IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

I.T.A. No. 1326/HYD/2014
Assessment Year: 2009-10

Malineni Babulu (HUF), Podalakur (V) & (M), SPSR Nellore Dist., **[PAN: AAGHB5221C]**	Vs	Income Tax Officer, Ward-I, GUDUR
(Appellant)		**(Respondent)**

C.O. No. 57/HYD/2014
(in ITA No. 1326/HYD/14)
Assessment Year: 2009-10

Income Tax Officer, Ward-I, GUDUR	Vs	Malineni Babulu (HUF), Podalakur (V) & (M), SPSR Nellore Dist., **[PAN: AAGHB5221C]**
(Cross-Objector)		**(Respondent)**

For Assessee : Shri S. Rama Rao, AR
For Revenue : Shri D. Srinivas, DR

Date of Hearing : 06-08-2015
Date of Pronouncement : 07-08-2015

O R D E R

PER INTURI RAMA RAO, A.M. :

These cross-appeals filed by assessee and Revenue against the orders of the Ld. Commissioner of Income Tax, Guntur dated 25-02-2014 passed U/s. 263 of the Income Tax Act [Act]. Revenue filed Cross Objections with the following Grounds of Appeal:

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"1. The appeal is barred by limitation in view of the fact that the date of communication of the order appealed against is 21.04.2014, whereas, the appeal was filed before the Honourable Tribunal on 14.07.2014.

2. The appellant has failed to pay the requisite fee as per sub-section (6) of Section 253 of the Income Tax Act, 1961".

2. Revenue has filed cross objections with a delay of 13 days. The delay in filing the Cross Objection is condoned keeping in view the delay is short. Therefore, we now take up the Cross Objections since they go the very root of the matter. The relevant law governing the Cross Objections is found in Sub-Section 4 of Section 253 of the Act, which is re-produced below:

"[(4) The Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) or the Assessing Officer in pursuance of the directions of the Dispute Resolution Panel has been preferred under sub-section (1) or sub-section (2) or sub-section (2A) by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof; within thirty days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order[77] of the Assessing Officer (in pursuance of the directions of the Dispute Resolution Panel) or Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3) or sub-section (3A).]"

3. From the above, it is clear that the provisions of the Act does not provide for filing of Cross Objection against the order passed U/s. 263. It is trite law that no appeal is maintainable unless the statute expressly provides for the same. Keeping in view of this settled legal position, we hold that the Cross Objections filed by Revenue are not at all maintainable, hence dismissed as such.

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4. Now, coming to the appeal filed by assessee, the assessee raised the following Grounds of Appeal challenging the order passed U/s. 263 of the Act:

> *"1. The order of the learned CIT passed U/s. 263 of the I.T. Act is erroneous both on facts and in law.*
>
> *2. The learned CIT erred in holding that there is an error in the assessment order U/s. 143(3) dated 21-12-2011 which determined the total loss at Rs. 4,85,000/-. The learned CIT ought to have seen that there is no error in the assessment which is prejudicial to revenue and, therefore, the provisions U/s. 263 would not apply.*
>
> *3. The learned CIT erred in holding that the provisions U/s. 40A(3) or 40(a)(ia) would apply to certain payments made by the appellant herein.*
>
> *4. The learned CIT erred in holding that the provisions U/s. 40A(3) would apply to the payments made to Coromandal Fertilizers Ltd., and further erred in holding that an amount of Rs. 3,63,720/- is liable for such disallowance.*
>
> *5. The learned CIT erred in holding that the provisions U/s. 40A(3) would apply to the payments made to Ravindra Agro Service Centre, Gudur and further erred in holding that an amount of Rs. 5,54,000/- is liable for such disallowance.*
>
> *6. The learned CIT erred in observing that interest of Rs. 98,193/- paid to Sri M. Babulu and Smt. M. Padmajais to be disallowed U/s. 40a(ia) of the I.T.Act.*
>
> *7. The learned CIT erred in directing the Assessing Officer to modify the assessment by making disallowance U/s. 40A(3) and 40a(ia) of the I.T.Act.*
>
> *8. Any other grounds that may be urged at the time of hearing".*

5. There is a delay of 24 days in filing this appeal. The appellant filed the petition condoning the delay as follows:

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"The petitioner herein is the kartha of HUF engaged in the business of fertilizers & pesticides in the name and style of "Sri Srinivasa Fertilizers". For the assessment year 2009-10, the HUF filed the return of income on 30.9.2009 admitting an income of Rs. 2,35,000/-. The Income-Tax Officer, Ward-I, Gudur originally completed the assessment U/s. 143(3) on 21.12.2011 determining the income at Rs. 4,85,000/-. Later, the Commissioner of Income-Tax, Gutur invoking the provisions of Sec.263 of the I.T.Act required the appellant to state the objections if any. In response to the said notice, the petitioner filed detailed explanation before the learned Commissioner of Income-Tax. The learned CIT passed an order under Section 263 of the I.T.Act on 25.2.2014 and directed the Assessing Officer to modify the assessment. The said order passed U/s. 263 was served on the appellant on 21.4.2014. The period of 60 days expired on 20.6.2014. The appeal is being filed before the Hon'ble Income-Tax Appellate Tribunal, Hyderabad on 14.7.2014. There is a delay of 24 days in filing the appeal. In this regard the petitioner humbly submits that when the order of the CIT was received he was under the bonafide belief that no appeal need be filed against such order and the appeal lies against the order to be passed by the Assessing Officer in consequence to the order U/s. 263 of the I.T.Act. In the mean time, the Assessing Officer passed an order U/s. 143(3) r.w.s. 263 of the I.T.Act. At this stage the petitioner approached an Advocate for filing the appeal against the order U/s. 143(3) r.w.s. 263 passed by the Assessing Officer. The petitioner was advised that an appeal lies against the order U/s. 263 of the I.T. Act. Accordingly, the petitioner got the appeal prepared against the order U/s. 263 and the same is being filed before the Hon'ble ITAT on 14.7.2014 with a delay of 24 days. The petitioner humbly submits that the delay is for the reasons submitted above which are beyond the control of the petitioner and is not intentional. The petitioner, therefore, prays the Hon'ble Income-Tax Appellate Tribunal to kindly condone the delay and pass appropriate orders in the matter".

6. From the above petition, it is clear that delay had occurred on account of bonafide belief that appeal was not necessary and the appellant does not gain anything out of the delay and the Ld. CIT-DR had expressed no objection for condonation of delay. In the circumstances, keeping in view the interest of justice, we condone the delay of 24 days in filing this present appeal.

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7. Now, coming to the issue of merits of the appeal, the brief facts leading the present appeal are as follows:

7.1 The appellant is a HUF. The return of income for the AY. 2009-10 was filed on 30-09-2009 declaring net income of Rs. 2,35,000/-. As against this return of income, assessment was completed U/s. 143(3) vide order dt. 21-12-2011 at a total income of Rs. 4,85,000/- after making addition of Rs. 2,50,000/- on estimate basis. While matter stood thus, the Ld.CIT, Guntur had issued a show cause notice dt. 20-01-2014 U/s. 263 of the Act requiring the appellant to show cause as to why the assessment order cannot be revised to make additions U/s. 40A(3) in respect of payment made to M/s. Coramandal Fertilizers Ltd., and M/s. Ravindra Agro Service Centre, Gudur and addition of interest expenditure of Rs. 98,193/- under the provisions of Section 40(a)(ia) for non-deduction of TDS. In response to show cause notice, the appellant had submitted vide its letter dt. 24-02-2014 contending that the provisions of Section 40A(3) are not applicable and in respect of the addition under the provisions of 40(a)(ia), it was submitted that the appellant had obtained Form 15H from the respective parties and the same was claimed to have been filed before the CIT and copy of which was filed before the AO. Hence, it was contended that provisions of Section 40(a)(ia) are not applicable. Therefore, it was prayed before CIT that the proposed revision U/s. 263 may be dropped. The Ld.CIT brushing aside the explanation offered by the appellant had passed an order dt. 25-02-2014 U/s. 263 holding that the assessment order was erroneous and prejudicial the interest of Revenue in as much as the above issues were not considered and added by the AO in the assessment order. Being aggrieved, the appellant had come up with the present appeal before us.

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8. The appellant had raised 8 Grounds of Appeal. Ground No. 1 & 8 are general in nature, does not require any adjudication. Appellant in Ground No.2 to 5 challenges the directions of CIT for making addition of Rs. 3,63,720/- in respect of payments made to M/s. Coramandal Fertilizers Ltd., and Rs. 5,54,000/- in respect of payments made to M/s. Ravindra Agro Service Centre, under the provisions of Section 40A(3). In Ground No.6, challenged the directions of Ld.CIT for making addition of Rs. 98,193/- under the provisions of Section 40(a)(ia) of the Act. In Ground No.7 he challenged the very legality of the order passed by CIT U/s. 263 of the Act. We shall now take up the Grounds of Appeal Nos. 2 to 5.

9. It was submitted on behalf of the appellant that the provisions of Section 40A(3) cannot be made applicable to the present case in as much as no cash payments were made to M/s. Coramandal Fertilizers Ltd. All the payments made to M/s. Coramandal Fertilizers Ltd., were by way of crossed Demand Drafts and he drew our attention to Page No. 76 of the Paper Book wherein the copy of the bank pass book of the appellant was placed. From this it is very clear that the impugned payments of Rs. 3,63,720/- were made to M/s. Coramandal Fertilizers Ltd., by way of Demand Draft as detailed below :

i.	10th October, 2008	-	Rs. 1,50,000/-
ii.	29th November, 2008	-	Rs. 25,000/-
iii.	4th December, 2008	-	Rs. 1,87,260/-.

All these amounts were debited to the appellant's bank account, the banker collected the applicable service charges for issuing the Demand Drafts.

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10. Now, coming to the payments made to M/s. Ravindra Agro Service Centre, he drew our attention to page No. 67 and as well as page No. 53 of the Paper Book, wherein the ledger account copy of M/s. Ravindra Agro Service Centre, in the appellant's books and as well as the ledger account copy of the appellant in the books of M/s. Ravindra Agro Service Centre, at page No. 53 are placed. From the above ledger account, it is clear that on any day no payment was made exceeding Rs. 20,000/- and therefore, he submitted that the provisions of Section 40A(3) cannot be applied. On the other hand, Ld.CIT-DR had relied on the order passed U/s. 263.

11. We have heard the rival submissions and perused the material on record. A perusal of the page No. 76 as well as page Nos. 53 and 67 of the Paper Book, it clear that in the case of M/s. Coramandal Fertilizers Ltd., no cash payments were made and in the case of M/s. Ravindra Agro Service Centre, it is clear that no payments in cash exceeding Rs. 20,000/- were made. This evidence has not been rebutted by the Ld. CIT-DR. Hence, we had no option but to hold that the provisions of Section 40A(3) are not applicable to the present case. Hence, this ground of appeal filed by appellant is allowed.

12. The next ground of appeal relates to challenging the directions of Ld. CIT to make addition of Rs. 98,193/- under the provisions of Section 40(a)(ia) of the Act. During the year, the appellant had made interest payment of Rs. 42,498/- and Rs. 38,709/- to the coparcener of the appellant. It was claimed that the taxable income of the payees was below the taxable limit hence Form 15H was obtained from them and it was claimed to have been submitted to the CIT, Guntur by post, but no proof in support of the dispatch by post was furnished before the CIT. However, a copy of Form 15H was filed before the AO. This fact has not

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been disputed by the Revenue. The CIT directed the AO to disallow the same for failure to adduce evidence in support of dispatch of Form 15H by post. The Ld. Counsel submitted that though no proof in support of dispatch of Form 15H to the CIT could be filed, copy of Form 15H was filed before the AO. Hence, he submitted that the provisions of Section 40(a)(ia) cannot be made applicable to the present case. On the other hand, Ld. CIT-DR relied on the order of CIT.

13. We have heard the rival submissions and perused the material on record. Neither the AO nor the CIT disputed the fact of filing copy of Form 15H before the AO. No doubt, it is fact that the appellant failed to produce proof in support of dispatch of Form 15H to the CIT. In our considered opinion, this by itself does not entail any addition. It is only technical breach of law and the act provides for separate penal provisions for such default. Therefore, no disallowance can be made and to the provisions of Section 40(a)(ia) of the Act. In this regard, we place our reliance on the decision of Hon'ble Delhi Bench of ITAT in the case of Vijaya Bank Vs. ITO [2014] [49 Taxmann.com 533 (Delhi-Trib)], which is re-produced below:

> *"**4.** We have heard rival arguments of both parties and carefully perused the record. The learned authorised representative submitted that the Commissioner of Income-tax (Appeals) grossly erred in upholding the order of the Assessing Officer because the Commissioner of Income-tax (Appeals) failed to appreciate the fact that the order passed by the Assessing Officer was time barred and there was no short deduction of tax. Learned counsel of the assessee further submitted that the Commissioner of Income-tax (Appeals) was not justified in not appreciating the important fact that the branch had obtained Forms 15H and 15G in all the cases and non-submission of the same was only a technical breach and as such, the assessee cannot be construed as an assessee in default. The learned authorised representative further pointed out that the assessee cannot be held as the assessee in default without proving that the recipient of the income has not paid the tax.*
>
> ***5.** During the arguments, the authorised representative of the assessee placed reliance on various decisions of the co-ordinate Benches of the Tribunal*

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including the decision of the Income-tax Appellate Tribunal, Mumbai Bench "F" in the case of Vipin P. Mehta v. ITO [2011] 46 SOT 71 (URO)/11 taxmann.com 342; decision of the Income-tax Appellate Tribunal, Pune Bench "A" in the case of Gokuldas Virjibhai& Co. v. ITO [2012] 139 ITD 284/27 taxmann.com 26 and the decision of the Income-tax Appellate Tribunal, Mumbai Bench "A" in the case of Karwat Steel Traders v. ITO [2013] 145 ITD 370/37 taxmann.com 190 and submitted that it is an undisputed fact that the assessee had obtained Forms 15G and 15H as provided under section 197A(1A) of the Act but the assessee did not furnish the said form to the jurisdictional Commissioner of Income-tax which is merely a procedural lapse. It was also submitted on behalf of the assessee that once the assessee had obtained Form 15G from the payee assessee, then the payer appellant has no legal obligation to deduct the tax on the payment made to the payee.

6. *Replying to the above, the learned Departmental representative fairly accepted that as per observations made by the Commissioner of Income-tax (Appeals) in the impugned order, the assessee obtained Forms 15G and 15H from the customers to whom payment of interest was made and no tax was deducted at source, at the same time it was the duty of the assessee to deliver these forms before the 7th day of the month next following the month in which form was furnished to it. The Departmental representative supported the orders of the authorities below and submitted that the assessee-bank is duty bound to deliver and submit Forms 15G and 15H to the jurisdictional Commissioner of Income-tax and omission in this regard is attributable to the assessee for which the assessee has no bona fide reason.*

7. *On careful perusal of record and decisions relied on by the assessee-appellant, at the outset, we observe that undisputedly, the assessee-bank obtainedForms 15G and 15H from the customers to whom the payment of interest was made and no tax was deducted at source. Further, we also observe that these forms were not submitted to the jurisdictional Commissioner of Income-tax, Faridabad, within the prescribed time as per provisions of the Act. In the case of Vipin P. Mehta (supra), the co-ordinate Bench of the Income-tax Appellate Tribunal, Mumbai, observed and held as under (page 366) :*

"In the present case the claim of the assessee is that at the time of paying the interest to 34 persons mentioned in the assessment order, he had before him the appropriate declarations in the prescribed form from the payees stating that no tax was payable by them in respect of their total income and therefore tax need not be deducted from interest under section 194A, and in the light of these declarations he had no option but to make the payment of interest without any tax deduction. If the claim is true then the contention must be accepted because under sub-section (1A) of section 197A, if such a declaration is filed by the payee of interest, no deduction of tax shall be made by the assessee. The Revenue authorities have doubted the assessee's version because according to them it is only when the Assessing Officer proposed the disallowance of the interest by invoking section40(a)(ia) in the course of the assessment proceedings that the assessee filed the declarations claimed to have been submitted to him by the

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payees of the interest, in the office of the Commissioner of Income-tax (TDS) as required by sub-section (2) of section 197A. Apart from this inference, there is no other evidence in their possession to hold that the declarations were not submitted by the payees of the interest to the assessee at the time when the payments were made. Without disproving the assessee's claim on the basis of other evidence, except by way of inference, it would not be fair or proper to discard the claim. The Assessing Officer has not recorded any statements from the payees of the interest to the effect that they did not file any declarations with the assessee at the appropriate time or to the effect that they filed the declarations only at the request of the assessee in September/October, 2008. In the absence of any such direct evidence, we are unable to reject the assessee's claim. The Assessing Officer has stated in paragraph 4.4 of the assessment order that he found that some of the loan creditors were having taxable income but still the assessee had submitted declarations from them in Form 15G. Unless it is proved that these forms were not in fact submitted by the loan creditors, the assessee cannot be blamed because at the time of paying the interest to the loan creditors, he has to perforce rely upon the declarations filed by the loan creditors and he was not expected to embark upon an enquiry as to whether the loan creditors really and in truth have no taxable income on which tax is payable. That would be putting an impossible burden on the assessee. That apart sub-section (1A) of section 197A merely requires a declaration to be filed by the payee of the interest and once it is filed the payer of the interest has no choice except to desist from deducting tax from the interest. The sub-section uses the word "shall" which leaves no choice to the assessee in the matter. In the case of payment of leave travel concession and conveyance allowance to employees who are liable to deduct tax from the salary paid to the employees under section 192, the Supreme Court has held in CIT v. Larsen & Toubro Ltd. [2009] 313 ITR 1 (SC), that the assessee was under no statutory obligation under the Act or the Rules to collect evidence to show that the employee had actually utilised the money paid towards leave travel concession/conveyance allowance. The position is stronger under section 197A which does not apply to section 192, but which provides in sub-section (1A) that if the payee of the interest has filed the prescribed form to the effect that he is not liable to pay any tax in computing his total income, the payer shall not deduct any tax. The sub-section does not impose any obligation on the payer to find out the truth of the declarations filed by the payee. Even if the assessee has delayed the filing of the declarations with the office of the Commissioner or the Chief Commissioner of Income-tax (TDS) within the time limit specified in sub-section (2) of section 197A, that is a distinct omission or default for which a penalty is prescribed. Section 273B provides that no penalty shall be imposed under any of the clauses of sub-section (2) of section 272A for the delay, if the assessee proves that there was reasonable cause for the same. We have already seen that under sub-section (4) of section 272A, no penalty can be imposed unless the assessee is given an opportunity of being heard. All these provisions indicate that the failure on the part of the assessee, who is the payer of the interest, to file the declarations given to him by the payees of the interest, within the time limit specified in sub-section (2) to section 197A is

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distinct and separate and merely because there is a failure on the part of the assessee to submit the declarations to the Income-tax Department within the time limit, it cannot be said that the assessee did not have the declarations with him at the time when he paid the interest to the payees. That would be a separate matter and separate proof and evidence is required to show that even when the assessee paid the interest, he did not have the declarations from the payees with him and therefore he ought to have deducted the tax from the payment. No such evidence or proof has been brought by the Department." [Emphasis supplied].

8. *The case of Gokuldas Virjibhai & Co. (supra) interpreted the relevant provisions of the Act and liability of the assessee in regard to Forms 15G and15H as under :*

"14. We have heard the parties and perused the record. In this case, there is no dispute about the fact that the assessee has obtained the Form 15G as provided under section 197A(1)(ia) of the Act, but the assessee did not furnish the said Form to the Commissioner of Income-tax, Kolhapur. In our opinion, it is only the procedural lapse. Once the assessee has obtained the Form No. 15G from the payee assessee, has no legal obligation to deduct the tax on the payment made to payee. We find no justification in order to sustaining the said addition. Accordingly, the same is deleted."

9. *On perusal of the decision of the Income-tax Appellate Tribunal, Mumbai Bench, in the case of Karwat Steel Traders (supra), we observe that the same issue has been dealt in paragraph 4.1 in favour of the assessee which reads as under :*

"4.1 As can be seen from above provision, the amount cannot be allowed as deduction only in the event when tax is deductible at source under Chapter-XVII-B and such tax has not been deducted or, after deduction has not been paid. In this case, the assessee was to deduct tax under provisions of section 194A. Section 194A is further qualified by the provisions of section 197A(1A) wherein if a person furnishes a declaration in writing in prescribed Form and verified in the prescribed manner to the effect that tax on his estimated total income is to be included in computing his total income will be nil, there is no need to deduct tax. The assessee has received such Forms as prescribed from those persons to whom interest was paid/being paid and accordingly no deduction of tax was to be made in such cases. The default for non-furnishing of the declarations to the Commissioner of Income-tax as prescribed may result in invoking penalty provisions under section 272A(2)(f), for which separate provision/procedure was prescribed under the Act. However, once Form 15G/ Form 15H was received by the person responsible for deducting tax, there is no liability to deduct tax. Once there is no liability to deduct tax, it cannot be considered that tax is deductible at source under Chapter XVII-B as prescribed under section 40(a)(ia). The provisions of section 40(a)(ia) can only be invoked in a case where tax is deductible at source and such tax has not been deducted or after deduction has not been paid. No such default occurred in this case. Accordingly, we are of the opinion that the provisions of section 40(a)(ia) are not applicable to the facts of the case. Both the Assessing Officer and the

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Commissioner of Income-tax (Appeals) erred in considering that non-filing of form 15H invites disallowance under section 40(a)(ia)." (Emphasis supplied)

10. *During the argument, the learned authorised representative submitted a copy of the letter submitted before the Income-tax Officer (TDS) dated February 16, 2010, wherein it has been submitted that all related Form 15G/15H have already been submitted with the office of the Income-tax Officer with a request to ignore the delay in submission of the same. In view of above, we hold that unless it is proved that Forms 15G and 15H were not in fact submitted by loan creditors, the assessee cannot be blamed because at the time of paying interest to loan creditors, the assessee payer has to per force rely upon the declarations filed by the loan creditors and the assessee was not expected to embark upon an inquiry as to whether the loan creditors really and in truth have no taxable income on which tax is payable. If such kind of duty is cast upon the assessee payer, that would be putting an impossible burden on the assessee.*

11. *In the present set of facts and circumstances of the case, we are of the view that apart from sub-section (1A) of section 197A which merely requires a declaration to be filed by the payee of the interest and once it is filed, the payer of the interest has no choice except to desist from deducting tax at source from the interest paid. In this sub-section, the word "shall" has been used by the Legislature which leaves no alternative to the payer in the matter but to accept declaration so filed by the payee. Under section 197A(1A) of the Act if the payee of the interest has filed the prescribed form to the effect that he is not liable to pay any tax in computing the total income, then the payee shall not deduct any tax at source from the interest. This provision does not impose any obligation on the payer to find out the truth of the declaration filed by the payee. Respectfully following the decision of the Income-tax Appellate Tribunal, Mumbai Bench, in the case of Vipin P. Mehta (supra), we are inclined to hold that if the assessee has delayed the filing of declaration with the office of the jurisdictional Commissioner of Income-tax, within the time limit specified in sub-section (2) of section 197A, that is a distinct omission or default for which a penalty is prescribed. As per section 273B of the Act, no penalty shall be imposed under any of the clauses of sub-section (2) of section 272A for the delay, if the assessee proves that there was a reasonable cause for the delay. We further observe that as per the provisions of sub-section (4) of section 272A of the Act, no penalty can be imposed unless the assessee is given an opportunity of being heard. The total effect of all these provisions indicate that there is a failure on the part of the assessee who is the payer of the interest, to file a declaration given to him by the payee of the interest, within the time limit specified in sub-section (2) to section 197A of the Act which is distinct and separate and merely because there was a failure on the part of the assessee-bank to submit these declaration to the jurisdictional Commissioner of Income-tax within time, it cannot be held that the assessee did not have declaration with him at the time when the assessee-bank paid interest to the payees. In this situation, that would be a separate issue which would be a separate matter and would require separate proof and evidence to show that even when the assessee paid interest, the assessee did not have a*

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declaration from the payees with him and, therefore, he ought to have deducted the tax from the payment of interest which is not a case of the Department in the present appeal.

12. *From the discussion made hereinabove, we accept the contentions of the assessee that since the assessee-bank had the declaration of the payees in the prescribed form with it at the time when the interest was paid to the respective customers, in this position, the assessee cannot be held to be liable to deduct tax therefrom under section 194A of the Act. We further hold that if the assessee-bank was not liable to deduct tax at the time of payment of interest, then section 40(a)(ia) of the Act is not attracted and the assessee cannot be held liable to pay tax as the assessee in default and interest thereon. At this juncture, it is pertinent to mention that for non-filing of Forms 15G and 15H within the prescribed time, there is a provision of penalty under section 272A(2)(f) of the Act which is not a case of the Department in the present appeal. Accordingly, the order of the Assessing Officer as well as the impugned order is set aside and sole ground of the assessee in all three appeals is allowed".*

Applying the ratio laid down in the above case to the facts of the present case, we are of the opinion that the order passed by CIT is neither erroneous nor prejudicial to the interest of Revenue. Hence, we hereby quash the order passed by CIT, Guntur under the provisions of Section 263 of the Act. In the result, Grounds of Appeal filed by the appellant are allowed. Appeal is allowed.

14. In the result, appeal of assessee is allowed and Cross Objections of Revenue are dismissed.

Order pronounced in open Court on 07th August, 2015

Sd/-	Sd/-
(P. MADHAVI DEVI)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Hyderabad, Dated 07th August, 2015

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Copy to :

1. Malineni Babulu (HUF), Podalakur (V) & (M), SPSR Nellore Dist. C/o. Sri S. Rama Rao, Advocate, 102, Shriya's Elegance, 3-6-643, Street No.9, Himayatnagar, Hyderabad.

2. The Income Tax Officer, Ward-I, D. # 2-44, Narasingaraopet, Gudur.

3. CIT, Guntur.

4. D.R. ITAT, Hyderabad.

5. Guard File.

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