**In the Income-Tax Appellate Tribunal,**
**Delhi Bench 'E', New Delhi**

**Before : Shri Bhavnesh Saini, Judicial Member And**
**Shri O.P. Kant, Accountant Member**

**ITA No. 603/Del/2017**
**Assessment Year: 2012-13**

| NTPC Electric Supply Company Ltd., NTPC Bhawan, Core-7, Scope Complex, Lodhi Road, New Delhi. PAN: AABCN7520Q **(Appellant)** | **vs.** | DCIT, Circle 18(2), New Delhi. **(Respondent)** |
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**ITA No. 777/Del/2017**
**Assessment Year: 2012-13**

| DCIT, Circle 18(2), New Delhi. **(Appellant)** | **vs.** | NTPC Electric Supply Company Ltd., NTPC Bhawan, Core-7, Scope Complex, Lodhi Road, New Delhi. **(Respondent)** |
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| **Assessee by** | Sh. Ved Jain, Advocate & Sh. Himanshu Aggarwal, CA Ms. Umang Luthra, CA |
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| **Revenue by** | Sh. Atiq Ahmad, Sr. DR |

| **Date of Hearing** | 17.09.2019 |
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| **Date of Pronouncement** | 15.11.2019 |

**ORDER**

**Per O.P. Kant, A.M.**

These cross appeals by the assessee and the Revenue are directed against the order dated 03.10.2016 passed by the learned Commissioner of

Income-tax (Appeals)-33, New Delhi [in short the ld. CIT(A)] for the assessment year 2012-13.

2. The grounds raised in appeal of the Revenue are reproduced as under :

*"1. On the facts and circumstances of the case, the learned CIT(A) is legally justified in deleting addition of interest income of Rs. 64,16,15,379/- by ignoring an admitted fact that the assessee had earned interest on the deposits in its bank account out of funds received by the assessee to be used as its own and the claim of transfer of the interest income to the payer was in contravention to provisions of section 60 of the Income Tax Act(the Act)?*

*2. Whether in facts and circumstances of the case , The Ld. C'IT(A) is legally justified in deleting addition of interest income of Rs. 64,16,15,379/- by ignoring the fact that the assessee had claimed credit of TDS on the interest income but had not credited the corresponding interest in the profit & loss account in contravention to provisions of section 199 of the Act?*

*3. That the appellant craves leave to add, amend, alter or forgo any ground/(s) of appeal either before or at the time of hearing of appeal."*

3. The grounds of assessee's appeal are reproduced as under :

*"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.*

*2(i). On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the A.O. in disallowing an amount ofRs.5,99,893/- on the account of community development & Welfare expenses.*

*(ii). That the disallowance has been confirmed despite the expenses having been incurred wholly & exclusively for the purpose of business.*

> *3. The appellant craves leave to add, amend or alter any of the grounds of appeal."*

4. Briefly stated, the facts of the case are that the assessee company is a wholly owned subsidiary of NTPC Ltd. During the year under consideration, the assessee company was engaged in the business of distribution and supply of electric energy along with providing consultancy, supervision & project management and inspection services etc. The assessee filed return of income for the year under consideration on 27.09.2012, declaring total income of Rs.11,12,14,130/-. The case was selected for scrutiny and notice u/s. 143(2) of the Income-tax Act (in short 'the Act') was issued and complied with. The assessment u/s. 143(3) was completed on 24.03.2015 after making disallowances of interest earned on deposit of advances received from Rural Electrification Company (REC) of Rs.64,16,15,379/- and disallowances of Rs.5,99,893/- u/s. 37(1) of the Act. On further appeal, the ld. CIT(A) deleted the addition of interest earned on deposit on advances received from REC, however, sustained the disallowance of Rs.5,99,893/-. Aggrieved, both the assessee and the Revenue are in appeal before the Tribunal, raising the grounds as reproduced above.

5. Before us, the ld. counsel for the assessee submitted that the issue in dispute of disallowance of interest earned on deposit of advances received from REC has been deleted by the ld. CIT(A) following the order of his predecessor for the assessment year 2009-10 and 2011-12. He further submitted that in earlier assessment years 2009-10 and 2011-12, the issue in dispute has been decided in favour of the assessee by Tribunal and the Hon'ble Delhi High Court and further appeal filed before the Hon'ble Supreme Court has also been dismissed. Accordingly, he submitted that the issue in dispute is covered in favour of the assessee.

6. Though the ld. DR relied on the order of the Assessing Officer, however, could not controvert the submissions made by ld. counsel for the assessee.

7. We have heard the rival submissions of the parties and perused the relevant material on record. We find that identical issue in the case of the assessee for the assessment year 2009-10 has been decided by the Tribunal in favour of the assessee observing as under :

> *"7. We have heard the rival parties and have gone through the material placed on record. We find that it is an undisputed that the funds were received by the assessee company for onward utilization for various projects. It is also an undisputed fact that the interest earned on funds*

*released by Government under the scheme were also to be used for cost of projects. The letter dated 26.3.2009 of under Secretary of Ministry of Power, Government of India to Chief Executive Officer of the appellant company as reproduced by learned CIT (A) clarifies those facts. In his order the learned CIT (A) clearly states that interest earned was to be utilized towards cost of project and interest was not to be treated as income of the assessee. The learned CIT (A) has made a finding of fact that all funds received from REC limited for implementation of projects was credited in separate bank accounts of the appellant and interest accrued thereon was also credited in the same bank account. The learned CIT (A) has also made finding of fact that out of total interest earned by assessee interest amounting to Rs.19,87,59,407/- related to this account. The learned CIT(A) has also made a finding of fact that the conditions stipulated for grants of funds to the appellant clearly provides that interest earned on the deposits shall be utilized for cost of the projects by way of adjustment in the last instalment and therefore there was no difference between funds granted by the Government and the interest credited by the bank in the account of the appellant. We find that learned CIT (A) has correctly allowed relief to the assessee and we do not find any infirmity in his order."*

8. We also note that Hon'ble High Court has upheld the decision of the Tribunal observing as under :

*"2. The question of law urged by the Revenue is whether the ITAT erred in law in holding that taxability of interest income of Rs.19,87,59,407/- will depend upon subsequent use of the interest income?*

*3. The undisputed fact, as noted by the ITAT, is that the said interest income was earned by the Assessee on the deposit of advances received from REC Ltd. for Rajiv Gandhi Gramin Vidyutikaran Yojana ('RGGVY'). A memorandum of Understanding ('MOU') was signed on 16th August 2004*

*between REC and the Assessee whereby inter alia it was agreed that interest earned on the deposits would be used as part of the cost of the projects and no other purpose.*

*4. In the circumstances, the view taken by the CIT(A) and affirmed by the ITAT, does not suffer from legal infirmity so as to give rise to any substantial question of law."*

9. The Hon'ble Supreme Court in SLP(Civil) Diary No. (5) 11488/2018 vide order dated 23.04.2018 has also upheld the order of Hon'ble High Court.

10. In view of the above, respectfully following the findings of Hon'ble Courts, the action of the ld. CIT(A) in deleting the disallowance is upheld. Grounds Nos. 1 & 2 of the appeal of Revenue are accordingly, dismissed.

11. Ground No. 3, being general in nature, we are not required to adjudicate upon.

12. Regarding the issue and dispute raised in appeal of the assessee, the ld. counsel of the assessee submitted that expenditure of Rs.5,99,893/- was incurred on social responsibility activities in the area, in which the project activities were carried out. According to the ld. counsel, the expenditure incurred was for smooth functioning of the project activities in the Rural areas and thus being in the nature of expenditure incurred wholly and exclusively for the purpose of business, the same should be allowed. Further he relied on

the decision of Tribunal in the case of National Seeds Corporation Ltd. vs. Addl. CIT in ITA No. 6794/Del/2014 dated 04.04.2018 wherein it is held that the Explanation to Sec. 37(1) has been inserted w.e.f. 01.04.2015 and cannot be construed as to disadvantage to the assessee in the period prior to this amendment.

13. On the contrary, the ld. DR relied on the findings of the ld. CIT(A) and submitted that the expenses incurred were not being incurred wholly and exclusively for the purpose of business, and therefore, the action of the Assessing Officer and the ld. CIT(A) is justified.

13. We have heard rival submissions and perused the material on record. Before us, the ld. counsel of the assessee has submitted the list of expenditure incurred on various items like Mosquito Nets, school bags, blankets etc. and claimed that same were distributed in the area, in which the assessee was operating. In our opinion, in comparison to the business turnover of the assessee, the amount incurred on community development and welfare is very miniscule amount and has been incurred to encourage a conducive atmosphere in the area of working of the assessee. In view of the fact, the finding of the ld. CIT(A) that expenditure has not been incurred wholly and exclusively for the purpose of business can not be said to be correct. Further,

Explanation-2 to section 37(1) which has prohibited expenditure on corporate social responsibility for claiming u/s. 37(1) has been inserted by the Finance Act No. 2 of 2014 w.e.f. 01.04.2015, which reads as under :

> "Explanation 2.—For the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession."

14. The Tribunal in the case of National Seeds Corporation Ltd. (supra) has held the above Explanation 2 to be prospective and not to be operated retrospectively. Since the assessment year involved in the instant case is A.Y. 2012-13, the above Explanation cannot be invoked in the case of assessee. Accordingly, the expenditure incurred of Rs.5,99,893/- on community Development and welfare is allowed. Ground of appeal of the assessee is allowed. In the result, the appeal of the assessee is allowed.

15 . In the result, the appeal of the Revenue is dismissed and the appeal of the assessee is allowed.

Order pronounced in the open court on 15/11/2019

| Sd/- | Sd/- |
|---|---|
| **(Bhavnesh Saini)** | **(O.P. Kant)** |
| **Accountant Member** | **Judicial member** |

Dated: 15th Nov., 2019

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*Copy of order forwarded to:*

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| *(1)* | *The appellant* | *(2)* | *The respondent* |
| *(3)* | *Commissioner* | *(4)* | *CIT(A)* |
| *(5)* | *Departmental Representative* | *(6)* | *Guard File* |

*By order*

*Assistant Registrar*
*Income Tax Appellate Tribunal*
*Delhi Benches, New Delhi*