

Neutral Citation No. 2025:KER:87679

APPELLATE CIVIL

Mr. Justice A. Muhamed Mustaque, and Mr. Justice Harisankar V. Menon

I.T.A No.45 of 2025

2025 November 18

State Bank of India

..

Appellant

v.

Commissioner of Income Tax

..

Respondent

Appellant is an assessee under the Income Tax Act, 1961. Appellant has been providing reimbursement of Leave Travel Concession (LTC) to its employees. Pursuant to a circular dated 15.04.2014 issued by the bank, LTC as regards overseas travel facility to the employees stood withdrawn. The circular was challenged before the Madras High Court at the instance of the association of the employees of the bank. The Madras High Court, by an order dated 25.04.2014, stayed the operation of the circular. Later, the stay order as above was sought to be modified/clarified at the instance of the petitioners therein complaining that the bank (appellant-assessee) was taking steps to 'deduct tax at source', treating the payments to the employees on the basis of the interim order as 'income' of the employees. It was clarified by the Court that any amount paid to the petitioner towards LTC or reimbursement of LTC pursuant to the impugned order would not amount to income so as to enable the Bank to deduct tax at source. The said writ petition was dismissed, and writ appeal against the said judgement was also dismissed, against which matter is pending before Supreme Court, wherein it was directed that no recovery shall be initiated against the employees. Meanwhile, the income tax authorities proceeded against the appellant treating the appellant as 'assessee in default'. Appellant challenged the order of the assessment authority before the first appellate authority, who rejected the same and the subsequent challenge before Tribunal was also rejected. Appellant challenged the said order before High Court, contending that when steps under Section 201(1) and (1A) of the Act were initiated, that though payments were made, deduction could not be carried out from the employees on such payment by virtue of the stay orders issued by Madras High Court, and subsequently by the Supreme Court. Allowing the appeal, the Court;

Issue for Consideration

Whether the appellant could be treated as 'assessee in default' under Section 201 of the Income Tax Act, 1961, when it was under an obligation not to deduct the tax by the interim order of the High Court of Madras ?

Income Tax Act, 1961 (Central Act 43 of 1961)—Sections 192 and 201— Ingredients of Section 201 delineated—It is only when the assessee after having a liability to deduct tax, fails to do so, the question of invoking Section 201 and treating it as an

‘assessee in default’ arises—The appellant cannot be treated as ‘assessee in default’ as there was an interim order by the High Court of Madras, not to deduct the tax—Under first proviso to Section 201, the payer is not to be treated as an ‘assessee in default’ if a payee has furnished the return, taking into account the amount received for computing the income—Effect of an interim order explained.

Held:

A reading of sub-section (1) to Section 201 of the Act would show that steps thereunder can be taken, and the assessee/payer deemed to be an ‘assessee in default’ when he;

- (i) does not deduct tax
- (ii) does not pay, or
- (iii) after deducting fails to pay

whole or any part of the tax as required under the Act. Here, provisions of Section 201 of the Act have to be read along with Section 192 of the Act, which provides for actual deduction of tax at source. But in the case at hand, when so visualised, there cannot be any dispute that the appellant-assessee could not have made any deduction in view of the interim order issued as noticed earlier. It is only when the appellant-assessee, after having a liability to deduct tax, fails to do so, the question of invoking Section 201 of the Act and treating it as an ‘assessee in default’ arises. Here, the Madras High Court found, *prima facie*, that the amount paid would not be the income of a payee so as to deduct tax. Therefore, we are of the opinion that the provisions of Section 201(1) of the Act are not attracted to the case at hand. For the same reasons, the provisions of sub-section (1A) of Section 201 of the Act providing for the levy of interest are also not attracted. The issue can be addressed from yet another angle, also. Section 192 of the Act, as noticed earlier, provides for making deductions while making payments to the employee. At the time of such payment, the interdiction by the Madras High Court did not permit the appellant to deduct tax, since the appellant-assessee was directed to make such payments without deduction of tax. The Court, however, cautiously made it clear that it is for the employees to pay tax directly on the amount paid by the bank, if ultimately, the writ petition is dismissed. Therefore, the appellant could not be called upon to make payment on a later date- after the dismissal of the writ petition in 2022- ignoring the liability of the payee to satisfy the tax. We also take note of the first proviso to Section 201(1) of the Act, as per which the payer is not to be treated as an ‘assessee in default’ if a payee has furnished the return of income under the Act, taking into account the amount received for computing the income. The circumstances like the one herein are taken care of, through the first proviso to Section 201 of the Act. Thus, it is clarified by the Madras High Court that the appellant therein is not to be proceeded against for payments already made pursuant to the orders issued, as per which there was no scope for tax deduction at source. We are of the opinion that the same is the position herein also, as the appellant, having complied with the orders of the Madras High Court, cannot be treated as an ‘assessee in default’ under the provisions of Section 201 of the Act. Thus, though the effect of an interim order would

come to an end upon the final disposal of the main case that would be subject to the observation to the contrary in the interim order or the final judgment. Applying this principle to the case at hand, even though the main writ petition/writ appeal has been later disposed of insofar as the interim order has directed the treatment of the amount paid without deduction of tax in the manner laid down therein, the appellant bank cannot be treated as an assessee in default. (*Paragraph 8, 9, 10, 11 and 12*)

Case Law Cited:

- (1) (1995) 215 I.T.R. 618—*Concurred with*.
- (2) (2022) 2 S.C.R. 990—*Relied upon*.

List of Acts and Rules:

Income Tax Act, 1961.

List of Keywords:

Assessee in default, Interim order, Section 201, Tax, Deduction at source.

Case Arising From:

Against the Order in I.T.A. No. 274 of 2024, ITA Tribunal, Cochin Bench.

Appearance of Parties:

Sri A. Kumar (Sr. Advocate), *Smt G. Mini*, *Sri P.J. Anilkumar*, *Sri. P.S. Sree Prasad* and *Sri. Satyajith K. Warriar* . . . for appellants

Sri P.G. Jayashankar and *Sri Navaneeth N. Nath* . . . for respondent

JUDGMENT

The Judgment of the Court was delivered by **Harisankar V. Menon, J.** —This appeal is at the instance of the assessee - a nationalised bank - seeking to challenge the order dated 09.12.2024 in ITA No.274 of 2024 of the Income Tax Appellate Tribunal, Cochin Bench upholding the steps initiated against it under Section 201(1) and (1A) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') with respect to the assessment year 2016-17.

2. The appellant has been providing reimbursement of Leave Travel Concession (LTC) to its employees. Pursuant to a circular dated 15.04.2014 issued by the bank, LTC as regards overseas travel facility to the employees stood withdrawn. The circular was challenged before the Madras High Court at the instance of the association of the employees of the bank. The Madras High Court, by an order dated 25.04.2014, stayed the operation of the circular. Later, the stay order as above was sought to be modified/clarified at the instance of the petitioners therein complaining that the bank (appellant-assessee) was taking steps to 'deduct tax at source', treating the payments to the employees on the basis of the interim order as 'income' of the employees. The Madras High Court, therefore,

issued Annexure-A interim order dated 16.02.2015 in W.P. No.11991 of 2014 clarifying the earlier order as under: -

“5. There is no dispute that the Bank would be paying LTC amount to the concerned officers pursuant to the interim order granted by this Court. The Interim Order is subject to the result of the writ petition. The learned counsel for the petitioner is correct in his contention that there is no taxable income for deduction at source.

6. The interim order granted by this Court is explained to the effect that any amount paid to the petitioner towards LTC or re-imbursement of LTC pursuant to the impugned order would not amount to income so as to enable the Bank to deduct tax at source. It is made clear that if the writ petition is dismissed, the employees are liable to pay tax on the amount paid by Bank.”

(Underlining supplied)

The appellant-assessee contends that in view of the afore interim order, no tax could be deducted while making payment to the employees, since, in paragraph 6 of the order, it was found that the payment to the employee would not amount to his income so as to enable the bank to deduct tax at source. In view of this, the appellant could not deduct tax while making payment to the employees during the financial year 2015-16 relevant to the assessment year 2016-17. The appellant points out that the afore writ petition was ultimately dismissed on 24.06.2022, against which W.A No.1653 of 2022 was filed, which led to the issuance of Annexure-C interim order dated 08.08.2022 interdicting the appellant from making recovery from the salary of the employee. Ultimately, the appellant points out that by Annexure-D judgment dated 08.06.2023, the Division Bench of the Madras High Court directed reconsideration of the issue as regards the withdrawal of LTC benefits. The afore judgment is again challenged by the appellant bank before the Apex Court, and by an order dated 28.08.2023 in SLP (C) 16734 of 2023, while issuing notice, the Apex Court interdicted the bank from making recoveries from employees during the pendency of the matter. It was the contention of the bank before the department, when steps under Section 201(1) and (1A) of the Act were initiated, that though payments were made, deduction could not be carried out from the employees on such payment by virtue of the stay orders noticed above. However, by Annexure-B order dated 30.03.2023, the explanation offered as above was brushed aside, and the appellant was treated as an ‘assessee in default’ demanding tax under Section 201(1) and interest under Section 201(1A) of the Act. The first appellate authority having confirmed the afore assessment, the appellant was before the Income Tax Appellate Tribunal, Cochin Bench, and by Annexure-G order dated 09.12.2024 in ITA 274/ COCH/2024, the appeal stood rejected.

3. It is in the afore circumstances that the captioned appeal is instituted by the appellant-assessee.

4. The following questions of law, as reframed by us, arise for consideration in this appeal:-

i. Whether, in the facts and circumstances of the case, the appellant could be treated as an assessee in default under Section 201 of the Income Tax Act, 1961?

ii. Whether, in the facts and circumstances of the case; when the assessee bank, by the interim order of the High Court of Madras, was under an obligation not to deduct tax at source, could be held to be an assessee-in-default for non-deduction of tax at source on impugned LFC payments at all as the non-compliance of the orders would have tantamounted to contempt of court?

5. We have heard Sri. A. Kumar, the learned senior counsel for the appellant-assessee, and Sri. P.G. Jayashankar, the learned Standing Counsel for the respondent-revenue.

6. The factual position as noticed earlier is not in dispute. The appellant had been paying various amounts to its employees towards LTC/LFC. The appellant sought to withdraw the benefits of LTC/LFC, which involves travel to places outside India. The circular was challenged before the Madras High Court, as noticed earlier. Both the appellant as well as the income tax department were respondents in the writ petition instituted as above. A reading of paragraphs 5 and 6 of the Annexure-A interim order dated 16.02.2015 shows that:

i. *Prima facie*, the Madras High Court was of the view that there is no taxable income accruing to the employee so as to deduct tax at source.

ii. It was clarified that the payment of the bank towards LTC on the basis of the interim direction would not amount to 'income' of the employee.

iii. Therefore, the bank could not make any deductions at source.

iv. If ultimately the writ petition stood rejected, it is for the employee to pay tax on the amount paid by the bank.

It is also not in dispute that the above state of affairs continued throughout the year 2015-16.

7. It is on the face of the afore, provisions of Section 201 of the Act requires to be analysed so as to consider the question as to whether the appellant could be treated as an 'assessee in default'. Under Section 192 of the Act, the appellant had a statutory duty to deduct income tax while making payments to the employee 'at the time of payment'.

8. The provisions of Section 201 of the Act, to the extent relevant herein, read as under: -

"201 Consequences of failure to deduct or pay.

(1) Where any person, including the principal officer of a company,—

(a) who is required to deduct any sum in accordance with the provisions of this Act; or

(b) referred to in sub-section (1A) of section 192, being an employer,

does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a payee or on the sum credited to the account of a payee shall not be deemed to be an assessee in default in respect of such tax if such payee—

- (i) has furnished his return of income under section 139;
- (ii) has taken into account such sum for computing income in such return of income; and
- (iii) has paid the tax due on the income declared by him in such return of income,

and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed:

Provided further that no penalty shall be charged under section 221 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.

(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,—

- (i) at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and
- (ii) at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid,

and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of section 200:”

A reading of sub-section (1) to Section 201 of the Act would show that steps thereunder can be taken, and the assessee/payer deemed to be an ‘assessee in default’ when he;

- i. does not deduct tax
- ii. does not pay, or

iii. after deducting fails to pay

whole or any part of the tax as required under the Act. Here, provisions of Section 201 of the Act have to be read along with Section 192 of the Act, which provides for actual deduction of tax at source. But in the case at hand, when so visualised, there cannot be any dispute that the appellant-assessee could not have made any deduction in view of the interim order issued as noticed earlier. It is only when the appellant-assessee, after having a liability to deduct tax, fails to do so, the question of invoking Section 201 of the Act and treating it as an 'assessee in default' arises. Here, the Madras High Court found, *prima facie*, that the amount paid would not be the income of a payee so as to deduct tax. Therefore, we are of the opinion that the provisions of Section 201(1) of the Act are not attracted to the case at hand. For the same reasons, the provisions of sub-section (1A) of Section 201 of the Act providing for the levy of interest are also not attracted.

9. The issue can be addressed from yet another angle, also. Section 192 of the Act, as noticed earlier, provides for making deductions while making payments to the employee. At the time of such payment, the interdiction by the Madras High Court did not permit the appellant to deduct tax, since the appellant-assessee was directed to make such payments without deduction of tax. The Court, however, cautiously made it clear that it is for the employees to pay tax directly on the amount paid by the bank, if ultimately, the writ petition is dismissed. Therefore, the appellant could not be called upon to make payment on a later date- after the dismissal of the writ petition in 2022- ignoring the liability of the payee to satisfy the tax.

10. We also take note of the first proviso to Section 201(1) of the Act, as per which the payer is not to be treated as an 'assessee in default' if a payee has furnished the return of income under the Act, taking into account the amount received for computing the income. The circumstances like the one herein are taken care of, through the first proviso to Section 201 of the Act.

11. We also notice the judgment of the Madras High Court in **Leema Resorts P. Ltd. and Another v. C.G. Suryakant and Others** [(1995) 215 I.T.R. 618], wherein a more or less similar issue arose for consideration. In that case, the appellants were the tenants of the premises concerned in the appeal. The appellants were found guilty of contempt of court for having wilfully disobeyed certain orders of the Court in an appeal filed against the order of the learned Single Judge. In the contempt appeal, the enforcement of the order was postponed in view of the undertaking made by the appellants to pay a certain sum of rupees ten lakhs on or before 01.08.1994. The amount of rupees ten lakhs was paid on 01.08.1994. The Division Bench recorded the payment of rupees ten lakhs on the previous day and permitted the appellants to make a deposit of rupees three lakhs in the manner stated thereunder. After payments were made as above, a notice was issued by the income tax department to the appellant in the contempt appeal, inviting attention to the provisions of Section 194-I of the Act introduced in June 1994, as per which 20% ought to have been deducted when rent exceeding Rs.1,20,000/- was paid in a financial year. The appellant in such circumstances approached the court seeking permission to deduct 20% of the amount already paid pursuant to the order noticed earlier. Considering this issue, the Court found as under: -

“One more question that remains for consideration is as to whether the petitioners should be subjected to the proceedings that are now initiated against them by notice dated September 2, 1994, which is extracted above. We have already extracted the relevant portion of our order dated August 2, 1994, which directed the mode of payment. Further, the petitioners/appellants in Contempt Appeal No. 5 of 1994, were required to pay under the teeth of punishment imposed in the contempt proceedings. Our order did not give any scope or option to the appellants in the contempt appeal to deduct 20 per cent, of the amount payable to the respondents at source. In such a situation, the proviso to section 201 of the Act is attracted as it specifically empowers the concerned Assessing Officer to extend the benefit to such an assessee and not to treat him as the assessee in default in respect of the tax. On this question also, we have heard learned senior standing counsel for the Department, who fairly submitted that as the petitioners were obliged to make payment pursuant to the order of this court, they cannot be treated as defaulters and they would fall within the proviso to section 201 of the Act, and the Assessing Officer would be suitably advised in this regard, on an application filed by the petitioners pursuant to the notice dated September 2, 1994. As the case falls under the proviso to section 201(1) of the Act and as the submission of learned senior standing counsel is also to the same effect, and in addition to this it is also submitted by learned senior standing counsel that the Assessing Officer would be advised, accordingly, we do not consider it necessary to issue any such direction as prayed for in this miscellaneous petition as it would be sufficient to place the submissions made by learned standing senior counsel for the Department on record.”

(Underlining supplied)

Thus, it is clarified by the Madras High Court that the appellant therein is not to be proceeded against for payments already made pursuant to the orders issued, as per which there was no scope for tax deduction at source. We are of the opinion that the same is the position herein also, as the appellant, having complied with the orders of the Madras High Court, cannot be treated as an ‘assessee in default’ under the provisions of Section 201 of the Act.

12. The Apex Court in **State of U.P. thr. Secretary and Ors. v. Prem Chopra** [(2022) 2 S.C.R. 990], considering the effect of an interim order granted by the Court, once the main matter itself is disposed of, has observed as under:-

“24. From the above discussion, it is clear that imposition of a stay on the operation of an order means that the order which has been stayed would not be operative from the date of passing of the stay order. However, it does not mean that the stayed order is wiped out from the existence, unless it is quashed. Once the proceedings, wherein a stay was granted, are dismissed, any interim order granted earlier merges with the final order. In other words, the interim order comes to an end with the dismissal of the proceedings. In such a situation, it is the duty of the Court to put the parties in the same position they would have been but for the interim order of the court, unless the order granting interim stay

or final order dismissing the proceedings specifies otherwise. On the dismissal of the proceedings or vacation of the interim order, the beneficiary of the interim order shall have to pay interest on the amount withheld or not paid by virtue of the interim order.”

(underlining supplied)

Thus, though the effect of an interim order would come to an end upon the final disposal of the main case that would be subject to the observation to the contrary in the interim order or the final judgment. Applying this principle to the case at hand, even though the main writ petition/writ appeal has been later disposed of insofar as the interim order has directed the treatment of the amount paid without deduction of tax in the manner laid down therein, the appellant bank cannot be treated as an assessee in default.

13. Sri.Jayashankar also contended that insofar as steps under Section 201 of the Act were initiated with reference to the deduction within the State of Kerala, the interim orders issued by the Madras High Court were of no consequence, and hence the appellant cannot seek refuge thereunder. But we are of the opinion that since the Act is an all-India statute and since what was challenged before the Court was the circular issued by the bank at the instance of the Association of Bank employees, the appellant cannot be faulted for having honoured the stay orders issued by the Madras High Court. Therefore, the afore contention raised is only to be rejected.

14. We also take note of the fact that the Apex Court, by judgment dated 04.11.2022 in Civil Appeal No.8181 of 2022, has found that, as against payments made by the appellant bank to its employees towards LTC, it was bound to deduct tax at source. But this finding was with respect to the Assessment Year 2013-14 (financial year 2012-13). In the case at hand, during the financial year 2015-16 relevant to the assessment year 2016-17, the interim directions issued by the Madras High Court governed the field, and the appellant-assessee was justified in not having deducted the tax.

In the result, this appeal would stand allowed, answering the questions formulated in favour of the assessee and against the revenue.

Result of the Case:

Allowed.

Headnote prepared by A.R.
