

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B" MUMBAI**

**BEFORE SHRI JOGINDER SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 3099 & 3100/Mum/2014
Assessment Years: 2004-05 & 2005-06**

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|----------------------------------------------------------------------------------------------------------------|-----|---------------------------------|
| Milton Plastic Ltd Asian Building 4 th Floor, R.Kaman Marg Ballard Estate Mumbai-400001 | vs. | ITO, TDS-2(3) Mumbai- 400020 |
| PAN No. AAACM4047Q | | |
| Appellant | .. | Respondent |
| Assessee by | | Mr. D.K.Bhatt |
| Department by | | Mr. Neil Philip, DR |

Date of Hearing: 07/11/2016
Date of pronouncement: 08/11/2016

ORDER

PER N.K.PRADHAN, AM:

These appeals are appeal filed by the Assessee. The relevant assessment years are 2004-05 & 2005-06. These are directed against the order of Commissioner of Income Tax (Appeals)-13, Mumbai and arise out of the order u/s. 201(1) and 201(1A) of the Income Tax Act, 1961 ('the Act').

2. The grounds of appeal raised by the assessee read as under:-

- "1. The Commissioner (Appeals) failed to consider the fact that the Interest on Non-Convertible Debentures (NCD) at the end of the term of repayment of NCD ceased to be NCD and the amount payable was

pure debt due to the banking company and ceased to be a security. After the end of term of Debentures the interest falls in the category of interest other than interest on securities u/s 194A. As per Sec. 194A the payment of interest to bank falls under the exempted category and hence deduction is not applicable.

2. The Commissioner (Appeals) failed to appreciate the fact that the appellant company is a sick company registered with BIFR and is continuously defaulting in repayment of the principal amount as well as interest to The Federal Bank Ltd., who have classified the appellant company's dues as NPA and filed an application for recovery before the Hon. Debt Recovery Tribunal at Chennai."
3. We find that the ITAT 'B' Bench, Mumbai in the case of the assessee [*ITO (TDS), 2(3), Mumbai Vs. M/s Milton Plastic Limited, Mumbai*] for the same assessment years i.e. 2004-05 and 2005-06 [ITA No. 3132 & 3133/Mum/2014] have dismissed the appeals filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals)-13 Mumbai. The issues therein were (i) non deduction of TDS u/s 194J on reimbursement of expenses amounting to Rs. 45,43,759/- to Milton Consultancy Services (ii) non deduction of TDS u/s 194A on interest of Rs.1,21,01,977/- on non convertible debentures of Rs. 2 crores issued to the Federal Bank Ltd. The Ld. CIT(A) has allowed the appeal filed by the assessee on the first issue, whereas she dismissed the appeal filed by the assessee on the above second issue. The ITAT has dismissed the appeal filed by the Revenue on the above two issues.
4. The Ld. counsel of the assessee filed a copy of the final order (judgment) of the Debts Recovery Tribunal (DRT), -1, Chennai dated 31.12.2002 in the case of the assessee i.e. *The Federal Bank Limited, Chennai Vs. M/s Milton Plastics Ltd., Mumbai*. We find that the above order of the DRT has a bearing on the issue of deduction of TDS u/s 194A on interest on non convertible debentures issued to the Federal Bank Ltd. We

also notice that the above final order of the DRT was not filed by the assessee before the AO and CIT(A).

5. In the interest of justice, we set aside the order of the Ld. CIT(A) on the issue of TDS u/s 194A on interest on redeemable debentures and restore it to the file of the AO for making a fresh assessment as per the provisions of the Act after giving reasonable opportunity of being heard to the assessee.

6. In the result, the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 08/11/2016

Sd/-
(JOGINDER SINGH)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai; Dated: 08/11/2016

Aks/ on Tour (DOC)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai