

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI V.P. RAO, JUDICIAL MEMBER**

**ITA Nos. 4284 to 4286/Del/2015
Assessment Years: 2011-12 to 2013-14**

**ACIT (TDS),
Noida.**

(Appellant)

vs.

**Jaypee Infratech Ltd.,
Sector-28, Noida.**

PAN : AABCJ9042R

(Respondent)

Appellant by : Sh. J.S. Minhas, CIT/DR &
Sh. Gaurav Pundir, Sr. DR

Respondent by: Sh. Ashwani Garg, Adv.

Date of hearing: 23.11.2021

Date of order : 23.11.2021

ORDER

PER V.P. RAO, J.M.

These three appeals by the Revenue are directed against composite order of the CIT(A) dated 31.03.2015, arising from the order passed u/s. 201/201(1A) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for the assessment years 2011-12 to 2013-14.

2. These appeals of the Department were disposed of by this Tribunal vide composite order dated 31.08.2017. Subsequently, the Revenue filed miscellaneous applications in MA No. 703 to

705/Del/2017 for rectification of the mistake in the said order of the Tribunal in respect of ground No. 3. The Tribunal vide order dated 29.06.2020 in MA No. 703 to 705/Del/2017 recalled the earlier order dated 31.08.2017 to the extent of deciding the ground No.3 afresh. The relevant finding of the Tribunal in paragraph No. 5 of the order dated 29.06.2020 reads as under :

“5. In ITA No. 4285/Del/2015 ground No. 3, in IYA No. 4286/Del/2015 ground No. 3 and in ITA No. 4284/Del/2015, ITA Nos. 4285 and 4286/Del/2015, ground No. 3 was related to non-deduction of tax on non convertible debentures interest. This ground was not in the case of M/s. Jaypee Sports International Ltd. and, therefore, there is a mistake apparent from record. In view of this, we recall the order of the Co-ordinate Bench to the extent of deciding ground No. 3 of the appeal of the learned Assessing Officer in ITA Nos. 4284, 4285 and 4286/Del/2015 with respect to non-deduction of tax at source on interest on non-convertible debentures.”

Thus, these three appeals are listed before us for hearing and disposal of ground No. 3, which is common for all the three years as under :

“3. Ld. CIT(A)-1, Noida has erred in law and on fact in deleting the demand on account of payments of interest on non-convertible debentures ignoring the fact that the provisions of section 194A are applicable on payment of interest on non-convertible debentures.”

3. Learned DR has submitted that the Assessing Officer while passing the order u/s. 201/201(1A) of the Act has noted that the

assessee had paid interest on non-convertible debentures without deducting tax at source as per provisions of section 194A of the Act. Learned CIT/DR heavily relied upon the order of the Assessing Officer and submitted that for want of any explanation on behalf of the assessee for the reasons for not complying with the provisions of section 194A, the assessee is treated as an assessee in default so far as the tax liability on such interest paid without tax deduction at source.

4. On the other hand, Id. AR of the assessee has submitted that the Id. CIT(A) has decided this issue in favour of the assessee by considering the fact that these non-convertible debentures are listed securities at Stock Exchange and therefore, the provisions of section 194A are not applicable as per proviso to section 193 of the Act. He has supported the order of the Id. CIT(A) qua this issue.

5. We have considered the rival submissions as well as relevant material on record. The Assessing Officer while passing the order u/s. 201/201(1A) of the Act has held that the assessee is in default for non-deduction of tax at source and therefore, liable to pay the tax u/s. 201 and interest thereon u/s. 201(1A) of the Act in respect of the interest paid on non-convertible debentures. The relevant finding of the Assessing Officer is as under :

“Interest paid on non convertible debentures:

Perusal of statement pertaining to " Interest on Non convertible debenture" revealed that the assessee had made payment on the dates mentioned hereunder amounting to Rs.

14,02,739/- without deduction of tax as required u/s 194-A of the Income Tax Act:

12.07.2012	Rs.11,83,561/-
01.10.2012	Rs.2,19,178/-

	Rs.14,02,739/-

The assessee was asked to explain the reasons for not complying the laid down provisions of the Income Tax Act. Assessee has not offered any plausible explanation in this regard. I have, therefore, no objection but create demand on account of short deduction of tax u/s 201 and an amount of interest thereon 201(1A) of The Income Tax Act.

Amount of NCD	Date of Payment	TDS deducted	Short Deduction under section 201	Defaults Months	Interest u/s 201(1 A)	Total liability
11,83,561	12.07.2012	-	1,18,356	21	24,855	1,43,211
2,19,178	01.10.2012	-	21,918	18	3,945	25,863

Further, an expenses amounting to Rs.2,62,04,229/-, Rs.22,47,200/- & Rs.3,46,71,086/- pertaining to the financial year 2010-11, 2011-12 & 2012-13 voluntarily added back to its returned income u/s 40(a)(ia) of the Income Tax Act.

Perusal of the information furnished by the Assessee revealed that it had debited an amount of Rs.2,62,04,229/-, Rs.22,47,200/- & Rs.3,46,71,086/- pertaining to the financial year 2010-11, 2011-12 & 2012-13 on account of expenses under various heads. However, aforesaid amount was voluntarily added back to its returned income u/s 40(a)(ia) of the Income Tax Act as the same had not been paid during the relevant F.Yrs. Assessee was, thus, asked as to why interest may not be charged for the late payment of the TDS as laid down u/s 201(1A) of the Income Tax Act.

Since, the assessee was failed to submit his explanation on this score, therefore it is assumed that he has nothing to say in this regard. The payment of interest has been held as mandatory by the various Hon'ble High Courts, some of which are mentioned hereunder:

F.Y. 2010-11

<i>Particular</i>	<i>Date</i>	<i>Amount paid</i>	<i>Date of credit</i>	<i>TDS amount</i>	<i>Intt. @ 1%</i>
<i>Audit fee</i>	<i>31.03.2011</i>	<i>1654500</i>	<i>30.07.2011</i>	<i>165450</i>	<i>8273</i>
<i>Tax audit fee</i>	<i>31.03.2011</i>	<i>330900</i>	<i>16.11.2012</i>	<i>33090</i>	<i>6949</i>

6. Thus, it is clear that the Assessing Officer has held the assessee in default in respect of the interest paid on non-convertible debentures without deducting tax at source. On appeal, the CIT(A) has decided this issue in favour of the assessee by considering the fact that these non-convertible debentures are listed at Stock Exchange and in view of the proviso to section 193, no TDS is required to be deducted in respect of interest paid on listed securities. The relevant finding of the CIT(A) at page 90 & 91 of the impugned order is as under:

“During the course of appellate proceeding the assessee has contained that Interest on listed & dematerialized Non Convertible Debenture is exempt from tax deduction under s. 193 of the Act. in this regard the appellant has furnished written submission as under:-

30. “The assessee paid interest (of Rs. 14,02,739/-) during the financial year 2012-13 to Axis Bank Ltd in respect of 10000 secured-redeemable Non Convertible Debentures of the face value of Rs. 10 lac each issued for cash at par. These NCDs were in dematerialized

form and were listed on the BSE. The relevant evidence of listing & dematerialization is at pp. 40-49 of the Paper Book. Hence, under clause (ix) of the proviso to s. 193, interest on the said debentures was exempt from tax deduction.

31. The assessing officer before making the impugned order did not confront this issue to the assessee and did not give it proper opportunity to file the evidence of listing and dematerialization of the NCDs under reference. Hence, the additional evidence now filed as per the paper Book deserves to be admitted and the finding of the learned assessing officer that the assessee was in default in respect of the interest paid on the aforesaid NCDs deserves to be quashed.”

During the course of appellate proceeding the assessee filed the evidence of listing and dematerialization of the NCDs under reference along with written submission dated 23.02.2015 with paper book a copy of which was also given to the AO during appellate proceeding. However AO has not controverted the above contention made by assessee.

*I have referred to provisions of Income Tax Act as contained in clause (ix) of the proviso to section 193 which reads as under:
.....Provided that no tax shall be deducted from –*

“(ix) any interest payable on any security issued by a company, where such security is in dematerialized form and is listed on a recognized stock exchange in India in accordance with the Securities Contracts (Regulation) Act 1956 (42 of 1956 and the rules made thereunder.)”

I have considered rival contentions and gone through the facts of the case as well as legal provisions and find that the interest on Non convertible debenture issued by assessee is

covered by exception laid down in clause (ix) under section 193 and therefore the tax was not liable to be deducted at source as requisite conditions have been met. Accordingly order passed by the AO U/s 201(1)/201(1A) on this issue is deleted.

This issue decided in favour of the assessee.”

7. Learned CIT(A) has considered the fact as evident from the documentary evidences filed by the assessee to show that the non-convertible debentures in question are listed and de-materialized. The said evidence was also forwarded to the Assessing Officer for his response and comments. CIT(A) has further noted that the Assessing Officer has not controverted the contentions of the assessee as well as the evidences filed by the assessee revealing the fact that these non-convertible debentures are listed in Stock Exchange and de-materialized. Learned DR has also not disputed the fact as considered by the CIT(A) while deciding this issue. Accordingly, in the facts and circumstances of the case, when the department has not disputed the fact of listing and de-materialization of the non-convertible debentures in question, then as per the proviso to section 193 and particularly clause (ix) of the said proviso, the tax was not liable to be deducted at source and consequently, there is no liability to be fastened on the assessee u/s. 201/201(1A) of the Act. Hence, we do not find any error or illegality in the impugned order of the CIT(A) qua this issue.

8. In the result, ground No. 3 of the Revenue's appeals for the assessment years 2011-12 to 2013-14 is dismissed.

Order pronounced in the open court on 23rd day of November, 2021 after conclusion of hearing.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 23.11.2021

'aks'

Sd/-

(V.P. RAO)
JUDICIAL MEMBER