

IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2859/Mum./2022
(Assessment Year : 2017-18)

ITA no.2860/Mum./2022
(Assessment Year : 2018-19)

Nirmaan RMBS Trust Series III 2013
Asian Building, Ground Floor
17, R. Kamani Marg, Ballard Estate
Mumbai 400 001 PAN – AACTN1092P

..... Appellant

v/s

Dy. Commissioner of Income Tax
TDS-2(3)

..... Respondent

ITA no.3231/Mum./2022
(Assessment Year : 2017-18)

ITA no.3232/Mum./2022
(Assessment Year : 2018-19)

Nirmaan RMBS Trust Series I 2015
Asian Building, Ground Floor
17, R. Kamani Marg, Ballard Estate
Mumbai 400 001 PAN – AACTN1092P

..... Appellant

v/s

Dy. Commissioner of Income Tax
TDS-2(3)

..... Respondent

Assessee by : Shri Percy Pardiwala a/w
Shri Niraj Sheth
Revenue by : Shri Ashok Kumar Ambastha

Date of Hearing – 25/09/2023

Date of Order – 28/09/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present batch of four appeals have been filed by the assessee challenging the separate impugned orders of even date 15/09/2022 (in case

of Nirmaan RMBS Trust Series III 2013) for the assessment years 2017–18 and 2018–19, and the impugned orders of even date 26/10/2022 (in case of Nirmaan RMBS Trust Series I 2015) for the assessment years 2017–18 and 2018–19, which are passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Center, Delhi, [*learned CIT(A)*"].

2. In all these appeals, the assessee has raised similar grounds. The grounds raised in assessee's appeal being ITA no. 2859/Mum./2022 are reproduced as under, for the sake of convenience:–

"The following grounds of appeal are distinct and separate and without prejudice to each other.

Ground No 1: Appellant being treated as 'assessee in default'

*The Commissioner of Income-tax (Appeals) [*learned CIT(A)*] from the National Faceless Appeal Centre erred on facts and in law in dismissing the appeal filed against the order passed under section 201 (the order) of the Income-tax, Act 1961 (the Act) of the Deputy Commissioner of Income-tax (TDS)-2(3) [*learned AO*] and by treating the Appellant as assessee in default".*

Ground No 2: Non-applicability of section 194LBC of the Act.

The learned CIT(A) erred on facts and in law in upholding the order of the learned AO that tax was required to be deducted at source under section 194LBC of the Act on the amount of excess interest spread paid by the Appellant to the originator. Without prejudice to the above, the learned CIT(A) ought to have held that, since the payee had furnished its income-tax return (ITR) under section 139 of the Act had taken into account such sum for computing income in its ITR and had paid the sum tax due on the income declared by them in such ITR.

Ground No 3: Non-grant of adjournment as requested

The learned CIT(A) erred in not granting the sine die adjournment as requested by the Appellant on 19 July 2022.

Ground No 4: Levy of interest under section 201(1A) of the Act.

The learned 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.

3. We have considered the submissions of both sides and perused the material available on record. The only grievance of the assessee, in these appeals, is against treating the assessee as "*assessee in default*" for not deducting the tax at source under section 194LBC of the Act on the amount of Excess Interest Spread ("*EIS*") paid by the assessee, and levying the interest under section 201(1A) of the Act.

4. The brief facts of the case as emanating from the record are: The assessee was established as a Securitisation Trust engaged in raising money on a private placement basis through the issuance of pass-through certificates to fund the acquisition of a loan portfolio from the financial institution. IDBI Trusteeship Co Ltd is acting as a trustee of the assessee trust. Since the assessee has not deducted tax at source on EIS, which is the difference between the yield on the portfolio acquired from the originator and returns payable to the investor, the AO vide order passed under section 201/201(1A) of the Act treated the assessee as "*assessee in default*" within the meaning of section 201(1)/201(1A) of the Act, for the failure to deduct tax at source on EIS paid by the assessee to the originator and determined the amount payable by the assessee towards tax and interest.

5. From the perusal of separate impugned orders passed by the learned CIT(A) in Nirmaan RMBS Trust Series III 2013 for the assessment years 2017-18 and 2018-19, we find that the assessee specifically requested time to furnish Form 26A in order to substantiate its claim that the recipient of

income has considered the receipt while calculating its total income. However, as per the assessee, due to some technical difficulty, the generation of Form 26A online was taking some time, and thus requested the learned CIT(A) to adjourn the matter. However, as is evident from the record that since the assessee could not furnish Form 26A, and also could not furnish any other submission, the learned CIT(A) dismissed the appeal filed by the assessee on the basis of material available on record and upheld the findings of the AO.

6. From the perusal of separate impugned orders passed by the learned CIT(A) in Nirmaan RMBS Trust Series I 2015 for the assessment years 2017–18 and 2018–19, we find that despite the fact that the assessee filed written submissions for both the assessment years, the learned CIT(A) dismissed the appeal filed by the assessee without passing a reasoned order.

7. During the hearing before us, the assessee, on a without prejudice basis, filed Form 26A in support of its submission that the deductee has already paid taxes on the income received from the assessee, by way of application seeking admission of additional evidence in these appeals. In the application, the assessee submitted that there were technical issues on the portal and therefore the utility to file Form 26A was not available, thus the assessee could not furnish the aforesaid Form 26A in the present appeals before the lower authorities. Considering the submission of the assessee in the aforesaid applications we are of the considered view that there was sufficient cause for not filing Form 26A, in the present appeals, before the lower authorities. Accordingly, we admit the additional evidence filed by the assessee in the present appeals.

8. Since the additional evidence now filed before us has not been examined by lower authorities and is also evident from the record that in some appeals the learned CIT(A) did not grant much time to the assessee to furnish the same and in other appeals, the learned CIT(A) did not pass a reasoned order, therefore we deem it appropriate to restore all these appeals to the file of the learned CIT(A) for *de novo* adjudication, after consideration of the Form 26A filed by the assessee before us. The assessee shall be at liberty to furnish any other document in support of its claim, in its appeals, before the learned CIT(A). Needless to mention the learned CIT(A) will have the liberty to seek any other information from the assessee, as it may deem fit, and also call for the remand report from the AO. Accordingly, the issues raised in the present appeals are left open and the impugned orders before us in the present appeals are set aside. As a result, the grounds raised by the assessee are allowed for statistical purposes.

9. In the result, all appeals by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 28/09/2023

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 28/09/2023

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai