



# DELHI TRIBUNAL ADDRESSES AN IMPORTANT CONSIDERATION FOR FPIS



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The Delhi Bench of the Income Tax Appellate Tribunal has recently delivered a ruling in the case of *Amplus Energy Solutions Pte Ltd*<sup>1</sup> concerning Foreign Portfolio Investors (FPIs) earning income from Indian debt instruments upto July 1, 2023.

The Tribunal has held that the concessional tax rate of 5% under Section 194LD of the Income-tax Act, 1961 (“the Act”) is not confined to interest earned from rupee-denominated “bonds” alone, but also extends to interest income from “debentures,” including Optionally Convertible Debentures (OCDs) and Compulsorily Convertible Debentures (CCDs), provided the instruments are rupee-denominated and other statutory conditions are satisfied.

### Key Findings

1. **“Bonds” include “Debentures”:** The Tribunal noted that the term “bonds” is not defined under the Act. Both bonds and debentures are fundamentally debt instruments, and the definition of “debenture” under Indian corporate law includes bonds. Relying on this inclusive definition and on judicial precedents which recognise Non-Convertible Debentures (NCDs) as debt securities, the Tribunal held that the debenture instruments (NCDs, OCDs and CCDs) fall within the scope of Section 194LD.
2. **Characterisation of CCDs/OCDs:** The Tribunal reaffirmed the settled position that convertible debentures retain the character of debt until conversion. It elaborated on the difference between debenture holders and shareholders, reiterating that CCDs and OCDs cannot be regarded as equity unless and until they are actually converted into shares.
3. **Purposive Interpretation over Literal Reading:** Highlighting the legislative intent behind Section 194LD, the Tribunal adopted a purposive interpretation. It observed that excluding OCDs and CCDs from the concessional tax regime would defeat the provision’s objective—namely, to incentivise investments in rupee-denominated debt instruments where Indian companies are not exposed to foreign exchange risk.

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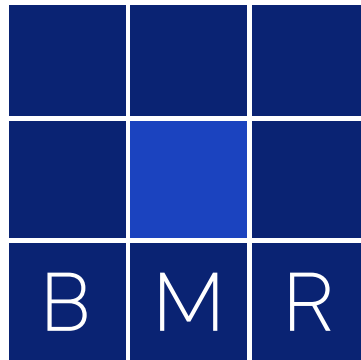
<sup>1</sup> ITAs No.2417 & 3370/Del/2023

### **BMR View**

In our view, the ruling brings much-needed clarity and reaffirms the position that convertible debentures are to be treated as debt instruments until their conversion into equity. The judgment aligns judicial interpretation with India's broader policy objective of attracting foreign investment into rupee-denominated securities.

[A copy of the ruling can be found here](#)

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