INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 3744/Del/2015
(Assessment Year: 2008-09)

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| Rural Electrification Corporation Ltd,<br>Core-IV, Scope Complex, 7,<br>Lodhi Road, New Delhi<br>PAN: AAACR4512R | Vs. | DCIT (LTU),<br>NBCC Plaza, Sector-5,<br>Pusp Vihar, New DelhI |
| (Appellant) | | (Respondent) |

ITA No. 3488/Del/2015
(Assessment Year: 2008-09)

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| DCIT (LTU),<br>NBCC Plaza, Sector-5,<br>Pusp Vihar, New DelhI | Vs. | Rural Electrification Corporation Ltd,<br>Core-IV, Scope Complex, 7,<br>Lodhi Road, New Delhi<br>PAN: AAACR4512R |
| (Appellant) | | (Respondent) |

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| Assessee by : | Shri R. S. Singhvi, CA<br>Shri Satyajeet Goyal, CA |
| Revenue by: | Smt Aparna Karan, CIT DR |
| Date of Hearing | 26/08/2019 |
| Date of pronouncement | 25/11/2019 |

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. These are the appeals filed by the assessee and the ld AO against the order of the ld CIT(A)-22, New Delhi dated 24.03.2015 for the Assessment Year 2008-09.

2. The brief facts of the case is that the assessee is a finance corporation providing finance for Rural Electrification, power generation, transmission and distribution projects. It filed its return of income on 29.09.2008 of Rs. 10397045410/-. The assessment u/s 143(3) of the Act was passed on 28.12.2010, wherein, the total income of the assessee was determined at Rs. 10,71,66,74,480/-. Five different types of additions and disallowances were made by the ld AO amounting in all of Rs. 23,97,79,774/-. The assessee

preferred appeal before the ld CIT(A), who passed an order on 24.03.2015, wherein, appeal of the assessee is partly allowed. Therefore, both the parties are in appeal before us.

3. We first take up the appeal of the revenue.

4. The revenue has raised the following grounds of appeal:-

*"1. On the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition of Rs. 12,33,47,000/- on account of disallowance of provision for post retirement medical expenses.*

*2. On the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition of Rs.6,61,96,753/- made by the AO on account of interest accrued to various cooperative societies but taxable in the hands of the assessee i.e. M/s REC Ltd.*

*3. On the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition of Rs.85,00,000/- made by the AO without appreciating that notwithstanding offering of such income by various societies in their hands, the same is legally taxable in the hands of the assessee i.e. M/s REC Ltd. only.*

*4. On the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition of Rs. 3,04,64,715/- on account of notional interest ignoring his own findings in the same appellate order, holding income of the same as taxable in the hands of the assessee i.e. M/s REC Ltd. only."*

5. The first ground of appeal of the revenue which is against the addition deletion of Rs. 12,33,47,000/- by the ld AO on account of provision for post retirement medical expenses. The fact shows that the assessee has debited the provisions for post retirement medical benefits based on scientific and actuarial valuation in accordance with accounting standard 15. According to the assessee the right of an employee to claim medical benefits on his retirement is a known and actual liability arising at the time of services by the assessee. Therefore, same is allowable. The ld AO disallowed the above expenditure holding that same is the contingent liability. The ld CIT(A) deleted the above disallowance relying upon the decision of the Bokaro Power Supply Company Vs. DCIT the coordinate bench in ITA No. 149/Del/2012 dated 24.01.2013 holding that it is based on actuarial valuation and is a definite liability. Therefore, the ld AO is in appeal before us.

6. We have carefully heard the parties on this issue and find that above issue is squarely covered by the decision of the coordinate bench in assessee's own case for AY 2009-10 in ITA No. 309 to 2011/Del/2014 dated 26.03.2018, wherein in para 39 of the order the above claim was allowed and appeal of the revenue on that issue was dismissed. The coordinate bench held that the post retirement medical scheme provision created on the basis of accounting standard 15 is a definite liability. Therefore, ground No. 1of the appeal of the ld AO is dismissed.

7. Ground No. 2 of the appeal of the ld AO is with respect to deletion of the addition of Rs. 66196753/- on account of interest accrued to various cooperative societies but taxable in the hands of the assessee. The above sum is added in the hands of the assessee on account of treating of the interest income earned by several cooperative societies on the special fund created by those societies. In the case of the cooperative societies the tribunal has held that as the ownership of the funds was of assessee fixed deposits credited out of that fund essentially belongs to the assessee and not to cooperative societies. Therefore, interest components had to be considered as interest income of the assessee. Thus, the ld AO made an addition. The ld CIT(A) held that if the income is charged to tax in the hands of those cooperative societies then the ld AO may verify the actual interest which has been shown as income by that cooperative society then same cannot be charged to the tax in the hands of the assessee. Against this finding of the ld CIT(A), the revenue is in appeal before us.

8. We have heard the rival parties and find that identical issue has been considered in the case of the assessee for Assessment Year 2009-10 in para No. 41 of that order. As the ld CIT(A) has clearly give a direction to the ld AO to verify the interest income offered by the cooperative society and taxed in the hands of that society same cannot be taxed in the hands of the assessee. We find that there is no grievance caused to the revenue. In the present case the ld AO has already made enquiry with the cooperative societies and it was found that those cooperative societies have offered the above amount to tax in their own hands. Further, it was merely a direction to the ld AO for verification. We do not find any infirmity in the order of the

ld CIT(A) and therefore, we dismiss the ground No.2 of the appeal of the ld AO.

9. Ground No. 3 of the appeal is with respect to the deletion of the addition of Rs. 85 lakhs on account of the taxability of interest income on the above fund. Infact according to para No. 3.8(d) of the order of the ld CIT(A) the above addition is not deleted but confirmed by the ld CIT(A). We find that the above ground is misconceived. Hence, we dismiss Ground No. 3 of the ld AO.

10. The ground No. 4 is with respect to deletion of the addition of Rs. 30464715/- on account of notional interest.

11. The brief facts of the case shows that assessee has not shown any interest income from the various loans given to cooperative societies. The ld AO also noted that the assessee also did not clarify that how the same has not been offered to taxation. The ld AO noted that the assessee has diverted the interest bearing funds to this cooperative societies for creation of special fund therefore he computed the interest @12% on disbursement made by the assessee to the various cooperative societies. Therefore, he made an addition of Rs. 30464715/- on the total advance of Rs. 253872629/-. The assessee carried issue before ld CIT(A). The ld CIT(A) in para No. 3.8(e) considered the above issue and held that as the assessee has submitted that in view of the RBI Guidelines on non performing assets interest has to be shown on cash basis, so assessee did not recognize any interest on this advance. The ld CIT(A) directed the ld AO to verify the claim of the appellant from the audited accounts that if the above advance have been shown as non performing assets then no notional interest can be taxed. Such verification was carried out by the ld AO and appeal effect order has been passed on 14.12.2016, wherein, the above interest was found to be deleted. The revenue is in appeal before us.

12. We have heard the rival contentions. On the non performing assets when the principle itself is doubtful of its recovery the amount of interest as such loans cannot be said to have accrued to the assessee. For accrual of any income, there has to be a corresponding liability on account of payer of such income. Further, for the accrual of income there has to be reasonable

certainty of realization of such income. In case of nonperforming assets, loans and advances itself are doubtful of recovery, therefore, it is not correct to presume that interest on such advances have certainty of recovery. In view of this, we do not find that in the present case where the business of the assessee is to finance cooperative societies for rural electrification and such advances have become irrecoverable, 'NPA' interest thereon can be recovered and offered to tax on its accrual. Undoubtedly, as and when such interest are received would be chargeable to tax on the date on which the interest is actually earned by the assessee. Accordingly, we find no merit in ground No. 4 of the appeal of the AO. Hence we dismiss Ground No. 4 of the appeal of the ld AO.

13. Now we come to the appeal of the assessee wherein, the assessee has raised the following grounds of appeal:-

*"1. On the facts and in the circumstances of the case and in Law, the Ld. CIT (Appeals) has erred in relying solely on the order pronounced by the Hon'ble ITAT Hyderabad, in the case of "Cooperative Electrical Society-Sircilla, Hyderabad Vs Asst. Commissioner of Income Tax, Karimnager, Hyderabad", by not appreciating the factual and legal proposition that the said order has been pronounced against the "Principle of Natural Justice" as the appellant company was not given any opportunity, whatsoever, of being heard.*

*2. On the facts and in the circumstances of the case and in Law, the Ld. CIT (Appeals) has erred in upholding the entire addition of Rs. 85,00,000/- done by the AO on notional basis by considering the interest income earned by the RE-Co-operative Society Siricilla, Hyderabad on the Special Reserve Fund created and maintained by it as taxable in the hands of the appellant company only on the basis of observation of Hon'ble ITAT Hyderabad and not on merit. Further, the Ld. CIT (Appeals) has erred in upholding the I entire addition of Rs. 85,00,000/- done by the AO whereas actual interest earned as recorded in the assessment order is only Rs. 49,00,000/-.*

*3. On the facts and in the circumstances of the case and in Law, the Ld. CIT (Appeals) has erred in upholding the additions made by the AO on notional basis to all Co-operative Societies to whom the appellant company has advanced loan by applying the observation of Hon'ble ITAT Hyderabad which is only with reference to RE-Co- operative Society Siricilla, Hyderabad.*

*4. On the facts and in the circumstances of the case and in Law, the Ld. CIT (Appeals) has erred in reverting back the issue of the addition of Rs.*

*6,61,96,753/- to the AO for verification and determination of actual amount of interest earned by the respective Re- Co-operative Societies on the Special Reserve Fund created and maintained by them instead of considering the Additional Evidence furnished by the appellant company to CIT (Appeals) as per Rule 46A read with section 250(4) of the Income Tax Act giving the details of RE-Co-operative Societies who are maintaining Special Reserve Fund and ignoring the fact that they have duly accounted for the said interest income in their books of accounts.*

5. *On the facts and in the circumstances of the case and in Law, the Ld. CIT (Appeals) has erred in reverting back the issue of the addition of Rs. 3,04,64,715/- to the AO for verification from the audited accounts of the appellant company so as not to tax the notional interest if it is shown as non performing assets in view of RBI Guidelines instead of deleting this addition on the basis of documentary evidence submitted by the appellant company.*

14. Ground No. 1 to 3 are with respect to taxability of notional interest relating to Sircilla Cooperative Society.

15. The brief facts of the case shows that the ld AO has made the above addition on account of treating the income earned by the Cooperative Electrical Supply Society Ltd, Sircilla on special fund created out of interest forgone by the appellant company as income of the assessee. The ld AO made the addition vide para No. 6.10 of his order holding that AO, Circle-1, Karim Nagar has passed an information to the ld AO on 23.12.2010 that income of Rs. 49 lakhs on account of interest from the appellant is not offered to tax by the above society. It was also stated that the interest income of Rs. 85 lakhs is also not offered to tax by that society. But no information was there related to Assessment Year 2008-09. The ld AO to protect the interest of the revenue and in absence of cooperation from the assessee made an addition of Rs. 85 lakhs as income of interest on special fund with the Cooperative Electric Supply Company Ltd, Sircilla. The assessee challenged the above addition before the ld CIT(A). The ld CIT(A) vide para No. 3.8(d) has confirmed the above addition based on the order of the coordinate bench in case of one of the cooperative societies. Therefore, the assessee is in appeal before us.

16. We have heard the rival parties. The addition has solely been made on the basis of the order of the coordinate bench dated 31.01.2010 in ITA No.

1112/Hyd/2005 with respect to Cooperative Electric Supply Society Ltd, Sircilla. The order of the coordinate bench is from Assessment Year 1999-2000 to 2006-07. Further, for Assessment Year 2008-09 in ITA No. 280 to 283/Hyd/2015 dated 19.06.2015 the coordinate bench has deleted the addition in the hands of the above cooperative society. In the case of Assessment Year 2008-09 it has not been held by the coordinate bench that interest income is chargeable to tax in the hands of the appellant and not in the hands of the cooperative society. It has simply deleted the addition in the hands of the above cooperative society. Even otherwise looking at the order of the coordinate bench in case of cooperative society the amount of the addition is only Rs. 49 lakhs and not Rs. 85 lakhs. Therefore, the order of the ld AO of estimating the income of Rs. 85 lakhs is incorrect. Further, in assessee's own case the Hon'ble Delhi High Court for Assessment Year 1999-2000 in para 14 and 15 of the order which is reported in 355 ITR 345 where the issue was whether ITAT is right in holding that interest income on special fund taxable in the hands of the assessee and not in the hands of the societies. Further, Hon'ble High Court has further held that petitioner/ appellant was not given any opportunity of hearing before the Hyderabad Bench where it was concluded that the interest income was taxable in the hands of the assessee and not in the hands of the those cooperative societies. Further in para No. 17 while dealing with the issue of validity of section 148 of the Act in case of the appellant, it was held that provision of section 150 are not attracted. In view of the above facts and respectfully following the decision of the Hon'ble Delhi High Court we hold that without giving any opportunity to the appellant, even otherwise on estimated basis, the addition cannot be made in the hands of the assessee. Even otherwise in 101 ITD 46 the interest on bonds purchased out of special fund was considered as income of the concerned society and not of the assessee. Further, the coordinate bench has decided in 101 ITD 46 on identical facts that such income is not chargeable to tax in hands of the assessee. ITAT Delhi in assessee's own case for Assessment Year 2006-07 has followed the Hyderabad Bench decision in case of cooperative societies to confirm the addition in the hands of the appellant. On careful perusal of the above two

decisions, it is apparent that there are contrary decisions of the Chennai Bench and Hyderabad Bench on the same set of facts. Therefore, in such a situation an approach which is favourable to the assessee is required to be adopted as laid down by the Hon'ble Supreme Court in CIT Vs. Vegetables 88 ITR 192. In view of this, we direct the ld AO to delete the addition of Rs. 85 lakhs in the hands of the assessee pertaining to the special reserve fund held by cooperative electric supply company ltd Sricila. Accordingly, ground Nos. 1 to 3 of the appeal are allowed.

17. Ground No. 4 of the appeal is with respect to taxability of interest accrued on advances to various cooperative societies. The above issue has already been discussed while deciding the ground No. 2 of the appeal of the ld AO wherein, the ld CIT(A) has set aside the whole issue to the file of the ld Assessing Officer. We have already held that there is no grievance caused to the revenue as well as to the assessee because if the income is offered in the hands of the cooperative societies they could not have been taxed in the hands of the assessee. In view of this, ground No. 4 of the appeal of the assessee is dismissed.

18. Ground no. 5 of the appeal is with respect to the interest of Rs. 30464715/- in the hands of the assessee as a notional interest on advances given to the cooperative societies. The ld CIT(A) has given a direction to the ld AO that if such advances have been shown as non performing asset then no income can be taxed in the hands of the assessee. This issue has already been decided by us while deciding ground No. 4 of the appeal of the ld Assessing Officer. In view of reasons given by us therein equally applies to this ground of appeal of assessee. Accordingly, we dismiss ground No. 5 of the appeal.

19. In views of this the appeal of the assessee is partly allowed and appeal of the revenue is dismissed.

Order pronounced in the open court on 25/11/2019.

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| -Sd/- | -Sd/- |
| (KULDIP SINGH) | (PRASHANT MAHARISHI) |
| JUDICIAL MEMBER | ACCOUNTANT MEMBER |

Dated:25/11/2019
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi