**THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 11.11.2014

**+ W.P.(C) 3563/2012 & CM No.7517/2012**

**UCO BANK** ..... Petitioner

versus

**UNION OF INDIA & ORS.** ..... Respondents

AND

**+ W.P.(C) 2714/2014 & CM 5633-34/2014**

**UCO BANK** ..... Petitioner

versus

**DEPUTY COMMISSIONER OF INCOME TAX** ..... Respondent

**Advocates who appeared in this case:**

For the Petitioner : Ms Prem Lata Bansal with Mr Sarfaraz Khan.

For the Respondents : Mr N.P. Sahni.
Mr Anuj Aggarwal with Mr Gaurav Khanna
UOI.

**CORAM:**
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**
**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**JUDGMENT**

**VIBHU BAKHRU, J**

1. The writ petition (W.P.(C) No.3563/2012) has been filed challenging a notice dated 25.04.2012 issued by the Assistant Commissioner of Income Tax, Delhi (hereafter 'ACIT') whereby the petitioner bank was directed to submit the details of deposits made with the petitioner bank by all litigants

in the name of Registrar General of this Court during the Financial Years 2005-06 to 2010-11. The petitioner bank also impugns a circular bearing no. 8/2011 dated 14.10.2011 (hereafter 'impugned circular') issued by Central Board of Direct Taxes (CBDT) whereby it was clarified that in cases where deposits were made in terms of directions issued by Court, the Banks were required to deduct tax at source and issue tax deducted at source (hereafter 'TDS') certificates.

2. The writ petition (W.P.(C) No.2714/2014) has been filed impugning an order dated 10.03.2014 passed by the Deputy Commissioner of Income Tax, holding the petitioner bank to be an assessee in default within the meaning of Section 201(1) of the Income Tax Act, 1961 (hereafter the 'Act') for a sum of ₹7,78,34,950 determined under Section 201(1)/(lA) of the Act.

3. The brief facts necessary for considering the present petitions are that the petitioner bank, on 29.09.2004, accepted a Fixed Deposit (FD) for a sum of ₹7,07,45,550/- in the name of Register General of this Court and issued a Fixed Deposit Receipt (FDR) bearing no. 163275. The said FD was made in compliance of a direction passed by this Court in Execution Petition No. 216/1999 titled as 'Union of India v. Oriental Building Furnishing Co. Ltd.' The said FD was initially for a period of one year, however, before maturity of the said FD, certain amount was paid to M/s CJ International Hotel on 27.10.2004 and the remaining amount of ₹6,93,87,888/- (being balance principal and accrued interest) was again accepted as a FD for a period of one year. The said FD was renewed

annually except once when instead of 30.10.2007, it was renewed on 06.02.2008.

3.1 In relation to proceedings pending against M/s Oriental Building Furnishing Company Limited, the Deputy Director, Income Tax (Investigation) issued summons dated 14.03.2011 under Section 131(1A) of the Act directing the petitioner bank to furnish details of the interest accrued with respect to the FDR No.163275, TDS deducted on the interest accrued and renewal of FD with respect to the company – M/s Oriental Building Furnishing Company Limited. The petitioner bank complied with the said direction and by its letter dated 15.03.2011 intimated the details and status of the above stated FDR.

3.2 Subsequently, the ACIT issued a show cause notice dated 21.03.2011 to the petitioner bank for not deducting TDS on the interest accrued and to show cause why the petitioner bank be not treated as an assessee in default under Section 201(1)/201(1A) of the Act. The petitioner, by its reply dated 22.03.2011, submitted that the said FD was in the name of Register General of this Court as a custodian and no TDS was deducted on the accrued interest because the actual beneficiary was not known as the matter was *sub judice*. It was also submitted that the TDS would be deducted on when payment is made to the beneficiary as may be decided by the Court.

3.3 Thereafter, the ACIT passed an order dated 29.03.2011 considering the petitioner bank as an assessee in default and demanded ₹40,33,330 and ₹14,19,804 under Section 201(1) and Section 201(1A) of the Act respectively for the Financial Years 2004-05 to 2010-11. By the said order, the penalty proceedings under Section 271C of the Act were also initiated

separately. A separate demand notice dated 29.03.2011 was also issued under Section 156 of the Act for the Financial Years 2004-05 to 2010-11.

3.4 In writ petition-W.P.(C) No.2972/2011, an order dated 29.03.2011 and a demand notice dated 29.03.2011 are impugned. On 15.07.2011, the learned counsel appearing for the Income Tax Authorities made a statement before the Court that the CBDT, was seized of the matter and there was a possibility of some solution. In view of that statement, the Court disposed of the said writ petition with a direction to CBDT to pass necessary orders within three months. The Court also gave liberty to the petitioner bank to approach this court at an appropriate stage.

4. The CBDT, thereafter, issued the impugned circular (bearing no. 8/2011 dated 14.10.2011) clarifying that Banks would have to deduct TDS under Section 194A of the Act at the time of accrual of interest and issue the TDS certificate in the name of the depositor. The relevant portion of the said Circular is quoted below:-

> *"3.1 The matter has been examined in the Board and it has been decided that, subject to para 4 below, this circular shall be applicable to cases where one or more than one litigant is directed by the court that a specified amount be deposited in the bank directly or through the court. The bank shall in accordance with the provisions of the Act, deduct tax at source on the interest accruing on the above mentioned deposit(s) as per existing procedure and at the rates in force. The certificate of deduction of tax shall be issued by the bank in the name of 'the depositor'. If more than one person has been directed to deposit any specified amount, the amount of TDS shall be corresponding to each such depositor for the portion of interest accrued in its respective share in the total amount deposited and TDS certificates shall be accordingly issued by the bank.*

*3.2 At the time of making deposit of the amount ordered by the court, the depositor(s) shall submit a prescribed declaration with the court for record purpose and to facilitate the administration of TDS. The Registrar/Prothonotary and Senior Master or any person authorized by the court will pass the information furnished therein to the bank concerned for TDS properly in the name of the depositor(s) in accordance with the provisions of the Act."*

5. Thereafter, the Commissioner of Income Tax, Delhi (hereafter 'CIT') initiated proceeding under Section 263 of the Act as it was considered that the said order dated 29.03.2011 was prejudicial to the interest of revenue. By an order dated 27.03.2012, the CIT set aside the order dated 29.03.2011 as it was limited to the tax assessed with respect to the FD made by M/s Oriental Building Furnishing Company Limited. The CIT held that there were other similar deposits, which would also require to be considered for assessing the liability of the petitioner bank. Accordingly, the Assessing Officer to pass an order after considering the matter afresh.

6. Pursuant to the CIT's order of 27.03.2011, the ACIT issued a separate notice dated 25.04.2012 under Section 201(1)/201(1A) of the Act directing the petitioner bank to submit the details of all deposits made in the name of Registrar General of this Court during the Financial Years 2005-06 to 2010-11. Aggrieved by the same, the petitioner bank filed the present petition (W.P.(C) 3563/2012) challenging the said notice dated 25.04.2012 issued the ACIT. By an order dated 01.06.2012, this Court stayed the impugned notice dated 25.04.2012.

7. Subsequently, the Deputy Commissioner of Income Tax, Delhi issued a notice dated 26.11.2013 under Section 201(1)/201(1A) of the Act

calling upon the petitioner to furnish information in respect of deposits/accrued interest for the Financial Year 2011-12. On 10.02.2014, summon under Section 131 of the Act was issued to the petitioner bank. By the impugned order dated 10.03.2014, the Deputy Commissioner of Income Tax, Delhi held the petitioner to be an assessee in default within the meaning of Section 201(1) of the Act and raised a demand of ₹7,78,34,950 under Section 201(1)/(lA) of the Act. The petitioner bank, thereafter, filed the present petition (W.P.(C) No.2714/2014) challenging the said order dated 10.03.2014 passed by the Deputy Commissioner of Income Tax.

8. Essentially, the controversy in the present case involves the question whether the provisions of Chapter XVII of the Act would be applicable in respect of interest which is payable on the fixed deposits maintained by this Court with the petitioner bank, in the name of the Registrar General. Concededly, money deposited by litigants or at their instance in this Court and kept in fixed deposit with the petitioner bank are not funds or assets of this Court and would be payable to the person as may be ultimately directed in the concerned proceedings. Any accretion on account of interest on the said deposits also do not inure to the benefit of this Court

9. There are myriad of situations in which this Court directs deposit of money by litigants or at their instance; directions for depositing funds in a case are made after considering the relevant facts and circumstances of that case. The final recipient or the beneficiaries of the funds can be ascertained only after appropriate orders are passed in those proceedings.

10. It is in the above circumstances that applicability of the provisions of Chapter XVII of the Act are to be considered.

11. Chapter II of the Act contains the provisions with respect to the basis of charge of income tax. Section 4 of the Act is the charging Section and reads as under:-

> *"**4. Charge of income-tax.** - (1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions (including provisions for the levy of additional income-tax) of, this Act in respect of the total income of the previous year of every person :*
>
> *Provided that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.*
>
> *(2) In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act."*

12. It is apparent from the plain language of Section 4(1) of the Act that income tax is charged in respect of the total income of the previous year of every person. Whilst total income is the basis of the charge of income tax and also the basis of the impost, the liability imposed is on the person whose total income is subjected to tax. Thus, the levy may be in respect to total income of a person but the tax is levied on the person so earning the income. Plainly, for any charge to be sustained under the Act, it is essential that (a) there is an assessee whose income would form the basis of the

charge; and (b) there is income which is subject to tax under the provisions of the Act.

13. Chapter IV of the Act provides for computation of income under various heads. Chapter XIV of the Act contains provisions for the procedure of assessment. The provisions for computation and assessment are for ascertaining the quantum of tax that is payable by an assessee. Chapter XVII of the Act contains the machinery provisions for collection and recovery of tax. Part B of Chapter XVII contains specific provisions for deduction of tax at source. Section 190 of the Act provides for deduction of tax at source in accordance with the provisions of Chapter XVII. Sub-section 2 of Section 190 makes it clear that the provisions of Sub-section 1 of Section 190 would not prejudice the charge of tax under the provisions of Section 4(1) of the Act. Section 191 of the Act provides that where provisions are not made for deducting income tax at the time of payment or in accordance with the provisions of Chapter XVII of the Act, income tax shall be paid by the assessee directly. Section 190 and 191 of the Act are relevant and are quoted below:-

> *"**190. Deduction at source and advance payment. -** (1) Notwithstanding that the regular assessment in respect of any income is to be made in later assessment year, the tax on such income shall be payable by deduction or collection at source or by advance payment, as the case may be, in accordance with the provisions of this Chapter.*
>
> *(2) Nothing in this section shall prejudice the charge of tax on such income under the provisions of sub-section (1) of section 4.*

> ***191. Direct payment.*** *- In the case of income in respect of which provision is not made under this Chapter for deducting income-tax 1673 at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of this Chapter, income-tax shall be payable by the assessee direct."*

14. Thus, although the collection of tax by deduction at source may precede the assessment, it is clear that the same does not affect the basis of the levy of tax. The provisions for collection of tax, under Part B of Chapter XVII of the Act, by way of tax deduction at source are, in substance, provisions for recovering tax payable by assessees and do not in any manner affect the levy or the charge of tax. Even though the obligation to pay the tax with respect to certain payments, is imposed on persons responsible for making them, Section 199 of the Act makes it clear that the deduction made under Chapter XVII of the Act and paid to the Central Government is to be treated as payment on behalf of the assessee. Section 199 of the Act is quoted below for ready reference:-

> *"**199. Credit for tax deducted**.— (1) Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be.*
>
> *(2) Any sum referred to in sub-section (1A) of section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income such payment of tax has been made.*
>
> *(3) The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the*

*rules for the purposes of giving credit to a person other than those referred to in sub-section (1) and sub-section (2) and also the assessment year for which such credit may be given."*

15. It is clear from the aforesaid scheme that whereas Section 4 of the Act provides for the basis of charge on the income of an assessee, the tax levied is collected either by way of tax deducted at source or by direct payment by the assessee. In case of direct payment by the assessee, it is the assessee and/or his representative who pays the tax in advance during the previous year. And in case of tax deduction at source, the person paying or crediting the income is obliged to pay the tax at the time of paying/crediting any amount representing income of the recipient assessee. However, such payment is to the credit of the assessee and is treated by the Income Tax Authorities as having been paid on behalf of the assessee.

16. In terms of Section 201 of the Act, if a person who is obliged to deduct tax at source and pay to the Central Government, fails to do so, he would - by legal fiction – be considered as an assessee in default and be subjected to proceedings for recovery of tax in the same manner as an assessee who had defaulted in paying his taxes. Section 202 of the Act also clarifies that deduction of tax is only one of the modes of recovery of tax and is without prejudice to other modes of recovery of tax under the Act. The important aspect to bear in mind is that notwithstanding the deeming provision of Section 201 of the Act, the provisions for recovery of tax are not in respect of tax levied or chargeable on the payer but the recipient assessee.

17. In the present case, the controversy is regarding applicability of Section 194A of the Act which provides for deduction of tax at source in

respect of any payment/credit on account of interest, other than interest on securities. Section 194A(1) of the Act is quoted as under:-

> ***"194A. Interest other than "Interest on securities".***—*(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:*
> *Provided that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this section.*
> *Explanation.—For the purposes of this section, where any income by way of interest as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly."*

18. In terms of Section 194A of the Act, the petitioner would, in the normal course, be obliged to deduct tax at source in respect of any credit or payment of interest on deposits made with it. However, in the present case, the question that needs to be addressed is whether Section 194A of the Act contemplates deduction of tax in a situation where the assessee is not ascertainable and the person in whose name the interest is credited is also, admittedly, not a person liable to pay tax under the Act.

19. The Registrar General of this Court is, clearly, not the recipient of the income represented by interest that accrues on the deposits made in his/her name. The Registrar General is also not an assessee in respect of the deposits made with the petitioner bank pursuant to the orders of this Court. The deposits kept with the petitioner bank under the orders of this Court are, essentially, funds which are *custodia legis,* that is, funds in the custody of this Court. The interest on that account – although credited in the name of the Registrar General - are also funds that remain under the custody of this Court. The credit of interest to such account is, thus, not a credit to an account of a person who is liable to be assessed to tax. In this view, the petitioner would have no obligation to deduct tax, because at the time of credit there is no person assessable in respect of that income which may be represented by the interest accrued/paid in respect of the deposits. The words *"credit of such income to the account of the payee"* occurring in Section 194A of the Act have to be ascribed a meaning in conformity with the scheme of the Act and that would necessarily imply that deduction of tax bears nexus with the income of an assessee.

20. In absence of an assessee, the machinery of provisions for deduction of tax to his credit are ineffective. The expression "payee" under Section 194A of the Act would mean the recipient of the income whose account is maintained by the person paying interest. In the present case, although the FD is made in the name of the Registrar General, the account represents funds which are in custody of this Court and the Registrar General is neither the recipient of the amount credited to that account nor the interest accruing thereon. Therefore, the Registrar General cannot be considered as

a "payee" for the purposes of Section 194A of the Act. The credit by the petitioner bank in the name of the Registrar General would, thus, not attract the provisions of Section 194A of the Act. Although, Section 190(1) of the Act clarifies that deduction of tax can be made prior to the assessment year of regular assessment, nonetheless the same would not imply that deduction of tax is mandatory even where it is known that the payee is not the assessee and there is no other assessee.

21. It is relevant to note that there is no assessee to whom interest income from the deposits in question can be ascribed; no person can file a return claiming the interest payable by the petitioner as income. The necessary implication of this situation is recovery of tax without the corresponding income being assessed in the hands of any asessee. The ultimate recipient of the funds from the FD would also not be able to avail of the credit of TDS. It is apparent that in absence of an ascertainable assessee the machinery of recovering tax by deduction of tax at source breaks down because it does not aid the charge of tax under Section 4 of the Act but takes a form of a separate levy, independent of other provisions of the Act. This is, clearly, impermissible.

22. The impugned circular proceeds on an assumption that the litigant depositing the money is the account holder with the petitioner bank and/or is the recipient of the income represented by the interest accruing thereon. This assumption is fundamentally erroneous as the litigant who is asked to deposit the money in Court ceases to have any control or proprietary right over those funds. The amount deposited vests with the Court and the depositor ceases to exercise any dominion over those funds. It is also not

necessary that the litigant who deposits the money would be the ultimate recipient of those funds. As indicated earlier, the person who is ultimately granted the funds would be determined by orders that may be passed subsequently. And at that stage, undisputedly, tax would be required to be deducted at source to the credit of the recipient. However, the litigant who deposits the funds cannot be stated to be the recipient of income for the reasons stated above.

23. Deducting tax in the name of the litigant who deposits the funds with this Court would also create another anomaly because the amount deducted would necessarily lie to his credit with the income tax authorities. In other words, the tax deducted at source would reflect as a tax paid by that litigant/depositor. He, thus, would be entitled to claim credit in his return of income. The implications of this are that whereas this Court had removed the funds from the custody of a litigant/depositor by judicial orders, a part of the accretion thereon is received by him by way of Tax deducted at source. This is clearly impermissible because it would run contrary to the intent of judicial orders.

24. In the given circumstances, the writ petitions are allowed and the impugned notice dated 25.04.2012, the impugned circular bearing no. 8/2011 and the impugned order dated 10.03.2014 are set aside.

**VIBHU BAKHRU, J**

**S. RAVINDRA BHAT, J**

**NOVEMBER 11, 2014**
**RK**