

आयकर अपीलिय अधिकरण, 'सी' न्याय पीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

S.No	ITA No.	Asst.Year	Appellant	Respondent
1.	451/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co-operative Bank Ltd. Head Office Branch , 186, MDCC Building, North Veli Street, Opp. Head Post Office Madurai-625 001. PAN: AADFT 2450 TAN : MRIT00069G
2.	452/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co-operative Bank Ltd. Virudhunagar Main Road Kalligudi Branch .PIN-625 701 Tirumangalam Taluk TAN: CHET14857D
3.	453/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co-operative Bank Ltd. Elumalai Branch Parasakthi Mahal, Near Pettai Kalliamman Kovil.Main Bazaar,Elumalai PIN : 625 535 TAN: CHET 14858E
4.	454/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co-operative Bank Ltd. Uthamapalayam Branch South Ratha Vidhi, Uthamapalayam,Theni PIN : 625 533 TAN: MRIM02723A
5.	455/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co-operative Bank Ltd. Palanganatham Branch 35, Madakulam Main Road Madurai-625 003 TAN: MRIT 00380C
6.	456/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co-operative Bank Ltd. Nagamalai Pudukottai Branch Alwarnagar, Nagamalai Pudukottai, Madurai-625 019 TAN: MRIT 00383F
7.	457/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co-operative Bank Ltd. Pudur Branch 47,Alagarkovil Road Madurai-625 007. TAN: MRIT 00384G
8.	458/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co-operative Bank Ltd. K.K.Nagar Branch 19/9,80 Feet Road, KK Nagar, Madurai-625 007. TAN: MRIT 00427A
9.	459/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co-operative Bank Ltd. Madurai East Branch SVS Street, Madurai-625 001. TAN: MRIT 00428B
10.	460/Chny/2022	2020-21	The Income Tax	M/s. Madurai District Central Co-

ITA Nos 451 to 484/Chny/2022

			Officer, TDS Ward, Madurai.	operative Bank Ltd. Arapalayam Branch A. A. Road, Gnanaolivupuram Madurai-625 010. TAN: MRIT 00426G
11.	461/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co- operative Bank Ltd. Villapuram Branch Aruppukottai Road, Villapuram Madurai-625 001. TAN: MRIT 00430D
12.	462/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co- operative Bank Ltd. Thiruparankundram Branch Thirunagar, New Building, Poonga Street, Madurai-625 006. TAN: MRIT 00431E
13.	463/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co- operative Bank Ltd. Krishnapuram Colony Branch 20, Krishnapuram Colony , 2nd Street, Madurai-625 014. TAN: MRIT 01291D
14.	464/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co- operative Bank Ltd. Ottakadai Branch Melur Road, Ottakadai Madurai-625 106 TAN: MRIT 02544D
15.	465/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co- operative Bank Ltd. IyerBangalow Branch 390/3, Srinivas, VOC Street Bank Colony, Narayanapuram Madurai-625 014. TAN: MRIT 03300D
16.	466/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co- operative Bank Ltd. Anna Nagar Branch 580, Main Road, A.A. NAGAR Madurai-625 020. TAN: MRIT 00425F
17.	467/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co- operative Bank Ltd. Bodinayakanur Branch South Raja Street, Bodinayakanur, Theni. PIN- 625 513 TAN: MRIT 03322E
18.	468/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co- operative Bank Ltd. Aundipatti Branch Theni Main, Jakkampatti, Aundipatti. PIN- 625 512 TAN: MRIT 03323F
19.	469/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co- operative Bank Ltd. Thirumangamam Branch Madurai Road, Thirumangalam PIN- 625 706 TAN: MRIT 03324G

ITA Nos 451 to 484/Chny/2022

20.	470/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co-operative Bank Ltd. Chinnamanur Branch Old Municipality Road, Chinnamanur,Theni. PIN- 625 515 TAN: MRIT 03325A
21.	471/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co-operative Bank Ltd. Usilampatti Branch Old Post Office Street, Usilampatti-625 532. TAN: MRIT 03327C
22.	472/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co-operative Bank Ltd. T.Kallupatti Branch T.Kallupatti, Peraiur, Madurai Dt. PIN: 625 702 . TAN: MRIT 03328D
23.	473/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co-operative Bank Ltd. Solavandan Branch 4/12/13, Railway Feeder Road Sholavandan,Madurai PIN: 625 214. TAN: MRIT 03329E
24.	474/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co-operative Bank Ltd. Allinagaram Branch Periyakulam Road, Near Gokila Hospital, Allinagaram, Madurai Dist. PIN: 625 531. TAN: MRIT 03330F
25.	475/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co-operative Bank Ltd. Peraiyur Branch 8-1/59, Palace Road, Peraiyur, Madurai Dt. PIN : 625 703. TAN: MRIT 03331G
26.	476/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co-operative Bank Ltd. Theni Branch 287, Subban Chetti Street, Near Old Sri Ram Theatre, Theni-625 531. TAN: MRIT 03332A
27.	477/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co-operative Bank Ltd. Melur Branch 71, Madurai Road, Melur, Madurai-625 109. TAN: MRIT 03333B
28.	478/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co-operative Bank Ltd. NCS Mill Branch (Alanganallur) 15B, Metthupatti, Alanganallur, Madurai-625 502. TAN: MRIT 03335D
29.	479/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co-operative Bank Ltd. Myladumparai Branch

ITA Nos 451 to 484/Chny/2022

				Main Road, Myladumparai, Aundipatti, Theni-625 579. TAN: MRIT 03336E
30.	480/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co-operative Bank Ltd. Vadipatti Branch 7-2-7/1B, Madurai Road, Vadipatti, Madurai-625 218. TAN: MRIT 03338G`
31.	481/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co-operative Bank Ltd. Cumbum Branch Near Apollo Medicals, Ambethkar Street, Cumbum, Theni-625 516. TAN: MRIT 03339A
32.	482/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co-operative Bank Ltd. Periyakulam Branch Near Agraharam Street, Thenkarai, Periyakulam, Theni-625 601. TAN: MRIT 03340B
33.	483/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co-operative Bank Ltd. Kottampatti Branch Trichy-Madurai Road, Kottampatti-625 103. TAN: MRIT 03341C
34.	484/Chny/2022	2020-21	The Income Tax Officer, TDS Ward, Madurai.	M/s. Madurai District Central Co-operative Bank Ltd. Keelayur Branch 4/449, Melur to Thirupathur Road, Melur Taluk. Madurai DT PIN: 625 102. TAN: MRIT 04038G

अपीलार्थीकीओरसे/ Appellant by	:	Mr. P.Sajit Kumar, JCIT
प्रत्यर्थीकीओरसे/ Respondent by	:	Mr. K.Ravi, Advocate & Mr.S.Sundar, C.A

सुनवाईकीतारीख/Date of hearing	:	22.06.2022
घोषणाकीतारीख/Date of Pronouncement	:	29.06.2022

देश / ORDER

PER BENCH:

This bunch of 34 appeals filed by the Revenue are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 30.03.2022 / 25.03.2022

/24.03.2022 and pertain to assessment year 2020-21. Since, facts are identical and issues are common, for the sake of convenience, these appeals are heard together and are being disposed off, by this consolidated order.

2. The Revenue has raised common grounds of appeal for the assessment year 2020-21, which reads as under:-

"1. Whether the Commissioner of Income Tax (Appeals), NFAC was right in holding that the Primary Co-operative Societies that disbursed the Pongal cash gift on behalf of the Government of Tamil Nadu are Business Correspondents of the Petitioners Bank?

2. Whether provisions of the section 194N of the Income Tax Act, 1961 are applicable only if the cash withdrawals from the bank accounts are in the nature of income in the hands of the account holders?

*3. Whether the CIT(A) has erred in not appreciating that the Deductor is under legal obligation to effect TDS in terms of the provisions introduced by the Legislature and that has not been held as *ultravires* yet.*

4. Whether the CIT(A) has erred in not appreciating the fact that the deductor cannot decide the taxability of the amount to be distributed to the Payees.

5. Whether the CIT(A) erred in not appreciating Section 198 Specifically declaring that the amount to be deducted in terms of Section 194N of the IT Act would not be included as income in the hands of the assessee

*6. Whether the CIT(A) has failed to appreciate that the nature of transaction as Contemplated u/s. 194N ; relevant especially when the provisions are explicit and **clear**.*

7. Whether the conclusion of the CITA) that the primary co-operative societies are business correspondents is right especially inasmuch as the decision of the Hon'ble High Court of Madras in the case of Tirunelveli District Central Cooperative Bank has been stayed by the Division Bench of the Hon'ble High Court (Madurai

*Bench) vide order in WA(MD) NO. 1137 of 2020 and CMP (MD)
No. 6226 of 2020 dated 17-12-2020.”*

3. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. When these appeals were taken up for hearing, the learned Sr. AR appeared for the Revenue strongly opposed out of turn listing of appeals for hearing in light of provisions of section 253(4) of the Income Tax Act, 1961, and argued that when the appellant/Department filed appeals, the Registry of the Tribunal is bound to give minimum thirty days time from date of receipt of memorandum of appeal to enable other party to file cross objection, if any. In this case, appeals have been filed by the Revenue on 30.05.2022 and considering minimum timeline of five working days for service, the Respondent in these cases would not have received appeal memorandum not before 06.06.2022. Therefore, considering the timeline, cases could not have been posted for hearing any day prior to 06.07.2022 and thus, argued that there is procedural lapse, which needs to be corrected. The learned Sr.AR for the Revenue further referring to CBDT Circular No.3/2018 and clause 10(a) submitted that where

constitutional validity of the provisions of an Act or Rule is under challenge, then the Department is mandated to contest adverse orders passed by the CIT(A) before the Tribunal irrespective of the tax effect involved in the cases. In these cases, it was brought to our notice that the Respondent, M/s. Madurai District Central Co-operative Bank Ltd., has filed a Writ Petition, *inter-alia*, praying for Writ of Declaration before the Hon'ble High Court of Madurai Bench to declare provisions of section 194N of the Income Tax Act, 1961, as illegal, arbitrary, infringes the fundamental rights under Article 14, 19(i)(g) along with Article 265 and 300A of the Constitution of India, since there is challenge before the Hon'ble High Court on constitutional validity of the provisions, appeals need to be heard on merits, irrespective of tax effects. The learned Sr.AR for the Revenue further referring to decision of the Hon'ble Jurisdictional High Court of Madras in the case of Tirunelveli District Central Co-operative Bank Ltd vs. JCIT in W.P. No. 6102 of 2020 dated 27.07.2020 submitted that Division Bench of the Hon'ble High Court of Madras (Madurai Bench) have been reported to have been stayed operation of Single Judge judgement in W.A(MD) No.1905 of 2020 and

thus, there is no valid and operational judgement on the merits of the issue involved in all these appeals and thus, it cannot be heard as covered matters. The learned Sr.AR therefore, submitted that as per provisions of section 194N of the Act, the Respondent/ assessee bank needs to deduct TDS on cash withdrawals from their savings bank accounts. However, these Respondents have not deducted TDS as per law, and hence, the Assessing Officer has rightly computed short deduction of TDS and consequent interest u/s.201(1) & 201(1A) of the Income Tax Act, 1961, and their orders should be upheld.

4. The learned counsel for the Respondents submitted that tax effect involved in all these appeals is less than monetary limit prescribed by the CBDT for filing appeal before the Tribunal in terms of Circular No.3/2018 and thus, these appeals filed by the Revenue are not maintainable and need to be dismissed.

5. We have heard both the sides and considered relevant materials on record. After hearing both sides, we deem it fit to answer first procedural issue raised by the learned Sr.AR appeared for the Revenue. We find that although, provisions of section 253(4) mandates 30 days time limit for filing cross

objection, if any, by the Respondents to appeals filed by any party, but in this case, the Revenue cannot question listing of appeals before the limitation period of 30 days, because the Respondent/ assessees in all these appeals have made statement at bar through their learned Authorized Representative that they do not want to file any cross objection, because they have got relief from the first appellate authority. Further, it is wisdom of the Registry of the Tribunal to list appeals out of turn, if it feels that issues can be disposed of immediately and thus, we are of the considered view that there is no merit in arguments advanced by the learned DR for the Revenue and thus, same is rejected.

6. Having said so, let us come to second argument of the learned Sr.AR for the Revenue in light of CBDT circular No.3/2018 dated 11.07.2018 and more particularly, clause 10(a) of said circular, which provides for exception to monetary limit fixed by CBDT for filing appeal. As per circular No.3/2018 dated 11.07.2018 of CBDT, clause 10(a) specifically provides exception to monetary limits, in case constitutional validity of any of the provisions is under challenge before Courts and in such case, the Revenue needs to file appeal irrespective of

monetary limit involved in those appeals. In this case, although, the learned Sr.AR for the Revenue brings to our notice that Respondent/assessee has challenged constitutional validity of provisions of section 194N of the Income Tax Act, 1961, before the Hon'ble High Court of Madras at Madurai Bench, but the issue involved in all these appeals filed by the Revenue is not on constitutional validity of provisions of section 194N of the Act, but short deduction of TDS computed by the Assessing Officer u/s.194N of the Act. We further noted that the learned first appellate authority has decided the issue on merits, without going into examine constitutional validity of provisions of section 194N of the Income Tax Act, 1961 and further, by following decision of the Hon'ble Jurisdictional High Court of Madras in the case of Tirunelveli District Central Co-operative Bank Ltd. Vs JCIT and held that the Assessing Officer has erred in computing short deduction of TDS and consequent interest u/s.201(1) & 201(1A) of the Income Tax Act, 1961, in respect of cash withdrawal from savings bank account of their branches and case of the assessee is covered under proviso to section 194N of the Act, and thus, on those cash withdrawals short deduction of TDS and consequent

interest cannot be computed. Further, the Revenue has challenged findings of the first appellate authority before us on the issue of short deduction of TDS and consequent interest, but not constitutional validity of provisions of section 194N of the Income Tax Act, 1961. Therefore, we are of the considered view that there will be a merit in the arguments of the learned Sr.AR for the Revenue, in case, the first appellate authority has allowed relief to the Respondent/assessee on the issue of constitutional validity of provisions of section 194N of the Income Tax Act, 1961. However, in this case, the issue has been decided on merits and thus, we are of the considered view that there is no merit in arguments advanced by the learned Sr.AR for the Revenue in light of clause 10(a) of CBDT Circular No.3/2018 dated 11.07.2018 and hence, same is rejected.

7. Having said so, let us examine whether monetary limit involved in these appeals is below prescribed limit fixed by the CBDT for filing appeals before the Tribunal. We find that in all these appeals tax effect involved is below monetary limit of Rs.50 lakhs prescribed by the CBDT for filing appeal by the Revenue before the Tribunal, which is evident from fact that

the learned Sr.AR for the Revenue has filed a chart, as per which in all these cases tax effect is below prescribed limit. Therefore, we are of the considered view that appeals filed by the Revenue is covered under CBDT Circular No.3/18 without any exception as provided under clause 10(a) of the said circular and thus, appeals filed by the Revenue in all these cases are not maintainable. Hence, in light of CBDT circular No.3/2018 dated 11.07.2018, we dismiss appeals filed by the Revenue as not maintainable. However, we keep open an option to the Revenue to file Miscellaneous Application, if so advised, in case, issue involved in these appeals comes under exception as provided in the said circular and press for recall of order.

8. In the result, appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 29th June, 2022

Sd/-
(वी. दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member
चेन्नई/Chennai,

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य /Accountant Member

दिनांक/Dated 29th June, 2022

DS

आदेशकीप्रतिलिपिअद्योषित/Copy to:

- Appellant 2. Respondent 3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT 5. विभागीयप्रतिनिधि/DR 6. गार्डफाईल/GF.