

Disallowance made erroneously in ITR owing to non-deduction of TDS could be raised before ITAT for first time

Summary – The Kolkata ITAT in a recent case of Allahabad Bank., (the Assessee) held that where assessee erroneously made certain disallowance in its return on account of non-deduction of tax at source and same was not contested before Commissioner (Appeals), it was open for assessee to challenge said disallowances before Tribunal for first time

In case of assessee-bank, amortisation of premium paid for purchase of securities was to be allowed as deduction

Facts

- In course of assessment, the Assessing Officer disallowed certain amount under section 40(a)(i) on account of non-deduction of tax at source from interest payments made by assessee-bank to various depositors. The Assessing Officer made another disallowance for non-deduction of tax at source under section 194-I in respect of rent paid for generator. Since said disallowances were made voluntarily by the assessee in the original return of income, same were not contested by the assessee in appeal before the Commissioner (Appeals).
- In course of appellate proceedings, the assessee contended that interest paid to depositors did not require deduction of tax at source under section 194A. Further, in respect of disallowance of rent for generator assessee submitted that tax deduction was not necessary as the payment made to the payee did not exceed the threshold limit prescribed under section 194-I. The assessee fairly stated that since said issues were never examined by the lower authorities to appreciate the aforesaid contentions of the assessee, it could be remanded to the file of the Assessing Officer for adjudication on merits.

Held

- It is now well settled that there is no estoppel against the statute. The assessee is only pleading for claim of deduction which had been erroneously disallowed by it in the return of income and considered as such by the Assessing Officer in the assessment. Though there was no occasion for the revenue to adjudicate this issue on merits, the revenue could not take advantage of the mistake committed by the assessee.
- The scheme of taxation is primarily governed by the principles laid down in the Constitution of India and as per article 265 of the Constitution of India, no tax shall be levied or collected unless by an authority of law. When a particular item is not to be taxed as per the statute, then taxing the same would amount to violation of constitutional principles and revenue would be unjustly enriched by the same.

- Hence, in the process of verification by the Assessing Officer, if the stand of the assessee is found to be correct and if it results in income being assessed lower than the returned income, that would be the true and correct income of the assessee and it would be the duty of the revenue to assess the correct tax liability of the assessee. In view of these findings in the facts and circumstances of the case, it is deemed fit and appropriate, in the interest of justice and fairplay, to remand this issue to the file of the Assessing Officer for adjudication on merits. Accordingly, the additional ground raised by the assessee is allowed for statistical purposes.