

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B" : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

I.T.A.No.25/PUN./2023
Assessment Year 2017-2018

Pune Smart City Development Corporation Ltd., PMC Main Building, Shivaji Nagar, Pune PIN 411 005 Maharashtra. PAN AAICP5447P	vs.	The Income Tax Officer, Ward – 4 (5), Pune. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri S.N. Puranik
For Revenue :	Shri Deepak Garg

Date of Hearing :	24.05.2023
Date of Pronouncement :	25.05.2023

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's appeal for assessment year 2017-18, arises against the National Faceless Appeal Centre [in short "NFAC"] Delhi's Din and Order No.ITBA/NFAC/S/250/2022-23/1047091450(1), dated 07.11.2022, involving proceedings u/s. 143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both parties. Case file perused.

2. The assessee raise the following substantive grounds in the instant appeal :

1. *“Honourable Commissioner of Income Tax (Appeals) has erred in bringing to Tax Interest of Rs.10,90,67,924/- on fixed deposits with Bank out of Capital Grant received from the Central Government.]*

Appellant prays to delete the same, as it is not the Income of the Assessee. [Rs.3,84,43,763/-].

2. *Commissioner of Income Tax (Appeals) has erred in not being just and equitable in not accepting Assessee's contentions, and making addition of Rs.10,90,67,924/- [Rs.3,84,43,763/-].*

Appellant prays for deletion of addition.

3. *Appellant denies liability to Interest charged u/s234A, 234B, 234C of I.T. Act.*

4. *Appellant prays for cancellation of Interest charged u/s.234A, 234B, 234C etc.*

5. *Appellant prays for Just and Equitable relief.*

6. *Appellant prays to add, alter, amend, take additional grounds, submit additional evidence, and/or withdraw the ground/s, during appellate Proceedings.”*

3. Both the parties next invited our attention to the NFAC's detailed discussion affirming the Assessing Officer's action assessing interest income of Rs.10,90,67,924/- on fixed deposits representing capital

grant received from the central government reading as under :

3. Decision

3.1 Appeal (App) has been filed against the order of AO, who by order u/s 143(3) dated 23.02.2021 had made an addition of Rs.9,87,43,351/- to the returned income of the assessee.

3.2 The main argument of assessee is as follows.

1. That it is a nodal agency for execution of work by the Ministry of Housing and Urban Affairs (MoHUA).
2. That it is hence a part of Government of India and hence a defacto state and hence not eligible to pay income tax.
3. That interest received on grant partake the nature of grant and hence is not an income u/s 2(24) of the Income Tax Act, 1961.
4. Assessee is simply a trustee of the funds received from Government of India and relies on the case of

Ref Karnataka High Court in the case of CIT & Anr. v. Karnataka Urban Infrastructure Development & Finance Corporation (2006) 284 ITR 0582: (2006) 203 CTR 0422: (2006) 155 TAXMAN 0228

e) That AO was wrong to say that funds were not utilized, when all the funds were exhausted by the assessee.

3.3 In its defence the assessee has furnished letter of Nagar Vibhag, Government of Maharashtra, which refers to GFR to state

महोदय,

उपरोक्त विषयासंदर्भात संदर्भाधिन पत्रान्वये अवर सचिव, गृहनिर्माण व नगरी विकास मंत्रालय, भारत सरकार यानि जीएफआर, 2017 च्या नियम क्र. 230(8)नुसार, "all interest or other earnings against Grant in aid or advances (other




Chief Finance Officer
 Pune Smart City
 Development Corporation Ltd

AAICP5447P- PUNE SMART CITY DEVELOPMENT CORPORATION LIMITED
A.Y. 2017-18
ITBA/NFAC/S/250/2022-23/1047091450(1)

than reimbursement) released to any Grantee Institution should mandatory be remitted to the Consolidated Fund of India immediately after finalization of the accounts.

3.4 In addition to above assessee has brought to light letter of MoHUA dated 02.02.2022

F. No. K-15016/92/2019-SC-VUS-II(PT)

' Government of India
Ministry of Housing & Urban Affairs
Mission Smart City Division
Nlrmsn Bhavan, New delhi-110001

!
2022

Dated: 2nd February,

To

**The CEOs of 100 Smart Cities
(As per standard List)**

Sub: Opening of New Head for remitting interest earned from the funds released under Central Sponsored Scheme (CSS) under Smart City Mission.

Sir/Madam,

I am directed to say that Rule 230 (8) of GFR, 2017 stipulates that "all interests or other earnings against Grant in aid or advances (other than reimbursement) released to any Grantee Institution should mandatorily be remitted to the Consolidated Fund of India immediately after finalization of the accounts". In this regard, Ministry of Finance vld O.M. dated 30.06.2021 has issued detailed procedure and head-wise details wherein such amount of interest so earned on Govt deposits, should be remitted.

2. In compliance of MoF O.M. dated 30.06.2021, PAO(Sectt), MoHUA has opened head of accounts for States/UTs in respect of




Chief Finance Officer
Pune Smart City
Development Corporation Ltd

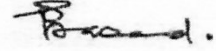
AAICP5447P- PUNE SMART CITY DEVELOPMENT CORPORATION LIMITED
A.Y. 2017-18
ITBA/NFAC/S/250/2022-23/1047091450(1)

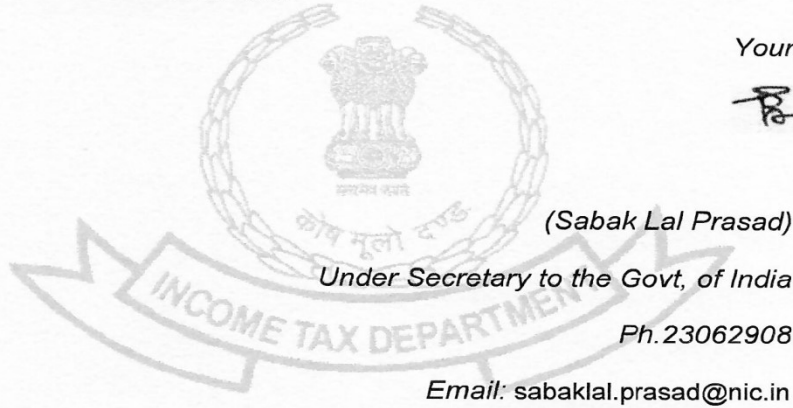
PMAY, NULM, AMRUT, SBM and SCM. As per instructions of the PAO (Sectt), MoHUA, States/UTs have to furnish a Cheque in favour of **Sr. Accounts Officer, PAY & ACCOUNTS OFFICE, SECRETARIAT, MINISTRY OF HOUSING & URBAN AFFAIRS, NIRMAN BHAWAN, NEW DELHI, PIN-110011** to remit the interest earned from funds released under CSS. Further, the cheque may be forwarded to this Ministry with a covering letter containing break-up of year wise fund release, applicable rate of interest, interest earned thereon and amount of unspent balance on which interest received by the city to verify the calculations.

3. Keeping in view the provisions of GFR and guidelines issued by

Ministry of Finance on the subject, all CEOs of 100 Smart Cities are requested to comply with the procedure as defined above strictly in a time bound manner.

Yours faithfully,




(Sabak Lal Prasad)
Under Secretary to the Govt, of India
Ph.23062908
Email: sabaklal.prasad@nic.in

3.5 Merely because a SPV is created by any Ministry, that does not become a part of ministry and commercial ventures, though funded by Government of India would still be liable to income tax like any other private venture.

3.6 Reference may be made to CIT vs ISRO Satellite Centre, Karnataka High Court dated 28.10.2011, when a national entity like ISRO is not claiming itself to be a state, the argument of assessee to be so is without merit.



Page 7 of 8


Chief Finance Officer
Pune Smart City
Development Corporation Ltd

3.7 The other limbs of assessee argument is that, as per enclosed notifications it was to pay back interest earned to the consolidated fund of India, and hence the interest earned would not be taxable. MoHUA is just one of the ministries functioning in Government of India but the income tax act is an central act and apply to all commercial ventures, all over India. Hence instructions given by particular ministry or the state government as to how particular grants are to be accounted for does not mean that assessee would not be taxable on the real income as per the national act which is the income tax act. Just because some officers work for income tax department does not mean that their salaries are not taxable.

3.8 Lastly, argument that assessee has used up the fund and had none to pay back, MoHUA is by itself a defective argument. If assessee was a state MoHUA would not ask back the funds, and secondly mere user of money is no argument that correct tax would not be payable. If that was to, then every loss making company, without any cash left would claim to be exempt from tax.

3.9 In considering all the factual and legal aspects it would seem that assessee appeal has not merit and the same is hence **Dismissed**.

3.1. Mr. Puranik submitted at the outset that both the learned lower authorities have wrongly assessed the impugned interest income once the same had to be remitted back in the central government's account as per the necessary intimation coming from Government of India, Ministry of Housing and Urban Affairs, Mission Smart City Division. He highlighted the fact that the assessee has filed it's additional evidence application running into 08 pages not only comprising of the above facts/letter in terms of GFR 2017 in clause 230(8) but also evidence of actual remittances of the aforesaid interest income in financial year 2016-2017 to 2021-2022 including that in issue of Rs.10,90,67,924/- by way of demand drafts.

4. The Revenue could hardly dispute that all these remittance evidence(s) goes to the root of the matter which requires Assessing Officer's afresh factual verification. That being the case, we admit the assessee's above additional evidence and restore it's corresponding substantive grounds back to the Assessing Officer for his *de-novo* adjudication on merits as per law preferably within three effective opportunities of hearing. Ordered accordingly.

5. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open Court on 25.05.2023.

Sd/-
[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 25th May, 2023

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The CIT(A) NFAC, Delhi.
4.	The CCIT, Pune.
5.	D.R. ITAT, Pune "B" Bench, Pune
6.	Guard File.

//By Order//

Assistant Registrar, ITAT, Pune Benches,
Pune.

