IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI S. RIFAUR RAHMAN, AM & SHRI RAM LAL NEGI, JM

आयकरअपीलसं./ I.T.A. No. 6803/Mum/2018
(**निर्धारणवर्ष** / Assessment Year: 2010-11)

DCIT (TDS)-2(3), Smt. K. G. Mittal Ayurvedic Hospital Bldg. Room No. 718, 7th floor, Charni Road (W), Mumbai-400 002	**बनाम**/ Vs.	M/s Wockhardt Ltd. 6th floor, Wockhardt Tower, G Block, Bandra Kurla Complex, Bandra, Mumbai-400 051
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAACW2472M		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

&
C.O. **No. 51/Mum/2020**
(निर्धारणवर्ष / Assessment Year: 2010-11)

M/s Wockhardt Ltd. 6th floor, Wockhardt Tower, G Block, Bandra Kurla Complex, Bandra, Mumbai-400 051	**बनाम**/ Vs.	DCIT (TDS)-2(3), Smt. K. G. Mittal Ayurvedic Hospital Bldg. Room No. 718, 7th floor, Charni Road (W), Mumbai-400 002
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थीकीओरसे/ **Appellant by**	:	Shri Anand Mohan, DR
प्रत्यर्थीकीओरसे/**Respondentby**	:	Shri Kirit Kamdar, AR

सुनवाईकीतारीख/ **Date of Hearing**	:	02.11.2020
घोषणाकीतारीख / **Date of Pronouncement**	:	11.12.2020

आदेश / O R D E R

Per S. Rifaur Rahman (Accountant Member):

The present appeal as well as cross objection have been filed by the revenue as well as assessee are against the order of Ld. Commissioner of Income Tax (Appeals) - 14 in short referred as 'Ld. CIT(A)', Mumbai, dated 29.09.18 for Assessment Year (in short AY) 2010-11 respectively.

2. Since, the facts raised in the appeal filed by the revenue as well as C.O. filed by the assessee on the revenue appeal, heard and disposed of by this consolidated order.

3. The brief facts of the case are, the assessee is a public limited company incorporated in India, engaged in the business of manufacturing and trading of pharmaceutical products. The return of income filed by the assessee was revised on 31st March 2012 declaring total income of Rs. 74,24,76,938/-. A survey was conducted on the premises of the assessee u/s 133A(2A) of the Act on 14th Feb 2017 in order to determine whether there was a non-deduction of tax at source on payments made or amount credited to the account of various payee by the company during

the financial year 2009-10. Further notices were issued u/s 201(1)/201(1A) of the Act and in response, submissions were filed by the assessee. Subsequently, vide an order dated 30th March 2017 passed u/s 201(1)/201(1A) of the Act. A demand of Rs. 52,26,02,233 (including interest of Rs. 24,82,58,610/-) was determined as payable for year under consideration which was in relation to addition on account of discount to stockist, bonus to stockist and interest to MSME.

4. Aggrieved with the above order, assessee preferred an appeal before Ld. CIT(A) and Ld. CIT(A) after considering the submission of assessee, partly allowed the appeal of the assessee.

5. Aggrieved with the above order, the revenue is in appeal raising the following grounds of appeal:-

> *a. "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in holding that the transaction of sale between the assessee company and stockist was on principal to principal basis and therefore discount offered would not come under ambit of 194H, without appreciating the fact that the entire liability in goods had not been transferred to the stockist and that the company had to*

still carry liability in terms of expired goods and quality of goods etc, and therefore the stockist were working as agents of assessee Company, to promote and effect sales on behalf of assessee."

b. "Whether the facts and circumstances of the case and in law, the CIT(A) was justified in holding that bonus and incentive offered by the assessee company to stockist were also in nature of discount and therefore not covered under Section 194H, without appreciating the fact that such bonus/incentive are offered subsequent to sales and therefore are essentially in nature of commission as envisaged u/s 194H."

c. "Whether on the facts and circumstances of the case and in law, the CIT (A) was justified in holding that provision of interest made was in nature of liquidation damages and therefore connected to sales or purchase without appreciating the fact that the assessee itself categorised this expenditure as interest and therefore the same is covered u/s 194Aof the Act."

d. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary at the time of hearing of the case or thereafter.

e. The order of the CIT(A) being erroneous be set aside and Ld. A.O's order be restored.

6. Before us, Ld DR with regard to ground no. (a) & (b) submitted that assessee is a leading Pharma company and gives discount and bonus to their stockist /distributor agents and as per the findings of AO, the relationship between the assessee and stockist /distributor are not principle to principle basis. Since they get discounts and bonuses on sale of products belonging to the assessee company, it clearly indicates that stockist /distributor are agents of the assessee on the receipts of discounts and bonuses. He further submitted that assessee failed to deduct TDS u/s 194H and in this regard, he brought to our notice para 3 of the assessment order. He also brought to our notice Clause-10 of the agreement with the stockist entered with the assessee company and Lotus Vaccine House on 26.08.13 that assessee company shall give credit notes/replacement in settlement of all claims for date expired goods. He submitted that this Clause clearly indicates the relationship exists on the basis of principle and agency because the entire liability on stock not transferred to the stockist. The stockist can return the expired goods. He further brought to our notice page 30 of the order of Ld. CIT(A) and objected the findings of Ld. CIT(A) that there exist principal to

principal basis. He referred to the above said Clause-10 of the agreement and submitted that Ld. CIT(A) has wrongly presumed that there exists principle to principle basis overlooking the facts that discounts are paid after sales. Therefore, it can only be commission and provision of section 194H is applicable.

7. On the other hand, Ld. AR brought to our notice the findings of Ld. CIT(A) at page no. 17, para 10 of the order of Ld. CIT(A) and he referred to the case law paper book, particularly the case of M/s Piramal Healthcare Ltd. (21 taxmann.com 225) (Mum-Trib) and the same case was upheld by Hon'ble Bombay High Court, which are placed on record. He further relied on the case of ITO(TDS) vrs. Unichem Laboratoreis Ltd. (ITA No. 4592-4593/Mum/2014) and brought to our notice page 38 of the said decision and submitted that the issues of the said case are similar to the case of assessee.

8. With regard to ground no. (c), Ld. DR brought to our notice para 5 of the assessment order and page 39 of the order of Ld. CIT(A) and submitted that the provision of interest made was in the nature of liquidation damages and therefore connected to

sales /purchases. He further submitted that Ld. CIT(A) had not appreciated the facts that assessee itself categorised these expenditure as interest, therefore this payment of interest comes under 194A of the Act and he heavily relied on the findings of AO.

9. On the other hand, Ld. AR submitted that provision of interest is in the nature of penal, therefore he submitted that this issue is also covered by the decision of Coordinate Bench of ITAT in the case of Income-tax Officer, Ward-2(2), Ahmedabad v. Parag Mahasukhlal Shah [2011] 12 taxmann.com 37 (Ahmedabad) and Sri Venkatesh Paper Agencies (Hyd.) (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle-3(1), Hyderabad [2012] 24 taxmann.com 52 (Hyd.)

10. With regard to CO filed by the assessee, he submitted that assessee does not want to press the grounds raised in C.O.

11. Considered the rival submissions and material placed on record. With the ground no. (a) and (b), we notice that the Coordinate Bench of ITAT in ITA No. 4592 & 4593/Mum/2014 in the case of ITO(TDS) vrs. Unichem Laboratoreis Ltd. has

already decided the similar issue on the grounds raised by the revenue in the present case. For the sake of clarity, which is reproduced below:-

> *8. We have considered the rival contentions and perused the material on record, we have observed that the perusal of the clauses of the distributor agreement dated 01-07- 2001 entered into by the assessee company and the Rudra Pharma Distributors Ltd. which is placed in the paper book page No. 18 to 34 clearly reveals that the assessee company is selling goods/products i.e. drugs-medicine to the distributor which is being paid by the distributor on principal to principal basis and property in goods with all risk and rewards passes to the distributor at the time of selling of the goods by the assessee company to the distributor when the goods are delivered by the carrier to the distributor. In-fact the distributors are the customers of the assessee company to whom the sales of the products i.e. drugs-medicine were effected by the assessee company. It is pertinent to note that the assessee company is dealing in products/goods i.e. drugs-medicine and not in the services. The distributors are required to notify any shortages during shipping or handling within 7 days of arrival of products at final destination to the assessee company*

along with endorsement on Lorry Receipt of the transporter along with shortage certificates by the transporter to claim loss from the assessee company, in other situations the loss or damage to products shall be borne by the distributor. The drugs being medicines contains certain restriction on the sale w.r.t. good governance and conduct by the distributors to follow first expiry and first out basis as the medicines having expiry could not be sold after the stipulated date of expiry , otherwise it will be health hazard to the consumers , the assessee company as normal market practice takes back the said expired drugmedicines from distributors which has expired and pay back the distributors but that does not in our humble opinion is decisive or change the character of dealing between the assessee company and the distributor which primarily continues to be on principal to principal basis . Such exception of taking back the expired products has its genesis to the sensitivity of the product being drugs-medicine handled by the assessee company otherwise it could have severe health hazard impacts on the consumer which is a normal market practice in the industry but the same is not decisive to conclude that the property in the goods with all risks and rewards have not passed to the distributor on sale of products by the assessee company to the distributor at the time of delivery by the carrier to the distributor

as per stipulated terms of distribution agreement. We have also observed that the assessee company is raising sale invoice's on the distributor M/s Rudra Pharma Distributors Limited which are placed on the paper book filed by the assessee company at page 35 while the ledger account showing invoices raised and payments received from distributor M/s Rudra Pharma Distributors Limited by the assessee company is also placed in the paper book filed by the assessee company at page 36 to 51. We have also observed that the said distributor M/s Rudra Pharma Distributors Limited is registered with VAT authorities and is raising its invoices (including VAT) to their customers , whereby all the above facts clearly reflects that the distributors is buying the products from the assessee company and then selling the same in its own right with all risks and rewards of ownership got vested in the said distributors on the delivery of goods by carrier to the said distributor which is also supported by the clause 5 of the distribution agreement dated 01-07-2001. Thus, we, therefore, hold that the assessee company has paid discount to MRP to the distributors at the time of sale of the said goods/products i.e. drugs-medicine which in our considered view is not covered u/s 194H of the Act and no tax was required to be deducted at source on these discount to MRP given by the assessee company

to the distributors at the time of sale of drugs-medicine to the distributors. We hold accordingly.

12. Therefore, respectfully following the decision of Coordinate Bench of ITAT which is applicable *mutatis mutandis* in the present case, we are inclined to accept the submission of Ld. AR. Accordingly, the grounds (a) and (b) raised by the revenue are **dismissed.**

13. With the ground no. (c), we notice that the Coordinate Bench of ITAT in the case of Income-tax Officer, Ward-2(2), Ahmedabad v. Parag Mahasukhlal Shah [2011] 12 taxmann.com 37 (Ahmedabad) has already decided the similar issue raised by the revenue in the present case. For the sake of clarity, which is reproduced below:-

5. We have heard both the sides at some length. Admitted factual position is that the assessee is having a dealership of FAG Bearing (India) Ltd. and, therefore, in the business of sales of ball-bearings. This fact has also not been denied that there were certain terms and conditions agreed upon between the two parties in case of delay in payments. Whenever there was delay in payment or the payments got overdue, there was a condition to compensate the delay. Likewise, in case of prompt payment, the terms of payments

have prescribed a facility of cash discount. Therefore, the fundamental and primarily argument from the side of the respondent-assessee was that the amount paid to compensate the delay in making the payment was nothing but the added sales price of the said commodity. Inter alia, it has also been argued that the impugned nature of payment was not within the definition of interest as prescribed under section 2(28A) of the Income-tax Act. With this factual back ground, the case laws relied upon is Nirma Industries Ltd. (supra), which now stood upheld and SLP of revenue was dismissed as per the citation CIT v. Nirma Industries Ltd. [2008] 166 Taxman 95 (SLP No. 28). In addition to this precedent, Learned Authorised Representative has also placed reliance on following decisions :—

Sl. No(s). Decision in the case of... Reported in...

1. CIT v. Indo Matsushita Carbon Co. Ltd. [2006] 286 ITR 201 / 122 Taxman 516 (Mad.)

2. British Bank Middle East v. CIT [1998] 233 ITR 251 (Bom.)

3. CIT v. Jackson Engineers Ltd. [2010] 231 CTR 348 (Delhi)

4. CIT v. Advance Detergents Ltd. [2010] 228 CTR 356 (Delhi)

5. Phatela Cotgin Industries P. Ltd. v. CIT [2008] 303 ITR 411 / 166 Taxman 9 (Punj. & Har.)

6. Tata Sponge Iron Ltd. v. CIT [2007] 292 ITR 175 / 165 Taxman 191 (Ori.)

6. We have carefully perused the decision of the Hon'ble Jurisdictional High Court, Nirma Industries Ltd. (supra) wherein observation in respect of the issue involved is as under :—

> *"33. However, the parties having made elaborate submissions, the matter may be examined from a slightly different angle. When the assessee enters into a contract for sale of its products it could either stipulate (a) that interest at the specified rate would be charged on the unpaid sale price and added to the outstanding till the point of time of realisation, or (b) that in case of delay the payment for sale of products worth Rs. 100 to carry the sale price of Rs. 102 for first month's delay, Rs. 104 for second month's delay, Rs. 106 for third month's delay and so on. If the contention of revenue is accepted, merely because the assessee has described the additional sale proceeds as interest in case of contract as per illustration (a) above, such payment would not be profits derived from industrial undertaking, but in case of illustration (b) above, if the payment is described as sale price it would be profits*

derived from the industrial undertaking. This can never be, because in sum and substance these are only two modes of realising sale consideration, the object being to realise sale proceeds at the earliest and without delay. Purchaser pays higher sale price if it delays payment of sale proceeds. In other words, this is a converse situation to offering of cash discount. Thus, in principle, in reality, the transaction remains the same and there is no distinction as to the source. It is incorrect to state that the source for interest is the outstanding sale proceeds. It is not the assessee's business to lend funds and earn interest. The distinction drawn by Revenue is artificial in nature and is neither in consonance with law nor commercial practice."

7. In the light of the above precedent, we deem it proper to discuss the relevant provisions of Income-tax Act.

7.1 Section 2(28A) of the Income-tax Act has defined the term "interest" as follows: "Section 2(28A) : "interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized."

7.2 The true character of the term interest has been defined, but the definition appears to be wide, inter alia, covers interest payable in any manner in respect of loans, debts, deposits, claims and other similar rights or obligation. This definition further includes service charges but those charges should be in respect of the money borrowed. By this definition, therefore, it is evident that if the charges are in respect of a debt or in respect of any credit facility then such charges are inclusive in the definition of "interest". Therefore, the interest is a payment of money in lieu of use of borrowings. It is payable by a debtor to the creditor. But it is also worth to note that the said definition is not wide enough to include other payments. There ought to be distinction between the payments not connected with any debt, with a payment having connection with the borrowings. A payment having no nexus with a deposit, loan or borrowings is out of the ambits of the definition of interest as per section 2(28A) of the Income-tax Act. While pondering upon the issue, we have come across a decision of Respected National Consumer Disputes Redressal Commission, wherein in the case of Ghaziabad Development Authority v. Dr. N.K. Gupta [2002] 258 ITR 337 (NCDRC), it was held as under :—

> *"Held, affirming the order of the State Commission, that section 194A of the Income-tax Act, 1961, did not apply to the payment made by the petitioner Authority.*

The Authority was asked to pay interest on the amount refunded to the complainant because of its failure to construct the promised flat and to provide the necessary facilities. The amounts deposited by the respondent with the petitioner Authority were not paid by way of deposit, nor had the petitioner Authority borrowed those amounts. Interest payment in this case was by way of damages. Merely because the damages were described as by way of interest that did not convert them into interest under the Act. The word used in the order of the State Commission was not "interest" as defined in section 2(28A). Interest, in the order of the Commission, meant compensation or damages for delay in construction or handing over possession of the same causing consequential loss to the complainant by way of escalation in the price of the property and also on account of distress and disappointment faced by him. Interest, in the order, had been used merely as a convenient method to calculate the amount of compensation in order to standardize it. Otherwise, each case of an allottee would have to be dealt with differently. Nomenclature did not decide the issue. In view of the definition of "interest" in section 2(28A), the provisions of section 194A were not applicable and the petitioner Authority was wrong in deducting tax at source from the interest payable to the respondent (complainant)."

7.3 This decision is very helpful to decide this appeal because it was held that if the nature of payment is to compensate an allottee, then the provisions of section 194A not to be applied as far as the question of deduction of TDS on interest is concerned. Though the said compensation was mentioned as "interest" but the Hon'ble Members have held that the word used "interest" did not fall within the definition as defined under section 2(28A) of the Income-tax Act.

8. The provisions of section 194A reads as follows :—

> *"194A. Interest other than "Interest on securities".—(1) Any persons. 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."*

8.1 If a person is responsible for paying any income by way of interest shall at the time of credit or at the time of payment is required to deduct income-tax. Vide an Explanation annexed to this section, it is clarified that where any income by way of interest is credited either under

the "suspense account" or "interest payable account" or "by any other name", then also such person is liable to deduct tax. On plain reading of this section, it is apparent that the term "interest" used in this section relates to and in connection of a debt or a loan or a deposit. The circumstances under which the assessee is required to deduct the tax has also been narrated. Therefore, a conclusion can be drawn that if a payment is compensatory in nature and not related to any deposit/debt/loan, then such a payment is out of the ambits of the provisions of section 194A of the Income-tax Act. To buttress this legal proposition, we hereby placed reliance on the decision of Hon'ble Gujarat High Court in the case of Nirma Industries Ltd. (supra), wherein the question was the admissibility of deduction under sections 80HH and 80-I of the Income-tax Act in respect of interest received from trade debtors. The observation was that when an assessee enters into a contract for sale of its product, it could either stipulate that interest at the specified rate would be charged on the unpaid sale price or it can be agreed upon that in case of delay the sale price shall escalate. As per the Hon'ble Court, the sum and substance of the discussion was that only two modes are plausible for realization of sale consideration. However, for a businessman the object is to realize the sale proceeds at the earliest and without any delay. When the purchaser pays a higher sale price on account of delay in payments of the sale proceeds, then the

source being trade activity, therefore, held as eligible profit of the Industrial Undertaking for the purpose of computation of deduction.

8.2 Almost on identical situation in the case of Phatela Cotgin Industries (P.) Ltd. (supra), the Hon'ble Court has stated that the interest which was received on delayed payment on account of sale to customers has to be termed as income derived from the Industrial Undertaking and such an income was held as distinct from interest income which is received from Fixed Deposit. The Courts have delivered these judgements by taking into consideration the immediate source of said receipt. If the immediate source is a loan, deposit, etc., then the payment is in the nature of "interest" but if the immediate source of receipt of payment is trade activity, then the nature of receipt is not "interest payment" but in the nature of payment of compensation.

9. In the case of Indo Matsushita Carbon Co. Ltd. (supra), the question was that whether overdues from trade debtors is eligible for relief under section 80HHC/80-I of the Income-tax Act. In that context the Hon'ble Court has commented that it is settled that the interest earned on the belated payment would be directly relatable to the business of the assessee. If the purchaser did not make the payment in time and agreed to pay the interest on the belated payments, the said interest would have direct nexus with the business activity. The true test would be whether such

interest would have been available to the assessee otherwise also; and the answer to the question as per the Hon'ble Court was in negative. Hence, it was held that the interest being directly relatable only to the amounts receivable by the assessee during the course of its business on account of sale, the interest would have to be included as the profits and gains derived from the business of the assessee. An another decision cited therein was CIT v. Madras Motors Ltd. [2002] 257 ITR 60 / 122 Taxman 516 (Mad.).

10. In the case of Phatela Cotgin Industries (P.) Ltd. (supra) the verdict was that the interest being received on delayed payment on account of sale to customers could clearly be termed to be an income derived from Industrial Undertaking. It was observed that such an interest is distinct from interest income which is being received from Fixed Deposit. Case laws referred were CIT v. Paras Oil Extraction Ltd. [1998] 230 ITR 266/96 Taxman 234 (MP) and Pandian Chemicals Ltd. v. CIT [2003] 262 ITR 278/ 129 Taxman 539 (SC).

11. An another interesting feature involved to resolve this controversy is that the revenue otherwise cannot allow the claim of payment under section 36(1)(iii) of the Act because as per this section, the deduction is provided in respect of the amount of interest paid in respect of capital borrowed for the purpose of business. The only provision under the Act is section 37 under which this payment/expenditure is

allowable being laid out wholly and exclusively for the purpose of the business. The nature of payment is such that it cannot be considered either under section 56 of the Act, i.e., "Income from other sources" or under section 57 of the Act prescribing deductions only in respect of "income from other sources". Inter alia, the conclusion is that since the nature of payment did not fall within the category of "income from other sources" as also cannot be allowed as payment of interest under section 36(1)(iii), therefore, it's true nature is nothing but added value of cost of purchase, hence no TDS was required to be deducted.

12. In the light of the overall discussion made hereinabove, we are of the view that the impugned payment had a direct link and immediate nexus with the Trade liability being connected with the delayed purchase payment, hence, did not fall within the category of "Interest" as defined in section 2(28A) of the Income-tax Act for the purpose of deduction of Tax at Source as prescribed under section 194A of the Act. Resultantly, this assessee cannot be held a defaulter of non-deduction of tax at source under section 194A of the Act. The Learned CIT (Appeals) has rightly reversed the findings of the Assessing Officer. Ground raised of the revenue is, therefore, dismissed.

14. We also notice that the Coordinate Bench of ITAT in the case of Sri Venkatesh Paper Agencies (Hyd.) (P.) Ltd. v. Deputy

Commissioner of Income-tax, Circle-3(1), Hyderabad [2012] 24 taxmann.com 52 (Hyd.) has decided the similar issue. For the sake of clarity, which is reproduced below:-

> *Held*
>
> *It is not disputed that the interest paid is not for any loan or debt incurred by the assessee but for the delay in payment of bills for purchases effected from company. Therefore, it has to be seen as to whether such payment is in the nature of interest as envisaged under section 2(28A). As seen from the order of the ITAT Ahmedabad Bench in the case of ITO v. Parag Mahasukhlal Shah [2011] 46 SOT 302 / 12 taxmann.com 37 the Tribunal has held that a payment which has direct link and immediate nexus with the trading liability being connected with the delayed purchase payments will not fall within the category of interest as defined in section 2(28A). The payment made by the assessee in the present appeal being of similar nature also cannot be termed as interest as defined under section 2(28A). Even without entering into the controversy as to whether the payment made on overdue bills will come within the ambit of interest as defined in section 2(28A), the assessee is also bound to succeed on its alternative argument Annexure 2 that the entire payment having been made during the previous year relevant to the assessment year under dispute no disallowance could be made under*

section 40(a)(ia) in view of the ITAT Special Bench decision in the case of Merilyn Shipping & Transports v. Addl. CIT [2012] 136 ITD 23/ 20 taxmann.com 244 (Visakha) . In the afore said view of the matter, the disallowance made under section 40(a)(ia) cannot be sustained. Therefore, the Assessing Officer is to be directed to delete the same. The appeal is to be allowed.

10. We have heard rival contentions and perused the material on record. It is not disputed that the interest paid of Rs. 3,12,600 is not for any loan or debt incurred by the assessee but for the delay in payment of bills for purchases effected from M/s. Sinermas Pulp & Papers Ltd. Therefore, it has to be seen as to whether such payment is in the nature of interest as envisaged u/s. 2(28A) of the Act. As seen from the order of the ITAT Ahmedabad Bench in the case of Parag Mahasukhlal Shah (supra) the Tribunal has held that a payment which has direct link and immediate nexus with the trading liability being connected with the delayed purchase payments will not fall within the category of interest as defined in section 2(28A) of the Act. The payment made by the assessee in the present appeal being of similar nature also cannot be termed as interest as defined u/s. 2(28A) of the Act.

15. Therefore, respectfully following the decision of Coordinate Bench of ITAT which is applicable *mutatis mutandis*

in the present case, we are inclined to accept the submission of Ld. AR. Accordingly, the grounds (c) raised by the revenue are **dismissed.**

16. CO filed by the assessee has not pressed by Ld. AR, therefore CO filed by the assessee is **dismissed** as not pressed.

17. In the net result, the appeal filed by the revenue and CO filed by the assessee are **dismissed.**

Order pronounced in the open court on 11.12.2020.

Sd/-	*Sd/-*
(Ram Lal Negi)	(S. Rifaur Rahman)
न्यायिकसदस्य / Judicial Member	लेखासदस्य / Accountant Member

मुंबई Mumbai;दिनांकDated : 11.12.2020
Sr.PS. Dhananjay

<u>आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

.उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ **ITAT, Mumbai**