

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI I BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President)  
and Ravish Sood (Judicial Member)]**

ITA No. 3851/Mum/18  
Assessment year: 2009-10

**Deputy Commissioner of Income Tax  
Circle 4(3)(2), Mumbai**

.....Appellant

*Vs*

**WNS Capital Investment Limited, Mauritius**  
c/o CIM Corporate Services Limited  
33, Edith Cavell Street, Port Louis, Mauritius  
[TAN: MUMW04886A]

.....Respondent

CO No. 147/Mum/ 2019  
Arising out of ITA No. 3851/Mum/18  
Assessment year: 2009-10

**WNS Capital Investment Limited, Mauritius**  
c/o CIM Corporate Services Limited  
33, Edith Cavell Street, Port Louis, Mauritius  
[TAN: MUMW04886A]

.....Cross-objector

*Vs*

**Deputy Commissioner of Income Tax  
Circle 4(3)(2), Mumbai**

.....Respondent

**Appearances by**

**Sanjay Singh, Commissioner (DR), for the income tax department**

**P J Pardiwala, Sr Advocate, along-with Sukh Sagar Syal, Advocate for the taxpayer**

Date of concluding the hearing : March 26, 2021

Date of pronouncement of order : April 30, 2021

**O R D E R**

**Per Pramod Kumar, VP:**

1. This set of appeal and cross objection is directed against the order dated 20<sup>th</sup> March, 2018 passed by the learned CIT(A) in the manner of tax withholding, and consequent interest, demands raised under section 201 r.w.s. 195 of the Income Tax Act, 1961, for the assessment year 2009-10.

2. Grievances raised by the appellant Assessing Officer, as set out in the memorandum of appeal, are as follows:

**1. On the facts and M the circumstances of the case and in law, whether the Ld. CIT(A) has erred in holding that interest u/s. 201(IA) of the Act is not chargeable in the case of the assessee as it had no liability to deduct tax at source u/s. 195(1) of the Act on payments made to Aviva International Holdings Ltd, UK in July, 2008 for acquiring from it 100% of equity shares in Aviva Global Services Singapore Pvt Ltd, Singapore which derived value substantially from assets situate in India?**

**2. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) has erred in holding that interest u/s. 201(1A) of the Act is not chargeable in the case of the assessee as it had no liability to deduct tax at source u/s. 195(1) of the Act on payments made to Aviva International Holdings Ltd. UK in July, 2008 for acquiring from it 100% of equity shares in Aviva Global Services Singapore Pvt. Ltd, Singapore which derived value substantially from assets situate in India when Aviva International Holdings Ltd, UK has accepted the taxability of the capital gains in its hands and the assessment has reached finality?**

**3. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) has erred in holding that interest u/s. 201(1A) of the Act is not chargeable in the case of the assessee as it had no liability to deduct tax at source u/s 195(1) of the All on payments made to Aviva International Holdings Ltd UK in July, 2008 on the premise that the law at that time did not have a charge on taxation of capital gains arising from indirect transfer of capital assets deriving their value substantially from assets situate in India prior to retrospective amendments made to section 9(1)(i) and section 195(1) of the Act by the Finance Act, 2012, thereby meaning that these amendments were not declaratory and clarificatory in nature and do not explain and clarify the existing law?**

**4. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) has erred in holding that interest u/s 201 (1A) of the Act is not chargeable in the case of the assessee as it had no liability to deduct tax at source u/s 195(I) of the Act on payments made to Aviva International Holdings Ltd UK in July,2008 under the existing law prior to retrospective amendments made to section 9(1)(i) and section 195(1) of the Act by the Finance Act, 2012, whereas these amendments fulfil the tests laid down by a Constitution Bench of Hon'ble Supreme Court in their decision in the case of CIT (Central)-I, New Delhi vs Vatika Township Pvt Ltd, 2015 (1) SCC 1, for being declaratory and clarificatory in nature and hence explain and clarify the existing law?**

**5. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) has erred in holding that interest u/s 201(1A) of the Act is not chargeable in the case of the assessee as it had no liability to deduct tax at source u/s 195(1) of the Act on payments made to Aviva International Holdings Ltd UK in July,2008 under the existing law prior to retrospective amendments made to section 9(1)(i) and section I95(1) of the Act by the Finance Act, 2012, whereas the Notes on**

**Clauses to Finance Bill, 2012 categorically mention these amendments as being clarificatory and thus fulfil the test laid down by a Constitution Bench of Hon'ble Supreme Court in their decision in the case of CIT (Central)-1, New Delhi vs Vatika Township Pvt Ltd, 2015 (1) SCC I, for being declaratory and clarificatory in nature and hence explain the existing law?**

**6. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) has erred in holding that interest u/s 201(1A) of the Act is not chargeable in the case of the assessee as it had no liability to deduct tax at source u/s 195(1) of the Act on payments made to Aviva International Holdings Ltd UK in July, 2008 under the existing law prior to retrospective amendments made to section 9(1)(i) and section 195(1) of the Act by the Finance Act, 2012, whereas the Memorandum to Finance Bill, 2012 categorically mention these amendments as being clarificatory and thus fulfil the test laid down by a Constitution Bench of Hon'ble Supreme Court in their decision in the case of CIT (Central)-1, New Delhi vs Vatika Township Pvt Ltd, 2015 (1) SCC I, for being declaratory and clarificatory in nature and hence explain the existing law?**

**7. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) has erred in holding that interest u/s 201(1A) of the Act is not chargeable in the case of the assessee as it had no liability to deduct tax at source u/s 195(1) of the Act on payments made to Aviva International Holdings Ltd UK in July, 2008 under the existing law at that time relying on the decision of Hon'ble Supreme Court of India in the case of GE Technology Centre (P) Ltd vs CIT & Anr., (2010) 327 ITR 456 (SC), without considering that this decision is not applicable as the retrospective amendments made to section 9(1)(i) and section 195(1) of the Act by the Finance Act, 2012, are declaratory and clarificatory in nature and explain the existing law regarding chargeability of capital gains arising from indirect of assets situate in India and liability to deduct tax at source on payments made to effect such transfers?**

**8. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) has erred in holding in paragraph 24 of his order that "section 195(2) is not applicable as even before retrospective amendment to Income Tax Act 1961" whereas in paragraph 14 of his order he had held that "it is made clear that merits are not examined considering the submission of the Appellant regarding liability towards deduction of tax at source on the payment to Aviva International Holdings Ltd, UK"?**

**9. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) has erred in holding that interest u/s 201(1A) of the Act is not chargeable in the case of the assessee as it had no liability to deduct tax at source u/s 195(1) of the Act on payments made to Aviva International Holdings Ltd UK in July, 2008 under the existing law by construing that the principal sum became liable to tax only on account of retrospective amendments to section 9(1)(i) and section 195(1) of the Act and applying the ratio of Hon'ble Bombay High Court's decision in the case of CIT vs NGC Network (India) Pvt Ltd. (In ITA no 397 of 2015) without considering that these amendments fulfil the tests laid down by a Constitution Bench of Hon'ble Supreme Court in their decision in the case of CIT (Central)-1,**

**New Delhi vs Vatika Township Pvt. Ltd, 2015 SCC 1, for being declaratory and clarificatory in nature and hence explain and clarify the existing law?**

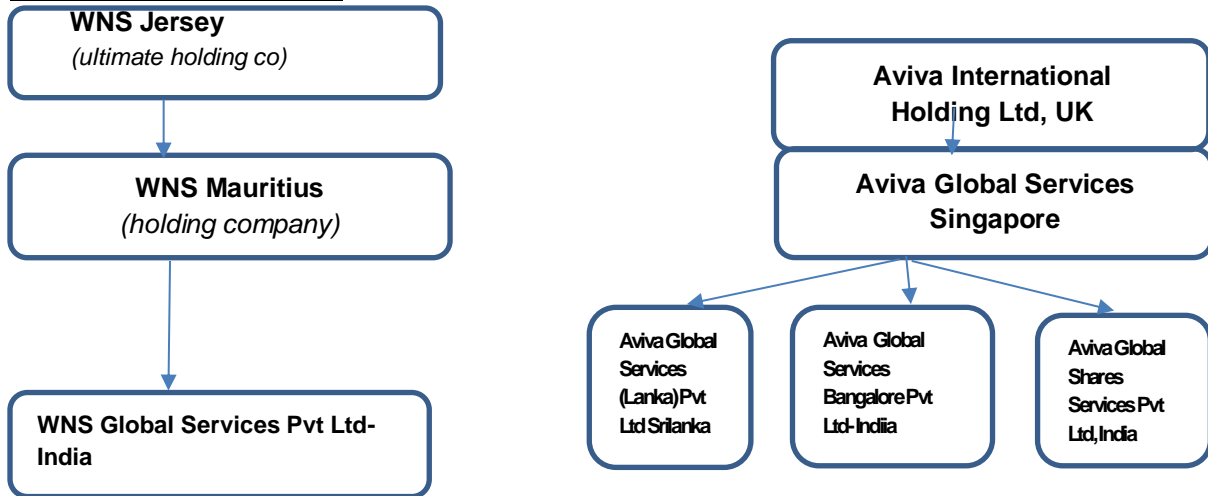
**10. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) has erred in holding that interest u/s 201(1A) of the Act is not chargeable in the case of the assessee as it had no liability to deduct tax at source u/s 195(1) of the Act on payments made to Aviva International Holdings Ltd UK in July, 2008 under these existing law by drawing partial inference from the decision of Ld. ITAT 'D' Bench in the case of Cairn UK Holdings Ltd. Vs DCIT (IT)-1(2)(1), New Delhi (ITA No. 1669/Del/2016 for AY 2007-08) without considering that amendment to section 9(1)(i) and section 195 (1) fulfil the tests laid down by a Constitution Bench of Hon'ble Supreme Court in their decision in the case of CIT (Central)-1, New Delhi vs Vatika Township Pvt. Ltd, 2015 SCC 1, for being declaratory and clarificatory in nature and hence explain and clarify the existing law?**

**11. On the facts and in the circumstances of the case and in law, whether the Ld. CIT(A) has erred in holding that interest u/s 201(1A) of the Act is not required to be levied in the case of the assessee on account of special circumstance of Aviva International Holdings Ltd UK having paid the taxes, without considering that there is no provision in law regarding existence of such special circumstance and its treatment in this regard?**

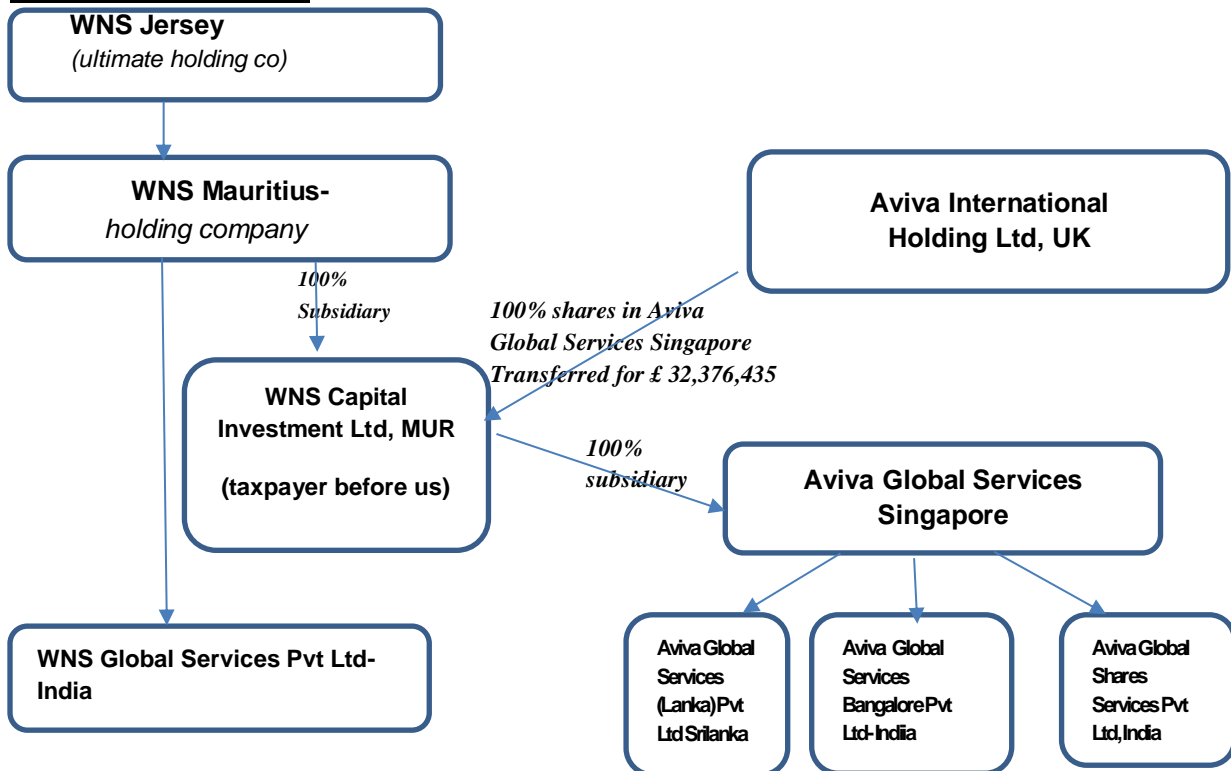
3. Verbosity of these grounds of appeal apart, as learned representatives fairly agree, the short grievance raised in these grounds of appeal is that on the facts and in the circumstances of this case, learned CIT(A) erred in deleting the impugned demand, on account of interest for delay in realization of taxes which ought to have been upheld by the assessee before us, under section 201(1A) read with Section 195- particularly in the light of Explanation 2 to Section 195. What are termed as grounds of appeal are arguments in support of this core grievance.

4. The issue in appeal lies in a very narrow compass of facts. On 11<sup>th</sup> July 2008, WNS Capital Investments Ltd Mauritius- the assessee before us and a company which is owned by WNS Mauritius which, in turn, is owned by the ultimate holding company situated in Jersey, purchased 100% equity shares in Aviva Global Services Singapore Pte Ltd (**AGSPL**, in short) from Aviva International Holdings Ltd UK (**AIH-UK**, in short) for a consideration of ₹ 3,23,76,435. AGSPL, in turn, was holding company of three subsidiaries- namely Aviva Global Services (Bangalore) Pvt Ltd India (**AGSBPL-I**, in short), Aviva Global Shared Services Pvt Ltd India (**AGSSPL-I**, in short), and Aviva Global Services Lanka Pvt Ltd Srilanka. The parent company of assessee company, i.e. WNS- M, also has a fully owned Indian subsidiary by the name of WNS Global Services Pvt Ltd (**WGSPL- India**, in short). Subsequently, with effect from 1<sup>st</sup> July 2007 and vide amalgamation approved by Hon'ble Bombay High Court vide order dated 11<sup>th</sup> August 2009, the two Indian subsidiaries of AGSPL, namely **AGSBLP-India** and **AGSPPL-India**, were amalgamated with WGSPL- India. In terms of diagrams this series of transactions could be, as is the case of the AO, described as follows:

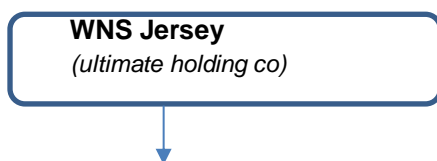
**Stage I ; Pre transaction**

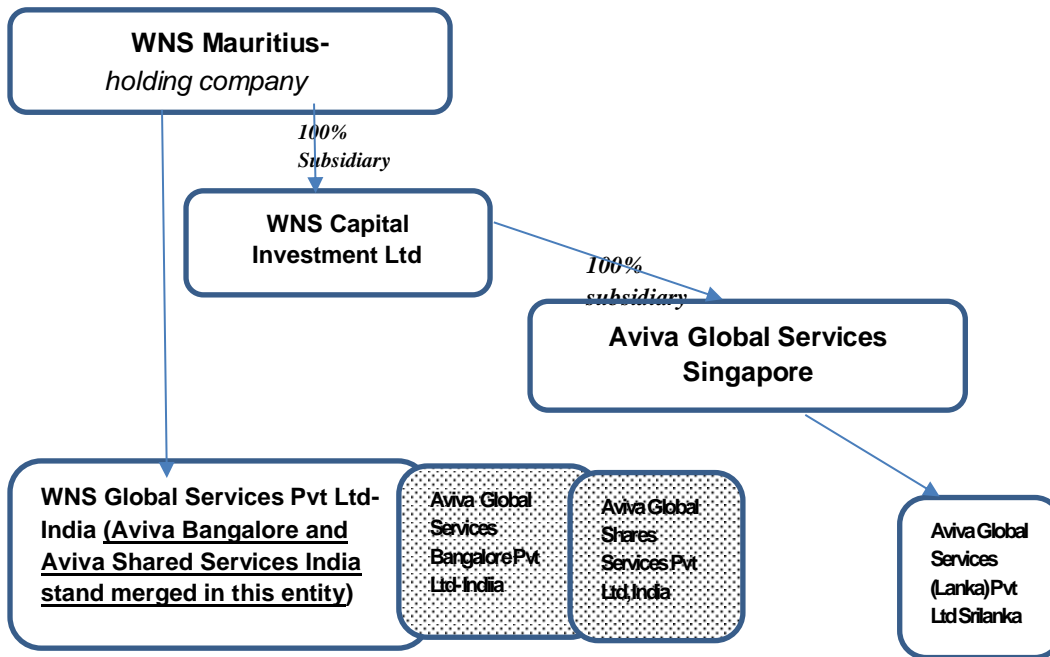


**Stage II: Transaction**



**Stage III: Post transaction**





5. What this, according to the Assessing Officer, clearly shows is that the predominant purpose of the assessee's purchasing shares of Aviva Singapore was the underlying assets, by way of shareholdings in Aviva Bangalore and Aviva India, and that is what attracts taxability of gains on sale of these shares in the hands of the seller of these shares. This income was embedded in the payment for the shares as made by the assessee, and, therefore, the assessee had, according to the Assessing Officer, the obligation to withhold taxes from taxes on such income. It was thus in the backdrop of the above information, which was received from the Transfer Pricing Officer II(6) Mumbai, that the Assessing Officer probed the matter further. He formed the view that in the present case, even though the transfer is of the shares of a foreign company, by one non-resident to another non-resident, since these shares "derive, directly or indirectly, its value substantially from the assets located in India", in view of Explanation 5 to 9(1)(i), the income on transfer of these shares is taxable in India. The Assessing Officer further noted that in the light of insertion of Explanation 2 to Section 195 inserted by the Finance Act 2012, with retrospective effect from 1<sup>st</sup> April 1962, even a non-resident is under obligation to withhold taxes, under section 195, from any payments by such non-resident to another non-resident, when income embedded in such payments is taxable in India. It was thus concluded that the assessee has defaulted in not withholding taxes from payments made to AIH-UK. Accordingly, demands were raised under section 201(1) and 201(1A), read with Section 195(2), in respect of the tax on income, taxable in India, embedded in such sale consideration, and also for interest on account of delay in realization of these withholding taxes, i.e. from the date on which the taxes ought to have been withheld till the date on which taxes are actually realized. The demands Rs 92.59 crores thus were raised. Aggrieved, the assessee carried the matter in appeal before the CIT(A). Learned CIT(A) noted that AIH-UK, in whose hands capital gains on the sale of shares in question is taxable, claims to have paid the tax to the extent of Rs 47,72,84,284, representing tax on the capital gains in question. To that extent, subject to necessary verification of facts, the demand under section 201(1) was deleted. As regards the levy of interest under section 201(1A) is concerned, learned CIT(A) deleted the same on the basis of the following reasoning:

20. There is a timeline in the case. It starts with no explicit provision in law and ended with retrospective amendments in Income Tax Act 1961 vide Finance Act 2012. The timeline is as under:

<i>Date</i>	<i>Particulars</i>
<i>February 11, 2017</i>	<i>SPA finalised of Vodafone BV</i>
<i>July 11, 2008</i>	<i>Share purchase transaction by WCIL from AIH</i>
<i>December, 2008</i>	<i>Bombay HC quashes writ petition filed by Vodafone BV challenging jurisdiction of India Tax authorities to initiate withholding proceedings against Vodafone BV. It did not exercise jurisdiction under Act. 226. Orders Vodafone to submit relevant documents to IT Dept. To decide on jurisdiction</i>
<i>December, 2008</i>	<i>Vodafone files SLP in Supreme Court against Bombay High Court Order;</i>
<i>January, 2009</i>	<i>Supreme Court dismisses SLP, orders that tax department first pass an order on jurisdiction issue, against which Vodafone can approach the Bombay HC;</i>
<i>May, 2010</i>	<i>IT Dept issues final order under section 201</i>
<i>June, 2010</i>	<i>Writ petition filed by Vodafone in Bombay HC challenging the IT Department's final order of May 2010;</i>
<i>September, 2010</i>	<i>Bombay HC rules in favour of IT Dept upholding the order under section 201</i>
<i>January 20, 2012</i>	<i>Supreme Court overrules Bombay HC order-Transaction is not liable to tax in India and Vodafone not liable to withhold TDS.</i>
<i>Finance Act 2012</i>	<i>Retrospective amendment vide Finance Act 2012 treating capital gains on indirect transfer of shares of India Company as transfer in India and casting obligation on non-resident to deduct tax at source whether or not such non-resident has presence in India.</i>

The foremost thing that emerges is that there is no omission on the part of assessee, if explicit provisions of law is considered at time of payment. This is to be read with my decision in paragraph 10 of this order regarding liability under section 195(2) which is ruled in favour of appellant. Here the situation is akin to forcing assessee to perform an impossible. Thus, I hold that there is a case to consider the case decision in CIT NGC Network (India) Pvt. Ltd. (ITA NO. 397 of 2015 dated 29.01.2018 of Mumbai High Court) where issue was whether tax is deductible under section 194C or 194J.

21. In *CIT v/s NGC Network (India) Pvt. Ltd (ITA No 397 of 2015, Mumbai)* the decision was vis-a-vis 194C and 194J on the basis of retrospective amendment. The Hon. High Court was dealing with disallowance as a result of same proposed by Assessing Officer under section 40(a)(ia) but not accepted by Dispute Resolution Panel. Since Dispute Resolution Panel took the view that tax is not deductible at source under section 194J as a result of retrospective amendment, the matter reached Hon. Mumbai High Court. The court held that the same tantamount to compulsion to perform what is not possible. Extract from the decision reads as under:

(d) we find the view taken by the impugned order dated 9<sup>th</sup> July, of the tribunal that a party cannot be called upon to perform an impossible Act i.e. to comply with a provision not in force at the relevant time but introduced later by retrospective amendment. This is in accord with the view taken by this Court in *CIT v/s. Cello Plast (2012) 209 Taxmann 617* – wherein this court has applied the legal maxim *lex non cogit ad impossibilia* (law does not compel a man to do what he cannot possibly perform)

(e) in the present facts, the amendment by introduction of Explanation-6 to Section 9(1)(vi) of the Act took place in the year 2012 with retrospective effect from 1976. This could not have been contemplated by the Respondent when he made the payment which was subject to tax deduction at source under Section 194C of the Act during the subject Assessment year, would required deduction under Section 194J of the Act due to some future amendment with retrospective effect.

Here the case is no tax (at time of payment of sum) against tax deductibility under section 195 as a result of retrospective amendment. Interest under section 201(1A) is a consequence of the additional demand under section 201(1) raised under section 195. When on principal sum such treatment is given, consequent charge also must have same treatment. Drawing analogy from decision of Mumbai High Court the consequent charge also cannot be levied as here the principal sum also become liable as a result of retrospective amendment.

22. The appellant cited the decision in *Cairn India Holdings Ltd. v/s DCIT(ITA No. 1669/Del/2016)* dated 09.03.2017 and sought to draw analogy from the decision Extracts from same reads as under:

Further, Hon'ble Delhi High Court also covers issue favour of the assessee in *DIT vs GE Packaged Power Incorporation 373 ITR 65* wherein, it has been held that if tax is required to be deducted on the income of the non-resident assessee, under the provisions of section 195 of the Income Tax Act then no fault can rest on the shoulder of a non-resident assessee and hence, he cannot be burdened with the liability of interest u/s 234A, 234B and 234C Act,.

Admittedly in the present case, the income of non-resident appellant has become chargeable to tax due to retrospective amendment in the act and further the payments made to assessee was also subject to withholding tax u/s 195 of the act and in view of the above judicial precedents cited before us, we are of the opinion that assessee cannot be burdened with interest u/s. 234A and 234B of the Act on tax liability arising out of retrospective amendment w.e.f.

*01.04.962 in the provision of section 9(1) of the Income Tax Act. In the result ground No of the appeal of the assessee is allowed.*

*Going through the same it can be seen that while deleting charge of interest under section 234A, 2B3 and 234D the Hon'ble ITAT has made mention on responsibility on deductor. It can also be viewed that there is an indirect finding that liability towards deduction of tax at source subsists. Since this is not explicit i.e whether 'subject' means here 'actually subjected' or 'to be subjected, I am not drawing any inference against appellant from the decision.*

23. *In this case a special circumstance exit. TDS is a mode of collection of tax in the hands of the recipient. In this case, the recipient has paid tax fully. The purpose of TDS has been met fully and the case needs to be considered differently from cases where the recipient has not paid taxes.*

24. *To conclude, I had (a)made a finding that section 195(2) is not applicable as even before retrospective amendment to Income Tax Act 1961 in view of decision in GE India Technology Centre (P) Ltd. v/s. CIT [2010] 327 ITR 456 (SC), (b) taken the import of decision CIT v/s. NGC Network (India) Pvt. Ltd., (ITA No. 394 on 2015 dated 29.01.2018 of Mumbai High Court), (c) considered the aspect noted in pars 23 above and (d) considered decision in Cairn India Holdings Ltd. v/s DCIT (ITA No. 1669/De1/2016) dated 09.03.2017 in the context of charging interest under section 234 A, 2348 and 2340 on basis of assessed income as a result of retrospective amendment to Income Tax Act 1961. My decision is to be balanced based on these factors.*

25. *In view of foregoing discussion, considering (a),(b) and (c) above cumulatively and in toto and (d) partially, I hold that in the instant case levy of interest under section 201(1A) is not required. Accordingly Assessing Officer is directed to delete the charge of interest under section 201(1A)*

6. The Assessing Officer is aggrieved of the relief so granted by the learned CIT(A) and is in appeal before us.

7. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

8. We must bear in mind the fact that this is a case of payment made by one non-resident to another non-resident and the claim of the Assessing Officer is that the payment so made by the assessee had an income taxable in India embedded therein. We must also bear in mind the fact that Explanation 2 to Section 195, which imposes the tax withholding obligations on non-residents in respect of payments involving income taxable in India, was introduced by the Finance Act 2012- though purportedly with retrospective effect from 1<sup>st</sup> April 1962. The said Explanation so inserted to Section 195 states that “**For the removal of doubts, it is hereby clarified that the obligation to comply with sub-section (1) and to make deduction thereunder applies and shall be deemed to have always applied and extends and shall be deemed to have always extended to all persons, resident or non-resident, whether or not the non-resident person has—(i) a residence or place of business or business connection in India; or (ii) any other presence in any manner whatsoever in India**”. There cannot indeed be any question about the powers of the legislature for enacting any law, or making any

amendment in law, imposing a tax with retrospective effect, as it is well settled in law that “the legislature can impose tax retrospectively though it cannot be arbitrary and unreasonable” [Kanthi Enterprises Vs State of Karnataka [(2002) 7 SCC 283, 288]. However, so far as tax withholding requirements under section 195 are concerned, these requirements impose duties and obligations on a person, including a non-resident, making payments, involving an element of income taxable in India, to a non-resident. The nature of this provision is thus of regulating the conduct of a person so far as tax withholding obligations are concerned. The question, therefore, arises whether such a legislative amendment can also be introduced with retrospective effect. As regards the reliance placed by the appellant on the judgment of Hon’ble Supreme Court, in the case of CIT Vs Vatika Township Pvt Ltd [(2014) 367 ITR 466 (SC)], it is important to bear in mind the fact that the said decision dealt with a taxability provision not the tax withholding provision, and the peculiarities of the nature of law with respect of tax withholding obligations require these provisions to be dealt in a manner different than the taxability provisions. This question becomes relevant in light of the undisputed factual position that while the transaction for the purchase of shares in question took place on 11<sup>th</sup> July 2008, Explanation 2 to Section 195 was introduced in 2012 by the Finance Act 2012.

9. In the case of **Engineering Analysis Centre of Excellence Vs CIT [(2021) 125 taxmann.com 42 (SC)]**, Hon’ble Supreme Court has, dealing with a materially similar situation i.e. with respect to the obligations of a person under tax withholding requirements, observed that “**It is thus clear that the “person” mentioned in section 195 of the Income Tax Act cannot be expected to do the impossible, namely, to apply** (the law as it did not exist as the point of time when the obligations in question were being performed) **the expanded definition** of “royalty” inserted by explanation 4 to section 9(1)(vi) of the Income Tax Act, for the assessment years in question, **at a time when such explanation was not actually and factually in the statute.**” It is in this context that Their Lordships also observed that “**This question is answered by two latin maxims, *lex non cogit ad impossibilia*, i.e., the law does not demand the impossible and *impotentia excusat legem*, i.e., when there is a disability that makes it impossible to obey the law, the alleged disobedience of the law is excused**”. For a person to perform the tax withholding obligations on the basis of an amendment in law which was enacted on a date later than the date on which tax withholding obligations were required to be performed, is expecting that person to do the impossible. When a law is nowhere even on the horizon, leave aside the statute, it is wholly impossible for any person to perform the obligations imposed by such a law. The assessee, therefore, cannot be faulted for not deducting tax at source from payments made to Aviva International Holding Ltd UK in respect of purchase of shares in Aviva Global Services, Singapore, which, in turn, are said to derive substantial value from underlying assets in India. Once we come to this conclusion to the effect that there were no lapses on the part of the assessee inasmuch as the related legal provisions were not even in existence at the point of time when the sale of shares took place, i.e., 11<sup>th</sup> July 2008, we need not deal with the question as to whether the income embedded in the payments in question was at all taxable in India. Quite clearly, therefore, as is held by Hon’ble Supreme Court in the case of **Engineering Analysis (supra)**, persons responsible for deducting tax at source cannot be expected to act on the basis of an Explanation when such an “explanation was not actually and factually in the statute”. It cannot thus be said that, on the facts of this case, tax was deductible under section 195 at the time of making the said payment. We hold so. Once we hold so, the very foundation of impugned demands under section 201 r.w.s. 195 ceases to be sustainable in law, as the entire case of the revenue authorities hinges on Explanation 2 to Section 195, and its retrospective application. Having said that, we must add that, in any event,

this issue is entirely tax neutral inasmuch as it is a case in which the person selling the shares, i.e. Aviva International Holdings Ltd UK, is said to have already paid taxes on the capital gains, and independent proceedings in the said matter are in progress, and the matter is said to be pending for adjudication, on merits, before a coordinate bench. In case the taxability of the said income in the hands of the seller is to be upheld, the upholding of levy of interest under section 234B, on the given facts, will only be a natural corollary. Whether interest is charged under section 201(1A) or under section 234B, it is to be charged @ 1% p.m, and levy of interest under one of these provisions is to the exclusion of levy of interest under the other provision. Let's not lose sight of the fact that the period before us is the period prior to insertion of Proviso to Section 209(1), with effect from 1<sup>st</sup> April 2012, which means that, as the law stood at that point of time, it could be argued that irrespective of the actual deduction of tax at source, as long as the tax is deductible at source, the tax deductible will be reduced from the advance tax liability. Therefore, our upholding the liability under section 201(1A), which could only proceed on the foundational assumption that tax was deductible at source by the person making payment in question, will end up exonerating the person, in whose hands the income is taxable, of liability under section 234B. The levy of interest to compensate for the delay in realization of taxes, in the event of the taxability of subject income being upheld, is reasonably protected. In a situation in which, however, no income is held to be taxable in India, no demands under section 201 r.w.s. 195- including demand under section 201(1A) r.w.s. 195., which are inherently in the nature of vicarious liability, survive. Viewed thus, the present dispute is wholly tax neutral. In view of these discussions, as also bearing in mind the entirety of the case, we approve the conclusions arrived at by the learned CIT(A) and decline to interfere in the matter.

10. Learned counsel submits that in the event of the appeal being dismissed, he would not wish to pursue the cross objection, which addresses much larger questions, including taxability of the capital gains in the hands of the seller on the sale of shares in question. All these aspects of the matter, in the present context, are wholly academic. The CO is, accordingly, dismissed as infructuous.

11. In the result, the appeal, as also the CO, are dismissed. Pronounced in the open court today on the 30<sup>th</sup> day of April, 2021.

*Sd/xx*

**Ravish Sood**

(Judicial Member)

**Mumbai, dated the 30<sup>th</sup> day of April, 2021**

*Sd/xx*

**Pramod Kumar**

(Vice President)

*Copies to:*

(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Mumbai benches, Mumbai*