

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, AM AND MS. KAVITHA RAJAGOPAL, JM

ITA No.3426/Mum/2023
(Assessment Year: 2017-18)

ITO TDS 2(3)(4) 317, 3 rd Floor, MTNL Building, Cumbala Hill Peddar Road, Mumbai-400 026	Vs.	Zion IFMR Capital 2016 Ground Floor 17, Asian Building, Kamani Marg, Ballard Estate, Mumbai-400 001
PAN/GIR No. MUMZ 02320 D		
(Assessee)	:	(Respondent)
Revenue by	:	Shri B. Laxmi Kanth
Assessee by	:	Shri Niraj Seth
Date of Hearing	:	09.07.2024
Date of Pronouncement	:	07.10.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the Revenue, challenging the order of the learned Commissioner of Income Tax (Appeals) (‘Id.CIT(A) for short), National Faceless Appeal Centre (‘NFAC’ for short) passed u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2017-18.

2. The Revenue has raised the following grounds of appeal:

1. *Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) is justified in holding that Excess Interest Spread (EIS) amount of Rs.8,73,92,849/- paid during F.Y. 2016-17 (relevant to A.Y. 2017-18) to the originator, M/s. Janalakshmi Financial Services Limited, cannot be held to be at part with income paid by the assessee trust to its investors (who had subscribed to pass through certificates) as defined in section 115TCA of the I. T. Act, 1961.*
2. *Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) is justified in holding that the assessee is not liable to deduct TDS u/s. 194LBC of the I. T. Act, 1961, on the payment made to the originator M/s. Janalakshmi Financial Services Limited by way of excess interest spread (EIS) amounting to Rs.8,73,92,849/-.*

3. *Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) is justified in holding that the assessee cannot be deemed to be an assessee in default for non deduction of tax at source on sum of Rs.8,73,92,849/- being Excess Interest Spread (EIS) paid to the originator, M/s. Janalakshmi Financial Services Limited.*

4. *Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) is justified in not appreciating the findings made by the ld. A.O. in the order u/s. 201/201(1A) of the I. T. Act, 1961 regarding assessee's TDS liability u/s. 194LBC of the I. T. Act, 1961.*

3. Brief facts of the case are that the assessee is a Securitization Trust (ST) which is controlled under the trusteeship of IDBI Trusteeship Ltd. and is engaged in raising fund on a private placement basis through issuance of pass through certificates for fund acquisition of loan portfolio from financial institutions hereby termed as the 'Originator'. Pursuant to a survey action conducted in the case of Nirmaan RMBS Trust, which was also controlled by IDBI Trusteeship Services Ltd., the learned Assessing Officer (ld. A.O. for short) observed that the assessee Trust had paid Rs.8,73,92,849/- to the Originator under the head Excess Interest Spread (EIS for short) without deducting TDS as per section 194LBC of the Act. The ld. A.O. held the assessee to be 'assessee in default' as per section 201(1) of the Act for the reason that the assessee has committed default u/s. 194LBC of the Act for non deduction of TDS on the EIS paid to the Originator.

4. Aggrieved the assessee was in appeal before the first appellate authority who vide order dated 07.08.2024 allowed the appeal filed by the assessee on the ground that the assessee trust is not liable to deduct TDS and is, therefore, not 'an assessee in default'.

5. The Revenue aggrieved by the impugned order is in appeal before us, on the above mentioned grounds, challenging the impugned order of the ld. CIT(A).

6. The learned Departmental Representative (Id. DR for short) for the Revenue relied on the order of the Id. A.O. and contended that the assessee was rightly held to be assessee in default. The learned Authorised Representative (Id. AR for short) for the assessee controverted the said fact and stated that the issue in hand is covered by various decisions of the Tribunal which was in favour of the assessee and also relied on the order of the Id. CIT(A).

7. We have heard the rival submissions and perused the materials available on record. The Special Purpose Vehicle (SPV) is a company/trust/entity constituted for limited purpose, here in this case for mitigating the risk of an originator who is the owner of the financial assets which is acquired by a securitization company or the trust for the purpose of securitization which is pooling of various types of debts and selling the same as financial instruments to the SPV. The SPV issues Pass Through Certificates (PTC) where all the risks and rewards are transferred to SPV in lieu of cash payments made by the PTC holders. The outstanding receivables pertaining to the securitized debts are credited in the trust accounts which are then distributed to the originators. The receipts are in the nature of principal amount, servicing fee and interest. The issue of whether or not the assessee is entitled to deduct TDS on the payments made to PTC holders u/s. 194LBC of the Act is only on the Excess Interest Spread (EIS) which is the difference in the rate of interest where the original loans are at higher rates which is generally ranging from 15 to 20% and the divisible securities/PTCs which are at lower rates between 6% to 9%. It is observed that the IDBI Trusteeship Ltd. manages and controls various securitization trust like the assessee Trust where the financial assets are sold to the

Special Purpose Vehicle (SPV) from the Originator who is the owner of the financial asset. The assessee Trust had paid to the originator EIS amounting to Rs.8,73,92,849/-, spreading over from April 2016 to March, 2017 for which the Id. A.O. has contended that the assessee has failed to deduct TDS amounting to Rs.2,62,17,855/- u/s. 194LBC @ 30%, which is tabulated herein under:

Sr. No.	Month	Month wise EIS payment	TDS to be deducted u/s. 194LBC @ 30%
1	Apr, 16	Nil	Nil
2	May, 16	Nil	Nil
3	Jun, 16	17125951	5137785
4	July, 16	14963981	4489195
5	Aug, 16	14311391	4293417
6	Sep, 16	13064431	3919329
7	Oct, 16	11532055	3459617
8	Nov, 16	10785438	3235631
9	Dec, 16	5609602	1682881
10	Jan, 17	Nil	Nil
11	Feb, 17	Nil	Nil
12	Mar, 17	Nil	Nil
		8,73,92,849	2,62,17,855

8. The Id. CIT(A), on the other hand, held that the EIS paid by the assessee to the originator is not a committed return and is merely a residual amount on the investment made by the investor in securitization trust. The Id. CIT(A) further held that it is only a contractual payment as per the terms of the deed of assignment and that the originator in the present case has not subscribed to PTCs and, therefore, the same will not amount to an investment. The Id. CIT(A) further held that sub section (1) of section 115TCA of the Act entitles that any income accruing or arising to an investor is to be taxed under this section for which the enabling provision to deduct tax source is section 194LBC of the Act. The Id. CIT(A) held that since the originator in this case has not subscribed to any PTCs, it cannot be termed as an 'investor' as defined in section 194LBC r.w.s. 115TCA of the Act and further no investment has also been shown to have been made by the

originator, thereby determining that the originator in this case is not an investor. The provisions of section 194LBC of the Act could not be attracted in the said case and the income received by the originator from the assessee in the nature of EIS did not accrue or arise from the investment and, therefore, the assessee was not entitled to deduct TDS on the same.

9. The learned Authorised Representative (ld. AR for short) had relied on the following decisions in support of the assessee's contention:

- *ITO vs. Syamantaka IFMR Capital 2017* (in ITA No. 2640/Mum/2023 vide order dated 08.05.2024)
- *M/s. Vivriti Cibus 013 2017 vs. ITO(TDS)* (in ITA No. 3171/Mum/2022 vide order dated 30.11.2023)
- *SME Pool Series V August 2016 vs. ITO* (in ITA Nos. 341 & 342/Mum/2023 vide order dated 21.02.2024)

From the above factual matrix of the case, it is observed that this issue has already been dealt with by the jurisdictional co-ordinate bench extensively which has taken a view in support of the assessee. We also find no infirmity in the order of the ld. CIT(A) and we find no justification in taking any other view. Therefore, the grounds of appeal filed by the assessee are dismissed.

10. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 07.10.2024

Sd/-
(Amarjit Singh)
Accountant Member
Mumbai; Dated : 07.10.2024
Roshani, Sr. PS

Sd/-
(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai