

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE DR. BRR KUMAR, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.2326/Del/2022
(Assessment Year: 2018-19)

GRID Controller of India (Formerly known as Power System Operation Corporation Ltd) B-9, 1 st Floor, Qutab Institutional Area, Katwaria Sarai, Hauz Khas, South Delhi, New Delhi PAN No. AAFCP2086B	Vs.	DCIT Circle-19(1), Delhi.
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Ved Jain, Adv. & Shri Aman Garg, CA
Revenue by	Shri Shyam Singh, Sr. DR

Date of hearing:	08.02.2024
Date of Pronouncement:	27.02.2024

ORDER

PER ANUBHAV SHARMA, JM :

The Assessee has come in appeal against the order dated 21.02.2020 passed by the Income Tax Department – National Faceless Appeal Centre (NFAC) u/s 250 of the Income Tax Act, 1961 (hereinafter referred as “the Act”) being Appeal No. 7/11292/2019-20, pertaining to AY 2018-19.

2. The brief facts are that the Assessee Company (POSOCO) is a, Government of India Enterprises and is carrying on the business of

System and Market Operations of Transmission of Electricity since October, 2010 onwards. The Company filed its Return on 31st October, 2018 declaring an income of Rs.76,10,55,955/-. The Return of income filed has been processed vide order dated 21st February, 2020 and intimation under section 143 (1) of the Income-tax Act, 1961 has been generated showing computed income at Rs.79,61,83,528/-. The addition made is as under:-

Employee share of PF & ESI	3,11,94,858
Profit on sale of fixed assets	87,542
Grants in Aid	<u>38,45,173</u>
	<u>3,51,27,573</u>

2.1 Addition of Rs.3,11,94,858/- has been made in the computed income for disallowance under section 36 (1)(va) of the Income-tax Act, 1961 for delayed deposit of Employee Benefits and Provident Fund contribution & ESI. Assessee claim that as per the judgment of Supreme Court of India in the case of CIT v Alom Extrusions Ltd. [2009] 185 Taxman 426 (SC) the employee share deposited before the due date of filing of the return of income under section 139(1) of the Income-tax Act, 1961 is to be allowed as deduction. Hence the disallowance made is not correct.

2.2 As per assessee profit on sale of fixed assets of Rs. 87,542/- is not taxable as the sale price of the asset is reduced from WDV for the purpose of calculation of depreciation. Hence this amount was

excluded from income but has been added in the computation u/s 143 (1) of the Income-tax Act, 1961.

2.3 Lastly grants in aid of Rs.38,45,173/- is a non current liability being of capital nature, hence is not taxable as income though it has been added computation u/s 143 (1) of the Income-tax Act, 1961. In the return of income credit of TDS of Rs. 32,49,84,734/- was claimed against which credit for Rs. 17,23,82,192/- has been given. The credit claimed is appearing in 26AS, hence the company is entitled to the credit of TDS as claimed. During the previous year the Dividend Distribution Tax of Rs.24,17,055/- was paid on 9th October, 2017. However, in the intimation credit for this payment has not been given and a demand of Rs.30,69,670/- including interest of Rs.6,52,607/- has been created.

3. The Ld.CIT(Appeals) has sustained the additions except deleting the addition on profit on sale of fixed assets of Rs.87,542/- by concluding that the same was on depreciable assets and there is no short term capital gain as per the provisions of Section 50 of the Act.

4. The assessee is in appeal raising following grounds:

“1. On the facts and circumstances of the case, the order passed by the Commissioner of Income Tax

(Appeals), National Faceless Appeal Centre (NFAC) is bad both in the eyes of law and on facts.

2. *On the facts and circumstances of the case, the CIT(A), NFAC has erred both on facts and in law in passing the impugned order by ignoring the fact that the AO (CPC) has made disallowance by exercising the power which are beyond the scope of section 143(1) of the Act.*

3. (i) *On the facts and circumstances of the case, the CIT(A), NFAC has erred both on facts and in law in confirming the disallowance of Rs.3,11,94,858/- made by the AO (CPC) on account of employees contribution to recognized provident fund (PF) invoking section 36(1)(va) of the Act.*

(ii) *That the above said disallowance has been confirmed ignoring the settled position in law that employees contribution to PF and ESI would qualify for deduction if the same is paid before due date of filing of return of income, even if the same is paid after the due date prescribed under the PF/ESI Act.*

(iii) *That the above said disallowance has been confirmed without considering the fact that the Explanations inserted to section 36(1)(va) and 43B vide Finance Act, 2021 w.e.f 01.04.2021 are prospective in nature and not merely clarificatory.*

(iv) *That the above said disallowance has been confirmed without considering the fact that the issue of 'employees' contribution to PF/ESI' is at most debatable in nature.*

(v) *Without prejudice to above and in the alternative, the CIT(A), NFAC has erred both on facts and in law in confirming the entire addition, without considering the fact that out of Rs.3,11,94,858/-, a sum of Rs.1,69,33,589/- had already been deposited within the time limit prescribed under the PF Act.*

4. (i) *On the facts and circumstances of the case, the CIT(A), NFAC has erred both on facts and in law in*

confirming the addition of Rs. 38,45,173/- on account of grant in aid.

(ii) That the above said addition has been confirmed ignoring the fact that grant aid received by the assessee are in the nature of capital receipts.

(iii) That the above mentioned addition has been confirmed ignoring detail explanations provided by the assessee, and the fact that the grant received h been deducted from capital cost of assets in the year of receipts itself.

5. *(i) On the facts and circumstances of the case, the CIT(A), NFAC has erred both on facts and in law in confirming the action of AO (CPC) of not allowing the credit of Rs.24,17,055/- on account of Dividend Distribution Tax.*

(ii) That the above action of AO (CPC) has been confirmed ignoring the details explanations provided by the assessee and by misinterpretation of the provisions of section 1150 of the Act.

(iii) That the above action of AO (CPC) has been confirmed ignoring the fact that computation of interest of Rs.6,52,607/- under section 115P of the Act is erroneous and bad in law.

6. *Without prejudice to the above, the CIT(A), NFAC has erred in confirming the action of AO (CPC) without considering the fact that regular assessment proceedings had already been initiated prior to the intimation under section 143(1) and no addition has been made by the AO on all the above issues while passing the order under section 143(3) of the Act.”*

5. Heard and perused the record.

6. In regard to ground nos. 2 & 3 the Ld. AR has pointed out that employees' contribution for the month of September, 2017 and November, 2017 have been paid before the respective due dates and

the employees' contribution for the month of July, 2017 was deposited on 16.08.2017 as 15.08.2017 was holiday and the employees' contribution for the month of August, 2017 the Challan was generated on 15.09.2017. However, the same was debited on 16.09.2017 as Bank servers were down on 15.09.2017.

7. We are of the considered view that these four deposits require verification and to that extent the disallowances covered under these four deposits be re-examined by Ld. AO and accordingly these grounds are rejected regarding the remaining disallowances.

8. In regard to ground no.5 the Ld. AR has submitted that the grant was not received during the year. It was submitted that this is a deferred grant which was received in the year 2009 and was thus, transferred from the deferred income to the Profit & Loss Account. Hence, this is not income of the year. Ld. AR has relied on the general ledger entry and submitted that no depreciation has been claimed. Since, the amount has been deducted from the cost as is evident from the tax audit report.

9. We are of the considered view that the Ld. Tax Authorities have fallen in error in not appreciating the aforesaid factual aspects. Consequently, this issue is also restored to the files of the Ld. AO.

10. Ground no.6. In this regard Ld. AR has submitted that:

“1. During the year under consideration assessee has deposited Rs.24,17,055/- vide challan no. 280 (PB Pg.257) on account of dividend distribution tax which is evident from perusal of Form 26AS available at PB Pg 255-256 and relevant amount is on PB Pg 256. Further, the details of same have also been furnished in the income tax return (PB Pg. 132) under Schedule DDT.

2. In the intimation u/s 143(1) of the Act dated 21.02.2020, without giving credit of the DDT paid Rs.24,17,055/-, has computed interest liability under section 115P of Rs.6,52,607/- and has raised total demand of Rs.30,69,670/- on account of DDT.

3. As DDT has been duly paid and the same is also appearing in Form 26AS, the credit of the same be allowed pursuant to which, the demand raised on this account of DDT will become Nil.”

11. We are of the considered view that the aforesaid also requires verification. Therefore, the issue is restored to the files of the Ld. AO.

12. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 27.02.2024

**Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER**

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:- 27.02.2024

*Kavita Arora, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI