SCC 378.** This judgment of the Supreme Court was also followed in the later case of **Union bank of India vs. Additional Commissioner of Income Tax (TDS) (2022) 442 ITR 194 (SC)** in respect of Agra Development Authority established/constituted under the provisions of Uttar Pradesh Urban Planning and Development Act, 1973. What was said by the Supreme Court in respect of Agra Development Authority may be set out below:

> *6. The issue which is raised in the present appeals is covered by the judgment of a two-Judge Bench of this Court in Commissioner of Income Tax (TDS) Kanpur and Another vs Canara Bank. In that case, the issue pertained to the applicability of the notification dated 22 October 1970 in relation to payments made by Canara Bank to the New Okhla Industrial Development Authority, an authority constituted under Section 3 of the Uttar Pradesh Industrial Area Development Act 1976. The Bank had not deducted tax at source under Section 194-A which led to notices being issued, resulting in consequential action. This Court, after considering the terms of the notification held that NOIDA which has been established under the Act of 1976 is covered by the notification dated 22 October 1970. Though the statute under*

which the Agra Development Authority has been constituted is the UP Urban Planning and Development Act 1973, the same principle which has been laid down in the judgment of this Court in Canara Bank (supra), would govern the present case".

12 When we apply the ratio of the aforesaid two judgments of the Supreme Court to the case in hand, we find that the JDA is also a statutory authority constituted under Section 3 of the Development Act 1970 which, for facility of reference, is reproduced hereunder"

*3.**Declaration of local area and constitution of Development Authority***

(i) As soon as may be after the commencement of this act, the Govt. may, by notification in the Government Gazette, declare any area to be local area for purposes of this Act and constitute therefore an authority to be called the Development Authority (herein-after referred to as the Authority).

(ii) The Authority shall be a body corporate by the name of the Local Area having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall in the said name sue and be used.

13 From a perusal of Section 3, it clearly transpires that it confers upon the Government power to constitute a Development Authority for an area to be declared by it, to be a local area for the purposes of this Act and this the Government would do by issuing a Notification in the Government Gazette. The Authority so constituted by the Government shall be a body corporate by the name of the local area having perpetual succession and a common seal with power to acquire, hold and dispose of the property, both movable and immovable and to contract. The Authority shall, by its name, sue and be sued. This is in pursuance of the powers conferred upon the Government under

Section 3, The Jammu Development Authority has been constituted for the Local Area of Jammu. The Authority is a body corporate known by the name of Jammu Development Authority and shall have perpetual succession and a common seal etc. That being the position, there can hardly be any dispute that JDA is a corporation constituted under the State Act i.e the Development Act 1970. S.O 3489 of 1970 clearly notifies a corporation established by a Central, State or Provincial Act exempt from the operation of sub-section (1) of Section 194A of the Act. The JDA is not incorporated like the company which is incorporated under the Companies Act or the Cooperative Society which is registered under the Cooperative Societies Act. The JDA is a statutory body which owes its origin to the Development Act 1970 and is regulated in its functions by the provisions of Development Act 1970 and the rules framed thereunder.

14 In view of the clear exposition of law made by the Supreme Court in the aforesaid two judgments, it would be a superfluous exercise for us to go into the issue in detail once again.

15 The JDA is similar to the Agra Development Authority constituted under the provisions of Uttar Pradesh Urban Planning and Development Act, 1973 and NOIDA established under Uttar Pradesh Industrial Area Development Act, 1976. Both the aforesaid Authorities too have been constituted under the similar Development Acts legislated by the State of Uttar Pradesh.

16 The judgment relied upon by Ms Thakur learned counsel appearing for the Revenue in the case of **Adityapur Industrial Area Development Authority** (supra), which is a judgment relied upon by the

Assessing Authority also, is totally off the point. In the said case, the Supreme Court was dealing with a different question i.e whether the income of Adityapur Industrial Area Development Authority could be termed as income of the Government and, therefore, exempt from the payment of tax for the purposes of Article 289 (1) of the Constitution. The Supreme Court was neither confronted with, nor did it consider the issue in the context of provisions of Section 194A of the Act. In the said case, the Supreme Court did hold that Adityapur Industrial Area Development Authority was an autonomous institution and the income of the said Authority was its own income and not the income of the State. The aforesaid judgment relied upon by the revenue in support of its contentions is, thus, not applicable to the case in hand.

17 For the foregoing reasons, we hold that ITAT committed no error of law in confirming the order of CIT(A) deleting the non deduction of TDS on account of interest on fixed deposits paid to the Jammu Development Authority even when JDA is a taxable entity. We further hold that the assessee was under no obligation to deduct TDS on interest payments made to the JDA on its fixed deposits in terms of Section 194A of the Act. The JDA being a corporation established by the State Act. i.e the Development Act 1970 was, thus, outside the purview of sub-section (1) of Section 194A.

18 For the aforesaid reasons, we find no merit in these appeals. Accordingly, both the appeals are dismissed.

(JAVED IQBAL WANI)
JUDGE

(SANJEEV KUMAR)
JUDGE

Jammu
13.07.2023
Sanjeev

Whether order is reportable:**Yes**