

No TDS liability u/s 194A if application for registration of trust was pending

Summary – The Panaji ITAT in a recent case of State Bank of Mysore, (the Assessee) held that where assessee bank did not deduct tax at source while making payment of interest on deposits of a university, income of which was so long exempt under section 10(23) but withdrawn later on, since payee-university's application for retrospective registration under section 12AA was pending before CBDT, assessee bank could not be regarded as assessee-in-default

Facts

- One VTU was a university established through the statute of the Karnataka Government. It had maintained certain deposits with the assessee-bank. VTU was not filing its return of income and was not paying any tax insofar as it was claiming exemption under section 10(23).
- For relevant years, the assessments of VTU was reopened wherein it was held that it was not entitled to benefit of exemption under section 10(23C). The matter was carried by VTU till the Supreme Court and the Supreme Court had upheld the finding that VTU was not eligible for the exemption under section 10(23C).
- For the assessment year 2016-17, VTU applied for registration under section 12AA and the same was granted. Consequently, VTU filed an application under section 119(2)(b) to the CBDT praying for retrospective recognition of the registration under section 12AA.
- Consequent to VTU being denied the exemption under section 10(23C), the assessee was held liable under section 201 and 201(A) by revenue authorities on account of the non-deduction of TDS under section 194A(3) in respect of the interest on the deposits.
- On second appeal:

Held

- Facts in the present case clearly show that VTU has filed an application for retrospective recognition under section 12AA to the CBDT under section 119(2B). In the event the CBDT accepted the claim of the VTU, then the liability of the assessee under section 201(1) and 201(1A) would efface. This being so in the interest of natural justice, the issues in these appeal are restored to the file of the Assessing Officer with the following directions:
- The Assessing Officer is to await the decision of the CBDT in respect of the petition filed by the VTU in respect of the retrospection grant of registration under section 12AA. In the event the application filed by the VTU is not considered favourably by the CBDT then in respect of the levy under section 201(1) the Assessing Officer is to re-adjudicate the issue in line with the decision of the Supreme Court in the case of *Hindustan Coca Cola Beverage (P.) Ltd. v. CIT* [2007] 293 ITR 226/163 Taxman 355, as also after considering the impact of the certificate issued by the deductee (VTU) in Form 26A.

- In respect of levy of interest under section 201(1A) the interest is to be computed for the period from the date from which the tax was deductible to the date of filing of the return by the deductee (VTU). This is because once any income is liable for TDS then in the hands of the deductee no interest under sections 234A, 234B and 234C can be levied in respect of such income. Therefore till such income is disclosed by the deductee in its return the liability of tax rests on the deductor. Once the deductee has filed his return disclosing such income then for such return to become valid the taxes of such return should have been paid and the liability in respect of such taxes and the credit for such taxes goes to the deductee only.
- In the result, appeal of the assessee is partly allowed for statistical purposes.