THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD

BEFORE SHRI D. MANMOHAN, VICE PRESIDENT
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA No. 1413/Hyd/2015
Assessment Year: 2012-13

Asst. Commissioner of Income-tax, Circle – 1, Warangal.	vs.	Warangal Urban Cooperative Bank Ltd., Warangal. PAN – AAAA W 06517
(Appellant)		(Respondent)

Revenue by	:	Shri B. Kurmi Naidu
Assessee by	:	Shri D. Satyanarayana

Date of hearing	:	09-06-2016
Date of pronouncement	:	22-07-2016

O R D E R

PER S. RIFAUR RAHMAN, A.M.:

This appeal of the Revenue is directed against the order dated 24/09/2015 of ld. CIT(A) - 3, Hyderabad for the AY 2012-13.

2. Briefly the facts of the case are that the assessee is an Urban Cooperative Bank having its head quarters at Warangal. It filed its return of income of Rs. 50,70,880/- on 06/09/2012. In the scrutiny assessment, the AO made disallowance of Rs. 1,52,36,988/- u/s 40(a)(ia) of the Income-tax Act, 1961 (in short 'Act').

3. The assessee debited interest of Rs. 1,52,36,988/- being the interest paid on time deposits. The AO disallowed the said amount on the ground that such payment is liable to tax deduction u/s 194A, as no TDS was deducted, in accordance with the provisions of section 40(a)(ia) the interest debited was disallowed. AO also observed that the assessee claimed exemption from TDS u/s 194A(3)(v). However, this provision is general in nature. There are specific provisions

194A(3)(i) and 194A(3)(viia) which clearly specify that TDS is deductible on interest paid by a cooperative bank.

4. Aggrieved with the above order, the assessee preferred an appeal before the CIT(A).

5. Before the CIT(A), the assessee stated as under:

a. That the interest paid to members by cooperative bank are exempt under 194A(3)(v) in accordance with the CBDT Circular No. 09/2002, dated 11/09/2002.

b. The interest paid of Rs. 1,52,36,988 consists of

i. Interest of less than Rs. 10,000 paid to each person	Rs. 64,89,904
ii. Interest of more than Rs. 10,000 paid to the shareholders	Rs. 66,97,058
iii. Interest of more than Rs. 10,000 paid to the non-members	Rs. 20,50,008

c. With reference to payments made of less than Rs. 10000 they are not liable to TDS u/s 194A as the amount paid is below the prescribed limits.

d. The interest paid to members (shareholders) is exempt u/s 194A therefore no disallowance can be made u/s 40(a)(ia).

e. With reference to amount of Rs. 20,50,008, to non-shareholders it was submitted that since these persons have given form 15G, no TDS should be deducted. It was further submitted that as per the decision of special bench in case of Merlyn Shipping Transport & Others Vs. ACIT, 136 ITR 23 (SB) (Viz.), since the amount was already paid and was not payable as on 31/03/2012, TDS provisions are not applicable.

6. After considering the submissions of the assessee and referring to the provisions of section 194A as well as CBDT Circular No. 09 dated 11/09/2002, the CIT(A) deleted the disallowance made by the AO by observing as under:

"In view of the above discussion, the interest payments made below Rs. 10,000, the TDS provisions are not applicable. The interest payments made to member shareholders are exempt u/s

194A(3)(viia). With reference to interest payment to non-members they are again not liable to TDS as the amount was already paid during the FY and the same was not payable as on 31.03.2012 in accordance with decision of Hon'ble Special Bench Vizag in the case of Merilyn Shipping & Transporters of 136 ITD 23 and also in accordance with Hon'ble AP High Court in the case of Janapriya Engineers Syndicate (pronounced on 24.06.2004).

Since the entire amount of interest was paid and nothing was payable as on 31.03.2012 the provisions of TDS are not applicable therefore no disallowance can be made u/s 40(a)(ia). Therefore these two grounds of appeal are allowed."

7. Aggrieved with the above order, the revenue is in appeal before us raising the following grounds of appeal:

1. The Ld.CIT(A) erred both in law and facts of the case.

2. The Ld. CIT(A) erred in deleting the disallowance of Rs.1,52,36,988/- made by invoking provisions of Section 40(a)(ia) of the I.T.Act.

3. The learned CIT(A) erred in deleting the disallowance of expenditure u/ s 40(a)(ia) of the Act, holding that the amounts are not payable as at the end of the year, ignoring that the provisions are applicable in respect of payments made during the year without TDS being made.

4. The Ld.CIT(A) erred in relying upon the decision of Hon'ble ITAT, Special Bench, Vishakhapatnam, in the case of Merlyn Shipping & Transporting not considering the circular of CBDT in No:10/DV/2013[F.No:279/Misc./M61/2012-ITJ dated 16/12/2013."

8. It deserves to be noticed that as per the approval granted by the CIT(A) u/s 253(2) of the Act, the following six grounds were directed to be raised before the ITAT:

"*1. Ld. CIT(A) erred in both law and facts of the case.*

2. The ld. CIT(A) erred in deleting the disallowance of Rs. 1,52,36,988/- made by invoking provisions of section 40(a)(ia) of the IT Act.

3. The ld. CIT(A) erred in deleting the disallowance of expenditure u/s 40(a)(ia) of the Act, holding that the amounts are not payable as at the end of the year, ignoring that the provisions are applicable in respect of payments made during the year without TDS being made.

4. The ld. CIT(A) erred in relying upon the decision of Hon'ble ITAT, Special Bench, Visakhapatnam, in the case of Merylin Shipping & Transporting not considering the Circular of CBDT No. 10/DV/2013, [F.No. 279/Misc./M-61/2012-ITJ dated 16/12/2013.

5. The ld. CIT(A) erred in relying upon the decision of Hon'ble ITAT, Special Bench, Visakhapatnam, in the case of Merylin Shipping & Transporting, not considering the fact that said decision is placed under Interim Suspension by Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and State of A.P.

6. Any other ground(s) that may be urged at the time of hearing.

However, the appellant/AO raised before us only four grounds. Even though the revenue sought to file revised Form No. 36 on 20/01/2006, the revenue did not adhere to the directions given by the CIT. Ld. DR seeks further time to file revised grounds of appeal. However, in these circumstances of the case, we are of the view that by granting adjournment would amount to give premium to the casual approach of the AO and, therefore, we reject the request of the ld. DR. At any rate, the issue arising out of the grounds of appeal proposed by the CIT(A) and grounds taken before the ITAT by the AO broadly are the same. Therefore, we proceed to dispose of the appeal on merits.

9. Though, Ld. AR Shri D. Satyanarayana appeared, he has not advanced any arguments before us, therefore, we treat this appeal as heard.

10. Considered the material facts on record as well as the orders of revenue authorities. The assessee is a cooperative bank and assessee paid interest of Rs. 152,36,988/- which consists of

a) interest paid less than Rs. 10,000	Rs. 64,89,904
b) Interest paid more than Rs. 10,000 to its members/share holders	Rs. 66,97,058
c) Interest paid more than Rs. 10,000 to the non-members	Rs. 20,50,008

From the above factual position, it is clear that the assessee had paid Rs. 64,89,904/- to the depositors, which is less than Rs. 10,000/- limit, which is exempt from TDS provision u/s 194A(3)(i) of the Act.

10.1 With regard to interest payment of more than Rs. 10,000 to individual members/shareholders, assessee represented before CIT(A) that it is exempt u/s 194A, whereas the section defines as below:

> *1. 194A(3)(v)*
>
> *To such income credited or [paid by a cooperative society (other than a cooperative bank) to a member thereof or to such income credited or paid by a cooperative society] to any other cooperative society.*
>
> *2. 194A(3)(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 cooperative 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 cooperative society, other than a cooperative society or bank referred to in sub-clause (a), engaged in carrying on the business of banking).*

By reading the above sub-section 194A(3)(v), it is clear that it is applicable to the cooperative societies and not cooperative bank. In the present case, assessee is a cooperative bank. At the same time reading the sub-section 194A(3)(viia), it explains the type of deposits which is eligible for exemption. In the present case, we are not sure, whether these deposits are time deposits or other deposits of member/shareholders of the assessee. Hence, in our considered view, this is a fit case to be remitted to the file of the AO to verify the type of deposits. If it is found that it is not time deposit, exemption may be granted. Needless to mention that proper opportunity of hearing may be given to assessee.

11. With regard to interest payment of Rs. 20,50,008 to the non-members, the assessee represented before the CIT(A) that assessee having obtained form 15G, no TDS should be deducted. It was also represented that as per the decision of the special bench of ITAT in the case of Merlyn Shipping & Transports (supra), the amount was already paid and not payable as on 31/03/2012, in which event, TDS provisions are not applicable. On careful perusal of the above two representations, we are of the view that if the assessee had collected form 15G, it should be made available to the AO so that it can be verified and exemptions may be granted to the assessee. In the interest of justice, we remit this matter also to the file of the AO to verify the Form 15G and grant exemption. We direct assessee to file the relevant Form 15G before the AO in support of its case.

12. As regards the alternative submissions of the assessee i.e. payment having been already made, there is no outstanding balance as on 31/03/2012 so as to attract TDS provisions and, hence, the assessee cannot be said to be in default, so as to disallow the payment u/s 40(a)(ia) of the Act. However, it deserves to be noticed that the Hon'ble Jurisdictional High Court had an occasion to consider the same issue (in the case of Janapriya Engineers Syndicate, order dated 24/06/2014) wherein the Court held that despite the decision of the special bench decision is upset by this High Court, the special bench verdict in Merlyin Shipping is binding on the ITAT due to judicial discipline. Under these circumstances, we follow the decision of the special bench. Since it is binding on all the benches of ITAT, going by the rule of judicial discipline, we hold that if the payment already made, the provisions of section 40(a)(ia) would not get attracted. No doubt there are contrary decisions on this aspect by various other High Courts. However, we prefer to follow the view which is in favour of the assessee in the light of the decision of the Hon'ble Supreme Court in the case of CIT Vs. Vegetable Products Ltd., [1973] 88 ITR 192. The AO is, however, directed to verify

whether the payments were already made or if there is any due/payable as at the end of the year.

13. In the result, appeal of the revenue is partly allowed for statistical purposes.

Pronounced in the open court on 22nd July, 2016.

Sd/-	**Sd/-**
(D. MANMOHAN)	**(S. RIFAUR RAHMAN)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Hyderabad, Dated: 22nd July, 2016

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Copy to:-

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2) *M/s Warangal Urban Cooperative Bank Ltd., D.No. 8-11-45, 1st Floor, RNT Road, Opp. Intezargunj Police Station, Warangal.*
3) *CIT(A)-3, Hyderabad*
4) *Pr. CIT - 3, Hyderabad*
5) *The Departmental Representative, I.T.A.T., Hyderabad.*