

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 4186/Mum/2024
(Assessment Year: 2021-22)**

Shree Siddhivinayak Realhomes Pvt. Ltd. 10, 1 st Floor, Ruparel IRIS, Nair Mahal, Senapati Bapat Marg, Matunga Road (West), Mumbai-400016. TAN : MUMS85819G	Vs.	ITO, TDS Ward-2(2)(3), Room No. 319, 3 rd Floor, MTNL Building, Cumballa Hill, Peddar Road, Mumbai-400026.
Appellant)	:	Respondent)

**I.T.A. No. 4247/Mum/2024
(Assessment Year: 2017-18)**

Shree Sukhakarta Developers Pvt. Ltd. 14 th Floor, Ruparel IRIS, Nair Mahal, Senapati Bapat Marg, Matunga Road (West), Mumbai-400016. TAN : MUMS77875A	Vs.	DCIT, OSD Circle-2(2), Room No. 311, 3 rd Floor, MTNL Building, Cumballa Hill, Peddar Road, Mumbai-400026.
Appellant)	:	Respondent)

Appellant / Assessee by : Shri Vimal Punmiya, CA

Revenue / Respondent by : Shri Dr. Kishor Dhule, CIT-DR

Date of Hearing : 02.12.2024

Date of Pronouncement : 09.12.2024

ORDER**Per Padmavathy S, AM:**

These two appeals by different assessee are against the separate orders of the Commissioner of Income Tax (Appeals)-4, Delhi [in short 'the CIT(A)'] dated 21.06.2024 for AY 2021-22 & 07.06.2024 for AY 2017-18. The common issue contended by both the assessee are against the treatment as assessee in default under section 201(1) and levy of interest under section 201(1A) of the Income Tax Act, 1961 (the Act). Since the issues contended are common, the appeal of both the assessee were heard together and disposed of by this common order.

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2. The assessee is a private limited company which is part of Ruparel Realty Group (the group) and is engaged in the business of building and developing property and selling flats and offices for residential and commercial use. The assessee filed the return of income for AY 2021-22 on 14.03.2022 declaring a total loss of Rs.35,95,810/-. A search action under section 132 of the Act was conducted on the Ruparel Realty Group on 25.11.2021. During the course of search, the Assessing Officer (AO) noticed that the assessee has made payments towards interest to its sister concerns as detailed below and has not deducted tax on these payments:

Sr.No	Name of party	Date of credit/payment whichever is earlier	Amount of interest	TDS deducted
1.	Ruparel Infra & Realty Private Ltd.	31.03.2021	12942213	NIL

2.	Shree Siddhivinayak Infra & Realty	31.03.2021	11712359	NIL
3.	Arise Developers	31.03.2021	22684	NIL
			24677256	

3. The AO accordingly issued a notice under section 201(1) to the assessee. The assessee submitted before the AO that

- (i) the entire group obtains loans from financial institutions by issuing non-convertible debentures and similar instruments
- (ii) These loans are secured by pooling the group's resources and mortgaging them, primarily based on the projects undertaken by each entity.
- (iii) The loans are collectively obtained through a common debenture trust deed and the entity in whose name the funds are borrowed becomes principle borrower with other entities standing as co-borrowers.
- (iv) The funds received from the financial institutions are initially received by the principal mortgagers and are then transferred to the relevant group entities based on their specific requirements
- (v) the interest liability on the borrowed funds is apportioned among the group entities according to the amounts and periods for which they availed the funds on a cost to cost basis without any mark up
- (vi) the principle borrower pays interest after deducting tax at source on behalf of the other co-borrower and the assessee being a co-borrower has reimbursed its share of interest to the principle borrower

4. The assessee argued that since the loans are obtained through the combined mortgage of assets, with multiple group entities as borrowers, and the interest payment represents the cost of funds without any income element, it should be considered as reimbursement. Furthermore, they contend that there is no default in TDS deduction as the ultimate borrower deducts TDS, as applicable. Accordingly the assessee submitted that the assessee cannot be treated as assessee is in default

since there is no requirement to deduct tax on the interest reimbursements under section 194A of the Act. Without prejudice the assessee obtained a certificate from an accountant in Form 26A, (as per Rule 31ACB) as mentioned in the first proviso to Section 201(1) where in it is certified that the recipient in question has filed their income tax returns under section 139, considering the specified sum for computing their taxable income in the respective return filed for the year, and has paid the taxes arising from the income declared in the return of Income. Though the AO did not accept the assessee's contention that it is not liable to deduct tax at source under section 194A, based on the certificate submitted held that the assessee is not an assessee-in-default as per section 201(1). However, the AO held that the assessee is liable to pay interest under section 201(1A) from the date when the TDS should have been deducted until the date of the recipient's return filing. Accordingly the AO raised a demand toward interest under section 201(1A) to the tune of Rs.3,20,804.

5. On further appeal, the CIT(A) confirmed the order of the AO. The assessee is in appeal against the order of the CIT(A) before the Tribunal.

6. The ld. AR submitted that the assessee is part of Ruparel Realty Group which consists of 15 private limited companies, 7 Partnership Firm and 1 proprietary concern and the Group is engaged in the business of redevelopment of slums and other old buildings and has been in real estate business for the last 20 years. The ld. AR further submitted that the group borrowed from financial institutions for the purpose of projects carried out by various entities in the group by mortgaging the projects as security. The ld. AR also submitted that since the group borrows by pledging the projects belonging to various entities the paper work and other compliances are reduced and the group is able to get the maximum possible finance. It is submitted that the entity in whose name the funds are

borrowed becomes the principle borrower and the other entities standing as co-borrowers. It is further submitted that the loans thus borrowed are utilized for various projects carried on by the entities belonging to the Group and the funds are transferred to the group entities as per their projects requirements. The servicing and the repayment of loans are routed through the principle borrower and the other co-borrowers repay the principle and interest to the principle borrower. The Id. AR brought to our attention that the interest reimbursed by the co-borrowers is not treated as income in the hands of the principle borrower but is treated as a reimbursement to the set off against the interest payment. The Id. AR further brought to our attention that the reimbursement of interest is done without any markup and is done on a cost to cost basis based on the utilization of funds by the co-borrowers. The Id. AR argued that the liability to deduct tax at source under section 194A would arise only if the interest is in the nature of income in the hands of the recipient. The Id. AR further argued that since the interest reimbursed is netted off against the interest paid by the principle borrower to the financial institutions and is not in the nature of income the liability to deduct tax at source under section 194A of the Act does not arise. The Id. AR submitted that the impugned issue has arisen in the case of other group entities (ITA No. 5305, 5325, 5357, 5357, 5354/Mum/2024 dated 27.11.2024) and the Co-ordinate Bench has held that the liability to deduct tax does not arise and accordingly deleted the demand made under section 201(1) / 201(1A) of the Act.

7. The Id. DR on other hand relied on the order of the lower authorities.

8. We heard the parties and perused the material on record. In assessee's case during the year under consideration interest amounting to Rs. 2,46,77,256/- was reimbursed towards interest to sister concerns. The AO held that the assessee is liable to deduct tax at source under section 194A and based on the certificate that

the recipient in question has filed their income tax returns under section 139, considering the specified sum for computing their taxable income in the respective return filed for the year computed the interest under section 201(1A) to raised a demand of Rs. 3,20,804/-. The primary contention of the assessee is that the interest paid to sister concerns is a reimbursement on a cost to cost basis and since there is no element of income in the interest paid, the liability to deduct tax under section 194A does not arise. Therefore, before proceeding further we will look at the relevant provisions of section 194A

" Interest other than "Interest on securities".

194A. (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."

9. From the plain reading of the above provisions it is clear that the person responsible for paying interest which is in the nature of income is liable to deduct tax at source. In assessee's case, from the perusal of financial statement we notice that the assessee has secured loans in the form of debentures and has unsecured loans from related parties. Further from the break-up of financial cost as submitted

by the assessee before the AO (page 120 of paper book), the assessee is having both receipt as well as payment of interest from group entities which substantiates the fact that borrowings are done by group entities together as co-borrowers to be utilized by the entity which has the requirement. This also substantiates that the interest is recovered on a cost to cost basis and is netted off for the purpose of accounting. It is an undisputed fact that the assessee while paying interest to the third party, the assessee has deducted tax at source and there is no default on the part of the assessee. The interest thus paid by the principle borrower gets allocated among the group entities on the basis of the loan which the respective entity has utilized. In other words the expenditure of interest gets allocated to the entity which has actually used the borrowed funds and the allocated interest gets actually reimbursed to the entity which has taken the responsibility as a principle borrower to pay interest and principle to the third party lender. The principle borrower is not claiming the interest paid to the third party as an expenditure since the same gets allocated to the entities who have utilized the funds. The recovery of interest reimbursed by the sister concerns is also not shown as income because it is only a recovery of expenditure incurred on behalf of sister concern in which there is no element of income. When we consider these facts with respect to how the funding requirements are managed by the group entities, we are of the view that the allocation / reimbursement process does not result in any income among the group entities but is a process of distribution of the expenditure to be claimed by the right entity which has utilized the borrowed funds. If the contention of the revenue is to be accepted then the same may result in a situation where the credit for the tax deducted cannot be given towards the interest received by the entity since reimbursement is not an income that is offered to tax by the said entity. It is also relevant to mention here that the CIT(A) in the case some entities belonging to

the group has given relief to the assessee on identical issue by deleting the addition made by the AO under section 201(1) / 201(1A) and in certain other entities of the group the proceedings under section 201(1) / 201(1A) has been dropped by the AO himself (page 148 to 317 of paper book). It is also relevant to note that the coordinate bench in the case of other group entities (supra) has held a similar view on the impugned issued and the relevant observations of the coordinate bench are extracted below –

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 it's 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 it's 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 not 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".

10. In view of these discussions and considering the facts unique to the assessee which is part of the group, we see merit in the claim of the assessee that the liability to deduct tax under section 194A of the Act does not arise with respect to the interest allocated and reimbursed among the group entities. Accordingly we hold that the assessee cannot be treated as assessee in default as per the provisions of section 201(1) since the assessee is not liable to deduct tax at source under section 194A the question of levying interest under section 201(1A) does not arise. The addition made by the AO in this regard is hereby deleted.

ITA No. 4247/Mum/2024 for AY 2017-18 - Shree Sukhakarta Developers Pvt. Ltd.

11. The assessee is a private limited company which is part of Ruparel Realty Group (the group) and is engaged in the business of building and developing property and selling flats and offices for residential and commercial use. A search action under section 132 of the Act was conducted on the Ruparel Realty Group on 25.11.2021. During the course of search, the Assessing Officer (AO) noticed that the assessee has made payments towards interest to its sister concerns as detailed below and has not deducted tax on these payments:

Sr.No	Name of party	Date of credit/payment whichever is earlier	Amount of interest	TDS deducted
1.	Home builders	31.03.2017	1254884	NIL
2.	Home Builders & Infrastructure Pvt. Ltd.	31.03.2017	91,34,510	NIL
3.	Sarvesh builders India Pvt. Ltd.	31.03.2017	22462596	NIL
4.	Shree Siddhi Vinayak Infrastructure Pvt Ltd	31.03.2017	6005768	NIL
5.	Shree Siddhivinayak Real Homes Pvt Ltd.	31.03.2017	37689332	NIL
6.	Ruparel Homes (I) Pvt Ltd	31.03.2017	7880847	NIL
		Total	84427937	

12. The AO initiated proceedings under section 201(1) / 201(1A) and the assessee filed response saying that the requirement to deduct tax under section 194A does not arise since the interest paid is towards reimbursement and that the principle borrower who paid the interest to the financial institution on behalf of the assessee has already deducted the tax. Though the AO did not accept the assessee's contention that it is not liable to deduct tax at source under section 194A, based on the certificate submitted held that the assessee is not an assessee-in-default as per section 201(1). However, the AO held that the assessee is liable to pay interest

under section 201(1A) from the date when the TDS should have been deducted until the date of the recipient's return filing to make an addition of Rs.7,18,398.

13. We heard the parties and perused the material on record. We have, while considering the identical issue in the case of another group entity held that the assessee is not liable to deduct tax at source under section 194A of the Act. The relevant findings are given in the earlier part of this order. Since impugned payments in the assessee's case are also reimbursements towards the interest allocated based on the borrowed funds utilized by the assessee, our findings in the case of Shree Siddhivinayak Realhomes Pvt. Ltd. above mutatis mutandis applicable to assessee's case also. Accordingly we hold that the assessee cannot be treated as assessee in default as per the provisions of section 201(1) since the assessee is not liable to deduct tax at source under section 194A the question of levying interest under section 201(1A) does not arise. The addition made by the AO in this regard is hereby deleted.

14. In result the appeals of both the assessees in ITA No. 4186/Mum /2024 and ITA No. 4247/Mum /2024 are allowed.

Order pronounced in the open court on 09-12-2024.

Sd/-
(AMIT SHUKLA)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai