Bank couldn't be held as assessee-in-default for TDS default if customer pays taxes on his interest income

Summary – The Delhi ITAT in a recent case of Punjab National Bank., (the Assessee) held that where payees had included interest income earned from assessee-bank in their total income and paid tax thereon, assessee bank could not be considered as in default in terms of section 201(1) for short deduction of tax on such interest income.

Facts

- The assessee-bank filed its e-TDS statement.
- On perusal of same, the TDS officer concluded that there were 39 instances in respect of which there was total short deduction of tax at source on interest amounting to Rs. 5.71 lakh. The assessee was held to be in default in respect of this amount under section 201(1) and also interest under section 201(1A) amounting to Rs. 1.37 lakh, thereby determining the total liability at Rs. 7.09 lakh.
- On appeal, the assessee-bank argued that the deductees had shown such interest as income in their respective returns and also paid tax thereon.
- The Commissioner (Appeals) noticed that no evidence was placed by the assessee on record about the payment of tax on interest income by the payees and directed the assessee to co-ordinate with the TDS officer for necessary verification in this regard. However, the Commissioner (Appeals) dismissed the appeal filed by the assessee against the order under section 201(1) and 201(1A).
- On second appeal:

Held

- The Supreme Court in *Hindustan Coca Cola Beverages (P.) Ltd.* v. *CIT* [2007] 293 ITR 226/163 Taxman 355 has held that where the payee has already paid tax on income of which there was a short deduction of tax at source, paid tax on income of which there was a short deduction of tax at source, recovery of tax cannot be made once again from the tax deductor. The assessee contended that 39 instances in respect of which the assessee short deducted tax at source, the payees had already included such interest in their respective total incomes and paid tax thereon. It appears that impressed with this submission, the Commissioner (Appeals) directed the assessee to co-ordinate with the TDS officer for necessary verification in this regard. However, the fact of the matter is that the Commissioner (Appeals) has no power to remand the proceedings before the Assessing Officer. In view of the foregoing precedent from the Supreme Court, it is clear that if the payees have included such interest income earned from the assessee-bank in their total income and paid tax thereon, the assessee cannot be considered as in default in terms of section 201(1).
- It is further relevant to note that *Explanation* to section 191 now makes it unequivocal that where the person who is required to deduct any sum in accordance with the provisions of this Act does not deduct or after so deducting fails to pay, or does not pay the whole or any part of the tax as

required by or under this Act, he may be deemed to be an assessee in default within the meaning of section 201(1) in respect of such tax, if the deductee has also failed to such tax directly. Thus it is obvious that the person responsible for deduction of tax at source on an income paid can be considered as in default only where the payee has not paid any tax on such income. To put it simply, if the payee has paid tax on such income, then the payer cannot be considered as the assessee in default. The insertion of this *Explanation* by the Finance Act, 2008 with retrospective effect from 1-6-2003 is the reiteration of the mandate laid down by the Supreme Court in the case of *Hindustan Coca Cola Beverages (P.) Ltd.* (*supra*). In the light of the above discussion, the impugned order is set aside and the matter is sent back to the Assessing Officer for necessary verification. The assessee is directed to produce the relevant evidence in support of its contention that all the payees included such interest income in their total income and paid tax thereon.

- Insofar as the question of interest under section 201(1A) is concerned, the same is chargeable for the period between the date on which tax was deductible till the date on which the tax was actually paid by the payee notwithstanding the fact that the payee ceases to be an assessee in default for the purpose of section 201(1). The Supreme Court in *CIT* v. *EliLilly & Company (India) (P.) Ltd.* [2009] 312 ITR 255/178 Taxman 505 has laid down to this extent. The matter of charging interest, wherever chargeable, is also remitted to the Assessing Officer for fresh determination in line with his verification of the liability of the assessee under section 201(1).