IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW

BEFORE SHRI A.D JAIN, VICE PRESIDENT AND
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER

ITA Nos. 374/Lkw/2020
Assessment Year: 2015-16

ITA Nos. 331/Lkw/2020
Assessment Year: 2016-17

ITA No. 291 /Lkw/2020
Assessment Year: 2009-10

Dy. Commissioner of Income Tax, Range-3, Lucknow	Vs.	M/s U.P. Projects Corporation Ltd., Left Bank Gomti Barrage, Gomti Nagar, Lucknow-226010 PAN – AAACU3393F
(Appellant)		(Respondent)

Assessee by	Shri Rakesh Garg, Advocate
Revenue by	Smt. Sheela Chopra, CIT (DR)
Date of hearing	09/06/2022
Date of pronouncement	04/07/2022

O R D E R

PER BENCH :

These three appeals have been filed by the Revenue against the separate orders of the ld. CIT(A), Lucknow-2, dated 17.08.2020, 17.07.2020 and 16.07.2020, for Assessment Years 2015-16, 2016-17 and 2009-10 respectively. The issue involved in all these appeals is identical and these appeals were heard together, therefore, for the sake of convenience a consolidated order is being passed. The Grounds taken by the Revenue in ITA No. 331/Lkw/2020, which was argued first, read as under:

"1. The Ld. CIT(A). Lucknow had erred in law, and facts in deleting the addition of Rs. 17,13,85,262/- on account of interest income

without appreciating the fact that the assessee had claimed TDS deducted by the bank on interest Income received from the FDRs and S.B. Accounts, the FDRs and SB Accounts are in the name of the assessee, but the assessee had not shown interest income in its total income, which is against the provision of section 198 and 199 of the Income Tax Act.

2. *The Ld. CTT(A), Lucknow had erred in law and facts ignoring the fact that assessee is enjoying double benefit by claiming interest income as not taxable but taking credit of TDS out of total taxes payable, which is also against the provision of section 198 and 199 of the Income Tax Act."*

2. The Grounds taken by the Revenue in ITA No. 374/Lkw/2020 read as under:

"1. The Ld. CIT(A). Lucknow had erred in law, and facts in deleting the addition of Rs. 57,96,84,591/- on account of interest income without appreciating the fact that the assessee had claimed TDS deducted by the bank on interest Income received from the FDRs and S.B. Accounts, the FDRs and SB Accounts are in the name of the assessee, but the assessee had not shown interest income in its total income, which is against the provision of section 198 and 199 of the Income Tax Act.

2. The Ld. CTT(A), Lucknow had erred in law and facts ignoring the fact that assessee is enjoying double benefit claiming income as not taxable but taking credit of TDS out of total taxes payable, which is also against the provision of section 198 and 199 of the Income Tax Act

3. *The Ld. CIT(A). Lucknow had erred in law, and facts in deleting the addition of Rs. 2,98,05,040/- on account of bad debts, which was never included in the debtors which is against the provision of section 36(2)(i) of the I.T. Act, 1961."*

3. The Ground taken by the Revenue in ITA No. 291/Lkw/2020 reads as under:

"The Ld. CIT(A). Lucknow had erred in law, and facts in deleting the addition of Rs. 15,01,87,602/- without appreciating the fact that the assessing officer made addition for not following percentage completion method for revenue recognition as given in Accounting Standard AS-7 (Revised) and also, the assessee is deducting

> *amounts from profit and crediting in retention reserve without any justification."*

ITA No. 331/Lkw/2020 (A.Y. 2016-17)

4. First we will deal with the Grounds of appeal taken by the Revenue in ITA No. 331/Lkw/2020.

5. The assessee had debited provision for interest on unutilized fund at Rs.17,13,85,262/- in its P&L account. The AO observed that the interest is allowable on actual payment against a loan or borrowing; that provision of interest is not an allowable expenditure under the Income Tax Act; that the assessee did not actually pay this amount of interest and yet debited it to its P&L account. The AO added the amount of Rs.17,13,85,262/- to the income of the assessee. The ld. CIT(A) deleted the addition, following the Tribunal's order dated 28.02.2019, passed in the assessee's case for Assessment Years 2010-11 to 2013-14, in ITA Nos. 330 to 332 and 508/Lkw/2016.

6. Challenging the impugned order, the ld. DR has contended that while wrongly deleting the addition, the ld. CIT(A) had failed to appreciate that the assessee had claimed TDS deducted by the Bank on interest income received from the FDRs and SB accounts; that it has also not been considered that the FDRs and SB accounts were in the name of the assessee, but the assessee had not shown interest income in its total income, thereby violating the provisions of Sections 198 and 199 of the I.T. Act; that the ld. CIT(A) has thus failed to consider that the assessee has enjoyed double benefit, by claiming interest income as not taxable but taking credit of TDS out of total taxes payable, which, again, is against the specific provisions of Sections 198 and 199 of the Act.

7. The ld. counsel for the assessee, on the other hand, has placed strong reliance on the impugned order. It has been submitted that as rightly taken into consideration by the ITAT in the assessee's case for the earlier years, while confirming the order passed by the ld. CIT(A), the interest in question was

earned on bank fixed deposits and savings deposits made out of funds received from the Government for executing civil contract work, which interest was the income of the U.P. Government as per U.P. Government Office order dated 02.03.1998; that it is this decision of the Tribunal in the Assessee's case, which has rightly been followed by the CIT(A), under similar facts.

8. It remains undisputed that the U.P. Government, vide G.O. No.B-1/564/10-7/97, dated 02.03.1998, specifically mentioned that whatever interest income accrues on the advances from the bank, would be remitted to the Government by the assessee. The assessee is a Government Company. It has been declared as a construction agency for Government works. It gets advance for execution of construction projects on behalf of the U.P. State Government. These funds are used by the assessee company for meeting the construction cost of the projects. The unutilized funds deposited in banks generate interest income, which, as per the aforesaid Government Order, is to be treated as the income of the Government and is required to be deposited in the Government Treasury. The assessee, as such, is under legal obligation to pay interest on the unutilized funds, to the respective Government Departments, and not only this, the U.P. Government, vide order dated 12.12.2014, has classified the accounting head for the deposit of interest in the Government Treasury.

9. The Hon'ble Gujarat High Court, in the case of 'CIT vs. SAR Infracon (P) Ltd.', 222 taxman 294 (Gujarat), while considering a similar stipulation of the Central Government, while sanctioning the grant in favour of that assessee, stipulated that interest earned on the Central Grant already utilized would form part of the Central Grant limit, held that the Tribunal was right in holding that the interest earned on the Central Grant already released could not be said to be the income of the assessee. This decision was followed by the ld. CIT(A) in the earlier years (supra) in the assessee's own case and it has been held by the Tribunal to have been rightly so followed. The fact-situation during the year has admittedly remained unchanged.

10. In view of above, finding no merit in the Grounds raised by the Department, the same are rejected and the impugned order is confirmed.

ITA No. 374/Lkw/2020 (A.Y. 2015-16)

11. Ground Nos. 1 and 2 have been raised against the ld. CIT(A)'s action of deletion of addition of Rs.57,96,84,591/- on account of interest income.

12. This issue is exactly similar to the one raised in ITA No. 331/Lkw/2020 (Supra) and our findings recorded with regard thereto are squarely applicable, *mutatis mutandis,* herein also. Following our findings in ITA No. 331/Lkw/2020, Ground Nos. 1 and 2 are rejected.

13. The AO made the addition of Rs.2,98,05,040/- for the reason that the amount claimed as bad debts was never included by the assessee in the debtors and the same, as per the AO, did not qualify to be considered for deduction as bad debts. Ground No. 3 has been raised since the ld. CIT(A) deleted the addition.

14. The ld. DR has contended that the ld. CIT(A) failed to consider that the bad debts were never included by the assessee in the debtors and that this is against the requirement of Section 36(2)(i).

15. The ld. counsel for the assessee, per contra, has placed reliance on the impugned order, contending that the amount of Rs. 2,98,05,040/- represented the amount of service tax payable for 574, Grameen Sachivalay, completed by the assessee during 2012-13 and since no service tax was payable on Government contracts, the income was inflated by the said amount; and that the assessee reduced this amount from the income of the year under consideration, on receipt of objection from CAG, which contention of the assessee was wrongly rejected by the AO while making the addition.

16. It has not been disputed that the amount of Rs.2,98,05,040/- out of the bad debts, was the service tax component. This became unrealizable because of the objection raised by the CAG. It was, therefore, that the same was reduced from the income of the assessee and was treated as bad debt. As such, we do not find any error in the action of ld. CIT(A) in deleting the addition. It has not been shown as to how the assessee, a Government Company, was not bound by the objections raised by the CAG, which rendered the amount in question, claimed as bad debts, as unrealizable service tax payable. It was due to the CAG's objection that no service tax was payable on Government contract, that the amount was treated as bad debts and reduced from the income of the assessee. Accordingly, Ground No.3 is also found to be shorn of merit and the same is rejected.

ITA No. 291/Lkw/2020 (A.Y. 2009-10)

17. Apropos the sole Ground taken by the Revenue in ITA No. 291/Lkw/2020, the AO added an amount of Rs.15,01,87,602/-, observing that the assessee was deducting profit from work-in-progress and was crediting it to Retention Reserve; that the assessee was required to prepare its profit and loss account as per AS-7 (Revised); that the assessee was not following AS-7 (Revised) and Revenue recognition was not as per AS-7(Revised); that the assessee was deducting profit from value of work done without justification and was crediting the profit to the Retention Reserve; that no entries of the Retention Reserve were shown either in the profit and loss account, or in the balance sheet; and that in view of these facts, the books of account of the assessee stood rejected.

18. The ld. CIT(A) deleted the addition following the Tribunal's order in the assessee own case for AYs 2010-11 to 2013-14 passed in ITA Nos. 330 to 332 and 508/Lkw/2016, on 28.2.2019.

19. Again, the facts have not undergone any change with regard to this issue as well, for the year under consideration, which is the year immediately succeeding assessment years 2010-11 to 2013-14, for which years, the Tribunal passed the order followed by the CIT(A). Also, the said Tribunal order has not been reversed on appeal or otherwise, or even stayed. In the above view of the matter, finding no error therein, the action of the Id. CIT(A) in deleting the addition of Rs.15,01,87,602/- on account of interest income, by following the aforesaid Tribunal order in the assessee's own case for Assessment Years 2010-11 to 2013-14, is hereby confirmed. Accordingly, the Ground taken by the Revenue stands rejected.

20. In the result, all the appeals filed by the Revenue are dismissed.

(Order pronounced in the open court on 04/07/2022)

(T.S. Kapoor) **Accountant Member**	**(A.D. Jain)** **Vice President**

Aks –
Dtd. 04/07/2022

Copy of order forwarded to:

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

Assistant Registrar