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Bank couldn't defer deduction of tax and wait for lower TDS certificate from depositor; held as assessee-in-default

Summary – The Chandigarh ITAT in a recent case of Assistant General Manager (PR)., (the Assessee) held that Bank cannot simply defer deduction of tax at source on interest on deposits and keep on waiting for certificate under section 197 to be obtained by depositor; it is liable to deduct tax as per mandate of section 194A

Facts

- The assessee-bank failed to deduct TDS on deposits made by Himachal Pradesh State Electricity Board (HPSEB).
- The Assessing Officer held the assessee to be assessee in default and determined liability under sections 201(1) and 201(1A).
- On appeal, the assessee argued that HPSEB was a government company established by the State and 100 per cent shares were held by the Himachal Pradesh Government and, therefore, provision of section 194A was not applicable to it because of exemption provided to it under section 194A(3)(*iii*)(*f*).
- The assessee further submitted that in earlier period HPSEB had furnished certificate under section 197 for non-deduction of TDS and for this year also the Board pleaded that it would obtain the certificate and, therefore, assessee was in a *bona fide* belief that tax was not required to be deducted and later on, when certificate from the Income-tax Officer was obtained for deduction of tax at the rate of 1 per cent, tax was deducted and deposited and, therefore, interest under section 201(1) would not have been levied.
- The Commissioner (Appeals) upheld the order of the Assessing Officer.
- On second appeal:

Held

- First of all when the interest was credited by the assessee-bank to HPSEB, valid certificate was not available with it and, therefore, it could not simply defer the deduction of tax and simply keep on waiting for certificate to be obtained by HPSEB. When there was a clear mandate of a Statute to do a particular action, then same cannot be postponed simply because the other person is making a request.
- Further, there is no force in the submission that the Board was exempt from deduction in view of section 194A(3)(iii)(f).
- The assessee has not filed any notification showing that HPSEB was notified by the Central Government under section 194A.

- Otherwise also, this theory of application of section 194A(3)(iii)(f) is totally contradicted by the HPSEB itself. On the one hand, it claims that it is covered by the exception and no tax is required to be deducted. On the other hand, it approaches the CIT (TDS) with a request for lower deduction and ultimately a certificate is issued that tax should be deducted at a rate of 1 per cent. If the HPSEB was really covered by this exception of section 194A(3)(iii)(f), then assessee should have asked for *Nil* deduction certificate or challenged the action of the Assessing Officer before the relevant forum. Therefore, the assessee-bank was required to deduct tax. Since assessee has later on deducted the tax at 1 per cent which was also approved by the Income-tax authorities, there cannot be any default for deduction of tax on the part of the bank. However, at the same time since tax has been deducted late, the assessee is definitely liable to pay interest under section 201(1A). Simply because assessee was under some *bona fide* belief that tax was not required to be deducted, cannot be a reason for not charging the interest.