IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.4431/Mum/2025
(Assessment Year : 2019-20)

Deputy Commissioner of Income Tax (TDS) – 2(1), Mumbai,

..... Appellant

v/s

Piramal Enterprises Limited,
Piramal Ananta, Agastya Corporate Park Kamini Junction LBS Marg Opp. Fire Brigade Kurla, Mumbai – 400070
PAN : AAACN5024A

…… Respondent

Assessee by : Shri Ronak Doshi (Virtually present)
Revenue by : Shri R.A. Dhyani, CIT-DR

Date of Hearing – 19/08/2025	Date of Order - 21/08/2025

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The Revenue has filed the present appeal against the impugned order dated 09/05/2025, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Additional/Joint Commissioner of Income Tax (Appeals)-2, Delhi, ["*learned Addl./Joint CIT(A)*"], which in turn arose from the order passed under section 201(1)/201(1A) of the Act, for the assessment year 2019-20.

2. In this appeal, the Revenue has raised the following grounds: –

"1. Whether the Addl. CIT(A) erred in allowing the appeal of PHL Finvest Pvt. Ltd. without considering the fact that the payment made by PHL Finvest Pvt. Ltd. to Piramal Enterprises Lid. for acquisition of loan assets included accrued interest as well?

2. Whether the Addl. CIT(A) erred in granting relief to the assessee by holding the sections 193 and 194A are not applicable to the transactions between PHL Finvest Pvt. Ltd. and Piramal Enterprises Ltd.?

3. Whether the Addl. CIT(A) erred in accepting the view of the assessee that there is no income, for provisions of TDS to be applicable, without appreciating the fact that transaction between PHL Finvest Pvt. Ltd. and Piramal Enterprises Ltd. is different from the transaction between Piramal Enterprises Ltd. & borrower?""

3. The brief facts of the case are that the assessee is a non-deposit taking Non-Banking Finance Company registered with the Reserve Bank of India. The primary activity of the assessee includes lending/investing. In the course of its business, the assessee purchased loans (including NCDs, ICDs and term loans) from Piramal Enterprises Ltd and Piramal Capital and Housing Finance Limited at carrying value, comprising the principal and accrued interest till the date of transfer of the loan. In order to verify whether the assessee properly complied with the provisions contained in Chapter XVIIB of the Act, a survey under section 133B(2) of the Act was conducted at the premises of the assessee on 19/11/2019. During the survey, on verification of the trial balance and accounts, it was observed that the assessee typically accrues interest in the books based on the period of its holding of the loan and has defaulted in deducting TDS on accrued interest and excess interest on revision in interest rates for the financial year 2018-19. Accordingly, notice under section 201(1)/201(1A) of the Act was issued to the assessee calling for various details. In response, the Authorised Representative of the assessee attended and filed relevant details from time to time, which were examined and taken on record. During the proceedings, it was observed that the assessee has

credited the following interest income, which attracts TDS, but has not deducted TDS on such payment: –

S.N.	*Instrument*	*Principal Value*	*Accrued Interest*	*Total assets transferred*
1	***ICD***	*2046898849*	*21839480*	*2047863413*
2	***NCD (Listed)***	*4880000000*	*546634564*	*5730551357*
3	***NCD (Un-Listed)***	*23065257336*	*2117495646*	*24810139835*
4	***Term Loan***	*67608170801*	*1234542696*	*68497578697*
	Grand Total	***97600326986***	***3920512387***	***101086133303***

4. Accordingly, the assessee was asked to show cause as to why it should not be treated as "*assessee in default*" within the meaning of section 201(1)/201(1A) of the Act on its failure to deduct the withholding tax at 10% in respect of accrued interest on ICDs and term loan under the provisions of section 194A and accrued interest on NCDs under section 193 of the Act. In response, the assessee submitted that it has acquired the loans in the course of its business and the payment made to the transferors is the purchase consideration for acquiring the right to receive the principal along with interest from the debtor at maturity. The assessee further submitted that the consideration paid is lump sum towards the assets taken comprising of loans, NCDs and accrued interest till the date of transfer and the consideration is paid for the purchase of an asset being "*the right to receive*" and no part of the consideration can be termed as "*interest*" paid by the assessee to the transferors. The Assessing Officer ("*AO*"), vide order dated 10/02/2020 passed under section 201(1)/201(1A) of the Act, disagreed with the submissions of the assessee and treated the assessee as an "*assessee in default*" for non-deduction of tax under section 194A/section 193 of the Act on payment of consideration with respect to accrued interest for acquiring loans from Piramal Enterprises Ltd and Piramal Capital and Housing Finance

Ltd and raised a demand of INR 33,73,87,782 and levied interest under section 201(1A) of the Act of INR 4,17,24,480, thereby raising the total demand of INR 37,91,22,261.

5. The learned Addl./Joint CIT(A), vide impugned order, following the decisions of the coordinate bench of the Tribunal in State Bank of India v/s DCIT, reported in (2024) 163 taxmann.com 266 (Mumbai-Trib.), and Piramal Capital and Housing Finance Ltd v/s ACIT, in ITA No. 2345/Mum/2024, allowed the appeal filed by the assessee and held that the amount paid for the acquisition of the financial instruments is not "*interest*" and, in the absence of borrower-lender relationship or borrowed funds, no obligation to deduct tax at source arises under section 194A of the Act. Being aggrieved, the Revenue is in appeal before us.

6. We have considered the submissions of both sides and perused the material available on record. In the present case, as per the assessee, the payment made by the assessee to the transferors, viz. Piramal Enterprises Ltd and Piramal Capital and Housing Finance Ltd, towards purchase of loans (including NCDs, ICDs and term loans) is the purchase consideration for acquiring the right to receive the principal along with interest from the debtor at maturity and no part of the consideration can be termed as "*interest*" paid by the assessee to the transferors. Thus, as per the assessee, the consideration paid is a lump sum towards the assets taken, comprising loans, NCDs and accrued interest till the date of transfer, and the same does not bring into existence a relationship of borrower-lender between the transferors and the assessee.

7. We find that a similar issue came up for consideration before the coordinate bench of the Tribunal in the case of assessee's sister concern in Piramal Capital and Housing Finance Ltd v/s ACIT, reported in (2024) 169 Taxmann.com 512 (Mumbai-Trib.). While deciding the issue in favour of the taxpayer, the coordinate bench of the Tribunal, in the aforesaid decision, observed as follows: –

> *"9. We have considered the rival submissions and perused the material on record.*
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> *10. The case set up by the Assessing Officer and confirmed by the CIT(A) is that the Appellant had committed default in complying with the provision contained in Section 193/194A of the Act as the Appellant had failed to deduct tax at source from the payments made to PEL which were in excess of the principle value of the ICDs/NCDs/Term Loans recorded in the books of accounts of PEL. On perusal of Section 193 and 194A of the Act we find that any person responsible for paying any income by way of 'interest on securities' or 'interest other than interest on securities' is under obligation to deduct income tax from the same (a) at the time of credit of such income to the account of the payee, or (b) at the time of payment thereof, whichever is earlier. Thus, the obligation to withhold tax under Section 193/194A of the Act gets fastened on credit or payment, whichever is earlier. IT is admitted position that in the present case the accrued interest had been recorded in the books of accounts of PEL. The contention of the Appellant that borrowers had deducted tax at source from such interest income [at the time of credit of such income in the account of PEL in their respective books of accounts] and had deposited the tax so deducted with the Government Treasury as per provisions of the Act has not been controverted by the Revenue. Therefore, in our view, in the present case, the provisions of Section 193/194A of the Act having already been triggered and complied with at the time of credit of interest income to the account of PEL in the books of accounts of the borrowers fi.e. the person responsible for making payment of such interest income at the relevant time), would not again get triggered on payment of the same interest income by the Appellant to PEL. In case the contention of the Revenue is accepted it would amount to subjecting same interest income to deduction of tax at source once at the time of credit and then again at the time of payment. Whereas Section 193/194A of the Act provide for deduction of tax at source at the time of credit or payment, whichever is earlier. Therefore, we hold that, given the facts and circumstances of the present case, the provisions contained in Section 193/194A of the Act were not attracted and therefore, the question of Appellant committing default in complying with the same does not arise.*
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> *11. Further, we note that it is also admitted position that when the interest income had accrued to PEL, the existed lender-borrower relationship between PEL and the borrowers. Subsequently, the Appellant stepped into the shoes of*

PEL and as a result, lender borrower relationship between the Appellant and the borrowers came into existence. The borrowers continued to be under contractual obligation to make payment of interest/accrued interest while the Appellant acquired the right to receive the same. There is no dispute as to the fact that no lender-borrower relationship existed between the Appellant and PEL at any point in time. Therefore, in absence of any statutory/contractual obligation on the part of Appellant to discharge the borrowers obligation to make payment towards interest/accrued interest to PEL, the Appellant cannot be regarding as person responsible for paying income by way of interest/interest on securities to PEL in terms of Section 194A/193 of the Act.

11.1. In the case of State Bank of India v. DCIT [2024] 163 taxmann.com 266 (Mumbai - Trib.) , the Mumbai Bench of Tribunal had accepted the contention of the assessee that to trigger the provisions contained in Section 2(28A) of the Act provisions the existence of 'moneys borrowed or debt incurred' is necessary. In absence of 'moneys borrowed or debt incurred' the payment made by the assessee in that case could not have been subjected to deduction of tax at source in terms of Section 194A of the Act. Further, the nature of income in the hands of the recipient and the nature of expenditure of the said sum in the hands of the payer need not be the same. The relevant extract of the aforesaid decision of the Tribunal reads as under:

> *"16. In order to decide whether interest retained by the NBCs on the pool of assets allotted to the assessee falls within the category of "interest" for the purpose of section 194A of the Act, it is firstly pertinent to note the relevant provisions of the Act. As per section 194A of the Act, any person, not being an individual or a HUF, who is responsible for paying to a resident any income by way of interest, shall at the time of credit of such income to the account of payee deduct income tax thereon at the rates in force. The term "interest" has been defined under section 2(28A) of the Act as under-*
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> > *2(28A) "interest" means interest payable in any manner 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 or in respect of any credit facility which has not been utilised;**
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> *17. Therefore, from the plain reading of the provisions of section 2(28A) of the Act, it is evident that interest means interest payable in respect of any money borrowed or debt incurred. As per the Revenue, since 90% of the pool of assets was purchased by the assessee, therefore the total interest pertaining to the assessee's share first accrued to the assessee and thereafter the same, by virtue of the tripartite agreement, is allowed by the assessee to be retained back by the originating NBFCs. Therefore, in light of the provisions of Section 194A read with Section 2(28A) of the Act, it needs to be examined whether the part interest allowed to be retained back with the originating NBFC by the assessee. In the present case, it has been disputed that the assessee purchased a pool of loans from the NBFCs by way of Direct Assignment. It is also the claim of the Revenue that by purchasing the loan, the assessee, to the extent of its share, i.e.90%, has stepped into the shoes of the NVFCs, and if there is a default on a particular loan (for the 90% pool assigned to the assessee) the entire loss will come to the assessee. In the present case, it also cannot be disputed that the borrowers have taken the loans from the NBFGs, which were subsequently purchased by the assessee by way of Direct Assignment, and on these loans, the borrowers are paying interest, which is getting deposited in "Collection and Payee Account, which is the Escrow*

Account operated by the Assignee Representative and ultimately this interest is distributed amongst the NBFC and the assessee as per the tripartite agreement. Therefore, from the aforesaid undisputed fact, it is sufficiently evident that the assessee has only purchased a part of loan by making the upfront payment and allowing the originating NBCs to retain part interest on such loan paid by the borrowers. In the present case, there is no material available on record to show that the assessee borrowed any funds or incurred any debt from the NBFC. Such being the facts of the present case, the question of payment or crediting of interest by the assessee in favour of NBFC does not arise. Therefore, in the absence of any funds borrowed or debt incurred by the assessee from the NBFC, we are of the considered view that the part interest allowed to be retained back with the originating NBFC cannot be said to be interest within the meaning of section 2(28A) of the Act. Further, it is pertinent to note that under section 194A of the Act, the payment must be in the nature of interest in order to make the payer responsible for deducting tax at the time of payment or credit of such income. Therefore, though the payment by the borrower of the loan, in the present case, is in the nature of interest, however, when the same is allowed to be retained with the originating NBFC by the assessee under the tripartite agreement, the nature of the same is converted to a consideration for the purchase of 90% of the pool of assets. The nature of income in the hands of the recipient and the nature of expenditure of said sum by that person may not always be the same. Therefore, it is no necessary that what is received as interest is also interest when paid, particularly in the absence of any money borrowed or debt incurred. Accordingly, we are of the considered view that there is no obligation on the assessee to deduct tax at source under section 194A of the Act. Thus, levy of tax under section 201(1) and levy of interest under section 201(1A) of the Act for non-deduction of TDS under section 194A of the Act is not sustainable. Accordingly, grounds no.1, 2, and 4 raised in Revenue's appeal are dismissed."

(Emphasis Supplied)

11.2. To the same effect is the decision of Mumbai Bench of the Tribunal in the case of Idea Cellular Ltd. v. ADIT (2015] 58 taxmann.com 101/69 SOT 526/41 ITR(T) 338 wherein it was held that as under:

"9. Now, the issue before us is, whether such a fees paid to the arranger can be termed as "interest" within the meaning of section 2(28A) or "fees for technical services for service" within the meaning of section 9(1)(vii).

10. The definition of "interest" u/s 2(28A) reads as under:-

"interest" means interest payable in any manner 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 or in respect of any credit facility which has not been utilised;'

From the above definition, it can be inferred that the term "interest" covers, firstly, the interest payable in any manner in respect of any money borrowed or debt incurred and, secondly, such interest payable includes any service fee or other charge in respect of the money borrowed or debt incurred or in respect of any credit facility which has not been utilised. In the main limb of the

definition, it is amply clear that interest should be in respect of the money borrowed or debt incurred. In other words, the interest is payable by the borrower who had borrowed the money from the lender or the debt has been incurred by him in favour of the lender who has given the money. The Arranger is not the lender as the person who has provided the money and any fee paid to him is not in respect of the borrowing, because no debt has been incurred by the assessee in favour of the Arranger vis-a-vis the money borrowed. He is merely a facilitator who brings lender and borrower together for facilitating the loan/credit facility. The second limb of the definition is an inclusive definition whereby interest encompasses to include service fee or other charge and such fee is in respect of the money borrower or any debt incurred or, for unutilised credit facility. Here also, such fee or charge is in respect of money borrowed only i.e. given by the lender to the borrower. The service fee or other charge does not bring within its ambit any third party or intermediary who has not given any money. The fundamental proposition permeating between various kinds of payments which has been termed as "interest" in the section is that, these payments are paid/payable to the lender either for giving loan or for giving the credit facility. Nowhere the definition suggests that payment of interest includes some kind of fee paid to a third party who has not given any loan or any credit facility. The Id. CIT(A) held that Arranger fee paid is nothing but a part of debt or loan taken by the assessee and utilised thereof and, therefore, it is interest payable within the meaning of section 2(28A). In our opinion, such an interpretation cannot be upheld because, it is not a part of debt or loan payable to the lender but it has been paid for facilitating the loan for the borrower from the lender. The element of relationship between the borrower and lender is a key factor to bring the payment within the ambit of definition of interest u/s 2(28A). The Arranger fee may be inextricably linked with the loan or utilisation or loan facility but it is not a part of interest payable in respect of money borrowed or debt incurred, because the relationship of a borrower or a lender is missing. Though, the fees of an Arranger may depend upon the quantum of loan or loan facility arranged but to be included within the meaning of term 'interest, it has to be directly in respect of money borrowed, i.e. directly flowing from the consideration paid for the use of money borrowed. It is a kind of a compensation paid by the borrower to the lender. Thus, Arranger is only a intermediary/third party and accordingly, any fee paid as Arranger fee cannot be termed as "interest" under both the limbs of the definition; given in section 2(28A). Therefore, the assessee was not liable to deduct tax for such payment, as it does not fall within the ambit of interest." 11.3. Accordingly, we accept the contention of the Appellant that in absence of any moneys borrowed or debt incurred, payments made by the Appellant to PEL in excess of the principle value of the ICDs/NCDs/Term Loans recorded in the books of accounts of PEL aggregating to INR.490,33,93,825/- cannot be regarded a 'interest'/interest on securities' as defined in Section 2(28A)2(28B) of the Act."

8. We find that the learned Addl./Joint CIT(A), vide impugned order, placed reliance on the aforesaid decision and held the assessee to be not under an obligation to deduct tax at source under section 194A of the Act. Accordingly, respectfully following the aforesaid decision of the coordinate bench of the

Tribunal, we do not find any infirmity in the findings of the learned Addl./Joint CIT(A) on this issue. Accordingly, the impugned order is upheld, and the grounds raised by the Revenue are dismissed.

9. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 21/08/2025

Sd/-	**Sd/-**
NARENDRA KUMAR BILLAIYA **ACCOUNTANT MEMBER**	**SANDEEP SINGH KARHAIL** **JUDICIAL MEMBER**

MUMBAI, DATED: 21/08/2025

Prabhat

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

By Order

Assistant Registrar

ITAT, Mumbai