

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI NARENDER KUMAR CHOUDHRY, JM

ITA Nos.2258 & 2257/Mum/2022
(Assessment Year: 2018-19 & 2019-20)

India Standard Loan Trust
XLIII
Asian Building,
Ground Floor, 17,
R. Kamani Marg,
Ballard Estate,
Mumbai-400 001

(Appellant)

PAN No. AABTI4249Q

Asst. Commissioner of
Income-tax (TDS)
1(2),
MTNL Telephone Exchange,
Vs. Building, Cumballa Hills,
Peddar Road, Mumbai-
400026

(Respondent)

Assessee by : Mr. Niraj Seth, Adv.
Revenue by : Mr. H.M. Bhatt, Sr. AR

Date of hearing: 10.08.2023
Date of pronouncement : 24.08.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No.2258/Mum/2022 is filed by the India Standard Loan Trust XLIII, Mumbai (the assessee / appellant) against the appellate order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)] dated 14th July, 2022, wherein the appeal filed by the assessee against the order passed on 24th January, 2020 by OSD TDS Circle 1(2), Mumbai under Section 201/ 201 (1A) of the Income-tax Act, 1961 (the Act), was dismissed.

02. ITA No. 2257/Mum/2020 for A.Y. 2019-20 is with similar facts.

03. Assessee is aggrieved, raising following grounds of appeal:

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"Ground No 1: Non-applicability of section 194LBC of the Income-tax, Act 1961 ('the Act")

The Commissioner of Income-tax (Appeals) ['learned CIT(A)'] from the National Faceless Appeal Centre CIT(A) erred on facts and in law in dismissing the appeal filed against the order passed under section 201/201(1A) (the order') of the Income-tax, Act 1961 (the Act) of the Assistant Commissioner of Income-tax (TDS) - 1(2) ["learned AO'] and in upholding that TDS is to be deducted on Excess Interest Spread (EIS) paid by the Appellant.

Ground No 2: Non-grant of adjournment

The CIT(A) erred on facts and in law in rejecting the application for adjournment

Ground No 3: Levy of interest under section 201(1A) of the Act

The CIT(A) erred on facts and in law in levying interest under section 201(1A) of the Act.

The Appellant craves leave to add, to amend, alter, vary, omit or substitute the aforesaid grounds of appeal or add a new ground or grounds of appeal at any time before or at the time of hearing of the appeal as they may be advised."

04. The brief fact of the case for AY 2018-19 shows that assessee is a securitization trust acting and controlling under the trusteeship of IDBI Trusteeship Services Ltd. A survey under Section 133A of the Act was conducted by Income Tax Department on 22nd October, 2018. During the survey, it was noted that assessee's trust has paid ₹701 lakh under the head Excess Interest Spread without deducting tax at source under Section 194LBC of the Act to the originator. The learned Assessing Officer explained what is the process of securitization and thereafter, held that on the above sum tax is required to be deducted at source under Section 194LBC of the Act. Accordingly, an order under Section 201/ 201(1A) of the Act was passed on 24th January, 2020. The learned Assessing Officer found that assessee has paid EIS of ₹7,01,42,692/- on which tax under Section 194LBC of the Act at the rate of 30% should have been deducted and therefore, assessee is in default for ₹2,10,42,807/- under Section 201(1) of the Act. The consequent interest u/s 201 (1A) of The Act of ₹61,06,232/- was made resulting into total demand of ₹2,71,49,039/-.
05. The assessee preferred the appeal before the learned CIT (A). The learned CIT (A) found that appeal of the assessee delayed by 23 days and no reason for such delay was available and hence, it cannot be condoned, therefore, the appeal of the assessee was dismissed in limini. The learned CIT (A) in Para no.5.1 of his order mentioned that assessee requested for adjournment for generation of form no.26A of the Act which was rejected and the appeal



of the assessee was dismissed. Therefore, the assessee is in appeal before us.

06. For ITA No.2257/Mum/2022 on identical facts, the assessee was found to be in default under Section 201 of the Act amounting to ₹1,11,34,624/- and further interest of ₹3,58,474/-. The appeal before the learned CIT (A) was in time but on merits adjournment was denied for generating online form no 26 A and so met with similar fate and therefore, there is an appeal.
07. The learned Authorized Representative submitted a paper book containing 124 pages. It was further stated that identical issue arose in case of Nirmaan Rmbs Trust Series V 2014, Mumbai in ITA No.2230 & 2231/Mum/2022 and order is awaited. The learned Authorized Representative submitted that the learned CIT (A) should have condoned the delay which is nominal. Even on the merits, the learned CIT (A) has not heard the assessee.
08. The learned Departmental Representative also submitted that assessee did not file an application for condonation of delay and therefore, the learned CIT (A) has dismissed the appeal of the assessee. Further, there is no discussion on the merits of the case.
09. We have carefully considered the rival contentions. The fact shows that assessee has not filed an application for condonation of delay before the learned CIT (A) for delay in filing of appeal by 23 days for A.Y. 2018-19. Admittedly, it is the prerogative of the learned CIT (A) that if there is

no application of condonation of delay then the appeal of the assessee can be dismissed without discussing the merit. This is the fact of appeal for A.Y. 2018-19. However, when we look at form no.35 filed by the assessee, in column no.14, the assessee has categorically stated that there is no delay in filing of the appeal however, the order of the learned CIT (A) says that there is delay of 23 days. The learned CIT (A) has ignored this fact in form no.35 filed by the assessee. He also took the date of receipt of order from form no 35 and held that appeal is delayed by 23 days. Of course, if those dates furnished by assessee in form no 35 are considered, there is a delay in filing of appeal. However, the assessee was not shown that there is a defect or delay in filing of the appeal. According to the assessee it is submitted that there is no delay but according to learned CIT (A) there is delay of 23 days. Without entering into that controversy, the assessee should have been granted an opportunity by stating that how it has mentioned that there is no delay in filing of the appeal. If that would have been pointed out to the assessee, perhaps, the assessee would have filed an application for condonation of delay admitting its mistake. But that opportunity should have been granted to the assessee.

010. Further, the appeal of the assessee for A.Y. 2019-20, is not at all delayed. The assessee sought sometime for generation of form no.26A however, the learned CIT (A) did not give any time but dismissed the appeal of the assessee.



011. Even while dismissing the appeal, he did not consider the issue on the merits at all. This is the fact for both the years. Throwing out the claim of the assessee on the merit without even discussing the basic provision of the law is not correct approach to deal with the appeal of the assessee. If the learned CIT (A) wanted to decide the appeal of the assessee on the merits of the case without hearing the assessee, at least the basic provisions of the law, contention of the assessee before Id. AO and contention of the learned Assessing Officer should have been discussed and thereafter learned CIT (A) should have given his own decision. There is no reason available in the appellate order that why he is dismissing the appeal of the assessee on merit. Reason is the soul of the decision. In view of this, we set aside both the appeals before the learned CIT (A) to decide afresh on merit after hearing the assessee.

012. In the result, both the appeals are allowed for statistical purposes.

Order pronounced in the open court on 24.08.2023.

Sd/-
(NARENDER KUMAR CHOUDHRY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 24.08.2023

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT



4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai