आयकर अपीलीय अधिकरण, मुंबई

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES 'A' MUMBAI

सर्वश्री आय.पी. बंसल, न्यायिक सदस्य

BEFORE SHRI I.P. BANSAL, JUDICIAL MEMBER

एवं /AND

श्री राजेन्द्र, लेखा सदस्य

SHRI RAJENDRA, ACCOUNTANT MEMBER

I.TA. No. 7245/Mum/2011
Assessment Year 2008-09

Allahabad Bank, Khar (West) Branch, 383, Vasusmiriti, 13th Road, Linking Road, Khar (West), Mumbai – 400 052. **PAN: AACCA 8464 F**	Vs.	Income Tax Officer, (T.D.S.) Range 1(1), Mumbai.
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by	:	NONE
प्रत्यर्थी की ओर से/Respondent by	:	Shri Manoj Kumar (DR)

सुनवाई की तारीख / Date of Hearing	:	01-10-2012
घोषणा की तारीख / Date of Pronouncement	:	10-10-2012

आदेश / **O R D E R**

PER RAJENDRA, AM

The appellant has filed this appeal against the Order dt. 28-07-2011 of the CIT(A), Mumbai on the following Grounds:

"The CIT(A) erred in upholding that the aappellant has not explained/clarified, as to whether the balance demand of Rs. 1,20,900/- is on account of the levied in the form of Higher and Secondary Education Cess.

The appellant craves leave to add, amend, alter or vary and / or withdraw any of the above Grounds of Appeals".

2. Assessee, a branch of Banking Company engaged in the business of banking filed its Return of Income on 30-06-2008. The case was selected for scrutiny and in due course of assessment proceedings, Assessing Officer (AO) held that there was short deduction of TDS for Quarter-I amounting to Rs. 63,46,970/-. Consequently, he charged interest on short deduction of TDS for Rs. 29.17 lakhs. He also charged late payment of TDS of Rs. 1,99,250/-. AO after considering submissions of the assessee in this regard passed the final order u/s. 201(1) of the Income Tax Act, 1961 (Act) on 25-01-2011 and made certain additions. Assessee preferred an appeal before the First Appellate Authority (FAA). FAA found that original demand of Rs. 94.64 lakhs consisted Rs. 63.46 lakhs (on account of short deduction of tax) and Rs. 29.17 lakhs (on account of interest on short TDS) and Rs. 1.99 lakhs (on account of interest of late deposit of tax), that this was result of mis-match of on-line data, that AO later on revised the demand through rectification order, the final demand was reduced to Rs. 1.20 lakhs consisting of Rs. 72,670/- on account of short deduction of tax and Rs. 35,000/- on account of interest on short deduction and Rs. 13,230/- on account of interest on late payment of tax. Deciding the appeal filed by the assesses, FAA held that although the appellant had stated that only grievance was on account of surcharge levied in the form of Higher and Secondary Education Cess, yet assessee had not furnished any explanation about it. He further held that it was not clarified as to whether the balance payment of Rs. 1.2 lakhs was on account of the said surcharge/cess, that it was also not stated whether the said demand was being contested in appeal. He agreed with the legal submissions of the appellant in principle but in absence of any clarification or computation as to how and what manner the decision of the AO was wrong he did not grant any relief to the appellant.

3. From the submissions made by the Authorised Signatory before the FAA, it is found that financial bill for the AY under consideration received presidential assent in 12th May 2007, that after the date it is started collecting Higher Education Cess in the form of Secondary Higher Education Cess. Departmental Representative (DR) relied upon the order of the FAA. We have heard the rival submissions. It is a fact that finance bill for the period under consideration received presidential assent in May 2007. In these circumstances, in the interests of justice, we restore back the matter to the file of the AO. He is directed to decide the issue afresh taking into consideration the legal position with regard to chargeability of cess/surcharge in the first quarter of the Assessment Year.

Appeal filed by the assessee stands Partly Allowed.

Order pronounced in the open court on 10th October, 2012.

Sd/-	Sd/-
(आय.पी. बंसल **/ I.P. BANSAL**)	(राजेन्द्र / **RAJENDRA**)
न्यायिक सदस्य/**JUDICIAL MEMBER**	लेखा सदस्य/**ACCOUNTANT MEMBER**

मुंबई Mumbai,

दिनांक Date: 10th October, 2012

TNMM

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. Appellant
2. Respondent
3. The concerned CIT (A)
4. The concerned CIT
5. DR “A” Bench, ITAT, Mumbai
6. Guard File

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asstt. Registrar
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai