

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: D : NEW DELHI

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA No.2417/Del/2023
Assessment Year: 2020-21

Amplus Energy Solutions Pte Ltd., #02-00, Robinson Road, Singapore – 688898	Vs	ACIT, Circle International Tax 1(1)(1), New Delhi.
--	----	--

PAN: AADCI8182P

ITA No.3370/Del/2023
Assessment Year: 2021-22

Amplus Energy Solutions Pte Ltd., Malaysia, Level 56, Tower-1, Petronas Twin Towers, Kuala Lumpur City Centre, 50088, Kuala Lumpur, Malaysia/ 6 th Floor, Emaar MGF, The Palm Square, Golf Course Ext. Road, Sector-66, Gurgaon – 122 102.	Vs.	ACIT, Circle International Tax 1(1)(1), New Delhi.
--	-----	--

PAN: AADCI8182P

(Appellant)

(Respondent)

Assessee by	:	Shri K.M. Gupta, Advocate & Ms Shruti Khimta, AR
Revenue by	:	Ms Ekta Jain, CIT-DR
Date of Hearing	:	05.05.2025
Date of Pronouncement	:	25.06.2025

ORDER

PER ANUBHAV SHARMA, JM:

These appeals are preferred by the assesseees against the final assessment orders dated 28.06.2023 and 26.09.2023 passed by the Asstt. Commissioner of Income Tax, Circle Int. Tax 1(1)(1), Delhi (hereinafter referred to as the Ld. AO) u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') for assessment years 2021-21 and 2021-22, respectively. The two appeals were heard together and wherever relevant the facts and impugned orders for AY 2020-21 shall be referred.

2. Heard and perused the records. The relevant facts coming forth from record and submissions advanced before us are that the Appellant is a foreign company and is tax resident of Singapore during the year under consideration. Copy of Tax Residency Certificate issued by the Inland Revenue Authority of Singapore is filed in paper book at page no. 1 to 3. The Company is a Category II Foreign Portfolio Investor (FPI) registered with the Securities and Exchange Board of India (SEBI) and the copy of the FPI certificate and the renewal letter dated 31 August 2018 is filed in PB at page no. 4 to 6. The Appellant has subscribed to debt instruments i.e., Non-Convertible Debentures (NCDs), Compulsory Convertible Debenture (CCDs) and Optionally Convertible Debenture (OCDs) issued by its Associated Enterprises (AEs) in India and during the year AY 2020-21, the Appellant earned a total interest income of

INR 82,86,22,790 on the aforesaid investment in debentures made in the AEs. The Appellant claimed to be eligible to seek a concessional tax rate of 5.46% (including applicable surcharge and cess) as per section 115A(1)(a)(BA)(ii) r.w.s. 194LD of the Act on the interest earned on aforesaid debentures. However, out of the aforesaid interest only INR 34,73,79,527 pertaining to interest earned on NCDs was offered to tax at the concessional tax rate of 5.46% (including applicable surcharge and cess) as per section 115A(1)(a)(BA)(ii) r.w.s. 194LD of the Act. The balance interest of INR 48,12,43,263 which pertained to interest earned on CCDs/ OCDs, was offered to tax @ 15% as prescribed under Article 11 of India-Singapore Tax Treaty. During the assessment proceedings, the Ld. AO denied the benefit of Section 194LD of the Act on the premise that section 194LD of the Act provides a lower tax rate only in the context of rupee denominated 'bonds' and not rupee denominated 'debentures'. Consequently, a draft assessment order under section 144C was issued proposing to tax the interest income of INR 34,73,79,589 earned on NCDs @ 10% instead of 5.46% (including applicable surcharge and cess) as per section 115A(1)(a)(BA)(ii) read with section 194LD. Aggrieved by the draft assessment order, the Appellant preferred to file its objections before the Dispute Resolution Panel (DRP). Further, by way of application dated 16 March 2023, the Appellant also raised an additional objection before the DRP seeking the benefit of the concessional tax rate of 5.46% (including applicable surcharge and cess) on the interest earned on OCDs and CCDs as per section

115A(1)(a)(BA)(ii) read with section 194LD of the Act. The copy of additional objection filed before the DRP is on record at page no. 7 to 24 of the Paperbook. The DRP vide impugned directions dated 23 May 2023 took note of the fact that the Appellant has earned interest income from investment in debentures which inter alia includes all three forms of debentures namely CCDs, OCDs and NCDs and taking a note of the internal letter dated 30-11-2017 issued by the PCCIT, International tax issued in the context of Section 194LD of the Act to CCIT/CIT under International Tax jurisdiction, directed the Ld. AO to adjudicate in line of the said letter. As for convenience the relevant part of the order of DRP in para 5.10 is reproduced below:-

“5.10 In this regard, the Panel draws the attention of the AO to the letter dated 30-11-2017 of the PCCIT, International Tax issued to CCIT/CIT under International Tax jurisdiction. Paras 3 and 4 of the said letter lays down as under:

3. In this regard, this office is of the view that in the context of Section 194 LD debentures do not constitute any class of securities that are different from bonds. The basic condition required to be satisfied under the section is that the debt should be rupee denominated, the instrument should be issued by an Indian company to the specified foreign investors and the interest should be payable during the period specified in the section. No other condition is attached to the nature of the debt security mentioned in the section. It is also seen that under Section 2 of the Companies Act the term ‘debenture’ includes debenture stock and bonds or any other instrument of a company evidencing a debt. Further, the SEBI Regulations of 2008 relating to issue and listing of debt securities define debt securities to mean non-convertible debt securities, which include debentures and bonds. Certain FAQs issued by SEBI on the secondary market also define the term debenture to mean bonds issued by a company bearing a fixed rate of interest, payable periodically on specific dates where the principle amount is repayable on a particular date on redemption

4. Considering the above and in the absence of any specific definition of bonds in the income-tax Act or in Section 194 LD, the term 'bonds' used in

the section should be considered as including non-convertible debentures. The concessional rate of 5% may therefore be allowed in respect of interest on non-convertible debentures provided the other conditions mentioned in the section are satisfied.”

3. Pursuant to the above directions, the assessment was completed vide impugned final assessment order dated 28 June 2023 passed under section 143(3) read with section 144C (13) of Act wherein the Ld. AO restricted the benefit of the concessional rate conferred under section 194LD of the Act only to NCDs but did not grant the benefit of concession rate under section 194LD of the Act to OCDs and CCDs. Aggrieved by the final order, the Appellant has preferred to file the appeal before this Tribunal raising following grounds in AY 2020-21, which are common to both the years;

“1. On the facts and circumstances of the case and in law, the Ld. Assessing Officer (‘Ld.AO’) / Ld. Dispute Resolutions Panel (‘Ld. DRP’) erred in disregarding the claim of the Appellant to tax the interest income earned on Optionally Convertible Debentures and Compulsorily Convertible Debentures at the rate of 5% as per section 115A(BA)(ii) read with section 194 LD of the Act.

1.1. On the facts and circumstances of the case and in law, the Ld. AO/Ld. DRP erred in not appreciating that the Optionally Convertible Debentures and Compulsorily Convertible Debentures are in the nature of debt until converted into equity and thus qualify as rupee denominated bonds as per the provisions of Section 194 LD of the Act.

3.1 In AY 2021-22 assessee has raised a further ground as follows;

2. On the facts and circumstances of the case, the Ld. AO has erred in computing the aggregate tax and interest liability leading to incorrect demand being raised against the Applicant.

2.1 On the facts and circumstances of the case, the Ld.AO erred in applying an incorrect rate of tax (without providing any basis for the same), resulting into an incorrect computation of tax and interest liability of INR 23,40,74,700 vis-à-vis the actual tax liability of the Applicant i.e., INR 12,38,69,200. Accordingly, a demand of INR 10,70,62,680 has been raised

against the Applicant after adjusting the prepaid taxes and the amount already refunded.”

4. **Ground no. 1 in both the years;** The ground arises questioning the taxability of interest income earned on CCDs and OCDs amounting to INR 48,12,43,263. Admittedly as per section 115A(i)(a)(BA)(ii) of the Act, interest income referred to in section 194LD of the Act will be taxable at the rate provided in the said section. Further, section 194LD of the Act provides that any person who is responsible for paying to a person being a Foreign Institutional Investor (FIIs) / Qualified Foreign Investors (QFIs), any income by way of interest, which satisfies the specified conditions, shall, at the time of credit or payment of such income to the account of the payee whichever is earlier, deduct income-tax thereon at the rate of 5.46% (including applicable surcharge and cess). On a bare perusal of section 194LD of the Act, it is evident that the following conditions need to be satisfied for the applicability of the concessional tax rate of 5.46% (including applicable surcharge and cess):

- Condition 1: Interest is paid/payable to a FIIs or QFIs
- Condition 2: Interest is payable within the time period of 1 June 2013 up to 1 July 2020 (extended up to 1 July 2023 through a subsequent amendment)
- Condition 3: Interest is payable on securities specified in the section
 - i.e., Rupee denominated bond of an Indian company or Government security.

- Condition 4: Rate of interest in respect of Rupee denominated bond of an Indian company should not exceed the interest rate notified by the Central Government

5. Now, as per the contentions of Sr. Counsel, appearing for the appellant, in the present case, all the aforesaid conditions are met and thus, interest on OCDs/ CCDs earned by the Appellant ought to be taxable at concessional tax rate of 5.46% (including applicable surcharge and cess).

6. Now admittedly interest is paid/payable to a appellant and its status as FII is not disputed. The term 'FII' used in section 194LD of the Act has the same meaning assigned to it in clause (a) of explanation to section 115AD of the Act. The Central Government vide Notification No. SO 199(E), dated 22-1-2014 has specified that Foreign Portfolio Investors (FPI) registered under the Securities and Exchange Board of India (Foreign Portfolio Investors), Regulations 2014 shall be treated as FIIs for the purpose of section 115AD. The Appellant is a Category II FPI registered with SEBI. Then interest is payable within the time period of 1 June 2013 up to 1 July 2020 (extended up to 1 July 2023 through a subsequent amendment). Revenue does not dispute that the interest rate on the respective OCDs and CCDs does not exceed the maximum interest rate notified by the Central Government, being 500 basis points over the base rate of State Bank of India. Thus, it can be concluded that the interest rate condition is also satisfied in the present case in respect of the respective OCDs and CCDs issued by the Indian AEs.

7. The only issue under dispute remains is if CCD and OCD fall in the category of Rupee denominated bond of an Indian company so the provisions of section 194LD of the Act, becomes applicable. Admittedly the terms ‘debenture’ or ‘bond’ are not defined under the Act. Assertion of Sr. Counsel is that these words are used interchangeably within the Act. Both bonds and debentures are debt instruments. In the absence of specific definition of the terms in the Act, the meaning of the ‘debenture’ can be borrowed from other statutes. In this regard, reference was made to some of provisions of the Companies Act, 2013 and same are reproduced below;

“Section 2

“(30) ‘debenture’ includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not;

*.....
.....*

(84) ‘share’ means a share in the share capital of a company and includes stock;”

Section 71

“(1) A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption: Provided that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special / resolution passed at a general meeting....”

8. Ld. Sr. Counsel has referred to the decision of co-ordinate bench in the case of **Heidelberg Cement AG, vs. ACIT, International Taxation, [2022] 143 taxmann.com 79 (Delhi - Trib.)**, where the bench has held that in absence of a specific definition of bonds in Act, term 'bonds' used in section 194LD of

the Act should be considered as including NCDs and accordingly concessional rate of 5 percent was to be allowed. In the said case, relying on the decision of Hon'ble Delhi High Court in the case of **Shree Visheshwar Nath Memorial Public Ch. Trust [2010] 194 Taxman 280 (Delhi)** bench has set aside the orders passed by the revenue authorities and decided the issue in favour of the assessee and held that a 'debenture' be considered as 'bond' for the purpose of section 194LD of the Act. The relevant extracts of the judgement are:

“..... In this case, on the issue of meaning of debenture in Income-tax Act purposes, Hon'ble jurisdictional High Court has expounded as under:-

“The word 'debenture' is nowhere defined under the Act. However, the Companies Act, 1956 specifically defines this term and as per the definition provided in section 2(12) of the said statute, 'bond' is covered under the expression 'debenture'. [Para 3]

The Kerala High Court in CIT v. Cochin Refineries Ltd. [1983] 142 ITR 441/ [1982] 11 Taxman 135 held that in the absence of any definition of 'debenture' in the Act, reliance could be placed upon the definition given in section 2(12) and also the common parlance in which this term is understood. [Para 4]

Thus, it would be appropriate to rely upon the definition of 'debenture' as contained in section 2(12) and, therefore, it could not be held that the assessee contravened the provisions of section 13(1)(d). [Para 5]”

9. Thus with regard to NCD there is no dispute left that same are considered to be 'Bonds' for the purpose of section 194LD of the Act. However, for OCDs and CCDs ld. Counsel has submitted that till conversion OCD and CCD cannot be said to be shares of a company because debentures and shares are two separate instruments and there are certain differences between rights and

obligations of debenture holders vis-a-vis shareholders. An illustrative list of them has been relied and we reproduce the same below:

- i. Shareholders are members and joint owners of the company, while a debenture holder is only a creditor;
 - ii. Section 47 of the Companies Act, 2013 grants right to vote to shareholders on every resolution of the company, unlike debenture holders;
 - iii. Debentures may be secured and have charge over the assets of the company, whereas no such charge is created in favour of the shareholders;
 - iv. Debenture holders, being creditors, are ranked in priority to the shareholders in case of winding up; the liability of the company including that towards debenture holders is discharged first while shareholders have the right on the residual assets/ monies;
 - v. As per section 62 of the Companies Act, 2013, existing equity shareholders shall have first right to subscribe additional shares where company proposes to increase its subscribed share capital; no such preferential right is available to the debenture holders, whether convertible or not;
10. The aforesaid makes it patently clear that the two instruments viz., “debenture” and “share” are separate and distinct instruments with separate rights and obligations of both the issuer company and the subscriber. For instance, instrument of debenture is evidence of existence of a debt with the issuing company. Unlike, debentures, instruments in the nature of shares (be it equity or preference) is not in the nature of debt, but form part of the permanent

capital of the company, entitling the holder to certain preferential rights, like voting rights, dividend, etc.

11. Further, the issue as to the nature of OCDs / CCDs, viz, whether the same are in the nature of debt or equity, is no longer res-integra. In the case of ***R.D. Goyal v. Reliance Industries Ltd.: 113 Comp. Cas. 1/ 40 SCL 503***, the Hon'ble Supreme Court of India, after detailed analysis of the difference between debenture and shares, noted that the expression "share" has been defined in section 2(46) of the Companies Act, 1956 to mean share in the share capital of a company, while debenture is simply an instrument of debt executed by the company acknowledging its liability to repay the amount represented therein at a specified rate of interest; in other words, debenture is a certificate of loan or bond evidencing the fact that the company is liable to pay an amount specified with interest. Though the amount which is raised by a company through debentures becomes part of its capital structure, the same does not become part of share capital, the apex Court further observed.

12. Further, reliance is placed on the following case laws to contend that the Hon'ble Courts and benches of the Tribunal have recognized the difference between CCDs / OCDs, on the one hand, and shares, on the other, to hold that expenses incurred on issuance of CCDs / OCDs being debt instruments, which is different from shares, is allowable deduction under the provisions of the Act.

- Sahara India Real Estate Corporation Limited and Ors v. Securities Exchange Board of India (Civil appeal no 9833 of 2011)
- Authority for Advance Ruling (Income Tax) reported in 307 ITR 40 (re: LMN India Ltd)
- DCIT vs. UAG Builders (P) Ltd.: 53 SOT 370,

13. Now from these decisions what we can conclude is that debentures has inseverable relation with debt. An acknowledgement of indebtedness is inherent in it. The payment of interest pre-supposes the fact that money has been borrowed or a debt has been incurred. The obligation to repay the amount is embedded in the concept of debt, the repayment need not be in the form of cash, it could be in kind. Conversion of bonds into fully paid-up equity shares at the end of the specified period at the conversion price amounts to constructive repayment of debt. The rights and obligation of debentures, in general, would mutatis mutandis be applicable to the OCDs / CCDs prior to their conversion. The only uncertainty in the OCDs is whether the debenture holder will go for conversion into shares or will continue to hold them as debentures. This uncertainty in no way impacts the inherent nature of the instrument. The nature, rights and obligations attached to OCDs / CCDs, cannot be equated with that of shares until conversion thereof till then OCDs / CCDs retain the character of a debenture simplicitor.

14. We are of further considered view that as for the purpose of Section 194LD what is important is that the security should be rupee denominated one.

Intention being that Indian company does not bear any risk out of foreign exchange fluctuation at the time of repayment of the principal or the interest amount. The distinction between OCD/CCD with NCD is of no consequence and they are debt instrument only like the bonds. Bond as a security when distinguished from the debentures only is for the purpose of signifying that bonds may at times be backed up by some collateral security while same is not the case when the debentures are issued. To treat CCD and OCD as shares *in praesentia* would be extending too far the principles of interpretation and infact the purposive interpretation would require extending benefit to the assessee as long as the OCD/CCD are rupee denominated, when investment is sought or interest is paid. Thus, we are of the considered view that Id. Tax Authorities have fallen in error to not give the assessee the benefit of Section 194LD in regard to OCD/ CCDs also. It appears that ground was specifically raised before the Id. DRP but no specific direction in that regard was made and while passing the final assessment order the AO has gone by the limited directions of the Id. DRP with regard to NCDs only. Thus, we are inclined to sustain the grounds in favour of the assessee.

15. Ground No.2: Ground No.2 in AY 2021-22 arises out of an error in applying the correct tax rate with regard to which the Id. DR could not dispute the facts and the issue is decided in favour of the assessee for statistical

purposes with a direction to the ld. AO to apply the correct tax rate in the light of the decision in ground No.1 also.

16. The appeals for both the years stand allowed with consequences to be followed.

Order pronounced in the open court on 25.06.2025.

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 25th June, 2025.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi