

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH 'DB', NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA Nos. 83, 84 & 85/Jodh/2023
Assessment Years: 2016-17, 2017-18 & 2018-19
(Through Virtual Mode)**

Maharaja Ganga Mahal, 0, Rathkhana Colony, Bikaner (Rajasthan). PAN: AANFM1000F (Appellant)	Versus	Income-tax Officer(TDS), Bikaner. (Respondent)
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Assessee by : Sh. Shafi Mohd. Chouhan, Adv. &
Sh. D.K. Vyas, C.A.

Revenue by : Sh. Rajeev Mohan, JCIT-DR

Date of hearing : 11.09.2023

Date of pronouncement: 18.09.2023

ORDER

Present appeals by the assessee arise out of three separate orders passed by National Faceless Appeal Centre (NFAC), Delhi pertaining to assessment years 2016-17, 2017-18 and 2018-19.

2. The common dispute arising in all these appeals relates to treating the assessee as an assessee in default for not deducting tax at source under various provisions of the Income-tax Act, 1961 and raising demands under section 201(1) and 201(1A) of the Act.

ITA No. 83/Jodh/2023 (A.Y. 2016-17):

3. Briefly, the facts are, as stated by the Assessing Officer, the assessee is engaged in hotel business and provides facility for rooms, restaurant and bar. To verify the TDS compliance, a survey under section 133A (2A) of the Act was conducted in the business premises of the assessee on 18.01.2019. In course of survey, it was found that the assessee has not deducted tax at source on laundry payment of Rs.4,28,663/-. It was further observed that the assessee has not deducted tax at source on payment of interest of Rs.6,13,104/- to AU Financiers (India) Ltd., a non-banking financial corporation (NBFC). Noticing the default committed by the assessee, the Assessing Officer initiated proceedings under section 201 of the Act by issuing show cause notice to the assessee. As far as laundry payment of Rs.4,28,663/- is concerned, the Assessing Officer was of the view that the payment is covered under section 194C of the Act, hence, required deduction of tax at source. Since the assessee has failed to deduct tax at source, the Assessing Officer computed the TDS amount along with interest under section 201(1A) at Rs.6,040/-. In so far as interest paid to AU Financiers (India) Ltd. is concerned, the

Assessing Officer applied the provisions of section 194A of the Act and computed the TDS liability and interest thereon in terms of section 201(1) and 201(1A) at Rs.83,382/-. Thus, in nutshell, the Assessing Officer raised the demand of Rs.89,422/- under section 201(1) and 201(1A) of the Act. Contesting the demand so raised, the assessee preferred appeal before learned first appellate authority. However, the appeal was dismissed.

4. Before us, learned counsel appearing for the assessee submitted that provisions of section 194A of the Act are not applicable to the interest paid to AU Financiers (India) Ltd., as it is covered under exceptions provided in Explanation –III(a) to section 194A(3) of the Act. He submitted, though, AU Financiers (India) Ltd. was registered as a NBFC, however, the Reserve Bank of India (RBI) granted approval to the said entity as a small finance bank in the private sector vide letter dated 16th September, 2015. Thus, he submitted, since, at the time of payment/credit of interest, AU Financiers (India) Ltd. was having status of a bank, there was no requirement of deduction of tax at source under section 194A of the Act.

5. As regards the payment made towards laundry expenses, learned counsel submitted that such payment will not fall within the ambit of section 194C of the Act. Without prejudice, he submitted that though, the PAN of laundry service provider was provided to the Assessing Officer, he did not verify whether the concerned party has offered the receipts to tax or not.

6. Learned Departmental Representative relied upon the observations of the Assessing Officer and learned first appellate authority.

7. We have considered rival submissions and perused materials on record. Undisputedly, the assessee had paid interest of Rs.6,13,104/- to AU Financiers (India) Ltd. in the year under consideration. Alleging non-deduction of tax at source under section 194A of the Act, the Assessing Officer has raised demand under section 201(1) and 201(1A) of the Act. However, materials placed on record reveal that AU Financiers (India) Ltd. has been granted the status of a small finance bank w.e.f. September, 2015. A careful reading of section 194A of the Act reveals that certain payments have been excluded from compulsion of deduction of tax at source. As per Explanation-

III(a) to section 194A(3) of the Act, any income credited or paid to any banking company, to which the Banking Regulation Act, 1949 applies, has been excluded from applicability of section 194A of the Act. The approval granted by the RBI to AU Financiers (India) Ltd. makes it clear that it has been covered under the Banking Regulation Act, 1949. That being the case, we hold that the interest paid to AU Financiers (India) Ltd. will not be covered under section 194A of the Act. Hence, there is no obligation on the assessee to deduct tax at source while paying interest to the concerned party. Therefore, the demand raised under section 201(1) and 201(1A) of the Act in respect of interest paid to AU Financiers (India) Ltd. is hereby deleted.

8. In so far as payment made towards laundry services, the assessee has not brought any material on record to establish that payment is not subject to TDS. Further, the assessee has not established the applicability of first proviso to section 201. Therefore, we uphold the demand.

ITA No. 84/Jodh/2023 (A.Y. 2017-18):

9. We have heard the parties. Facts in this appeal are more or less identical to ITA No. 83/Jodh/2023 except little variation in the sense that in this year, the assessee has made following payments :

Nature of payment	Name of recipient	Amount paid	TDS to be deducted	Interest	Total default
Int. to NBFC u/s 194-A	AU Small Finance	1,00,42,501/-	10,04,250/-	5,29,804/-	15,34,054/-
Int. to NBFC u/s 194-A	HDB Financial Services	17,94,183/-	1,79,418/-	92,142/-	2,71,560/-
Int. to NBFC u/s 194-A	Bajaj Finserve	2,12,575/-	21,257/-	10,892/-	32,149/-

10. In so far as interest paid to AU Small Finance is concerned, elsewhere in the order, we have already decided that said payment will not be covered under section 194A of the Act. Accordingly, we delete the demand raised in respect of such payment.

11. In so far as interest paid to HDB Financial Services is concerned, before us, learned counsel has submitted that the concerned payee has offered the income to tax in the return of income filed in the assessment year under dispute. Keeping in view the aforesaid submission of learned counsel, we direct the Assessing Officer to factually verify, whether, the recipient of interest income has offered it to tax in the return of income filed in the concerned

assessment year and in case, it is found to be so, no demand under section 201(1) can be raised. However, interest under section 201(1A) has to be charged till the date of payment of tax by the recipient of such income.

12. In so far as the interest paid to Bajaj Finserv is concerned, learned counsel has submitted before us that the conditions of first proviso to section 201 has been complied and Form No. 26A collected from the payee has been furnished. Keeping in view such submission of the assessee, we direct the Assessing Officer to factually verify Form 26A furnished by the assessee in respect of interest paid to Bajaj Finserv and in case the declaration in Form 26A is found to be in order, no demand under section 201(1) can be raised. However, the Assessing Officer may consider charging interest under section 201(1A) of the Act till the date of payment of tax by the payee.

13. Besides the above, there are two other payments, i.e., payment of Rs.1,35,103/- to Booking.com and payment of Rs.4,59,874/- to Shiva Laundry having subjected to the proceedings under section 201(1) and 201(1A) of the Act. The only submission made by learned counsel before us is that the Assessing Officer failed to verify whether

payments are covered under the first proviso to section 201. Having taken note of the fact, we are of the view that the duty is cast upon the assessee to furnish primary facts to establish that the recipient of the payment has offered the income to tax. Since, no material has been brought on record by the assessee to establish such claim, we decline to interfere with the decision of the departmental authorities. Appeal is partly allowed.

ITA No. 85/Jodh/2023 (A.Y. 2018-19):

14. We have heard the parties and perused materials on record. Facts are more or less identical to the other two appeals dealt in earlier part of the order. However, in this year, payments have been made to the following parties :

Nature of payment	Name of recipient	Amount paid	TDS to be deducted	Interest	Total default
Int. to NBFC u/s 194-A	AU Small Finance (become Bank w.e.f 19/04/2017)	1,04,040,76/-	10,40,408/-	4,22,517/-	14,62,925/-
Int. to NBFC u/s 194-A	HDB Financial Services	12,72,663/-	1,27,266/-	57,309/-	1,84,575/-
Int. to NBFC u/s 194-A	Bajaj Finserve	2,39,535/-	23,593/-	10,557/-	34,510/-
Int. to NBFC u/s 194-A	India Bulls	24,42,711/-	2,44,271/-	95,032/-	3,39,303/-

15. In so far as the payment made to AU Small Financiers (India) Ltd. is concerned, while deciding other appeals, we have already held that the interest paid to the concerned party is not covered under section 194A of the Act. Consistent with the view expressed in those appeals, we direct the Assessing Officer to delete the demand raised in respect of interest paid to AU Small Financiers (India) Ltd.

16. In so far as interest paid to HDB Financial Services, facts are identical to ITA No. 84/Jodh/2023. Following our decision therein, we direct the Assessing Officer to verify whether the payment is covered under first proviso to section 201 of the Act.

17. In so far as payment made to Bajaj Finserv is concerned, admittedly, the assessee had furnished certificate in Form 26A in terms with first proviso to section 201 of the Act. Therefore, we direct the Assessing Officer to factually verify the certificate issued in Form 26A by the concerned payee and thereafter delete the demand raised under section 201(1) of the Act. However, interest under section 201(1A) has to be charged till the date of payment of tax by the concerned payee.

18. In so far as some other payments made to Booking.Com, MMT, Creaa Think, Fabric Spa and Shiva Laundry is concerned, since, the assessee has failed to bring on record even the primary facts to establish that the said payments are covered under first proviso to section 201, we decline to interfere with the decision of departmental authorities. Appeal is partly allowed.

19. In the result, all the appeals are partly allowed.

Order pronounced in the open court on 18/09/2023.

Sd/-

Sd/-

(GIRISH AGRAWAL)

(SAKTIJIT DEY)

ACCOUNTANT MEMBER

VICE-PRESIDENT

Dated: 18.09.2023

*aks/-