

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“E” BENCH MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &  
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No. 5305/Mum/2024 (A.Y: 2016-17)  
ITA No. 5325/Mum/2024 (A.Y: 2017-18)  
ITA No. 5357/Mum/2024 (A.Y: 2018-19)  
ITA No. 5356/Mum/2024 (A.Y: 2019-20)  
ITA No. 5354/Mum/2024 (A.Y: 2020-21)**

KD Lite Developers Pvt Ltd CTS No. 470 (PT), NG Acharya Nagar, off Eastern Express Highway, Swastik Park, Chembur – 400071.	Vs.	DCIT, TDS Circle 1(3) Room No. 420, 4 <sup>th</sup> Floor, MTNL TE Bldg Pedder Road, Cumballa Hill, Mumbai.
PAN/GIR No. MUMK22845E		
(Applicant)		(Respondent)

Assessee by	Shri Vimal Punmiya
Revenue by	Shri Hemanshu Joshi, Sr. DR

सुनवाई की तारीख/Date of Hearing	26.11.2024
घोषणा की तारीख/Date of Pronouncement	27.11.2024

आदेश / ORDER

**PER BENCH:**

The present appeals have been filed by the assessee challenging the common impugned order dated 12.08.2024, passed u/s 250 of the Income Tax Act, 1961 (‘the Act’), by the learned Commissioner of Income Tax

(Appeals), National Faceless Appeal Centre, Delhi ('Ld. CIT(A)'), for the assessment years 2016-17 to 2020-21.

2. Since all the issues involved in these eight appeals are common and identical, therefore, they have been clubbed, heard together and consolidated order is being passed for the sake of convenience and brevity. For the sake of convenience we shall take ITA No. 5305/Mum/2024 A.Y 2016-17 as a lead case and facts narrated therein. The assessee has raised the following grounds of appeal:

*1. On the facts of the case and in Law, the CIT(A) has grossly erred in considering the assessee as "Assesse in default" for non-deduction of TDS without accepting the fact that the interest paid on loan from group entities are in the nature of reimbursement and therefore not liable for deduction of TDS.*

*2. The appellant craves leave to add, to amend, alter / delete and / or modify the above grounds of appeal on or before the final date of hearing.*

3. As per the facts of the case the assessee is a part of the Ruparel Realty Group which is engaged in the business of building and developing properties and selling flats and offices for residential and commercial use in various parts of Mumbai Metropolitan Region and generates income from business of building and developing properties and selling flats and offices for residential and commercial use. The assessee has filed return of income for the year under consideration i.e A.Y. 2016-17 on 17.10.2016 declaring total income at Rs. 13,39,060/-.

4. A search action u/s 132 of the Income Tax Act was conducted on the Ruparel Realty group on 25.11.2021. On the basis of the details forwarded by the DDIT(Inv), Unit-6(3), Mumbai the Ld. Assessing Officer is of the view that the assessee has prima facie committed default in deduction of TDS and consequently proceedings u/s 201(1) / 201(1A) of the Income Tax Act, 1961 ('IT Act') were initiated against the various group entities & the assessee.

5. The AO after serving notices and seeking reply of the assessee, determined that the assessee was in default and passed an order under section 201(1A) of the IT Act thereby determining an interest of Rs. 1,27,458/- payable by the assessee for the default on account of non deduction of TDS under section 194A of the IT Act.

6. Being aggrieved by the said order, the assessee filed appeal before Ld. CIT(A), however, the same was decided against the assessee.

7. Aggrieved with the above order, the assessee preferred appeal before us and the only ground raised by the assessee is with regard to challenging the order of Ld. CIT(A) in upholding the order of AO in considering the assessee as "assessee in default" for non deduction of TDS, without asserting the fact that the interest paid on loan from group entities are in the nature of reimbursement and therefore not liable for deduction of TDS.

Ld. AR appearing on behalf of the assessee reiterated the same arguments as were raised by him before the

revenue authorities and also submitted detailed written submissions. The written submissions filed by the assessee in support of his arguments is reproduced herein below:

1. *The assessee is part of Ruparel Realty Group. Ruparel Realty Group consist of various concerns/entities. At present there are around 23 entities in the Ruparel Realty Group which consists of 15 Private Limited Companies, 7 Partnership Firms, 1 Proprietary Concern and family members forming part of it.*
2. *The objectives behind forming these different entities are:*
  - i. *to have separate entity for each project or group of projects having common features like geographical location, interested groups, financier etc.*
  - ii. *few entities are the results of the takeovers of the projects from the existing developers. So, to fasten the takeover processes, separate entity is formed so that existing entities and processes are not disturbed.*
  - iii. *to have ease of accounting and thereby clarity in decision making.*
  - iv. *to secure the finance from the lenders as the entity has to pledge the shares. If there is only one entity then securing finance from different lenders becomes difficult for the various reasons.*
  - v. *to give share of the specific projects to the outsiders, wherever applicable.*
  - vi. *many other reasons depending on case-to-case basis*
3. *All these entities are engaged in similar business activity of builders and developers. The group is mainly engaged in the business of re-development of slums (SRA Projects) and other old building structures.*
4. *All the companies and firms are family owned and have common shareholders and directors.*
5. *Area of the business operation of the group is Mumbai, Navi Mumbai and suburbs of Mumbai. The group is into real estate business since last more than 20 years.*
6. *The group needs finance for the various projects carried out by various entities of the group. The group has to mortgage various projects in order to borrow more money and fulfil*

*security objectives of Lenders / Financial Institutes which ranges from 2-3 times of loan amount. This also helps in minimizing the paper work and other compliances. The objective of the groups is to secure maximum possible finance by one or another way to keep the projects alive at minimum possible cost & compliance, is thus thereby achieved.*

7. *The entity in whose name the funds are borrowed becomes Principal Borrower with other entities standing as co-borrowers. Projects of both principal borrower and co-borrowers are generally mortgaged. Therefore, the loans / funds are borrowed for the group (co-borrowers and other entities) as a whole for utilization in the various projects of the group. The funds are then transferred to various group entities as per project requirements.*
8. *The servicing and repayment of the loans also happen from cash flows of all such entities including but not limited to principal borrower and co-borrowers. However, the same has to be routed through the principal borrower.*
9. *The funds sanctioned by the lender are for utilization by not only the principal borrower but also the co-borrowers whose projects are mortgaged to secure the loan facility and for other general corporate purposes. The lender provides flexibility to utilize the facility amount through the principal borrower to other projects in the group to ensure completion and successful repayment of the loan from various such group entities.*
10. ***The Principal Entity makes the payment of interest along with principal repayment to the principal lender after deduction of tax on interest, wherever applicable. This payment is for the entire facility which includes the funds utilized by the group also.***
11. *The funds are given to the various group entities within the group by the principal borrowers and co-borrowers on the basis of requirements in the project(s) as and when arise.*
12. *The funds given and taken amongst the various entities are in the nature of current account.*
13. *The interest reimbursement is calculated on the amounts given to and loans taken from the group entities at the rate of interest at which the Principal Lender has lent the loans. There is no mark up in the rate of interest while calculating the interest reimbursement amount from various entities of the group.*

14. The interest paid and received on the amounts given and taken amongst the group entities are netted off and the resultant amount of interest paid (net) / interest received (net) are reflected in the Profit & Loss Account of individual entity. As per the method of accounting and stage of the completion of the project, the net interest is then included in the closing work in progress of project of the entity.
15. From the above it is evident that interest transactions between the group entities are pure reimbursement in nature.
16. The assessee has reimbursed interest amounting to a total of Rs. 1,59,32,156/- in the relevant A.Y. 2016-17 to its sister concerns. The details of the same has been tabulated below

<b>S. No.</b>	<b>Name of the Sister Concerns</b>	<b>Amount (Rs.)</b>
1	Ruparel Developers India Pvt Ltd	59,065
2	Ruparel Estates India Pvt Ltd.	2,76,357
3	Ruparel Homes (I) Private Ltd.	1,33,38,962
4	Shree Sukhakarta Developers India Pvt Ltd	22,57,772
	<b>Total</b>	<b>1,59,32,156</b>

17. The Ld. AO has determined an amount totalling to Rs. 1,27,458/- as an interest payable for failure to deduct TDS on the above-mentioned interest payments to its sister concerns. The details of the same has been tabulated below

<b>Sr. No.</b>	<b>Name of the Sister Concerns</b>	<b>Amount</b>	<b>TDS</b>	<b>Interest Due u/s 201(1A)</b>
1	Ruparel Developers India Pvt Ltd	59,065	5,907	473
2	Ruparel Estates India Pvt Ltd.	2,76,357	27,636	2,211
3	Ruparel Homes (I) Private Ltd.	1,33,38,962	13,33,896	1,06,712
4	Shree Sukhakarta Developers India Pvt Ltd	22,57,772	2,25,777	18,062
	<b>Total</b>	<b>1,59,32,156</b>	<b>15,93,215</b>	<b>1,27,458</b>

**Assessment proceedings dropped with respect to two of the group entities :**

*Without prejudice to above we would further like to emphasize on the fact that similar proceedings were initiated against some of our group entities i.e. 1. HOME BUILDERS, 2. HOME BUILDERS AND INFRASTRUCTURES PRIVATE LIMITED, and the said proceedings were dropped accepting the contention of the assessee the details of the said cases are hereby produced with the submissions.*

**Evaluation of Section 194A r.w.s. 2(28A) of the IT Act.**

Section 194A: Interest other than "Interest on securities".

*(1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force:*

*Provided that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed one crore rupees in case of business or fifty lakh rupees in case of profession during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this section.*

*Explanation. —For the purposes of this section, where any income by way of interest as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.*

.....

*(4) The person responsible for making the payment referred to in sub-section (1) may, at the time of making any deduction, increase or reduce the amount to be deducted under this section for the purpose of adjusting*

*any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year.*

*(5) The Central Government may, by notification in the Official Gazette, provide that the deduction of tax shall not be made or shall be made at such lower rate, from such payment to such person or class of persons, as may be specified in the said notification.*

*Section 194A deals with deduction of TDS on interest other than interest on securities like Interest on Fixed Deposits, Interest on Loans and Advances other than banks.*

- 1. This section is only applicable to a resident. Thus, the provisions of section 194A are not applicable in case of payment of interest to a non-resident.*
- 2. Payments made to non-residents are also covered under TDS mechanism. However, tax in such a case is to be deducted as per Section 195.*
- 3. The payer/Deductor shall deduct TDS if the amount of such interest paid or credited or is likely to be paid or credited in a financial year, exceed*
  - a. 10,000 where the payer is*
    - Banking company or any bank or a banking institution*
    - Co-operative society engaged in the business of banking*
    - Post office (on deposit under scheme framed and notified by Central Government).*
  - b. 5,000 in any other case*
    - From FY 2018-19 onwards no TDS will be deducted on interest earned upto INR 50,000 by senior citizens. The interest amount should be earned from the following:*
      - Deposits with banks;*
      - Deposits with post offices*
      - Fixed deposit schemes*
      - Recurring deposit schemes*

***Analysing section 194A of the IT Act in the assessee's case.***

*As discussed, this Section of Income Tax Act is concerned with the deduction of interest accrued on sources other than securities.*

*One must note that if the provisions of Section 194A apply to specific earnings, the same will be subjected to tax deduction at a rate of 10%. However, if individuals fail to provide their PAN, the Deductor has to deduct 20% tax as per the 194A TDS rate.*

*The Section 194 payment is made out in the form of –*

- *Interest on loans and advances*
- *Earnings on fixed deposits*
- *Interest on recurring deposits*

*Fundamental Provisions of 194 A*

*These pointers highlight the fundamental provisions of Section 194A –*

*Besides HUF and individuals, entities that pay interest to resident individuals are required to deduct TDS.*

*If at any time HUF or individuals have to get their accounts audited under the clauses of 44AB, they have to deduct TDS on interest payout.*

***I. Tax is deductible at source only in respect of payment of income or other sum comprising an element of income.***

*The relevant provisions of the Act, will clearly prove that tax is deductible at source only in respect of income. This view clearly emerges from the reading of the TDS provisions under the Act and also in view of the relevant legal precedents. The same are discussed as follows:*

***1) Section 4 – Charge of income-tax.***

*Section 4 of the Act is the charging section and the power to deduct tax at source is derived from the provisions of section 4(2) of the Act.*

*For the sake of ready reference, section 4 of the Act is reproduced as follows:*

*Section 4: Charge of income-tax.*

*4. (1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions including provisions for the levy of additional income-tax of, this Act in respect of the total income of the previous year of every person:*

*Provided that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.*

*(2) In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.*

**From the aforesaid provisions of section 4(2), it is quite clear that income-tax is deductible at source, in respect of income chargeable to tax under section 4(1) of the Act. In other words, it is quite clear that tax is deductible at source, in respect of income, which is chargeable to tax under the Act.**

## **2) Section 190 – Deduction at source and advance payment.**

*Section 190 falls under Chapter XVII-A and its heading is ‘Deduction at source and advance payment’. For the sake of ready reference, section 190 is reproduced as follows:*

*Section 190: Deduction at source and advance payment.*

*190. (1) Notwithstanding that the regular assessment in respect of any income is to be made in a later assessment year, the tax on such income shall be payable by deduction or collection at source or by advance payment or by payment under sub-section (1A) of section 192, as the case may be, in accordance with the provisions of this Chapter.*

*(2) Nothing in this section shall prejudice the charge of tax on such income under the provisions of sub-section (1) of section 4.*

**From the aforesaid provisions of section 190, it is clear that tax is deductible at source, in respect of any income. Thus, the provisions of section 190 also make it clear that tax is deductible at source only in respect of an amount which partakes the nature of income and not otherwise.**

## **3) Section 191 – Direct payment**

*Section 191 also falls under Chapter XVII-A and it deals with a situation where an assessee has to make payment*

*of tax directly in respect of income, which is not subject to the provisions of TDS or where though it is subject to TDS provisions, but no TDS has been deducted at source in respect thereof. For the sake of ready reference, section 191 is reproduced as follows:*

*Section 191: Direct payment.*

*191. In the case of income in respect of which provision is not made under this Chapter for deducting income-tax at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of this Chapter, income-tax shall be payable by the assessee direct.*

*Explanation. —For the removal of doubts, it is hereby declared that if any person including the principal officer of a company, —*

*(a) who is required to deduct any sum in accordance with the provisions of this Act; or (b) referred to in sub-section (1A) of section 192, being an employer, does not deduct, or after so deducting fails to pay, or does not pay, the whole or any part of the tax, as required by or under this Act, and where the assessee has also failed to pay such tax directly, then, such person shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default within the meaning of sub-section (1) of section 201, in respect of such tax.*

***From the aforesaid provisions of section 191, it may be seen that in the case of income, in respect of which provision is not made under Chapter XVII of the Act, for deducting income-tax at source at the time of payment and in any case where income-tax has not been deducted in accordance with the provisions of the said Chapter, income-tax shall be payable by the assessee directly.***

***Thus, even from the provisions of section 191 of the Act, it is clear that tax is deductible at source only in respect of income.***

***With respect to the above, relevant extracts of the judgement of Karnataka High Court in the case of - Hyderabad Industries Ltd Vs ITO [1991] 188 ITR 749 (Karn) is hereby reproduced :***

*It was held in this case that amounts exempt under section 10A of the Act, do not constitute income for the purpose of section 195 and therefore, no tax is deductible at source, in respect of such amount. The relevant observations of the Hon. High Court on page 752 of the Report are reproduced as follows:*

*The construction sought to be placed by the respondents is based on a distinction which has no substance in it. It is not understandable as to why a benefit which will not be included in the total income of a person, should be considered as "income" for the purpose of deduction of tax at source at all. The purpose of deduction of tax at source is not to collect a sum which is not a tax levied under the Act. The interpretation put on those provisions by the respondents would result in collection of certain amounts by the State which is not a tax qualitatively.*

*Such an interpretation of the taxing statute is impermissible.*

*From the aforesaid observations of the Hon. High Court, it is clear that a benefit or amount which will not be included in the total income of a person, should not be considered as 'income', for the purposes of deduction of tax at source, at all.*

**4) Reimbursement of expenses does not partake the nature of income in the hands of the payee of such expenses.**

*The assessee has not obtained any services from its sister concerns and in no circumstances, it can be treated as interest within the definition of section 2(28A). Furthermore, the ultimate beneficiary of bank interest is bank and it cannot be treated as interest paid to the sister concerns since the sister concerns has not provided any loan for and on behalf of the assessee to any third party or the Bank. The provisions of section 194A are not applicable on any payment made to any banking company to which the Banking Regulation Act, 1949 applies as in the case of assessee, the payment reimbursed to the sister concerns towards interest is what is paid by the sister concerns to the Banks.*

*Section 194A (1) is applicable only to 'income by way of interest'. However, the impugned transaction is that of*

**purereimbursement** of bank interest. There is no borrowing whatsoever. 'Interest' as per section 2(28A) means 'interest payable ... in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred. Here, the assessee has not borrowed any money or otherwise from its sister concerns.

In the instant case, there is no money borrowed or debt incurred by the assessee from its sister concerns. Therefore, provisions of sections 2(28A) and 194A do not apply. Payment made to the sister concerns is not 'income by way of interest'. The impugned receipt would be in the nature of reimbursement of expenses incurred by it. In view of the above discussion, none can find any merit in the order passed under section 201(1)/201(1A) in respect of one of the possible views taken by the Ld. AO. Even on merit, one can find that reimbursement of expenses does not come under the purview of interest income so as to make assessee liable for TDS under section 194A.

As already pointed out, an expenditure incurred by the payee cannot form part of income in his hands and therefore, no tax will be deductible at source therefrom.

In other words, no tax will be deductible at source at the time of payment or reimbursement of the aforesaid expenses by the payer or the tax-Deductor to the payee or tax-deductee.

**In support of the aforesaid stand, reliance is placed on the following legal precedents:**

**1. Onward e-Services Ltd. v/s Assistant Commissioner of Income-tax, Central Circle 37-ITAT MUMBAI (IT APPEAL NOS. 97 AND 2974 (MUM.) OF 2010)**

Assessee-company was engaged in business of software development - It had taken over a banking division of its parent company - In view of taking over of banking division, assessee had to share interest cost burden of parent company based on funds utilized because, parent company was enjoying borrowing facilities from banks for its group companies - On other hand, assessee company was enjoying borrowing facilities from bank through its parent company and funds had actually been advanced to

*assessee as bank had not approved transferring said borrowing facility to assessee - Thus, to extent of funds utilized in respect of borrowing in name of parent company, interest cost was being reimbursed by assessee to parent company - Whether on facts, it was apparent that assessee had paid interest to bank only through its parent company and, thus, there was no statutory obligation on it to deduct tax at source under section 194A - Held, yes [In favour of assessee]*

**2. Neo Sports Broadcast (P.) Ltd. v/s Commissioner of Income-tax (TDS), Mumbai (ITAT MUMBAI IT APPEAL NOS. 4010 & 4011 (MUM.) OF 2014)**

*Assessee was a step-down subsidiary of ZSPL., a subsidiary of NCL - Assessee- company was engaged in business of broadcasting - It had two channels - Agreement was entered between assessee and NCL for transfer of media rights of BCCI matches - As per agreement NCL was under obligation to provide for bank guarantee to BCCI for Rs.2000 crore - NCL had been paying bank guarantee commission to various banks year after year as per agreed terms - NCL had set a condition that 80 per cent of bank guarantee commission had to be reimbursed to it by assessee - Accordingly, assessee reimbursed certain amount to NCL - Assessee had not deducted TDS on these payments - Whether since there was no money borrowed or debt incurred and payment made to NCL was only in nature of reimbursement of expenses incurred by NCL and assessee, it did not come under purview of interest so as to make assessee liable for TDS under section 194A - Held, yes [Para 12] [In favour of assessee]*

***From the above judgments, we can state that, interest expenses booked in the books of account are in nature of reimbursement only as group entities has to reimburse interest expenses incurred by principal mortgagor / borrower. Since the group has multiple companies/entities under same management, multiple loans are taken by various entities by giving various projects as collateral securities. Therefore, proportionate loans used by a particular group entity, group follows standard method to reimburse the***

***interest expense in books of account by debiting account of group companies at the same rate of interest at which the principal borrower has taken the loan.***

**3. ITO Vs. Dr. Willmar Schwabe India (P) Ltd. [2005] 95 TTJ 53 (Del)**

*In this case, one of the issues before the Hon. Bench of the Tribunal, was TDS in respect of reimbursement of conveyance expenses.*

*As per agreement between the assessee company and Indochem Techno Consultants Ltd, a vehicle was to be provided by the assessee company to the said consultant for attending to its work and thus, the assessee company was to bear the vehicle expenses actually incurred by the said party. Bills for such expenses incurred by the said consultant were separately raised by him on the assessee company, in addition to bills for fees payable on account of technical services.*

*It was held that since the amount of bills so raised was towards the actual expenses incurred by the consultant, there was no element of any profit or income involved in the said bills. It was, thus, a clear case of reimbursement of actual expenses incurred by the consultant and the same, therefore, was not of the nature of payment, requiring the assessee to deduct tax at source therefrom.*

**4. Mahindra and Mahindra Ltd Vs Dy. CIT [2009] 313 ITR (AT) 263 (Mum)(SB): 22 DTR (Trib) 361 (Mum)(SB).**

*It was, inter alia, held in this case that reimbursement of expenses cannot be considered to be in the nature of income and therefore, it is not income by way of fees for technical services.*

*It was further held that when a particular amount of expenditure is incurred and that sum is reimbursed as such, that cannot be considered as having any part of it in the nature of income. Any payment, in order to be brought within the scope of income by way of fees for technical services under section 9(1)(vii) should, be or have at least some elements of income in it. Such payment should involve some compensation for the rendering of any services which can be described as income in the hands of*

*the recipient. In other words, the component of income must be present in the total amount of fees paid for technical services to constitute an item falling under section 9(1)(vii). Where the expenditure incurred is reimbursed as such without having any element of income in the hands of the recipient, it cannot assume the character of income deemed to accrue or arise in India and accordingly, there was no obligation to deduct tax at source therefrom under section 195 of the Act.*

**5. JDIT (Int.Tax) Vs. KRUPP UHDE GmbH [2009] 26 DTR (Trib) 289 (Mum): [2010]1 ITR 614 (Mum)**

*It was, inter alia, held in this case that amounts received by the assessee towards reimbursement of expenses were not liable to tax as fees for technical services.*

**6. NathpaJhakri Joint Venture Vs ACIT [2010] 5 ITR (Trib) 75 (Mum)**

*It was held in this case that reimbursement of expenses was not income in the hands of the non-resident and therefore, not liable to TDS under section 195 of the Act. It was further held that it is axiomatic that tax is charged on income and not on receipts. The reimbursement of expenses by the Indian assessee to the non-resident was not taxable in the hands of the non-resident. Only if the sum paid or credited is chargeable to tax in the hands of the payee, the assessee is liable to deduct tax at source. If the assessee payer did not move application under sub-section (2) of section 195 of the Act, it could not be held that the liability to deduct tax at source had automatically arisen. As the reimbursement of expenses was not taxable in the hands of the payee, the assessee was not liable to deduct tax at source.*

**7. Expeditors International (India) P. Ltd VsAddl.CIT [2010] 2 ITR (Trib) 153 (Del)**

*It was, inter alia, held in this case that the amount paid by the assessee company to its parent company, on account of reimbursement of expenses incurred in respect of global accounts manager, could not be treated as payment of salary, so as to attract the deduction of tax at source. It was a case of reimbursement of common expenses incurred*

by the parent company for the benefit of all the group concerns, including the assessee company, which do not attract any deduction of tax and disallowance could not be made by invoking the provisions of section 40(a)(iii) for non-deduction of tax from reimbursement.

**8. Linklaters LLP Vs ITO (Int.Tax) [2011] 9 ITR (Trib) 217 (Mum)**

It was, inter alia, held in this case that reimbursements received by the assessee were in respect of specific and actual expenses incurred by the assessee and do not involve any mark up. Besides, there was reasonable control mechanism in place to ensure that these claims were not inflated and the assessee had furnished sufficient evidence to demonstrate the incurring of expenses. There was, thus, no reason to make any addition to income in respect of the reimbursement of expenses.

**We also rely on the below mentioned judgements related to reimbursement:**

<p><b>IN THE SUPREME COURT OF INDIA</b> <b>Director Of Income Tax (It) - I vs A.P. Moller Maersk</b></p>	<p>The Supreme Court in the case of Director of Income-tax (IT) vs. A.P. Moller Maersk, held that cost reimbursed by Indian agents for utilizing global telecommunication facility cannot be treated as fees for technical services and therefore not taxable.</p>
<p><b>IN THE HIGH COURT OF JUDICATURE AT BOMBAY</b> <b>INCOME TAX APPEAL NO. 652 OF 2017</b> <b>Pr. Commissioner of Income Tax - 1 Versus Goldman Sachs (India) Finance Pvt Ltd (GSIFPL)</b></p>	<p>Held that, 3. The Tribunal, however, held that, the amount in question was by way of reimbursement of costs. The Tribunal held that Assessee had paid such sums towards administrative costs such as the employee cost, rent, finance and legal corporate recharge etc. The Tribunal noted that, GSIPL had provided services to the assessee by deploying its employees for such work and the cost was for reimbursement for such expenses besides other related expenditure. Revenue was unable to dislodge these findings of fact recorded by the Tribunal.</p>

	<p><i>That being the position, we must proceed on the basis that the payment in question was in the nature of reimbursement of costs. As held by the Supreme Court in the case of Director of Income Tax v/s. A. P. Moller Maersk A. S. reported in 78 taxmann.com 287 and consistently followed by this Court in the number of decisions, liability to deduct tax at source in such a case, would not arise. No question of law arises."</i></p>
<p><b>IN THE ITAT MUMBAI BENCH 'C' Onward e-Services Ltd. v. Assistant Commissioner of Income-tax, Central Circle 37* [ASSESSMENT YEARS 2005-06 AND 2007-08]</b></p>	<p><i>IT: Reimbursement of interest by subsidiary to parent company which, in turn, had repaid it to lender bank, did not involve any element of income and, thus, no TDS liability would arise under section 194A on reimbursement</i></p> <p><i>Section 194A of the Income-tax Act, 1961 - Deduction of tax at source - Interest other than interest on securities - Assessment year 2005-06 - Assessee-company was engaged in business of software development - It had taken over a banking division of its parent company - In view of taking over of banking division, assessee had to share interest cost burden of parent company based on funds utilized because, parent company was enjoying borrowing facilities from banks for its group companies - On other hand, assessee-company was enjoying borrowing facilities from bank through its parent company and funds had actually been advanced to assessee as bank had not approved transferring said borrowing facility to assessee - Thus, to extent of funds utilized in respect of borrowing in name of parent company, interest cost was being reimbursed by assessee to parent company - Whether on facts, it was apparent that assessee had paid</i></p>

	<i>interest to bank only through its parent company and, thus, there was no statutory obligation on it to deduct tax at source under section 194A - Held, yes [In favour of assessee]</i>
<b>HIGH COURT OF GUJARAT Principal Commissioner of Income Tax, Central, Ahmedabad v. Plastene India Ltd.* R/TAX APPEAL NO. 1284 OF 2018</b>	<i>Section 194A of the Income-tax Act, 1961 - Deduction of tax at source - Interest other than interest on securities (Letter of credit discount charges) - Assessment year 2008-09 - During relevant year, assessee-company debited payment of interest which included Letter of Credit (LC) discount charges - Assessing Officer opined that finance charges debited to profit and loss account were in nature of interest under section 2(28A) and thus, there was requirement to deduct tax at source - In view of assessee's failure to deduct tax at source, Assessing Officer disallowed LC discount charges - Commissioner (Appeals) found that LC discount charges were in nature of reimbursement of cost incurred by suppliers under agreed arrangement and it was also an additional cost for assessee for purchase of goods - However, no interest payments were made to supplier by assessee - Commissioner (Appeals) thus taking a view that provisions of section 194A were not applicable, deleted disallowance made by Assessing Officer - Tribunal upheld order passed by Commissioner (Appeals) - It was noted that assessee had opened LC in favour of its suppliers who had discounted same with bank - On account of early payment, bank had deducted some amount which assessee was liable to reimburse to its suppliers - Thus, assessee had not made payment of interest to bank or to supplier</i>

	<p><i>and amount credited to suppliers' account was towards reimbursement of expenses incurred by suppliers - Whether in view of aforesaid, Commissioner (Appeals) was justified in holding that provisions of section 194A would not be attracted and, consequently, question of making any disallowance under section 40(a)(ia) would not arise - Held, yes [Para 10] [In favour of assessee]</i></p>
<p><b>IN THE ITAT MUMBAI BENCH 'B'</b> <b>Neo Sports Broadcast (P.) Ltd.</b> <b>v.</b> <b>Commissioner of Income-tax (TDS), Mumbai*</b> <b>IT APPEAL NOS. 4010 &amp; 4011 (MUM.) OF 2014 [ASSESSMENT YEARS 2010-11 AND 2011-12]</b></p>	<p><i>Section 194A, read with section 263, of the Income-tax Act, 1961 - Deduction of tax at source - Interest other than interest on securities (Reimbursement of commission to holding company) - Assessment years 2010-11 and 2011-12 - Assessee was a step-down subsidiary of ZSPL., a subsidiary of NCL - Assessee-company was engaged in business of broadcasting - It had two channels - Agreement was entered between assessee and NCL for transfer of media rights of BCCI matches - As per agreement NCL was under obligation to provide for bank guarantee to BCCI for Rs.2000 crore - NCL had been paying bank guarantee commission to various banks year after year as per agreed terms - NCL had set a condition that 80 per cent of bank guarantee commission had to be reimbursed to it by assessee - Accordingly, assessee reimbursed certain amount to NCL - Assessee had not deducted TDS on these payments - Whether since there was no money borrowed or debt incurred and payment made to NCL was only in nature of reimbursement of expenses incurred by NCL and assessee, it did not come under purview of interest so as to make assessee liable for TDS under section</i></p>

	<i>194A - Held, yes [Para 12] [In favour of assessee]</i>
<b>HIGH COURT OF BOMBAY RupeshRashmi Kant Shah v. Union of India* WRIT PETITION NO.2902 OF 2016</b>	<i>Section 4 read with sections 2(28A) and 194A, of the Income-tax Act, 1961 - Income - Chargeable as (Interest on compensation) - Whether interest awarded on compensation in motor accident claim cases from date of Claim Petition till passing of award or in case of Appeal, till judgment of High Court in such Appeal, is not 'income' and therefore would not be eligible to tax - Held, yes - Whether further, provision of deducting tax at source cannot govern taxability of amount which is being paid, hence, section 194A provision relating to deduction of tax at source also cannot make interest income chargeable to tax if it otherwise is not, as it is not a charging provision - Held, yes - Whether however, interest which may be paid for delay in depositing awarded amount, would not form part of compensation and, therefore, would fall in bracket of interest income and would be eligible to tax under normal provisions - Held, yes [Paras 59 and 61][In favour of assessee]</i>
<b>HIGH COURT OF ALLAHABAD Commissioner of Income-tax v. Oriental Insurance Co. Ltd.* IT APPEAL NOS. 441 OF 2006 &amp; 398 OF 2009 IT APPEAL DEFECTIVE NOS. 279, 281, 284 &amp; 285 OF 2006</b>	<i>Section 2(28A), read with section 194A, of the Income-tax Act, 1961 - Interest - Interest on delayed payment of compensation under motor accident claims - Assessment years 1998-99 to 2002-03 - Whether interest paid on delayed payment of compensation under motor accident claims does not come within ambit of section 2(28A) and, therefore, there is no obligation to deduct tax at source while making said payment of interest - Held, yes [Paras 35 to 41] [In favour of assessee]</i>

<b><i>The High Court in Karnataka Power Transmission Corporation Ltd. v. Dy. CIT [2016] 67 taxmann.com 259/238 Taxman 287/383 ITR 59 (Kar)</i></b>	<i>This Court in Karnataka Power Transmission Corporation Ltd. v. Dy. CIT [2016] 67 taxmann.com 259/238 Taxman 287/383 ITR 59 (Kar) while considering the applicability of Section 194A of the Act has observed that, Section 194A of the Act mandates the tax Deductor to deduct 'income tax' on any income by way of interest other than income by way of interest on securities. The phrase 'any income' and 'income tax thereon' if read harmoniously, it would indicate that the interest which finally partakes the character of income, alone is liable for deduction of the income tax on that income by way of interest. If the said interest is not finally considered to be an income of the deductee, as per reversal entries of the provision, Section 194A (1) of the Act would not be made applicable. In other words, if no income is attributable to the payee, there is no liability to deduct tax at source in the hands of the tax Deductor.</i>
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*Further reliance placed on:*

- 1. Neo Sports Broadcast (P.) Ltd. v/s Commissioner of Income-tax (TDS), Mumbai (ITAT MUMBAI IT APPEAL NOS. 4010 & 4011 (MUM.) OF 2014)*
- 2. Proceeding dropped in case M/s. Home Builders and Infrastructure Pvt. Ltd. for AY 2016-17 (Assessee's sister concern)*
- 3. Proceeding dropped in case M/s. Home Builders and Infrastructure Pvt. Ltd. for AY 2017-18 (Assessee's sister concern)*
- 4. Proceeding dropped in case M/s. Home Builders and Infrastructure Pvt. Ltd. for AY 2018-19 (Assessee's sister concern)*
- 5. Proceeding dropped in case M/s. Home Builders and Infrastructure Pvt. Ltd. for AY 2019-20 (Assessee's sister concern)*

6. *Proceeding dropped in case M/s. Home Builders and Infrastructure Pvt. Ltd. for AY 2020-21 (Assessee's sister concern)*
7. *Proceeding dropped in case M/s. Home Builders and Infrastructure Pvt. Ltd. for AY 2021-22 (Assessee's sister concern)*
8. *Proceeding dropped in case M/s. Home Builders for AY 2017-18 (Assessee's sister concern)*
9. *Proceeding dropped in case M/s. Home Builders for AY 2018-19 (Assessee's sister concern)*
10. *Proceeding dropped in case M/s. Home Builders for AY 2019-20 (Assessee's sister concern)*
11. *IN THE ITAT MUMBAI BENCH 'C' Onward e-Services Ltd. v. Assistant Commissioner of Income-tax, Central Circle 37 IT APPEAL NOS. 97 AND 2974 (MUM.) OF 2010 [ASSESSMENT YEARS 2005-06 AND 2007-08]*
12. *IN THE ITAT MUMBAI BENCH 'L-1' NathpaJhakri Joint Venture v. Assistant Commissioner of Income-tax, Circle 23(1), Mumbai IT APPEAL NOS. 35 AND 105 (MUM.) OF 2007 [ASSESSMENT YEAR 2003-04]*
13. *IN THE INCOME TAX APPELLATE TRIBUNAL DELHI BENCH 'I-2', NEW DELHI M/s Expeditors International (India) v. DCIT, Circle-11(1), New Delhi  
ITA No. 2242/Del/2015 :Asstt. Year: 2009-10  
ITA No. 2260/Del/2015 :Asstt. Year: 2009-10  
ITA No. 5994/Del/2017 :Asstt. Year: 2010-11  
ITA No. 17/Del/2021 :Asstt. Year: 2010-11  
ITA No. 3513/Del/2017 :Asstt. Year: 2011-12  
ITA No. 18/Del/2021 :Asstt. Year: 2011-12  
ITA No. 5538/Del/2018 :Asstt. Year: 2012-13  
ITA No. 19/Del/2021 :Asstt. Year: 2012-13*
14. *IN THE ITAT MUMBAI BENCH 'B' Deputy Commissioner of Income-tax- 10 (1), Mumbai v. Mahanagar Gas Ltd. IT APPEAL NO. 1945 (MUM.) OF 2013 [ASSESSMENT YEAR 2009-10]*
15. *HIGH COURT OF DELHI Commissioner of Income-tax v. Industrial Engineering Projects (P.) Ltd. IT CASE NO. 211 OF 1991*
16. *HIGH COURT OF CALCUTTA Commissioner of Income-tax v. Dunlop Rubber Co. Ltd. IT REFERENCE NO. 250 OF 1974*
17. *In the Supreme Court of India Director of Income Tax vs AP Moller Maersk*

18. *IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
Pr. Commissioner of Income Tax – 1 v. Goldman Sachs  
(India) Finance Pvt Ltd (GSIFPL)*

19. *HIGH COURT OF GUJARAT Principal Commissioner  
of Income Tax, Central, Ahmedabad v. Plastene India Ltd.  
R/TAX APPEAL NO. 1284 OF 2018*

20. *In case of Shree Siddhivinayak Infrastructure &  
Realty before The Commissioner of Income Tax, Appeal  
ADDL/JCIT (A)-2 Ahmedabad AY 2017-18 (Assessee's sister  
concern)*

21. *In case of Shree Siddhivinayak Infrastructure &  
Realty before The Commissioner of Income Tax, Appeal  
ADDL/JCIT (A)-2 Ahmedabad AY 2018-19 (Assessee's sister  
concern)*

22. *In case of Shree Siddhivinayak Infrastructure &  
Realty before The Commissioner of Income Tax, Appeal  
ADDL/JCIT (A)-2 Ahmedabad AY 2019-20 (Assessee's sister  
concern)*

23. *In case of Ruparel Infra & Realty Private Limited  
before The Commissioner of Income Tax, Appeal ADDL/JCIT  
(A)-2 Ahmedabad AY 2018-19 (Assessee's sister concern)*

***In the light of the discussion in the preceding paras (I)  
and (II), it is clearly established that –***

1. *Tax is deductible at source only in respect of payment of  
income or other sum comprising an element of income.*
2. *Reimbursement of expenses does not partake the nature of  
income, in the hands of the payee of such expenses.*

*In view of the aforesaid reasons, tax is not deductible at  
source, in respect of payment or reimbursement of expenses  
incurred by the payee.*

***Without Prejudice to the above,***

1. ***Interest paid is nothing but reimbursement in nature:***  
*From the facts of the case, as stated herein above it is  
crystal clear that the interest paid by various entities until  
the principal borrower is nothing but reimbursement of the  
interest to the principal borrower who have paid the interest  
to the lender after duly deducting TDS, wherever applicable.*

*Thus, TDS shall not be applicable on these payments of interest reimbursements.*

*There is no mark up in respect of interest charged to the group entities and therefore there is no income embedded for the group entity receiving interest from another group entities. It is very clear from the provisions of section 194A that the TDS is deductible on "the income". To ascertain where a particular receipt is income or not has to be looked from many aspects. The circumstances and nature of the transaction has to be analysed. Mere nomenclature resembling to that of an income item does not make it an Income. Here, the payments made by the assessee to its sister concerns are not treated as an income in the hands of the sister concerns as the payments are in nature of pure reimbursements.*

**2. There is no Loss of Revenue to the Exchequer:**

*The principal borrower has duly deducted and paid the TDS to the exchequer while making payment of interest to the lender, wherever applicable. As the exchequer has duly received the share of the amount and hence, there is no any revenue loss to the Government.*

*Had if the individual group entities directly paid the interest to principal lender deducting the TDS at their individual level, the amount of TDS amount reaching to the Government would have been the same, as is done now. The process of making one entity as principal borrower and other as co-borrowers is for the purposes as stated here in before i.e. to secure maximum finance, less paper work and compliances, convenience, proper tracking of the repayment etc.*

**3. This is established and duly accepted practice by Income Tax Department over the years:**

*As stated herein before, that we are into the real estate business since last more than 20 years. Our business expansion and loan transactions has majorly grown during last 8-10 years. During this tenure, we had number of income tax scrutinies and TDS enquiries of many group entities every year. Almost 5-6 scrutinies every year. This question of non-deduction of TDS on reimbursement of Interest is being asked and explained in almost all the cases.*

**4. Undue Hardship and injustice:**

*If you make us to deduct the TDS on reimbursements amongst the group entities, the amount of TDS would be much higher than what it should be and no wonder it could be more than the actual total interest paid by the principal borrower, which is gross injustice and unnecessary hardship to the business.*

*In light of the above, we would request your honour to delete the interest demand raised by the Ld. A.O.*

8. On the other hand, Ld. DR objected to the submissions made by the Ld AR and relied upon the orders passed by the revenue authorities.

9. We have heard the counsels for both the parties and we have also perused the material placed on record, judgments cited before us and also the orders passed by the revenue authorities. From the records, we noticed that the assessee has submitted relevant documents to prove that the payment of interest is a reimbursement in nature. As per the language used by the Parliament in section 194A what is contemplated is the 'interest in the form of income'. In the present case the argument of the assessee is that it is only reimbursement of the interest payment in respect of the funds utilized by the assessee towards borrowing facility of its group entities. As per the facts on record the assessee-company is a sister concern of 'Ruparel Realty Group'. The assessee-company borrowed a sum of money from its group entities which is repayable on demand. The same is evident from the presentation in the Balance Sheet of the period under consideration. In the balance sheet for year ending 31.03.2016, note no.6 under

the head 'short-term borrowings' the 'Loans repayable on demand' from the group companies is disclosed. In the interim period group companies has advanced a loan as 'Short Term Loan & Advances' under 'Current Assets' of same amount. From the above evidence, it can safely be concluded that the assessee-company was enjoying borrowing facilities from the bank through its group entity companies and the funds have been advanced to the assessee. As per the contention of the assessee to the extent of the funds utilized in respect of bank borrowing in the name of the group entity companies, the interest cost is reimbursed. In fact, the assessee is paying only the interest to the bank but it is through the group entity companies. The group entity companies is not in lending business.

10. From the Balance Sheet of the assessee it has been observed that the assessee has shown the loan amount in the name of the group entity companies. If the credit limit has not been transferred in the name of the assessee but the credit facility is being enjoyed by the assessee through the group entity companies, then in such a situation the assessee cannot directly show the name of the bank but liability has to be shown on the name of the group entity companies.

The assessee has also relied upon the decision of the Coordinate Bench of ITAT in the case of **Neo Sports Broadcast (P.) Ltd Vs. CIT (TDS), Mumbai, [2016] 69**

**taxmann.com 422 (Mumbai)**, wherein it was held that “Where a holding company provided bank guarantees for benefit of assessee, its reimbursement by assessee would not come under purview of interest so as to make assessee liable to TDS under Section 194A”

The Ld. AR further relied upon the decision in the case of **Onward e-service Ltd. Vs ACIT, [2012] 22 taxmann.com 60 (Mumbai)**, wherein it was held that “Reimbursement of interest by subsidiary to parent company which, in turn, had repaid it to lender bank, did not involve any element of income and, thus, no TDS liability would arise u/s 194A on reimbursement.”

11. Apart from above, Ld. AR also placed on record the copies of proceedings dropped in the case of assessee’s sister concern by the AO himself under the identical circumstances which are at paper book page No. 7 to 15 and also copy of orders passed by Ld. CIT(A) in assessee’s sister concerns which are also at paper book at page No. 85 to 245, wherein it has been held by the revenue themselves that “the reimbursement of expenses by the appellant to sister concerns are in the nature of pure reimbursement to principal borrower and it does not partake the nature of income, in the hands of the payee of such expenses”.

11. Therefore, in the light of the above legal proposition and also in view of our detailed discussion, it is held that the assessee is under no statutory obligation to deduct the

tax at source under section 194A. Consequently, the interest payable for failure to deduct TDS under section 201(1A) of the Act does not arise. Therefore, the ground of appeal taken by the assessee is allowed and the addition made by the Assessing Officer is hereby directed to be deleted.

**ITA Nos. 5325, 5327, 5356 & 5354/Mum/2024, A.Ys: 2017-18 to 2020-21**

12. As the facts and circumstances in these appeals are identical to ITA No 5305/Mum/2024 for the A.Y 2016-17 (except variance in figures) and the decision rendered in above paragraph would apply *mutatis mutandis* for these appeals also. Accordingly, we allow the grounds of appeal of the assessee.

13. In the result, all the five appeals filed by the assessee are allowed.

Order pronounced in the open court on 27.11.2024.

Sd/-

**(PRABHAS SHANKAR)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SANDEEP GOSAIN)**  
**JUDICIAL MEMBER**

Mumbai, Dated 27/11/2024

KRK, PS