

INSTITUTE OF INSOLVENCY PROFESSIONALS

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Learning Curve-492

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The Liquidator of a Company in liquidation under the Code is not required to file Income Tax Return, then there is no question of claiming refund of TDS deducted under Section 194 IA of the IT Act.

CASE TITLE	Om Prakash Agrawal Liquidator-S.Kumars Nationwide Limited v. Chief Commissioner of Income Tax (TDS)andOrs. ¹
CASE CITATION	Company Appeal (AT) (Insolvency) No. 624 of 2020
DATE OF ORDER	08.02.2021
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	<i>Leo Edibles & Fats Limited Vs. Tax Recovery Officer (Central)</i> <i>LML Limited Vs. Office of</i> <i>Commercial of Income Tax, Mumbai</i> <i>Imperial Chit funds (P) Ltd. Vs. Income Tax Officer</i>
SECTION/REGULATION REFERRED	Section 53 IBCandSection 194-IA, 178 of the Income Tax Act

Brief of the case:

The Liquidator filed an Application before the AA for direction against the successful bidder in auction held for sale of assets of the Corporate Debtor and, Income Tax Authority not to deduct 1 % TDS from the sale consideration on the premise that Income Tax dues can be recovered by the department as per waterfall mechanism set out under Section 53 of IBC. AA held that the deduction of Tax at source under Section 194-IA of the IT Act does not mean assessment and raising demand for collection of Tax by the Department.

Decision:

Hon'ble NCLAT set aside the impugned order and held that,

“We are of the view that the Liquidator of a Company in liquidation under the Code is not required to file Income Tax Return, then there is no question of claiming refund of TDS deducted under Section 194 IA of the IT Act ..Ld. Adjudicating Authority has erroneously held that the deduction of Tax at source does not mean raising demand for collection of tax by the Department. Actually TDS under Section 194 IA, is an advance capital gain tax, recovered through transferee on priority with other creditors of the company. Hence, inconsistent with the provision of Section 53 (1) (e) of the Code and by virtue of Section 238 of the Code, the provision of Section 53(1) (e) shall have overriding effect. Thus, the impugned order is not sustainable in law. Therefore, it is hereby set aside.”



QR CODE FOR FULL ORDER/JUDGEMENT:

¹<https://nclat.nic.in/Useradmin/upload/155180032160212e9286f98.pdf>