

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

ITA No.22 of 2014

Date of Decision: 31.12.2014

Commissioner of Income tax (TDS), Chandigarh.

...Petitioner.

Versus

State Bank of Patiala Sectt., Shimla.

..Respondent.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

The Hon'ble Mr. Justice P.S. Rana, Judge.

Whether approved for reporting?¹ Yes.

For the Petitioner: Mr. Vinay Kuthiala, Sr. Advocate
with Mr. Diwan Singh Negi,
Advocate vice Ms. Vandana
Kuthiala, Advocate.

For the Respondent: Mr. Vishal Mohan, Advocate with
Mr. Aditya Sood, Advocate.

Sanjay Karol, J (oral)

This appeal stands admitted on the following
substantial question of law:-

“Whether for the purpose of obtaining exemption under Section 194A(3) (f) of the Income Tax Act, the assessee was required to apply for exemption and the same could only be granted to the assessee after the Central Government issued a notification in this behalf in the official gazette?”

2. Genesis of the dispute emanates with the alleged non-compliance of statutory provisions of

¹ Whether reporters of the local papers may be allowed to see the judgment?

Section 194A (1) of the Income Tax Act, 1961 (hereinafter referred to as the Act) by the assessee/respondent herein. M/s Biotech Biobusiness and HP SITEG, wholly financed and controlled establishment of the Government, had made certain deposits with the assessee, who at the time of disbursement did not deduct the component of income tax (TDS).

3. Finding such action of the assessee to be illegal, Revenue initiated proceedings with the issuance of notice under Section 201(1) /201(1A) of the Act. Vide order dated 15.12.2012, for the financial year 2008-09, Income Tax Officer (TDS), Shimla, raised demands and took penal action.

4. In an appeal filed by the assessee, Commissioner of Income Tax (Appeals), Shimla, vide order dated 14.12.2012, reversed such findings, which order stands affirmed by the Income Tax Appellate Tribunal Chandigarh Benches 'A' Chandigarh, vide order dated 10.07.2013, in ITA Nos. 323 & 324/CHD/2013, titled as *The ITO (TDS), Shimla Versus State Bank of Patiala*.

5. For the purposes of adjudication of the present appeal, relevant provisions of the Act, are reproduced as under:-

“194A. (1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income [by way of interest on securities], shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force:

.....(3) The provisions of sub-section (1) shall not apply—.....

.....(iii) to such income credited or paid to—.....

.....(f) such other institution, association or body [or class of institutions, associations or bodies] which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette;”

6. It is not disputed that the Societies in question are wholly funded by the Government.

7. Evidently, as noticed by the Appellate Authority, by virtue of its power, in terms of Section 194A, Central Government has issued notification covering “Any undertaking or body including a Society

registered under the Societies Registration Act, 1860 (XXI of 1860) financed wholly by the Government.”

8. Now the language of Section 194A of the Act is simple, unambiguous and evidently clear. The Central Government has issued notification, specifically exempting, *inter alia*, Societies which are wholly financed by the Government, thus making the provisions of Section 1 of Section 194A inapplicable. In view of sub-section 3(iii) (f) of the said Section, in the instant case, assessee made payments, without deducting income-tax, to such Societies which stand exempted under the notification.

9. In our considered view, once the notification stands issued, it is not the requirement of the Act for the assessee to either apply or seek exemption from the Authorities under the Act or the Central Government. Expression “reasons to be recorded in writing” are in reference to the stage preceding issuance of notification by the Central Government. Reasons have to be that of the Central Government and not the assessee. With the issuance of notification by the Central Government, which is not the subject matter of challenge herein, provisions of Section 194(A) (1) of the Act, automatically becomes inapplicable.

10. Thus, order passed by the Appellate Authority is upheld and substantial question of law is answered accordingly. As such, appeal stands disposed of as also pending application(s), if any.

(Sanjay Karol),
Judge.

(P.S. Rana),
Judge.

December 31, 2014
(Purohit)

High Court