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

BEFORE JUSTICE (RETD.) C.V. BHADANG, PRESIDENT AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER

ITA NO. 2640/MUM/2023 : **A.Y : 2018-19**

Income Tax Officer (TDS)-2(2)(4), Mumbai. (Appellant)	Vs.	Syamantaka IFMR Capital 2017 Office No. 83-87, 8th Floor, Mittal Tower, B-Wing, Nariman Point, Mumbai 400 021. **PAN : AAUTS6775N** (Respondent)

Appellant by : Dr. Kishor Dhule
Respondent by : Shri Niraj Sheth

Date of Hearing : 07/03/2024
Date of Pronouncement : 08/05/2024

O R D E R

PER JUSTICE (RETD.) C.V. BHADANG, PRESIDENT :

Whether the respondent-assessee, which is a securitization trust, is liable to deduct tax at source (TDS) under Section 194LBC of the Income Tax Act, 1961 ('Act' for short) from out of the payments made to the 'Originator', as Excess Interest Spread (EIS), is the question which falls for determination in this appeal.

2. In order to appreciate the controversy involved in this appeal, it is necessary to set-out the nature of securitization process. (i) Securitization is the financial practice of pooling various types of contractual debts and selling them in the form of a financial instrument, (ii) In the process, there are various

stakeholders, viz. an Originator, which is the owner of financial assets which are acquired by securitization company or securitization trust for the purposes of securitization, (iii) The Debtor, which is the retail loan borrower who had obtained financial accommodation from the Originator under a contract or otherwise and who is liable to pay interest and to discharge any other obligation in respect of the financial asset to the Originator. (iv) A Special Purpose Vehicle (SPV) (the respondent-assessee in this case) is a company or a trust or any other entity constituted or established for a specific purpose. The SPV is structured in a manner intended to isolate the Originator from the credit risk and to make it "bankruptcy remote". (v) The SPV issues Pass Through Certificates (PTCs) to the investors which amount is used for payment to the Originator in order to acquire the financial assets (contractual debts) from the Originator. In this process, all the risks and rewards are transferred to the SPV. All the receivables in respect of the debts securitized, are initially credited to the account of the trust (SPV) and thereafter the same is distributed amongst the PTC holders and the balance to the Originator. (vi) The Originator in some cases can provide liquidity support to the SPV in the nature of credit enhancement by way of fixed deposit and/or offering bank guarantee.

3. The respondent-assessee in the present appeal is a securitization trust controlled by M/s. IDBI Trusteeship Services Ltd. It appears that during the course of post survey proceedings in an inquiry in the case of M/s. Sansar Trust (a securitization trust group managed and controlled by M/s. Catalyst Trusteeship Ltd.) it was noticed that the respondent-assessee has paid an amount of Rs.8,27,73,455.91 under the head of EIS to the Originator for the financial year 2017-18 relevant to the assessment year 2018-19. According to the Revenue, the respondent-assessee was obliged to deduct TDS from the said amount under

Section 194LBC of the Act which has not been done. As noticed earlier, this is the issue which is involved in this appeal.

4. The Income Tax Officer (TDS), Mumbai by an order dated 22.02.2019 had found the assessee to be a defaulter within the meaning of Section 201(1)/201(1A) of the Act, inasmuch as according to the ITO, the assessee had failed to deduct the tax at source under the relevant provisions. It was found that the total monetary liability towards default is Rs.2,70,54,449/- for the relevant year under consideration in respect of which a demand was raised.

5. Feeling aggrieved, the assessee challenged the same before the CIT(A), NFAC, Delhi. Before the appellate authority, it was contended on behalf of the respondent that Section 194LBC of the Act is not attracted in the present case inasmuch as the Originator cannot come within the ambit of definition of an 'investor' within the meaning of the relevant provisions. In short, it was contended that in a case where the Originator has not made any deposit or investment with the securitization trust, the Originator cannot be placed at par with the PTC holders. It was thus contended that the provision requiring deduction of tax at source as contemplated under Section 194LBC of the Act would apply only where the payment is made to an "investor" and not otherwise.

6. On behalf of the Revenue, reliance is placed on the reasoning articulated by the learned ITO (TDS) in order to contend that the respondent was under an obligation to deduct TDS.

7. The learned CIT(A) accepted the contention on behalf of the respondent and by an order dated 01.06.2023 has allowed the appeal, which is the subject matter of challenge in this appeal at the instance of the Revenue.

8. We have heard learned DR for the appellant and learned counsel for the respondent. With the assistance of the parties, we have gone through the record.

9. It is submitted by the learned DR that the Originator who grants credit enhancement to the securitization trust/SPV (the assessee) ought to be treated at par with the PTC holders. It is pointed out that there is no distinction between the investment made by the PTC holders with the securitization trust and the Originator granting credit enhancement. In the absence of any distinction between the two, the payment made by the securitization trust to the PTC holders and the Originator has also to be reckoned and treated at par. It is submitted that the securitization trust is admittedly deducting tax at source while making the payment to the PTC holders and there is no reason why the payment made to the Originator should be treated differently. The learned DR was at pains to point out that after the survey action in cases pertaining to Sansar Trust, various securitization trusts have started deducting TDS under Section 194LBC of the Act on the amount of EIS to the Originator, albeit under protest. In short, according to the learned DR, the payment made to the Originator is covered within the purview of Section 194LBC of the Act.

10. The learned AR has supported the impugned order. It is submitted that the nature of the investment made by the PTC holders is materially different than the credit enhancement granted by the Originator. It is submitted that the assessee in this case cannot be said to be an investor and thus there was no occasion for the assessee to have deducted tax while making payment to the Originator under Section 194LBC of the Act. On behalf of the respondent, reliance is placed on the decision of a co-ordinate Bench of this Tribunal in *M/s.*

Vivriti Cibus 013 2017 vs ITO (TDS) decided on 30.11.2023 and *SME Pool Series V August 2016 vs ITO (TDS)* decided on 21.02.2024.

11. We have considered the rival circumstances and the submissions made. The respondent-assessee is a securitization trust as specified in clause (d) of Explanation to Section 115TCA of the Act. There is a Deed of Assignment dated 28.12.2017 under which the respondent-assessee has been assigned with certain loan receivables (loan portfolio) from the Originator, Spandana Sphoorthy Financial Ltd. As a securitization trust, the respondent-assessee has raised funds by issuing PTCs to Bank of Baroda (Distinctive No. SA1 1-1977279374) and IFMR Capital Finance Private Ltd. (Distinctive No. SA2 1-114958103), who are the investors. The terms of the contractual relationship between the respondent-assessee and the Originator are governed by the Deed of Assignment dated 28.12.2017. The entire securitization process is subject to and is governed by the guidelines issued by the RBI, viz. (a) Guidelines on Securitization of Standard Assets dated 01.02.2006 and (b) Revision to Guidelines on Securitization Transactions dated 21.08.2012. It is a matter of record that as per the RBI guidelines, the PTC holders (investors) are entitled to committed returns arising out of loan portfolio and any surplus is paid to the Originator as Excess Interest Spread (EIS). The CIT(A) after taking note of the provisions of Section 115TCA of the Act has come to the conclusion that the assessee in this case cannot be treated as an investor within the meaning of clause (a) of Explanation to Section 115TCA of the Act, in as much as an investor in such a case, has to be a holder of any 'securitized debt instrument' or securities or security receipts. A distinction has to be drawn between the PTC holders making a specific investment in the securitized trust in order to get committed returns and the payment made and the Originator, which is entitled to the residual amount collected by the

securitization trust after discharging the statutory and contractual obligations towards the investors. There may be a case where in order to comply with the Minimum Retention Requirement (MRR) as per the applicable guidelines, the Originator may also be a holder of PTCs. There may also be cases where the commitment towards MRR is made vide other permissible modes other than in the capacity as an investor holding the PTCs. In the later case, the Originator cannot be treated at par with an investor. The First Appellate Authority has noticed, and in our view rightly so, that two conditions have to be satisfied before the applicability of Section 194LBC of the Act and the consequent obligation for deduction of tax at source, viz. (i) the entity to whom the payment is made is an investor of the securitization trust and (ii) the payment is towards income accruing or arising out of the investment made in securitization trust. In our view neither of these conditions are satisfied in the present case. The First Appellate Authority after perusal of the Assignment Deed dated 28.12.2017 has found on facts that the Originator in this case is neither a holder of any securitized debt instrument, securities or security receipts and thus, cannot be regarded as an investor.

12. The First Appellate Authority has also visited the reasoning articulated by the Assessing Officer in holding otherwise. The Assessing Officer has opined that the Deed of Assignment dated 28.12.2017 is itself an instrument in the nature of a "securitized debt instrument" which has been negatived by the First Appellate Authority. We find that the Deed of Assignment cannot be seen as a 'securitized debt instrument' as has rightly been held by the First Appellate Authority. There is a clear distinction between the Originator, which is the Assignor of the loan portfolio to the assessee, which is the Assignor and the PTC holders, who are the investors in the securitization trust. As noticed earlier, there may be a case where

the Originator in order to comply with the MRR requirement, may be a holder of securitized debt instrument, securities or security receipts in which case for the payment made towards such instruments, the requirement of Section 194LBC of the Act may apply, which is not the factual position obtaining in the present case. Thus, we do not find any reason to interfere with the impugned order. We find that the view which we are taking is fortified by the decision of the co-ordinate Bench of this Tribunal in *M/s. Vivriti Cibus 013 2017 (supra)*, which has also been followed by another Division Bench of this Tribunal in *SME Pool Series V August 2016 (supra)*.

13. In the result, the appeal stands dismissed.

Order pronounced in the open court on 08/05/2024.

Sd/-	Sd/-
(B.R. BASKARAN)	(JUSTICE (RETD.) C.V. BHADANG)
ACCOUNTANT MEMBER	PRESIDENT

Mumbai; Dated : 08/05/2024

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Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai