

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA

BEFORE SHRI S. S. GODARA, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.2126/Kol/2017

(निर्धारणवर्ष / Assessment Year: 2010-11)

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| ACIT, Cir-2(2), Kolkata P-7, Chowringhee Square, 8 th Floor, Kolkata – 700 069. | Vs. | M/s. West Bengal State Electricity Transmission Co. Ltd. Bidyut Bhawan, 9 th Floor, Bidhan Nagar, Salt Lake City, Kolkata – 700 091 |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AAACW 6952 G | | |
| (Appellant) | .. | (Respondent) |

Appellant by : Shri G. Hangsingh, CIT, DR

Respondent by : None

सुनवाईकीतारीख/ **Date of Hearing** : **14/08/2018**

घोषणाकीतारीख/**Date of Pronouncement** : **12/11/2018**

आदेश / ORDER

Per Dr. A. L. Saini:

The captioned appeal filed by the Revenue, pertaining to Assessment Year 2010-11, is directed against an order passed by Id. Commissioner of Income Tax (Appeals)-22, Kolkata, dated 30.06.2017.

2. The grievances raised by the Revenue are as follows:

“1. That in the facts and circumstances of the case the Ld. CIT(A) has erred in law by deleting of additions on account of (i) Prior period expenses of Rs. 12,65,000/- (ii) ERPC Charges of Rs. 14,50,000/- and (iii) Integrated income on SLDC UI Fund WBSETCL of Rs. 7,46,19,000/- and thereby holding that the AO was not justified in making the disallowance as whatever expenses claimed by the appellant are already disallowed by the A.O. separately.

2. That in the facts and circumstances of the case the Ld. CIT(A) has failed to appreciate the fact that before proceeding for disallowances the AO has conducted necessary examination and ground work, which are evident from the recording of note sheet.

3. That the department craves leave to add, modify or alter any of the ground(s) of appeal and/or adduce additional evidence at the time of hearing of the case.”

3. After hearing the Id DR for the Revenue, we note that issue raised by the Revenue is fully covered in favour of the assessee, as evident from the order of the Id CIT(A), wherein the Id CIT(A) held as follows:

Issue relating to prior period expenses of Rs.12,65,000/-

“1. I have carefully considered the action of the Ld. A.O. in making the impugned disallowance of Rs. 12,65,000/- on account of the claim of the prior-period expenses. The Ld. A.O. has remarked that the appellant assessee had claimed Rs. 3,03,96,000/- as net period income (expenditure) in its P & L Account, and that the amount includes period expenses/losses amounting to Rs. 12,65,000/-. Thereafter, the Ld. A.O. has observed that as the said portion of expenditure is not an allowable expenditure as per Income Tax Act, 1961, the impugned amount of Rs. 12,65,000/-, was to be disallowed and added back to the total income of the assessee.

2. In appeal, it has been contended by the Ld. A.R. for the appellant that certain expenses relating to earlier years aggregating to Rs. 12,65,000/- had been debited to prior period expenditure since those expenses had been finalized during the year. It was further submitted that even without asking for details of Prior Period expenditure of Rs. 12,65,000/- and without issuing any specific show-cause in the matter, the Ld. AO had held that such expenditure was allegedly not allowable. It was submitted during appeal that as the relevant expenses had been finally settled during the Financial Year 2009-10 (relevant for the Assessment Year 2010-11), the action of the Ld. AO was without any basis, and requires to be deleted.

3. I have carefully examined both the action of the Ld. AO and the contentions of the appellant. It is noted that the Ld. AO has not even issued a specific show-cause in the matter before making the impugned disallowance, less of calling for any details relating to the classification of such expenses relating to the prior period, as claimed by the appellant. There is no gainsaying in such matter, that the expenses would be allowable in the year in which they have been crystallized in the mercantile method of accounting. The decision of the Hon'ble Gujarat High Court in the case of Saurashtra Cement & Chemical Industries Ltd. vs CIT reported in (1995) 213 ITR 0523 is worthwhile to be quoted wherein it was held that:

“Merely because an expense relates to a transaction of an earlier year it does not become a liability payable in the earlier year unless it can be said that the liability was determined and crystallized in the year in question on the basis of maintaining accounts on the mercantile basis. In each case where the accounts are maintained on mercantile basis it has to be found in respect of any claim, whether such liability was crystallized and quantified during the previous year so as to be required to be adjusted in the books of accounts of that previous year. If

any liability, though relating to the earlier year, depends upon making a demand and its acceptance by the assessee and such liability has been actually claimed and paid in the later previous years cannot be disallowed as deduction merely on the basis the accounts are maintained on mercantile basis and that it related to a transaction of the previous year.

4. The above judgment was followed by the Hon'ble Jaipur Tribunal in the case of DCIT vs M/s. Rajasthan Co-operative Dairy Federation Ltd. (ITA No. 79, 80 & 81/JP/2015).

In view of the findings above, and the legal matrix as elucidated by the above judgments, I find that the action of the Ld. AO in disallowing certain prior period expenses was not justified in the facts and circumstances of the case. The same are accordingly deleted, and this ground of appeal allowed in favour of the assessee-appellant.”

4. We note that certain expenses relating to earlier years aggregating to Rs. 12,65,000/- had been debited to prior period expenditure since those expenses had been finalized during the year. In each case where the accounts are maintained on mercantile basis it has to be found in respect of any claim, whether such liability was crystallized and quantified during the previous year so as to be required to be adjusted in the books of accounts of that previous year. Considering, the assessee's facts and circumstances, we note that liability of expenses of Rs.12,65,000/- has been crystallized during the previous year, relevant to the assessment year under consideration. As per mercantile basis of accounting, the liability is recorded when obligation to pay arises. In the assessee's case the liability to pay arises in the assessment year under consideration therefore, assessee has rightly claimed the expenses to the tune of Rs.12,65,000/-. That being so, we decline to interfere in the order passed by the Id CIT(A), his order on this issue is hereby upheld and the grounds of appeal raised by the Revenue, on this issue is dismissed.

5. The next issue is relating to ERPC Charges of Rs.14,50,000/-. We note that assessee, (M/s WBSETCL) being a member of EPRC has contributed as per Statute to EPRC Establishment Fund & ERPC Fund every year, and that as these

were statutory contributions made to a Government Body/ Fund, and these are not contractual payments. These payments would not attract any of the provisions relating to the requirement for making TDS while making the impugned payments. We note that this issue is squarely covered in favour of assessee, as it is evident from the order of the Id CIT(A), which is reproduced below:

“14. DECISION:

1. I have carefully perused the action of the Id.AO, and equally carefully examined the submissions of the appellant-assessee/Ld. A.R for the appellant-assessee. The appellant has submitted that even during the assessment proceedings, it had explained before the Ld.AO that in pursuance of sub-section 55(2) of section 2 of the Electricity Act, 2003, Govt. of India vide resolution F. No:23/1//2004-R&R dated 25/05/2005 and subsequent resolution F. No: 23/1/2004-R&R dated 29/11/2005 established Eastern Regional Power Committee (ERPC) for facilitating the integrated operation of the power system in the region. It was also explained that Section 29(4) of the Act also mandated that ERPC might, from time to time, agree on matters concerning the stability and smooth operation of the integrated grid and economy and efficiency in the operation of the power system in that region. It was further submitted that in accordance with ERPC (Conduct of Business rules, 2011) all members except CEA, NLDC and ERLDC should contribute to 'ERPC Establishment Fund', 'ERPC Fund' and any other fund created by ERPC as per the regulations of respective funds. The appellant (WBSETCL) being a member of ERPC contributed as per statute to ERPC Establishment Fund & ERPC Fund every year. In making the aforementioned submissions, it has been contended by the appellant, that as these were statutory contributions [and not contractual payments] these payments would not attract any of the provisions relating to the requirement of making TDS while making the impugned payments.

2. I have carefully examined the submissions of the Ld. A.R made in the matter during the course of the appeal. I have also analyzed the documents relating to the ERPC (Conduct of Business Rules)2011; ERPC (Technical Co-ordination Sub- committee) Regulations, 2011, ERPC (operation Co-ordination sub-committee) Regulations, 2011, ERPC (Commercial Sub-Committee) Regulations, 2011, ERPC (Protection Sub-Committee) Regulations, 2011, ERPC (Establishment fund) Regulations, and the ERPC Fund regulations, 2011. Chapter V of the document relates to the methodology of the creation and utilization of the Fund. It may be worthwhile to reproduce the relevant extracts as under:

[quote]

EXPENDITURE OF ERPC

23. MOP communication to CEA vide, letter no. A-60016/59/2005 Adm .. dated 23rd February 2006 stipulates "The activities of the Regional Power Committees (RPCs) will be fully financed by the constituent Members with effect from

01.04.2006 and the Central Electricity Authority will take immediate steps in this regard.

24. MOP communication to CEA vide letter no. F.No.6/10/90-Trans dated 3rd April 2006 stipulates "For a transition period of six months the establishment expenditure of RPC would be met out of the budget of the CEA and the same will be reimbursed by the constituent members of the RPCs. Meanwhile, the constituents of RPCs will finalise the share of expenditure to be borne by the constituents of RPCs so that the RPCs become self-financing. The expenditure meted out from the budget and contribution of share by the constituent members will be reviewed by the Ministry of Power, every quarter.

Unquote (for para 23 & 24): All activities to be self-financed. Establishment expenditures to be met out of the Central budget. It implies that all other expenditures which are not covered under establishment expenditures will be financed by constituent members. ERPC to decide as to how it shall meet its expenditure other than establishment .

25. a) For the purpose of reimbursement of establishment expenditure of ERPC Secretariat to the consolidated fund of Gal, a fund named "ERPC ESTABLISHMENT FUND" shall be created and got maintained by ERPC. Out of this fund, a cheque shall be issued and got deposited for an amount equal to the quarterly bill amount, within the period specified on the bill. The fund may also be utilized for any other purpose as per the decision of ERPC.

b) In the event no bill is received from Central Government/ CEA, the actual amount spent by the ERPC secretariat shall be got deposited as and when required by the Member Secretary, ERPC. The difference between the bill amount and actual expenditure shall be got adjusted subsequently.

c) As and when CEA/Central Government discontinue the practice of first spending from central budget and getting reimbursement, the establishment expenses of the ERPC Secretariat shall be met out of "ERPC Establishment Fund".

d) ERPC shall make regulations on "ERPC Establishment Fund". CBR 2011-12 26. The expenses related to ERPC meeting shall be borne by each constituent in respect of the meeting hosted by it (on the basis of roster on its turn).

27. Deleted.

28. Expenses related to sub-committee meetings held at ERPC HQ shall be met out of the fund named "ERPC FUND", which shall be created and got maintained by ERPC for this purpose. ERPC shall make regulations on "ERPC Fund".

29. Expenses related to activities as a consequence of functions entrusted by IEGC, other regulations / orders of CERC, shall be met out of the "ERPC Fund" mentioned in para-(28) above.

30. Expenses related to discharge of any other functions deemed fit by ERPC shall be met out of the "ERPC Fund" mentioned in para-(28) above.

31. Air/Rail ticket(s) of appropriate class in relation to the journeys of travelling of Secretariat officer(s) for attending ERPC meeting or ERPC sub-committee

meetings shall be provided by the constituents. Such ticket(s) shall be purchased out of 'EPRC Fund' mentioned in para (28) above.

[unquote]

3. After analyzing the issue at hand, I find myself in agreement with the contentions of the Id. AR for the appellant that the appellant (M/s WBSETCL) being a member of EPRC has contributed as per Statute to EPRC Establishment Fund & ERPC Fund every year, and that as these were statutory contributions made to a Government Body/ Fund, [and not contractual payments] these payments would not attract any of the provisions relating to the requirement for making TDS while making the impugned payments."

We note that these payments would not attract any of the provisions relating to the requirement for making TDS while making the impugned payments, as these were statutory contributions made to a Government Body, and not contractual payments and hence these payments would not attract any of the provisions relating to the requirement for making TDS. That being so, we decline to interfere with the order of Id. C.I T.(A) deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue is dismissed.

6. The next issue is relating to Interest income on SLDC-UI Fund-WBSFTCL-Rs. 7,46,19,000/-. We note that this issue is squarely covered in favour of assessee, as it is evident from the order of the Id CIT(A), which is reproduced below:

"i. I have carefully considered the action of the Ld. AO in including the impugned amount of Rs. 7,46,19,000/- as the appellant's alleged interest income arising out of the investments made out of the UI Charges belonging to the West Bengal Electricity Regulatory Commission (WBERC) which had been kept under the custody of the State Load Despatch Centre (SLDC). The Ld. AO has relied on the order of the immediate preceding A.Y. 2009-10.

ii. I have also carefully examined the contentions of the appellant made out in appeal, which primarily are that the Ld. AO has failed to appreciate that the WBERC being a Commission formed by the Government, its income from investments under the custody of SLDC, could not be considered as the appellant's income and therefore the Ld. AO has erred in including Rs. 7,46,19,000/- as the appellant's alleged interest income.

iii. It is pertinent that the identical addition made by the Ld. AO for the assessment year 2009-10 (as referred by the Ld. AO) was deleted by the 1st Appellate Authority by order dated 6th September, 2012 in appeal no

1103/CIT(A)-I/Circle-59/2011-12. Aggrieved by such relief granted by the 1st Appellate Authority, the matter was agitated by the department before the hon'ble ITAT. By its order dated 30th October, 2014, the Hon'ble ITAT-A Bench, Kolkata in ITA No. 1822/K/2012 have decided the matter in favour of the appellant. The relevant portion of the orders of the Hon'ble ITAT is reproduced below:

“(1). Whether on the facts and the circumstances of the case, the Ld. CIT(A)-I, Kolkata has erred in both law and facts in observing that interest income did not belong to the assessee company?

(2) Whether on the facts and the circumstances of the case, the Ld. CIT(A)-I, Kolkata has erred in both law and facts in deleting the addition on account of interest Rs.3,46,97,166/- to the total income of the assessee without showing any reasons thereof.”

3. Briefly stated facts are that assessee during the course of assessment proceedings before the AO explained as to why interest amounting to Rs.3,46,97,166/- on which TDS of Rs.39,31,189/- was deducted, is not offered as income of the assessee. This interest income was earned on account of deposits made with Axis Bank Ltd. The assessee explained that West Bengal State Electricity Transmission Co. Ltd, (WBSETCL for short) is a West Bengal Government Enterprise and the State Transmission Utility (STU for short). It is licensed u/s 14 of the Electricity Act, 2003 and WBSETCL as a STU is statutorily required and established and maintained as Extra High Voltage (EHV for short) transmission network throughout the state of West Bengal interconnecting the generating stations within the state to the different load centers. It is required to establish interconnecting points with the regional and national transmission system so as to facilitate import and export of electricity from one state or regions to and from West Bengal. The interconnection between the generating stations through transmission system and the distribution system constitutes the State Power Grid (SPG for short). The parameters for operating grids as lay down under the State Electricity Grid Code by West Bengal Electricity Regulatory Commission (WBERC for short). The responsibility for supervising and maintaining grid discipline in the state as laid down under State Grid Code, is entrusted upon State Load Dispatch Centre (SLDC for short) which is a wing of the STU but independent and DT. In order to maintain grid discipline and ensure save operation of the power system, the State and Central Regulatory Commission have introduced the system whereby a penal charge is imposed on the defaulting power utility for deviating from the scheduled energy generation / withdrawal programme. This penal charge on the UI charge is levied on a graded scale depending on the extent to which the system frequency is affected by such unscheduled generation or

power withdrawal. The UI charge was introduced in West Bengal by WBERC from 01-01-2008. The WBERC is authorized under the Electricity Act 2003 to frame regulations for operation of State Power Grid and the administration of the UI funds for such purpose of WBERC has framed the West Bengal Electricity Regulatory Commission (Balancing and Settlement Code) Regulation, 2008. The relevant portion of Regulation-5 reads as under:-

“5. SLDC-UI FUND-WSETCL – SLDC shall open an account preferably with electronic clearing facility with the name and style of “SLDC-UI FUND – WBSETCL” in a nationalized/scheduled commercial bank within 27th November 2007 for the purpose of handling UI charges in pursuance to regulation 5.13 of the Tariff Regulations. Such fund will be managed in the following manner:

i).Such account shall be operated by the DDO with the cheque signing authority for payment upto Rs.5 lacs. For payment above Rs.5 lacs such cheque signing authority shall be jointly with DDO and the officer in charge of SLDC.

ii). All deposit for UI charges payable by any licensee shall be through bank draft in favour of the said account or through electronic clearance system where such facility is available. Cost of such draft and services shall be payable by the depositor.

iii).UI charges received by any entity shall be through account payee cheque or through electronic clearance system where such facility is available.

iv).SLDC shall maintain the accounts of the said fund separately and such account shall not be considered as the part of the accounts of the SLDC.

v).Accounts of such fund shall be audited by Chartered Accountant / Cost Accountant in full time practice for every financial year within 30th June of the succeeding year and such audited accounts shall be subsequently submitted to the Commission within 31st July of that year for approval.

vi).The entity shall pay the UI charges within 10 days of the billing date in pursuance to regulation 7.2 of the State Grid Code. The DDO will activate the Letter of Credit © if the amount receivable from any entity is not received fully or partly within ten days from date of issuance of the weekly UI settlement.

4.In terms of Regulation-5 of West Bengal Regulatory Commission (Balancing and Settlement Code) 2008 SLDC is maintaining current account named as SLDC UI Fund WBSETCL with Axis Bank Ltd., Howrah Branch and fixed deposit in the same bank was opened as per the directive of WBSERC vide Memo No.WBEC/B-36/3ABT/0286 dated 19-05-2008. The assessee before the Assessing Officer contended that in the absence of PAN for SLDC. The current account was utilizing the PAN of the assessee. Consequently, TDS was made and certificate of TDS was issued in the name

of assessee, although assessee has no control over utilization of such income. The utilization of income is regulated by Regulation-5.14.8 of West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2007 as under:-

“5.14.8 If at the end of a financial year, there is any amount in UI account then 90% of such amount will be used for the following purposes:

(a) The annual amount required to operate SLDC shall be transferred as per the budget to be approved by the SLDC from the Commissions.

(b) The balance amount shall be distributed among the licensee in proportion to the amount of energy required by the licensee for selling the power to its consumer and licensee of the Commission. Such distributed amount shall be kept in the power purchaser fund of the concerned licensee.”

5. But the AO has not accepted the contention of the assessee and added the interest income to the returned income of the assessee by observing as under:-

“... The contention of the Assessee-company is considered and the facts brought on record were examined. However, the claim that this income does not form part of the income of the Assessee-company appears unacceptable.

It is noted that the bank account is maintained by the State Load Despatch Centre (SLDC), but as admitted in the Assessee-company's submissions, the SLDC is merely the custodian of such an account and does not have any proprietary rights to the funds or incidental incomes generated therefrom. As per the terms of the scheme, the deposits were made from the funds of the Assessee-company and not SLDC, and the funds do not form part of the accounts of the SLDC at all. In such a circumstance, it can be concluded that the PAN correctly utilized for maintenance of the account is the PAN of the Assessee-company, and not merely because a separate PAN was not available for SLDC.

Further, whereas the accounts were opened in terms of the scheme formulated by the West Bengal Electricity Regularity Commission (WBERC), and it is this body that directs the levy of UI charges as well as any other such payments & C, the funds have not been transferred to WBERC as such, nor does the incomes incidental to the deposit form part of the income of the Commission.

In essence, therefore, the funds are in the nature of a security deposit, from which penal charges are deduced from time to time in connection with the maintenance of power generation and withdrawal schedules.

The funds deposited are unquestionably the funds of the Assessee-company, even if withdrawal from the same is governed by the directives of the regulatory commission. Further yet, as provided for in regulation 5.14.8 of the WBERC (terms and conditions of tariff) regulations, 2007, the Assessee-company, being a licensee, is entitled to part of the amounts remaining in the account at the end of each financial year.

In the circumstances, the Assessee-company's accounting treatment is unacceptable. The amount of Rs.3,46,97,166/- accruing as interest on the deposit is being added to income of the Assessee-company under the head 'Income from Other Sources.'

Further, it is notable that there was no disclosure of the amount anywhere in the audited accounts, and was detected only on the basis of the statement issued by the banker. The Assessee-company therefore appears guilty of having concealed particulars of income, as well as furnished inaccurate particulars of income in its computation and subsequent submissions."

6. Aggrieved, assessee filed appeal before CIT(A), who after considering the submission of assessee deleted the addition by observing as under:-

".. After carefully consideration of the order of the AO and written submission filed by the A/R, it is noted that the assessing officer addition of Rs.3,46,97,166/- on account of interest income from Axis Bank was made under the head 'income from other sources' as per IT computation and addition was also made for the same of amount interest for computation of book profit under the MAT provisions. Assessee is a West Bengal Govt. Enterprise (STU) regulated under section 14 of Electricity Act, 2003. The responsibility for maintaining grid discipline in the state is entrusted to State load Despatch Centre (SLDC). In order to ensure grid discipline penal charge called UI charge is levied by WBERC from 1st January, 2008. In compliance of regulation of WBERC current account in Axis Bank was maintained and PAN of the assessee was used for the operation of about account named SLDC UI Fund WBSETCL. Assessing Officer made addition of interest income on deposit maintained in the above account in the hands of the assessee company, as per 26AS Statement while the assessee contended that interest of Rs.3,46,97,166/- did not belong to the appellant and this income belonged to WBERC as the funds utilized in form of UI charges belonged to WBERC. Subsequently, on 21.10.2001 as trust under the name SLDC-UI-Funds-WBSETCL was created in accordance WBERC Regulations for collection of UI charges and income earned from investment made from said UI charges."

Aggrieved, now Revenue is in appeal before us.

7. We have heard rival contentions and gone through the facts and circumstances of the case. We find from the facts of the case that this Interest of Rs.3,46,97,166/- did not belong to the assessee nor it was an income in the hands of SLDC and the said income should not be considered in the assessment of the assessee. It is a fact that the Income arising out of the Investments made out of the Balance of UI charges, actually belonged to WBERC which was a Commission formed by the Government and consequently such interest being the income of the Government, there should not arise any taxability thereof. However, the Assessing officer observed that according to him SLDC was merely the custodian of the account and allegedly it did not have any proprietary rights to the funds or incidental incomes generated there from. The Assessing Officer also stated that deposits had been made from the funds of the assessee and not of SLDC and the funds did not form parts of the account of the SLDC at all. The Assessing Officer went on to hold that the assessee's PAN had correctly been utilized for the maintenance of the Account. The Assessing Officer also stated that in his Order that the accounts have been opened in terms of the scheme formulated by the West Bengal Electricity Regulatory Commission (WBERC) and it was that body which directed the levy of UI charges as well as any other such payments. He further mentioned that since the funds had not been transferred to WBERC as such, the income incidental to the deposit should not form part of the income of WBERC. The Assessing Officer held that the funds deposited were allegedly unquestionably the funds of the assessee. On the basis of these observations, the Assessing Officer held that the assessee's accounting treatment was unacceptable to him and he added the Interest of Rs.3,46,97,166/-to the total income of the assessee. But we find that the Interest of Rs.3,46,97,166 had arisen out of the investment made out of balance of UI charges which belonged to WBERC which was a Commission formed by the Government and consequently that interest income was actually an income in the hands of the Government. Since the interest income was an income of the Government, there could not arise any taxability thereof. It is also a fact that the relevant deposits had been made under the PAN of the assessee since at the relevant time no separate body had been created for the maintenance of the UI Accounts. We find that on 21-10-2011 a Trust under the name and style of 'SLDC-UI FUND-WBSETCL" was created in accordance with the WBERC Regulations for the purpose of management of the Fund created through collection of UI charges and interest earned from the investment made out of the said UI Chares and the Trust does not have the ownership on the moneys lying in the Fund and for all the times to come it is the WBERC which is the owner of the Fund of the Trust. We further find that neither any asset or any income earned out of the UI account could ever be considered as any income in the hands of the assessee. The moneys

lying in the UI account always belonged to the Government, viz. under the name of WBERC. It was only for the convenience in the matter of making investment in deposits of UI balances that the PAN of the assessee had been utilized. However, just because of utilization of PAN resulting in showing the TDS in Form No.26AS, could not be considered as any alleged income in the hands of the assessee. The Assessing Officer was repeatedly requested by the assessee to go through the relevant documents explaining how UI charges were being recovered, utilization of UI charges and investments required to be made. In view of the above facts of the case, we are of the considered view that this interest income of Rs.3,46,97, 166/- belongs to WBERC and not of the assessee. Accordingly, CIT(A) has rightly deleted the addition, and we confirm the same.

7. We have given a careful consideration to the rival submissions and perused the material available on record, we note that on the identical issue, the Division Bench in ITA No. 1822/Kol/2012, in assessee's own case, order dated 30.10.2014, deleted the addition. As the issue is squarely covered in favour of the assessee and there is no change in the facts and law and the Ld. CIT(A) has allowed the appeal of the assessee by relying the judgment of the Division Bench. The Ld. DR for the Revenue did not bring any material on record to controvert the findings of the Division Bench. That being so, we decline to interfere in the order passed by the Ld. CIT(A), his order on this issue is hereby upheld and the grounds raised by the revenue is dismissed.

8. In the result, the appeal filed by the Revenue is dismissed.

Order is pronounced in the open court on 12.11.2018.

Sd/-
(S. S. GODARA)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 12/11/2018

(BS, SPS)

Sd/-
(A. L. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant- ACIT, Cir-2(2), Kolkata
2. प्रत्यर्थी/ The Respondent- M/s. West Bengal State Electricity Transmission Co. Ltd
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, **कोलकाता/** DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

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By Order

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