IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER

I.T.A. No.512/Srt/2025
(Assessment Year: 2013-14)

The Udhna Citizen Co.operative Bank Limited,(Now merged with Kalupur Commercial Co-op. Bank Limited Kalupur Bank Bhavan, Kalupur Bank, Ashram Road, Ahmedabad-380014. **[PAN:AAAAT2983 J]**	Vs.	Income Tax Officer, TDS-2, Surat.
(**Appellant**)	..	(**Respondent**)

Appellant by :	Ms Urvashi Shodhan, AR
Respondent by:	Shri Ajay Uke, Sr. DR

Date of Hearing	11.12.2025
Date of Pronouncement	20 .01.2026

O R D E R

PER SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER :

This appeal is filed by the assessee against the order of the Addl/JCIT(A)-1 Mumbai, dated 03.03.2025 for the Assessment Year 2013-14 in the provision u/s.201(1)/201(1)A of the Income tax Act.

2. The brief facts of the case are that the assessee is Co-operative Bank and filed its return of income for A.Y 2013-14 on 30.09.2013, declaring Nil income. In the course of assessment, the Assessing Officer found that the assessee had made provision for rent expenses of Rs.20,89,512/- and also claimed deduction for legal & consultation fees

of Rs.5,03,500/- on which no tax deduction at source (TDS) was made. On the basis of this information the TDS Assessing Officer initiated proceeding u/s.201(1) r.w.s 201(1A) of the Act. The TDS AO noticed that the assessee was required to deduct TDS at the rate of 10% on the rental expense under the provision of section 194I of the Act. Similarly, the TDS was required to be deducted @ 10% u/s.194J of the Act on the legal and consultation expenses. Since the TDS AO was not satisfied with the explanation of the assessee regarding the non-deduction of TDS, the assessee was treated as “assessee in default” and accordingly demand of Rs.4,77,114/- was raised vide order dated 29.03.2019 under the provision of section 201(1) r.w.s 201(1A) of the Act.

3. Aggrieved with the order of the TDS AO, the assessee had filed an appeal before the First Appellate Authority which was decided by the Ld. CIT(A) vide impugned order and the appeal of the assessee was **dismissed.**

4. Now the assessee is in second appeal before us. The assessee has raised the following grounds of appeal:

1. *The Learned Addl./Jt. CIT(A)-1, Mumbai has erred both in law and on facts of the case in passing an Order u/s 250 of the IT Act dt. 03/03/2025 towards the Appeal filed by the Assessee against the order passed u/s 201(1) r.w.s 201(1A) of the IT Act, 1961 for Asstt.Year 2013-14.*

2. *The Learned Addl./Jt. CIT(A)-1, Mumbai has erred in confirming the demand raised of Rs. 4,77,114 u/s 201 r.w.s. 201(1A) of the IT Act by the Order passed by the learned Income Tax Officer TDS-2, Surat.*

3. *The Learned Addl./Jt. CIT(A)-1, Mumbai has erred in not considering the earlier submission filed on 16/03/2021 vide submission dt. 15/03/2021.*

4. *The Learned Addl./Jt. CIT(A)-1, Mumbai has erred in confirming the Assessee, "as Assessee in default" u/s 201 of the IT Act which has been considered by the learned Income Tax Officer TDS-2, Surat for Asstt.Year 2013-14.*

5. *The learned Addl./Jt. CIT(A)-1, Mumbai has erred in confirming the levy of the interest u/s 201 r.w.s 201(1A) of the IT Act, although Assessee was not required to deduct the tax at source and for the addition made u/s 143(3) of the IT Act, Appeal filed is pending for disposal.*

6. *Assessee was not liable to pay and therefore question of deducting tax thereon and payment thereof does not arise. Thus, there being no failure on the part of assessee to deduct and pay, provisions of Section 201(1) OF THE it Act has been wrongly invoked. So also, provision Sec.201(1A) has been wrongly invoked.*

7. *Your Appellant craves leave to add, alter, amend or delete all or any of the Grounds of Appeal before the Appeal is finally heard and decided.*

5. Ms. Urvashi Shodhan, Ld.AR appearing for the assessee submitted that the Assessing officer had already disallowed the rental expenses of Rs.20,89,512/- and legal and consultation fees of Rs.5,03,500/- under the provisions of section 40(a)(ia) of the Act, while completing the assessment. Regarding non deduction of TDS, she explained that the assessee had only made a provision for rental expense and no rent was actually paid to the owners. The legal and consultation fees was also explained to be only a provision. The Ld. AR explained that since the amounts debited to the account were only a provision, no TDS was made thereon. She further submitted that the entire amount was already disallowed under the provisions of section 40(a)(ia) of the Act, therefore, no addition u/s. 201(1)/201(1A) of the Act was called for.

6. Per Contra Shri Ajay Uke, Ld. Sr. DR submitted that as per the provisions of section 194I and 194J of the Act, the assessee was required to deduct the TDS at the time of credit of the amount in the

books of accounts or at the time of payment, whichever was earlier. He explained that considering the explicit provision of the Act, the assessee was required to deduct TDS even at the time of making the provision in the books of account for rental payment and the provision for legal and consultation fees. The Ld. Sr. DR further submitted that as per the provision of section 201(1) of the Act, the assessee could not be treated as "assessee in default" only if the conditions as specified in the proviso to that section were satisfied. He submitted that no evidence for satisfaction of conditions in proviso to section 201(1) of the Act was brought on record by the assessee. Therefore, the TDS AO had rightly passed the order u/s. 201(1) r.w.s. 201(1A) of the Act in the present case.

7. We have considered the rival submissions. There is no dispute to the fact that assessee had claimed expenses for rent of Rs.20,89,512/- and legal and consultation fees of Rs.5,03,500/- on which no TDS was made under the provisions of the Act. The provision of section 194I of the Act stipulates that any person (other than individual and HUF) is required to deduct TDS at the time of credit of rent to the account of the payee or at the time of payment thereof, whichever is earlier. The liability to deduct TDS u/s. 194J of the Act on payment of fees towards professional services, is identical. Thus, the assessee was duty bound to deduct TDS u/s.194I and 194J of the Act on the provisions for rent and professional fees made in the accounts. Merely, because the expenses were disallowed u/s.40(a)(ia) of the Act, the assessee cannot escape the consequence of failure to deduct TDS as stipulated u/s.201(1) of the Act. The provisions of section 40(a)(ia) and section 201(1) operate in

different domain and are not mutually exclusive to each other. It will be relevant to reproduce the provision of section 201(1) of the Act, which is as under:

> 1)Where any person, including the principal officer of a company,—
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> (a)who is required to deduct any sum in accordance with the provisions of this Act; or
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> (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
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> (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:
>
> Provided that in case any person, including the principal officer of a company 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 but is not deemed to be an assessee in default under the first proviso to sub-section (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such payee:[Provided further that where an order is made by the Assessing Officer for the default under sub-section (1), the interest shall be paid by the person in accordance with such order.] [Emphasis supplied.]

8. It is evident that the provision of section 201(1) of the Act is operative without prejudice to any other consequence. Therefore, the contention of the assessee that no action was called for u/s 201(1)/201(1A) of the Act for the reason that disallowance was already made u/s 40a(ia) of the Act, is rejected. The provisions of section 201(1) of the Act stipulates that where a person who is required to deduct TDS, does not deduct TDS or does not pay the TDS after deduction, then such person without prejudice to any another consequence, shall be deemed to be "assessee in default" in respect of such tax. At the same time proviso to section 201(1) of the Act stipulates the conditions under which any person can escape the rigours of section 201(1) of the Act. In order to avoid being treated as "assessee in default" for non-deduction of TDS, the assessee was required to bring on record the evidence that the recipients of rent and legal and consultation fees had satisfied the following conditions and furnish a certificate as under:

(i) the recipients/payees had furnished their return of income u/s 139 of the Act;

(ii) that they had taken into account the amounts received from the assessee for computing income in such return of income; and

(iii) they had paid the tax due on the income declared by them in such return of income, and

(iv) the assessee furnished a certificate to the above effect from an accountant in the prescribed form.

9. In the present case, no such evidence was brought on record by the assessee that the recipients of rent and legal and consultation fees had filed their return of income, had taken the amount received from the assessee in computation of their income and also paid tax thereon. The assessee has also not brought on record any declaration by the recipients of rental income and legal & consultation fees that their income was below the taxable limit and no TDS was required to be made by the assessee in this respect. The assessee being a bank and having advice of technical experts, can't take a plea that it was unaware of the obligation under the Act to deduct TDS at the time of making provision. Since the conditions as stipulated in the proviso to section 201 of the Act was not found fulfilled in the present case, the TDS Assessing officer had rightly treated the assessee as "assessee in default".

10. Regarding rental expenses the assessee has admitted that the assessee had made only provision of expense and the amount was not credited to parties account due to disputes. The provision was made in the F.Y.2012-13 whereas the TDS AO had initiated the proceeding in the F.Y. 2018-19, still the assessee had not explained about the status of the

provision or resolution of the dispute after six years. The rent must have been paid or provided as per agreement and nothing prevented the assessee to deduct the TDS on the provision for rent as made in the accounts. Therefore, the explanation of the assessee is not found satisfactory and we do not find any reason to interfere with the order of the TDS Assessing Officer in respect of default pertaining to non-deduction of TDS on rental income. As regards TDS on legal fee, it is submitted that the total provision was Rs.6,53,000/- out of which payment of Rs.3,91,000/- was made on 24.08.2013, before due date of filing of return, on which TDS was duly deducted and only on balance amount of Rs.2,62,000/- no TDS was made. In view of this fact, we deem it proper to set aside the matter to the TDS AO with a direction to verify whether TDS was made on payment of provision of Rs.3,91,000/- on 24.08.2013. If yes, then the assessee can't be treated as "assessee in default" for the TDS liability on this amount and accordingly relief should be allowed to the assessee u/s 201(1)/201(1A) of the Act.

11. In the result, the appeal of the assessee is partly allowed for statistical purpose.

The order is pronounced in the open Court on 20 .01.2026.

Sd/- **(SANJAY GARG)** **JUDICIAL MEMBER**	**Sd/-** **(NARENDRA PRASAD SINHA)** **ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad; Dated - 20.01.2026

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Surat
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Surat