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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 323/2026 CM APPL. 26251/2026

PR. COMMISSIONER OF INCOME TAX -7, DELHI .....Appellant

Through: Mr. Puneet Rai, SSC, Mr. Ashvini Kumar and Mr. Rishabh Nangia, JSCs.

versus

PUNJAB NATIONAL BANK .....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR

<u>O R D E R</u>

% **21.04.2026**

1. By way of the present appeal, the Income Tax Department has challenged the order dated 28.08.2025 passed by the Income Tax Appellate Tribunal, Delhi 'A' Bench (ITAT) (*hereinafter referred to as 'the Tribunal*) for the Assessment Year 2020-21.

2. The substantial question of law proposed by the Department reads as under:-

> *"a) Whether, on the facts and in law, the Hon'ble ITAT erred in law in allowing credit of tax deducted at source (TDS) amounting to Rs. 4.42 crores relating to sale of properties of defaulting borrowers without examining that part of the corresponding income was not offered to tax by the assessee bank in contravention of the provisions of*

Section 199 of Income Tax Act, 1961?"

3. Mr. Puneet Rai, learned Senior Standing Counsel for the appellant argued that the Tribunal has erred in rejecting the Department's appeal by simply relying upon the findings of the Commissioner of Income Tax (Appeals) (*hereinafter referred to as 'CIT(A)'*) without giving its own findings or reasons *qua* its order.

4. In relation to merits of the case, Mr. Rai contended that the amount was deducted from the payment received by the respondent-Bank in relation to the auction/sale of the property as per the scheme of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*hereinafter referred to as 'SARFAESI Act'*).

5. He submitted that since the amount was deducted from the sale consideration, unless the Bank showed the corresponding income in relation to sale of those assets, the amount of Tax Deducted at Source (TDS) could neither be refunded nor claimed as a tax credit.

6. Heard learned counsel for the appellant and perused the record.

7. It true is that the Tribunal has not given its own findings or reasons while affirming the same and has merely reproduced the relevant part of the order of the CIT(A) in para no.16 of its order. Such approach cannot be countenanced.

8. On perusal of para no. 16 of the Tribunal's order, we find that the CIT(A) has made reference of wrong provision *viz* Section 194A of the Income Tax Act, 1961 *(hereinafter referred to as 'the Act of 1961')*, whereas the correct provision ought to have been Section 194IA of the Act of 1961.

9. We have verified the facts from the assessment order. We find that

Section 194IA of the Act of 1961 is the correct provision under which the tax could have been deducted, as the tax was deducted at the time of and from the proceeds of sale of an immovable property.

10. When the tax is deducted in relation to the amount paid/received *qua* purchase/sale of the property, then one has to bear in mind the nature of transaction.

11. In case of auction/sale of a property under the provisions of the SARFAESI Act, the Bank cannot be treated to be the owner, as it only has possession of the property for having security interest in the property and corresponding rights to sell the same for recovery of its dues. The property neither factually nor by any legal fiction belongs to the Bank. It is actually the borrower who is the owner of the property having created a security interest in relation to the property in favour of the Bank or secured creditor.

12. The Bank during the course of assessment proceedings, had clearly explained before the Assessing Officer(AO) that it had charged interest on the loan amount and has adjusted all expenses from the sale proceeds it received consequent to the auction. When the secured assets are sold by the Bank, it is only a trustee or custodian of the sale proceeds and any excess amount received in relation to the property over and above its outstanding dues and expenses incidental to the auction, has to be returned to the borrower. Similarly, in case there is any deficit, the Bank can recover the same from the borrower in accordance with law.

13. The property does not belong to the Bank and therefore, irrespective of the fact that the amount has been deducted under Section 194IA of the Act of 1961 from the sale proceeds, the Bank is entitled to get refund of that amount because, Bank's asset was not sold by the Bank. The respondent-

Bank is entitled to get refund of the amount deducted from the sale proceeds, as has been rightly held by the CIT(A).

14. We therefore, do not find any error in the orders of the CIT(A) so also of the Tribunal. They are hereby affirmed.

15. The appeal is rejected.

16. The appeal along with the pending application is disposed of.

DINESH MEHTA, J

VINOD KUMAR, J

APRIL 21, 2026/*dd*