IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1493 OF 2016
WITH
INCOME TAX APPEAL NO.1495 OF 2016
WITH
INCOME TAX APPEAL NO.1496 OF 2016

Commissioner of Income-Tax (TDS)-2 … Appellant

V/s.

The Baroda Rayon Corporation Ltd. … Respondent

Mr.Suresh Kumar for the Appellant.

CORAM : AKIL KURESHI AND
SANDEEP K.SHINDE, JJ.
DATE : JANUARY 28, 2019.

P.C.:-

1. These appeals arise out of the common judgment of the Income Tax Appellate Tribunal filed by the revenue.

2. Following questions are presented for our consideration:-

> "I. Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in allowing relief to the assessee relating to non deduction of tax at source in respect of interest on debenture on the ground that no income has accrued to or has been received by the debenture

holders under the provisions of Sec.193 of the Act, without appreciating that w.e.f. 01.06.89 words 'at the time of credit' has been inserted in Section 193 of the I.T. Act alongwith the explanation to Sec. 193 w.e.f. 01.06.1989 which casts an obligation on the assessee to deduct tax at source at the time of credit of such income ?

II. Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in ignoring the provisions of Section 193 of the Act, which states that "the person responsible for paying any 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 at the rates in force on the amount of interest payable?"

III. Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the addition on the ground that assessee has not claimed any deduction in respect of interest on debentures without appreciating that in the P & L a/c the same has been debited by the assessee?

IV. Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in deleting the addition relating to non deduction of tax at source in respect of interest on debenture, without appreciating the fact that assessee has disallowed the expenditure of interest on debentures u/s. 43B and not u/s. 40a(i)(a) and in subsequent year, if the same is allowed on payment basis without considering the issue of non deduction of tax on the interest paid to debenture holders, it will result in loss to the exchequer?

V. Whether on the facts and in the circumstances of the case and in law, the ITAT erred in rejecting the order of the Assessing Officer by holding that the assessee is not in default u/s 201(1) for non

> deduction of tax in respect of interest on debenture as required under section 193 and that the assessee is not liable for levy of interest under section 201(1A)? "

3. Though multiple questions are framed, issue is single namely correctness of the action of the Assessing Officer to hold that the assessee had failed to deduct tax at source as mandated by Section 193 of the Income Tax Act ("the Act" for short) and that resultantly assessee's liabilities under section 201(1) and 201(1A) had arisen.

4. The assessee had issued convertible debentures to Banks and Financial Institutions, however, soon thereafter the assessee-company went sick and was before BIFR. No interest was paid on such debentures under such circumstances. However, the assessee to comply with the legal requirements, had credited such interest in the accounts of the debenture holders. In background of such facts, the Assessing Officer was of the opinion that liability deduct tax at source under Section 193 of the Act had arisen. The CIT (Appeals) however noted that it was merely

an entry made to comply with legal requirements, that interest was never paid and infact the assessee did not even claim the same as expenditure. The Tribunal in appeal further elaborated this aspect. Noticing that the assessee was a sick company and was before BIFR. In view of the financial condition, the assessee had not paid interest to these financial institutions. However, liability was provided only in the accounts for compliance of the requirements under the Companies Act.

5. Learned counsel for the revenue may be correct in pointing out that the requirement of deducting tax at source may arise even in a case where such interest is credited in the accounts of the creditor. However, in the peculiar facts of the present case such requirement cannot be stretched to unreasonable levels. The debenture holders never claimed interest. The assessee could never pay the interest. The assessee was a sick industrial unit. Its case was before BIFR. The entries crediting the interest had to be made to comply with the mandatory requirements of law. On the principle of real income theory also the order of Commissioner (Appeals) and the Tribunal can

be supported.

6. In the result, Income Tax Appeals are dismissed.

(SANDEEP K.SHINDE, J.) **(AKIL KURESHI,J.)**

....