

## **आयकर अपीलिय अधिकरण, कटक न्यायपीठ, कटक**

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK  
BEFORE SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM

आयकर अपील सं./ITA Nos.280 & 281/CTK/2015

(निर्धारण वर्ष / A.Ys :2008-2009 & 2010-2011)

M/s Northern Electricity supply Commission of Orissa Ltd., Januganj, Balasore	Vs.	DCIT (TDS-II), Bhubaneswar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AABCN 3921 H</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

**AND**

आयकर अपील सं./ITA Nos.227/CTK/2015

(निर्धारण वर्ष / A.Y :2008-2009)

DCIT (TDS-II), Bhubaneswar	Vs.	M/s Northern Electricity supply Commission of Orissa Ltd., Januganj, Balasore
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AABCN 3921 H</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Manoj Patra, CA AR

राजस्व की ओर से /Revenue by : Shri D.K.Pradhan, DR

सुनवाई की तारीख / Date of Hearing : 11/10/2017

घोषणा की तारीख/Date of Pronouncement 13/10/2017

### **आदेश / O R D E R**

**Per Shri Pavan Kumar Gadale, JM:**

These are the cross appeals filed by the assessee and revenue against the order of CIT(A)-1, Bhubaneswar, dated 9.2.2015 & 26.3.2015 for the assessment years 2008-09 & 2010-2011, passed u/s.254/201(1)/(1A) of the Income Tax Act, 1961.

2. Out of these three appeals, appeal of the assessee i.e. ITA No.280/CTK/2015 is filed with 14 days barred by 14 days. Considering the application filed by the assessee for condonation of delay, we condone

the delay of 14 days in filing the appeal and the appeal is heard on merits along with other connected appeals.

3. Since the issue and facts involved in these appeals are interconnected and common, they are being heard and disposed off through consolidated order. For the sake of convenience, we shall take up the appeal filed by the assessee in ITA No.280/CTK/2015 for the assessment year 2008-2009, wherein the assessee has raised the following grounds :-

1. *Treating the appellant as assessee in default for non deduction of tax on interest accounting of Rs.4,10,45,248/- on Gridco loan is not based on any logic as the appellant has not affected any direct payment to GRIDCO and it was done pursuant to order of OERC.*
2. *GRIDCO being a wholly own Govt. of Orissa undertaking TDS on interest payment to Gridco is not deductible in terms of notification number S.0-3489 of CBDT read with sub-Clause (f) of Clause -CiW of sub-section -3 of section - 194A of LT. Act, 1961.*
3. *That the appellant craves leave to add or to amend the above grounds of appeal before or at the time of hearing of the appeal.*
4. *For these and among other grounds to be urged at the time of hearing, adequate relief as may be deemed fit be granted in the matter.*

4. Brief facts of the case are that the assessee is engaged in the business of supply of electricity transmission. Earlier the AO had passed an order and raised demand of Rs.1,35,49,880/- u/s.201(1) & 201(1A) of the Act. Aggrieved by the order, appeal was filed before the first appellate authority and the Id. CIT(A) issued certain directions to the AO and disposed of the appeal. Aggrieved, the assessee assailed an appeal before the Tribunal and the Tribunal restored the matter to the file of AO

and directed the AO to determine the quantum of amount payment to GRIDCO and the nature of payment. Accordingly, the AO passed the order holding the assessee in default for non-deduction of TDS on interest Rs.4,10,45,248/- in the financial year 2007-08 paid to GRIDCO and Rs.1,33,53,680/- paid to REC and passed the assessment order dated 22.3.2013.

5. Aggrieved by the order of AO, the assessee has filed an appeal before the CIT(A). The CIT(A) on the issue of non-deduction of TDS on REC payments observed the Id. AR's submissions that REC has filed return of income on 30.3.2010 and the ledger account of interest of the assessee in the books of REC show that interest amounting to Rs.1,40,77,318/- has been received by the REC and relied on the decision of Hon'ble Apex Court in the case of Hindustan Coca Cola Beverages (P) Ltd., 293 ITR 226 (SC) and directed the AO not to treat an assessee as assessee in default on payment of interest to REC and on second disputed issue of payment of interest to GRIDCO the assessee submitted the notification No.3489, dated 22.10.1970 and the CIT(A) observed the notification is without any supporting evidence and the submission does not have any merit and finally, the CIT(A) upheld the action of AO on this payment of interest and treated as assessee-in-default and partly allowed the appeal.

6. Aggrieved by the order of CIT(A), the assessee has filed an appeal before the Tribunal.

7. Before us, Id. AR submitted that the interest payments to GRIDCO which is a Government of Odisha undertaking and a PSU. Further provisions shall not be applied as the transaction is between two Government companies and provisions of Section 194A(f)(iii) of the Act and prayed for allowing the appeal. Contra, Id. DR relied on the orders of CIT(A).

8. We have heard the rival contentions and perused the material on record. Prima facie, the main crux of the disputed issue is with respect to non-deduction of TDS by the assessee. Id. AR's contention that the assessee is not liable to deduct tax in view of the CBDT's Notification No.SO-3489, dated 22.10.1970. At the time of hearing, a query was raised by the bench to the assessee as to whether it could be substantiated with any other evidence for the Government enterprise. The Id. AR produced copy of annual report and explained that it is an Odisha Government Undertaking and prayed for an opportunity to substantiate it as a Government company with evidence. Accordingly, we considering the apparent facts, material on record, are of the substantial view that for limited purpose the disputed issue is remitted to the file of AO for verification and the assessee shall file details and material and the grounds of appeal of the assessee is allowed for statistical purposes.

9. Now, we shall take appeal of the revenue in ITA No.227/CTK/2015 for the assessment year 2008-09. Id. DR submitted that the CIT(A) is not justified in deleting the tax/interest u/s.201(1)/201(1A) of the Act and the

CIT(A) erred in taking suo moto decision. Contra, Id. AR relied on the order of CIT(A).

10. We have heard the rival submissions and perused the material on record. The sole crux of the disputed issue is with respect to payment of interest to the REC. We found the assessee has filed income tax particulars of REC Ltd. and the interest income has been offered in the income tax return which is not disputed and we found that the CIT(A) has dealt on the disputed issue at page 4 & 5 of the order which reads as under :-

*4. The appellant submits that REC has filed the return of income and offered the interest as part of the returned income. Accordingly, it is submitted that the appellant should not be treated as an assessee in default relying on the decision of the Hon'ble Supreme Court in the case of Hindustan Coca Cola Beverages (P) Ltd.*

*In respect of payment of interest to GRIDCO, it is submitted that no tax is deductible in view of the CBDT's Notification No.SO-3489.*

*5. I have considered the matter. The details filed show that M/s. REC has filed the return of income on dt.30.3.2010 and the ledger account of interest of the appellant in the books of REC show that interest amounting to Rs.1,40,77,318/- has been received by the REC. In view of the decision of the Hon'ble Supreme Court in the case Hindustan Coca Cola Beverages (P) Ltd., 293 ITR 226, the AO is directed not to treat the appellant as an assessee in default in respect of interest of Rs. 1,33,53,680/- paid to REC without TDS.*

We found that the CIT(A) has directed the AO not to treat the assessee as assessee –in-default for non-deduction of TDS on interest payment and we find there is no loss of revenue. Accordingly, we are not inclined to interfere with the order of CIT(A) on the disputed issue and upheld the same and dismiss the grounds of appeal of revenue.

11. Now, we shall take appeal of the assessee in ITA No.281/CTK/2015 for the assessment year 2010-2011, wherein the assessee has raised the following grounds :-

1. *The stand of the Ld. AO that interest earned by the assessee from its term deposits does not qualify to be treated as profit or gain out of business is devoid of any logic and illegal.*

2. *The appellant being a company carrying on the business of distribution of electricity in Odisha is bound by the regulations of OERC.*

3. *As per Regulation 21 of the Odisha Electricity Regulatory Commission Distribution (Conditions of supply) Code, the licensee has to pay interest on the year end closing balance of the security deposit of the consumers at notified rate.*

4. *Accordingly, interest has to be provided and paid to the consumers which are integral part of business requirement as per Statute. Hence, these are absolute business expenditure and cannot be treated as a deduction u/s 57 from interest received from term deposits.*

5. *Similarly, the interest earned from term deposits arising out of receipt of security deposit from consumers as per OERC Regulation is a purely income from business and cannot be shown as Income from Other Source u/s 56(1) (id).*

6. *Needless to say that the aforesaid section comes into play only when the income is not chargeable to income tax under the head "Profits and Gains from business or profession". As the said interest accrues purely from business operation, the action of the Ld. AO of treating the interest income under Income from Other Source is against law.*

7. *The contention of the Ld.AO that the appellant has made the investment out of surplus money lying idle with it, clearly indicates that the Ld.AO has failed to understand the relevant provision of Electricity Act and the financial statement of the appellant.*

8. *The case law cited by the Ld. AO of the Hon'ble Apex Court in the case of Tuticorin Chemicals and Fertilizers Ltd. Vs. CIT (1997) 227 ITR 172 is totally out of place and not relevant to our case.*

9. *That the appellant craves leave to add or to amend the above grounds of appeal before or at the time of hearing of the appeal.*

10. *For these and among other grounds to be urged at the time of hearing adequate relief as may be deemed fit be granted in the matter.*

12. Brief facts of the case are that the assessee company filed return of income on 6.10.2010 showing total income at Rs.Nil and the return of income was processed u/s.143(1) of the Act. The Id. AO on perusal of financial statements, found that the assessee out of the electricity security deposits collected from the customers has made fixed deposits in the bank and interest on fixed deposits was treated as business income. But the AO observed that the interest income cannot take the character of the business income as idle funds available with the assessee are parked in the bank deposits. The AO dealt exhaustively on interest on deposits at page No.2 of the order and relying on the decision of Hon'ble Supreme Court in the case of Tuticorin Chemicals and Fertilizers Ltd. Vs. CIT (1997) 227 ITR 172, treated the interest on fixed deposits under income from other sources and with other additions, the AO assessed the total income to Rs.2,53,27,120/- and passed order u/s.143(3), dated 6.3.2013.

13. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A), whereas the CIT(A) having considered the submissions and the findings of AO and judicial decision, has confirmed the action of AO on this disputed issue in treating the interest income under the head income from other sources and partly allowed the appeal of assessee.

14. Aggrieved by the order of CIT(A), the assessee preferred appeal before the Tribunal.

15. Before us, the Id. AR submitted that the CIT(A) has erred in confirming the action of AO in treating the interest income under the income from other sources irrespective of the fact that in transactions there exists business expediency and the assessee is paying interest on security deposits and claim be allowed and prayed for allowing the appeal. Contra, Id. DR relied on the order of CIT(A).

16. We have heard the rival contentions and perused the material on record. The sole crux of the disputed issue with respect to interest on fixed deposits to be treated as income from other sources. The contention of Id. AR that the interest income is a character of business receipt, therefore, the assessee has rightly treated the business income. A query from the bench to the assessee as to whether there is any condition for deposit on fixed deposits in the bank to avail any benefit, Id. AR submitted that there is no such restriction. We found that the AO has dealt on this issue and the Id. CIT(A) has also made elaborate discussion on the disputed issue and relied on the judicial decision and treated the interest income as income from other sources. The Id. AR submitted that the assessee is paying interest on security deposits to customers and interest on fixed deposits from bank and interest paid to customers on the security deposit are to be set off. We find strength in the arguments of Id. AR under the provisions of Section 57(1)(iii) which reads as under :-

*57(1)(iii): any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income;*

The AO relied on the Apex Court decision and treated the interest income under the income from other sources. Accordingly, we direct the AO to allow the deduction of payment of interest on security deposit to customers from the interest income (if not claimed earlier) and allow the ground of appeal of assessee for statistical purposes.

17. In the result, appeal of assessee in ITA No.280&281/CTK/2015 are allowed for statistical purposes and appeal of revenue in ITA No.227/CTK/2015 is dismissed.

Order pronounced in the open court on this 13/10/2017.

**Sd/-**

**(N. S. SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**

**(PAVAN KUMAR GADALE)**

न्यायिक सदस्य / JUDICIAL MEMBER

**कटक Cuttack; दिनांक Dated 13/10/2017**

प्र.कु.मि/PKM, Senior Private Secretary

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**(Senior Private  
Secretary)**

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack