आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डॉ. एस.सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 597/JPR/2023
निर्धारण वर्ष/Assessment Years : 2016-17

The ACIT, Circle-6, Jaipur.	बनाम Vs.	Rajasthan Urban Drinking Water Sewerage and Infrastructure Corporation Limited Old working Women Hostel, Behind Nehru Place Lal Kothi, Tonk Road, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADCR 0095 E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

राजस्व की ओर से/ Revenue by : Shri Ajay Malik (CIT)
निर्धारिती की ओर से/ Assessee by : Shri Shyam Lal Agrarwal (C.A.) &
Shri Tarun Agarwal (C.A.)

सुनवाई की तारीख/ Date of Hearing : 13/02/2024
उदघोषणा की तारीख/Date of Pronouncement : 10/05/2024

आदेश/ ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This is an appeal filed by the Revenue directed against the order of the CIT(A), National Faceless Appeal Centre, Delhi (hereinafter called as 'CIT(A)NFAC') dated 27.27.2023 for the assessment year 2016-17.

2. The Revenue raised the following grounds of appeal:-

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(Appeals), NFAC has erred in deleting the addition of Rs. 5,13,22,611/- made on account of undisclosed interest earned on FDRs and not appreciating the fact that as the assessee has claimed credit of TDS deducted on the said interest as per section 199 of the IT Act, such income on account of interest assessable in the hands of the assessee.

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(Appeals), NFAC has erred in deleting the addition of Rs. 5,13,22,611/- made on account of interest earned on FDRs in spite on the fact that the assessee company is a corporation not a government itself and hence its accounts are to be maintained as per the principles of section 145 of the Act on commercial principles and it has also not been registered u/s 25 of the Companies Act as well as u/s 12A of the Income Tax Act, 1961.

3. the appellant craves leave to add, alter amend, withdraw or insert any ground or grounds of appeals before or at the time of hearing of the appeal." `

3. The brief facts of the case are that the return in this case was filed on 16.03.2017 declaring a total income of Rs. 2,71,88,860/-. The case was selected under compulsory manual scrutiny. Notice u/s 143(2) was issued on 26.09.2017, which was duly served upon the assessee. In response to the statutory notices issued during the proceedings, details were submitted from time to time. RUDSICO is a government company working as a state level nodal agency for executing the schemes and projects as initiated by Central Government/State Government. Details pertaining to the issues were called for from the assessee and examined as

per record. Based on the submission, verification and factual position as per record. The ld. AO noted that the interest receipts shown by the entity in the return were lesser than the receipts shown in Form 26AS. It was also noted that the entity had shown Rs. 5,13,22,611/- as interest receipts under the head of 'Current Liabilities. Since receipts of interest are seen to be in the nature of revenue receipts, hence the assessee was issued a show cause notice on 20.08.2018 by the ld. AO. The assessee filed reply which contending that

(i) RUDSICO is a government company working as nodal agency for implementing the works in the form of Schemes/projects of GOI and GOR.

(ii) That as RUDSICO is a nodal agency it cannot credit the income of another scheme or project in its own account.

3.1 The ld. AO noted that the assessee Corporation is not a charitable organization. It is not registered u/s 25 of companies Act. It is not registered u/s 12A of the IT Act. Therefore its income has to be computed on the principles of commercial expediency. In view of above, second argument is also not accepted by the ld. AO. He further noted that the assessee Corporation is a separate entity not Government itself hence income- expenditure has to be maintained as per provisions of section 145 of the IT Act on commercial principles. The assessee Corporation may maintain separate accounts of income/expenditure of a particular project

or scheme. But it has to account for all the income arising from any sources during the year. Related expenditure has also to be accounted for.

3.2 He further noted that the FDRs are in the name of assessee Corporation. It has claimed TDS also on the interest accrued on these FDRs. Moreover TDS claim can be allowed only in respect of income which is offered for tax during the year. In any case, there is no reason for not showing such interest income received during the year in its total income. As stated above, the Auditor has also given qualified remarks that 'the company claims credit of tax deducted at source on the interest income of RUDF against its total tax liability. This interest income is not considered in its calculation of income tax liability." It may also be stated that IT Act is a special Act enacted by Parliament which inter alia lays down the rules of calculation of income of an entity, hence computation of income has to be made as per the I.T. Act. The OMs/orders issued by Govt cannot decide the taxable income of a particular entity whose income is taxable. In view of discussion it is clear that assessee's arguments for not including interest income in its total income are not acceptable. The Corporation should have included total interest received during the year on FDRs in its total income. However, it has shown

interest income less by Rs. 5,13,22,611/-. Hence, the same was added back in total income.

4. Being aggrieved from the order of the assessing officer, the assessee carried the matter in appeal before the ld. CIT(A) who allowed the relief to the assessee. The relevant findings of the ld. CIT(A) are contained at para 6.3 which is reproduced as under:-

> *"6.3 Ground of appeal No. 1 In view of the above factual matrix and position of law, I find that the assessment was completed by the AO on 12.11.2018 u/s 143(3) of the Act at the assessee income of Rs. 7,85,11,480/- against the returned income of Rs. 2,71,88,870/- after making an addition of Rs. 5,13,22,611/- on account of interest earened on FDRs and not offered to tax. Even before the passing of assessment order in this case, the disputehad been put to rest by the jurisdictional ITAT in assessee's own case (Rajasthan Avas Vikas & Infrastructure Ltd merged with the assessee) in ITA Nos 247 & 248/JP/2014 dated 18 march, 2016 holding the assessee was only modal agency for the government of Rajasthan depositing money on behalf of the government and the government of Rajasthan was not a taxable entity. Therefore TDS made had to be refunded to the assessee. The Hon'ble ITAT, Jaipur Bench has held as under:-*
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> > *"4.3 We have heard rival contentions and perused the material available on record. In our view the issue involved in the present appeal had already been adjudicated in the matter of CIT vs. Relcom (2015) 62 Taxmann.com 190 (Delhi) wherein it was held as under:-*
> > *"6. Having heard the submissions made on behalf of the revenue and after a perusal the orders passed by the CIT(A) and the ITAT, we are of opinion that the said orders do not call for any interference and were warranted and justified in the facts and circumstances of the case. Before we proceed to elaborate on our reasons for the same, a perusal of Section 199 of the Act is necessary. Section 199 reads as follows:*
> >
> > *"199. Credit for tax deducted.*

(1) Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be.

(2) Any sum referred to in sub-section (IA) of section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income such payment of tax has been made.

(3) The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub- section (1) and sub-section (2) and also the assessment year for which such credit may be given."

7. The revenue relies on the phrase "shall be treated as a payment of tax on behalf of the person from whose income the deduction was made" to contend that the assessee's TDS claim cannot be based on the receipts of M/s REPL. However, the assessee fairly admitted throughout the proceedings for its TDS claim of Rs. 1,20,73,097/- that the benefit of such claim has not been availed by M/s. REPL. Therefore, the revenue, having assessed M/s REPL's income in respect to such TDS claim cannot now deny the assessee's claim on the mere technical ground that the income in respect of the said TDS claim was not that of the assessee, given that M/s Relcom (the assessee) and M/s REPL are sister concerns and M/s REPL has not raised any objection with regard to the assessee's TDS claim of Rs. 1,20,73,097/-.

8. This Court's reasoning is supported by a ruling of the Division Bench of the Andhra Pradesh High Court in CIT v. Bhooratnam & Co. [2013] 357 ITR 396/216 Taxmин 6/29 taxmann.com 275 where the Court noted as follows:
"In our view, the CIT (Appeals) and the Tribunal have rightly held that the assessee is entitled to the credit of the TDS mentioned in the TDS certificates issued by the contractor, whether the said certificate is issued in the name of the Joint Venture or in the name of a Director of

the assessee company. They have considered the terms of the agreement dated 12-03-2003 among the parties to the joint venture and held that credit
for TDS certificates cannot be denied to the assessee while assessing the contract receipts mentioned in the said certificates as income of the assessee. The income shown in the TDS certificates has either to be taxed in the hands of the joint venture or in the hands of the individual co-joint venturer. As the joint venture has not filed return of income and claimed credit for TDS certificates and the TDS certificates have not been doubted, credit has to be granted to the TDS mentioned therein for the assessee.

The Revenue cannot be allowed to retain tax deducted at source without credit being available to anybody. If credit of tax is not allowed to the assessee, and the joint venture has not filed a return of income, then credit of the TDS cannot be taken by anybody. This is not the spirit and intention of law, "(Emphasis Supplied)

9. At this stage, it is also relevant to note the provisions of Rule 37BA of the Income Tax Rules, 1962, which envisions grant of TDS credit to entities other than the deductee (herein, M/s REPL). We must clarify that we are not oblivious of the fact that Rule 37BA is not directly applicable in the facts of this case. The reliance placed on Rule 37BA is merely to demonstrate that in not all circumstances is TDS credit given to the deductee.

In the present case the amount was deposited as FDR's by the assessee on behalf of State of Rajasthan with the Bank of Rajasthan and on the FDR's deposit the interest has been accrued. The TDS was deducted by the Bank on the interest accrued on the FDRs. In our view, the Revenue is taking the hyper technical plea of not returning the TDS to the assessee on the pretext that the amount has been deposited with the bank on behalf of State of Rajasthan. Since the State of Rajasthan is not a taxable entity, therefore, refund of TDS cannot be given to the State of Rajasthan. It is not disputed that the assessee after realizing the interest income from the bank has given back the amount to the State of Rajasthan. Similarly it is also undisputed that the refund of TDS has not been claimed by the the State of Rajasthan and is only claimed by the Assessee being the nodal agency of the State of Rajasthan for this project. In our view, no prejudice will be caused to

any person if the TDS is refunded to the assessee being the nodal agency with the undertaking to return the amount to the State of Rajasthan. In view of thereof and also in view of the judgment referred hereinabove, the TDS deducted by the Income Tax Department is directed to be paid to the assessee and we accordingly hold the same. In this view of the matter, the appeal of the assessee is allowed."

6.4 I also find the Jurisdictional ITAt, Jaipur bench has also considered the issue in assessee's own case (M/s Rajasthan Urban Drinking Water Sewerage and Infrastructure Corp. Ltd.) in ITA No. 713 & 714/JP/2018 (A.Y. 2013-14 & 2014-15). Dated 05.02.2019 and decided the issue in favour of the assessee in the following words:-

"Thus, it is now settled precedent that the interest earned by the assessee on the fixed deposit of the amount which is received from the Government for disbursement to the various schemes/projects for which the assessee is a Nodal Agency to implement such projects/schemes such interest will not be the income of the assessee. Accordingly, following the decisions of Hon'ble Karnataka High Court as well as Coordinate Bench of this Tribunal (supra) we hold that the interest received by the assessee is not assessable to tax but it was received on behalf of the Government and will be forming part of the funds to be disbursed for implementation of various schemes and projects for public welfare. Hence, the addition made by the assessee is deleted. This issue is common for both the years, therefore, it stands adjudicated for assessment years 2013-14 & 2014-15

6.5 The above observations made by the Hon'ble ITAT, Jaipur Bench clearly uphold the fact that the interest earned on such funds only belongs to be respective Govt. schemes and not to the company and the company is acting only as nodal agency of the Govt. Therefore, the interest income of FDRs earned by the assessee is not assessee's income.

7. Identical issue has also been decided by the Gujarat High Court in the case of Gujarat Power Corporation Ltd. vs. Income-tax Officer, (2012) 25 taxmann.com 14 (Gujarat), June 26, 2016 in favour of the assessee while holding as under:-

"26.Reliance placed by the Tribunal in case of Tuticorin Alkali Chemicals and Fertilizers Ltd. (supra) was also misplaced. In the said decision, the assessee had earned interest out of investment made from the borrowed funds prior to the commencement of the business. It was in this background that the Apex Court held that such interest would be taxable and interest earned cannot be utilized to discharge liability for payment of interest. It was held that this was not a case of diversion of income by overriding title and that the deduction or set off against interest liability on the borrowed funds would not be permissible. The present case does not involve such facts. The assessee did not earn interest on funds borrowed for the purpose of its business. The prime question is whether the Interest income though received by the assessee from investment of the share capital money received from the Government which was deposited in fixed deposit, can be treated to be the income of the assessee or that of the Government. It is well settled that every receipt by a person is not necessarily his income.

27.Mere fact that in the earlier year, the assessee had treated such income differently, or that in the year under consideration, initially had paid advance tax on such basis, to our mind, would not be conclusive of the nature of the income. What needed to be ascertained was whether the assessee is legally correct in asserting that the income did not belong to the assessee, but that was of the Government of Gujarat, and that therefore, it cannot be taxed in the hands of the assessee. In our opinion, the assessee is perfectly justified in raising such a contention which was, to our mind, erroneously turned down by the Tribunal.

28. In the result, the appeal is allowed. The judgement of the Tribunal dated 16.12.1999 is set aside to that extent. The question is answered in the negative, that is, in favour of the assessee and against the revenue."

8. In view of the above, and respectfully following the decision of the Hon'ble Gujarat High Court, Hon'ble Delhi ITAT and jurisdiction Hon'ble ITAT, it is clear that the interest income of Rs. 5,13,22,611/- belongs to the Government Rajasthan and not to be the assessee. Therefore, there is no question of offering the said income to tax by the assessee. Accordingly, I am of the considered view that the addition made by the AO of Rs. 5,13,22,611/- is uncalled for and therefore, deleted.

Hence, the ground of appeal No. 1 is allowed."

5. Aggrieved by the CIT(A) order, the Revenue is in appeal before us. The ld. DR raised only one ground challenging the finding of ld. CIT(A) while deleting the addition of Rs. 5,13,22,611/- in view of the provisions of the Act. To support the grounds of appeal the ld. DR heavily relied upon the contention in detailed recorded in the order of the ld. AO and based that ld. DR prayed to set aside the order of the ld. CIT(A)

6. Per contra at the time of hearing of the appeal, the ld. AR of the assessee relied upon order of the ld. CIT(A) and also filed the written submission which is extracted herein below:-

" Brief About the Company

Rajasthan Urban Drinking Water Sewerage and Infrastructure Corporation Limited (RUDSICO) was incorporated as a Government Company under Companies Act, 1956. RUDSICO, a Govt. of Rajasthan undertaking, is the State Level Nodal Agency (SLNA) for Govt. of India financed projects like AMRUT, smart city, UIDSSMT, UIG, Eleven City Sewerage and the state Govt. financed projects like ROB-RUB, Seven Cities Sewerage and Affordable Housing. Earlier it was known by the name of Rajasthan Urban Infrastructure Finance and Development Corporation Limited (RUIFDCO) but after 19th November 2015 its name got changed to RUDSICO.The Authorized Share Capital of the company is Rs. 50 Crore and paid up capital of the company is Rs. 48,66,99,950/-.

Main objectives of the assesseecompany apart from acting as a nodal agency for Centre/State Govt. funded projects, are as under:

o To give financial assistance to ULBs/Government Agencies/Non-Government organization.

o To give subsidy, aid, assistance of any financial nature to ULBs/Govt. Agencies/Non Govt. Agencies.

o To arrange or provide consultancy services, technical, financial and other consultancy to ULBs.

o To carry out survey for schemes and programme relating to Infrastructure Development.

o To receive amount as revenue from ULBs.

o To distribute on behalf of Govt. grant-in-aid and financial assistance to ULBs.

o To arrange or raise funds from public, institutional investor, Banks or Financial Institutions.

o To plan and financial monitor all type of project related to development of Urban Areas in Rajasthan.

o To set up a Central Urban Data Centre for collecting and updating of all information relating to urban development and urban Infrastructure for the urban areas of the state.

o To act as nodal agency for implementation of affordable housing policy/scheme 2009 and as amended from time to time by the Government of Rajasthan

o To Plan, design, develop, construct, maintain, and manage the finance and to make or arrange all the works/Jobs/Services including incidental and ancillary for infrastructure development, housing, public utility services and all other works related to the construction.

We completely rely on the order passed by the Ld CIT(Appeals), we place our argument as below on the merits of the case;

Ground No 1:

Whether on the facts and circumstances of the case and in law, the Ld CIT(Appeals), NFAC has erred in del3eting the additions of Rs. 5,13,22,611/-made on account of undisclosed interest earned on FDRs and not appreciating the fact that as the assessee has claimed credit of TDS deducted on the said interest as per section 199 of the IT Act, such income on account of interest assessable in the hands of assessee.

Our submission:

1. The Company works as a nodal agency on behalf of the State Government/ Central Govtfor implementation of various schemes for the development of Urban Local bodies/Local Authorities /Municipalities.

2. The Company is holding certain funds under trust on behalf of Government, which are parked in the various bank accounts and the interest revenue received as interest by the Company is transferred to the respective scheme account. The scheme balances are shown as liability of the Company and the corresponding bank balances are lying in the bank account.

3. The assessee company has disclosed Rs. 5,13,22,611/- as Interest receipts was transferred under the head of 'Current Liabilities', because it is not the income of the company, as the same was interest earned on funds held on behalf of the Centre/State Governments.

4. At all the stages, the Government of Rajasthan was having over riding title over the funds lying with assessee Company, which is acting in fiduciary capacity.

5. Thus, neither the interest income was taxable in hands of the assesseecompany nor it is taxable in any other hand as the same is exempted under section 196 of the I.T. Act, 1961 being the income of Government. Hence, it was undisputed fact that the interest income earned on funds along with the TDS belong to the Government only, also as per the scheme guidelines duly seen by the Ld CIT(Appeals).

6. The Learned assessing Officer has grossly erred in making addition of such interest income which has to be transferred to the respective scheme as per directions of the respective Government. The Company is not empowered to utilise any amount out of the scheme funds for any other purpose.

7. Further, the Ld Assessing officer has also grossly erred in holding that "The Corporation should have included total interest received during the year on FDRs in its total income. However, it has shown interest income less by Rs. 5,13,22,611/-. Hence, the same is added back in total income."

   However, fundamentally, the assessee company cannot account for the interest income not belonging to it, as its own incomejust because the TDS has beendeducted on it by the Banks.

8. Finally, the learned CIT(Appeals) after analysing all the facts of the case has rightfully held at page 15 of the order that, *"8. In view of the above, and respectfully following the decision of the Hon'ble Gujarat High Court, Hon'ble Delhi ITAT and jurisdictional Hon'ble Jaipur ITAT, it is clear that the interest income of Rs.5,13,22,611/- belongs to the Government of Rajasthan and not to the assessee. Therefore, there is no question of offering the said income to tax by the assessee. Accordingly, I am of the considered view that the addition made by the AO of Rs.5,13,22,611/- is uncalled for and therefore, deleted."*

Further, the case is squarely covered by the decision of Honourable Coordinate Bench in the ITA no. 713 & 714/JP/2018 in an appeal filed by assesse Company for the Assessment year 2013-14 and 2014-15.

In support of the above facts, we place reliance on the judgment of Hon'ble Gujarat High Court in the matter of Gujarat Power Cooperation vs. ITO, 354 ITR 201 (Guj.), where it was held by that,

> *"26. Reliance placed by the Tribunal in case of Tuticorin Alkali Chemicals & Fertilisers Ltd. (supra) was also misplaced. In the said decision, the assessee had earned interest out of investment made from the borrowed funds prior to the commencement of the business. It was in this background that the Apex Court held that such interest would be taxable and interest earned cannot be utilized to discharge liability for payment of interest. It was held that this was not a case of diversion of income by overriding title and that the deduction or set off against interest liability on the borrowed funds would not be permissible. The present case does not involve such facts. The assessee did not earn interest on funds borrowed for the purpose of its business. The prime question is whether the interest income though received by the assessee from investment of the share capital money received from the Government which was deposited in fixed deposit, can be treated to be the income of the assessee or that of the Government. It is well settled that every receipt by a person is not necessarily his income.*
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> *27. Mere fact that in the earlier year, the assessee had treated such income differently, or that in the year under consideration, initially had paid advance tax on such basis, to our mind, would not be conclusive of the nature of the income. What needed to be ascertained was whether the assessee is legally correct in asserting that the income did not belong to the assessee, but that was of the Government of Gujarat, and that therefore, it cannot be taxed in the hands of the assessee. In our opinion, the assessee is perfectly justified in*

raising such a contention which was, to our mind, erroneously turned down by the Tribunal.

28. In the result, the appeal is allowed. The judgement of the Tribunal dated 16.12.1999 is set aside to that extent. The question is answered in the negative, that is, in favour of the assessee and against the revenue."

We also rely on the order of the HonorableDelhi High Court in case of CIT vs. Relcom (2015) 62 Taxmann.com 190 (Delhi High Court) wherein exactly similar facts as that of the assessee are involved and it was held that,

"6. Having heard the submissions made on behalf of the revenue and after a perusal the orders passed by the CIT(A) and the ITAT, we are of opinion that the said orders do not call for any interference and were warranted and justified in the facts and circumstances of the case. Before we proceed to elaborate on our reasons for the same, a perusal of Section 199 of the Act is necessary. Section 199 reads as follows: "199. Credit for tax deducted. (1) Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be. (2) Any sum referred to in sub-section (1A) of section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income such payment of tax has been made. (3) The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in subsection (1) and sub-section (2) and also the assessment year for which such credit may be given."

7. The revenue relies on the phrase "shall be treated as a payment of tax on behalf of the person from whose income the deduction was made" to contend that the assessee's TDS claim cannot be based on the receipts of M/s REPL. However, the assessee fairly admitted throughout the proceedings for its TDS claim of Rs. 1,20,73,097/- that the benefit of such claim has not been availed by M/s. REPL. Therefore, the revenue, having assessed M/s REPL's income in respect to such TDS claim cannot now deny the assessee's claim on the mere technical ground that the income in respect of the said TDS claim was not that of the assessee, given that M/s Relcom (the assessee) and M/s REPL are sister concerns and M/s REPL has not raised any objection with regard to the assessee's TDS claim of Rs. 1,20,73,097/-.

8. This Court's reasoning is supported by a ruling of the Division Bench of the Andhra Pradesh High Court in CIT v. Bhooratnam& Co. [2013] 357 ITR 396/216 Taxman 6/29 taxmann.com 275 where the Court noted as follows: "In our view, the CIT (Appeals) and the Tribunal have rightly held that the assessee is entitled to the credit of the TDS mentioned in the TDS certificates issued by the contractor, whether the said certificate is issued in the name of the Joint Venture or in the name of a Director of the assessee company. They have considered the terms of the agreement dated 12-03-2003 among the parties to the joint venture and held that credit 8 ITA No. 247 & 248/JP/2014 Rajasthan Avas Vikas & Infrastructure Ltd. Vs. DCIT for TDS certificates cannot be denied to the assessee while assessing the contract receipts mentioned in the said certificates as income of the assessee. The income shown in the TDS certificates has either to be taxed in the hands of the joint venture or in the hands of the individual co-joint venturer. As the joint venture has not filed return of income and claimed credit for TDS certificates and the TDS certificates have not been doubted, credit has to be granted to the TDS mentioned therein for the assessee.

The Revenue cannot be allowed to retain tax deducted at source without credit being available to anybody. If credit of tax is not allowed to the assessee, and the joint venture has not filed a return of income, then credit of the TDS cannot be taken by anybody. This is not the spirit and intention of law.(Emphasis Supplied)

9. At this stage, it is also relevant to note the provisions of Rule 37BA of the Income Tax Rules, 1962, which envisions grant of TDS credit to entities other than the deductee (herein, M/s REPL). We must clarify that we are not oblivious of the fact that Rule 37BA is not directly applicable in the facts of this case. The reliance placed on Rule 37BA is merely to demonstrate that in not all circumstances is TDS credit given to the deductee."

Further, the case is also covered by the decision of Honourable Coordinate Bench in for the Assessment year 2009-10 and 2010-11 in the case of Rajasthan Avas Vikas & Infrastructure Ltd.Vs DCIT, Circle 6,ITA Nos 247 & 248 JP/2014 dated 18 march 2016.It was held at page 8 of the order that,

"In the present case the amount was deposited as FDR's by the assessee on behalf of State of Rajasthan with the Bank of Rajasthan and on the FDR's deposit the interest has been accrued . The TDS was deducted by the Bank on the interest accrued on the FDRs. In our view, the Revenue is taking the hyper technical plea of not returning the TDS to the assessee on the pretext that the amount has been deposited with the bank on behalf of State of Rajasthan.

Since the State of Rajasthan is not a taxable entity, therefore, refund of TDS cannot be given to the State of Rajasthan. It is not disputed that the assessee after realizing the interest income from the bank has given back the amount to the State of Rajasthan . Similarly it is also undisputed that the refund of TDS has not been claimed by the the State of Rajasthan and is only claimed by the Assessee being the nodal agency of the State of Rajasthan for this project . In our view, no prejudice will be caused to any person if the TDS is refunded to the assessee being the nodal agency with the undertaking to return the amount to the State of Rajasthan. In view of thereof and also in view of the judgment referred hereinabove, the TDS deducted by the Income Tax Department is directed to be paid to the assessee and we accordingly hold the same.

In this view of the matter, the appeal of the assessee is allowed."

(Note: Rajasthan Avas Vikas & Infrastructure Ltd was merged in RUDSICO vide MCA order dated 29th January, 2016 and accordingly notification no. F. 3(K)/Esta./PD/DLB/14/4169 dated 12th April, 2016 was issued in this regard.)

Further, the case is covered by the decision of Honourable Coordinate Bench in for the ITA no. 713 & 714/JP/2018 in an appeal filed by assesse only, for the Assessment year 2013-14 and 2014-15. Where it was held by the Honourable Coordinate Bench that,

"Thus, it is now settled precedent that the interest earned by the assessee on the fixed deposit of the amount which is received from the Government for disbursement to the various schemes/projects for which the assessee is a Nodal Agency to implement such projects/schemes such interest will not be the income of the assessee. Accordingly, following the decisions of Hon'ble Karnataka High Court as well as Coordinate Bench of this Tribunal (supra) we hold that the interest received by the assessee is not assessable to tax but it was received on behalf of the Government and will be forming part of the funds to be disbursed for implementation of various schemes and projects for public welfare. Hence, the addition made by the assessee is deleted."

In view of above, your good self is requested to kindly upheld the order passed by the Ld CIT(Appeals) in this regard.

Ground No 2:

Whether on the facts and circumstances of the case and in law, the Ld. CIT (Appeals) NFAC has erred in deleting the additions of Rs. 5,13,22,611/- made on account of interest earned on FDRS in spite of the facts that the assessee company is a corporation not a Government itself and hence its accounts are to be maintained as per

the principles of Section 145 of the Act on commercial principles and it has also not been registered u/s 25 of the Companies Act as well as u/s 12A of the Income Tax Act, 1961.

Our submission:

The learned AO has completely misunderstood the fundamentals of the Company and its functioning, particularly Government Company. It was mentioned in the Ld AO order at page 2 and 3 that, *"Regarding first argument it may be stated that the assesseeCorporation is not a charitable organization. It is not registered u/s 25 of companies Act. It is not registered u/s 12A of the IT Act. Therefore its income has to be computed on the principles of commercial expediency. In view of above, second argument is also not acceptable. The assessee Corporation is a separate entity not Govt itself hence income & expenditure has to be maintained as per provisions of section 145 of the IT Act on commercial principles. The assessee Corporation may maintain separate accounts of income / expenditure of a particular project or scheme. But it has to account for all the incomes arising from any sources during the year. Related expenditure has also to be accounted for."*

The Ld AO has complete misunderstood commercial expediency, which never suggests to account for income not belonging to an assessee be categorised as its own income.

Further, the basic principles of accounting and rules for preparation of financial statements are same for a charitable trust and a section 25 company of the Companies Act.Hence, it suggest that the learned AO has completely misunderstood the transaction and its purpose

The assessee company prepares its financial statements as per the applicable accounting standards issued by ICAI and the books are audited by the Independent Chartered Accountancy firm, which is then supplementarily audited by the C&AG Department of India. The Company is also under the Tax Audit, where the income and expenditure are audited in compliance of the Income Tax Act, 1961, being undertaken by the independent CA Firm. Further, being a Government Company, the assessee is also under the regular audit system of C&AG of India.

In view of the above, we request your honours to dismiss the appeal of the Department and decide in favour of the assessee."

7. We have heard rival contentions and perused the material available on record. We observe that the assessee company works as a nodal agency on behalf of the State Government/Central Govt. for implementation of various schemes for the development of Urban Local bodies/Local Authorities/Municipalities. The company is holding certain funds under trust on behalf of Government which are deposited in the various bank accounts and the interest on that funds are transferred to the respective scheme account. The scheme balances are shown as liability of Company and the corresponding bank balances are lying in the bank account. The ld. AR for the assessee submitted that the assessee company has duly recorded Rs. 5,13,22,611/- as 'Current Liabilities', because it is not the income of the company, as the same was interest earned on funds held on behalf of the Centre/State Governments. At all the stages, the Government of Rajasthan was having over riding title over the funds lying with assessee Company, which is acting in fiduciary capacity.

7.1 We observe that interest which has been transferred to the respective scheme or as per directions of the State Government where the company is not empowered to utilize any amount of the scheme fund for any other purposes. The issue raised by the revenue in this appeal has

already been decided in the case of the assessee for A.Ys 2013-14 and 2014-15 and this being the specific A.Y 2016-17. The finding of the Co-ordinate Bench in the case of the assessee in assessment year 2013-14 and 2015-16 in ITA No. 713 & 714/JP/2018 dated 05/02/2019 is reproduced herein below:

"5. We have considered the rival submissions as well as relevant material on record. There is no dispute that the assessee was incorporated as a State Government company to function as a Nodal Agency for the purpose of monitoring and disbursing funds to the various welfare schemes and projects. The assessee is receiving funds from the Government and then disbursing the same to various projects and schemes as it is clearly spelt out in the objects of the assessee. During the year under consideration the assessee has received interest of Rs. 3,78,34,698/- on the FDRs which were made to park various amounts with the bank. There is no dispute that the amount which was put into the fixed deposit was received by the assessee from the Government for the purpose of disbursement of the same in the various schemes/projects sponsored by the Government. This fact has not been disputed by the authority below that the assessee is working as a Nodal Agency and it is not the assessee own activity of providing such activation or carrying out the activity of development or infrastructure under the welfare schemes but the assessee is only disbursing the funds as intermediary between the Government and the actual execution of the scheme. Therefore, the assessee is functioning as a Nodal agency for disbursing of funds as per mandate or instructions given by the Government. The assessee has been keeping the said amount in the fixed deposit for earning the maximum interest as per the memorandum issued by the Ministry of Finance Department of Expenditure dated 28.01.2013. In case the fund remained unutilized along with interest has to go back to the consolidated fund of India. Otherwise, the interest will be forming part of the funds to be allocated to a particular projects or schemes. Therefore, even if the interest amount is not refunded to the consolidated funds, the same has to be adjudicated while allocating the subsequent funds for the purpose of utilizing on a schemes or projects. Therefore, the assessee is receiving the funds and utilizing the same as per instructions/directions of the Government and in the mean time holding the said fund in the fiduciary capacity and the interest if

any earned in the mean time would not belong to the assessee but it will be forming part of the fund itself which is meant for a particular scheme(s) or project(s). The assessee has been showing the interest as liabilities and give the treatment to the said interest as the fund itself being liability in the balance sheet. The Hon'ble Karnataka High Court in case of CIT & Anr. Vs. Karnataka Urban Infrastructure Development & Finance Corporation (supra) while considering the issue of interest income brought to tax has held in paras 6 to 8 as under:-

*"**6.** We have no doubt in our mind that the said judgment squarely covers the issue involved in this appeal. It has been held by the Division Bench of this court in the aforesaid judgment in the relevant paragraph as under (page 584) :*

"The material on record shows that the very purpose of constitution of the assessee was to act as a nodal agency for implementation of the mega city scheme worked out by the Planning Commission. Both the Central and the State Governments are expected to provide requisite finances for implementation of the said project. The funds from the Central and State Governments will flow directly to the specialised institutions/nodal agencies as grant and the nodal agency will constitute a revolving fund with the help of Central and State shares out of which finance could be provided to various agencies such as water, sewerage boards, municipal corporations, etc. The objective is to create and maintain a fund for the development of infrastructural assets on a continuing basis and, therefore, the assessee is a nodal agency formed/created by the Government of Karnataka as per the guidelines ; there is no profit motive as the entire fund entrusted and the interest accrued therefrom on deposits in bank though in the name of the assessee has to be applied only for the purpose of welfare of the nation/States as provided in the guidelines ; the whole of the fund belongs to the State Exchequer and the assessee has to channelise them to the objects of the Centrally sponsored scheme of infra-structural development for the mega city of Bangalore. Funds of one wing of the Government are distributed to the other wing of the Government for public purpose as per the guidelines issued. The monies so received, till they are utilised, are parked in a bank. The finding recorded by the Tribunal clearly shows that the entire money in question is received for implementation of the scheme which is for a public purpose and the said scheme is implemented as per the guidelines of the Central Government and, therefore, the assessee is only acting as a nodal agency of the Central Government for implementation of these projects. It is not the case of the Revenue that the assessee was carrying on any business or activities of its own while implementing the scheme in question. The unutilised money, during which the project could not be fully implemented, is deposited in a bank to earn interest. That interest earned is also again utilised for the implementation of the mega city scheme which is also permitted under the

scheme. Therefore, in computing the total income of the assessee for any previous year the interest accrued on the bank deposits cannot be treated as an income of the assessee as the interest is earned out of the money given by the Government of India for the purpose of implementation of the mega city scheme.

Therefore, we do not find any error in the conclusion reached by the Tribunal that there was no income earned by way of interest by the assessee and setting aside the order of the Assessing Officer which is affirmed by the first appellate authority. The finding given by the Tribunal is purely a question of fact. We do not find any substantial question of law involved in this appeal and, therefore, this appeal is liable to be dismissed at the stage of admission itself."In the light of the aforesaid findings recorded by the Division Bench of this court, we are of the considered opinion that there is no merit or sub stance in this appeal. No substantial question of law arises to be answered by this court. Thus, the appeal is hereby dismissed.

7. As observed supra, Explanation 3C has now in clear terms provided that 7 such conversion of interest amount into loan shall not be deemed to be regarded as "actually paid" amount within the meaning of section 43B. In view of clear legislative mandate removing this doubt and making the intention of the legislature clear in relation to such transaction, it is not now necessary for his court to interpret the unamended section 43B in detail, nor it is necessary for this court to take note of facts in detail is also the submissions urged in support of various contentions except to place reliance of Explanation 3C to section 43B and answer the question against the assessee and in favour of the revenue.

8. In view of the forgoing discussion and in the light of Explanation 3C appended to section 43B, quoted supra, we answer the questions referred to this court against the assessee and in favour of the Revenue."

Therefore, the Hon'ble High Court has upheld the order of the Tribunal that there was no income earned by way of interest by the assessee as the entire money was received for implementation of the scheme which is for the public purpose the said scheme implemented by the Central Government. It was also held that the assessee is only acting as a Nodal Agency for the Government for implementation of those projects. Thus, once the assessee has not carried out any business activity of its own while implementing the scheme floated by the Government then, the unutilized money during which the project could not be fully implemented is deposited in the Bank to earn interest, the same would not be the income of the assessee. The Coordinate Bench of this Tribunal in case of Rajasthan Avas Vikas & Infrastructure Ltd. vs. DCIT (supra) while

dealing with an identical issue of not granting the TDS credit in respect of the interest of such deposit has held in para 4.3 and 5 as under:-

"4.3. We have heard rival contentions and perused the material available on record. In our view the issue involved in the present appeal had already been adjudicated in the matter of CIT vs. Relcom (2015) 62 Taxmann.com 190 (Delhi) wherein it was held as under :-

6. *Having heard the submissions made on behalf of the revenue and after a perusal the orders passed by the CIT(A) and the ITAT, we are of opinion that the said orders do not call for any interference and were warranted and justified in the facts and circumstances of the case. Before we proceed to elaborate on our reasons for the same, a perusal of Section 199 of the Act is necessary. Section 199 reads as follows:*

"199. Credit for tax deducted.

(1) Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be.

(2) Any sum referred to in sub-section (1A) of section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income such payment of tax has been made.

(3) The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub-section (1) and sub-section (2) and also the assessment year for which such credit may be given."

7. *The revenue relies on the phrase "shall be treated as a payment of tax on behalf of the person from whose income the deduction was made" to contend that the assessee's TDS claim cannot be based on the receipts of M/s REPL. However, the assessee fairly admitted throughout the proceedings for its TDS claim of Rs. 1,20,73,097/- that the benefit of such claim has not been availed by M/s. REPL. Therefore, the revenue, having assessed M/s REPL's income in respect to such TDS claim cannot now deny the assessee's claim on the mere technical ground that the income in respect of the said TDS claim was not that of the assessee, given that M/s Relcom (the assessee) and M/s REPL are sister concerns and M/s REPL has not raised any objection with regard to the assessee's TDS claim of Rs. 1,20,73,097/-.*

8. *This Court's reasoning is supported by a ruling of the Division Bench of the Andhra Pradesh High Court in CIT v. Bhooratnam & Co. [2013] 357 ITR 396/216 Taxman 6/29 taxmann.com 275 where the Court noted as follows:*

"In our view, the CIT (Appeals) and the Tribunal have rightly held that the assessee is entitled to the credit of the TDS mentioned in the TDS certificates issued by the contractor, whether the said certificate is issued in the name of the Joint Venture or in the name of a Director of the assessee company. They have considered the terms of the agreement dated 12-03-2003 among the parties to the joint venture and held that credit for TDS certificates cannot be denied to the assessee while assessing the contract receipts mentioned in the said certificates as income of the assessee. The income shown in the TDS certificates has either to be taxed in the hands of the joint venture or in the hands of the individual co-joint venturer. As the joint venture has not filed return of income and claimed credit for TDS certificates and the TDS certificates have not been doubted, credit has to be granted to the TDS mentioned therein for the assessee.

** ** **

The Revenue cannot be allowed to retain tax deducted at source without credit being available to anybody. If credit of tax is not allowed to the assessee, and the joint venture has not filed a return of income, then credit of the TDS cannot be taken by anybody. This is not the spirit and intention of law."(Emphasis Supplied)

9. *At this stage, it is also relevant to note the provisions of Rule 37BA of the Income Tax Rules, 1962, which envisions grant of TDS credit to entities other than the deductee (herein, M/s REPL). We must clarify that we are not oblivious of the fact that Rule 37BA is not directly applicable in the facts of this case. The reliance placed on Rule 37BA is merely to demonstrate that in not all circumstances is TDS credit given to the deductee.*

In the present case the amount was deposited as FDR's by the assessee on behalf of State of Rajasthan with the Bank of Rajasthan and on the FDR's deposit the interest has been accrued . The TDS was deducted by the Bank on the interest accrued on the FDRs. In our view, the Revenue is taking the hyper technical plea of not returning the TDS to the assessee on the pretext that the amount has been deposited with the bank on behalf of State of Rajasthan. Since the State of Rajasthan is not a taxable entity, therefore, refund of TDS cannot be given to the State of Rajasthan. It is not disputed that the assessee after realizing the interest income from the bank has given back the amount to the State of Rajasthan . Similarly it is also undisputed that the refund of TDS has not been claimed by the

the State of Rajasthan and is only claimed by the Assessee being the nodal agency of the State of Rajasthan for this project . In our view, no prejudice will be caused to any person if the TDS is refunded to the assessee being the nodal agency with the undertaking to return the amount to the State of Rajasthan Avas Vikas & Infrastructure Ltd. Vs. DCIT Rajasthan. In view of thereof and also in view of the judgment referred hereinabove, the TDS deducted by the Income Tax Department is directed to be paid to the assessee and we accordingly hold the same. In this view of the matter, the appeal of the assessee is allowed. 5. Similar ground is raised in the assessee's appeal in ITA No. 248/JP/2014 for the assessment year 2010-11. Since we have decided the assessee's appeal in ITA No. 247/JP/2014 in its favour, on the same reasoning we decide the appeal of the assessee for the A.Y. 2010-11 in favour of the assessee."

The Coordinate Bench has again considered the issue of non grant of TDS credit in case of Rajasthan Avas Vikas & Infrastructure Ltd. vs. ACIT in ITA No. 391 & 392/JP/2016 vide order dated 12.05.2017 has held in para 2.2 to 2.5 as under:-

"2.2 At the outset, the ld. AR drawn our attention to the decision passed by the Coordinate Bench in ITA No. 247 & 248/JP/2014 dated 18.3.2016 in assessee's own case for A.Y 2009-10 and 2010-11 and submitted that issue was decided in favour of the assessee by the said decision passed by the Coordinate Bench and hence, the same should be followed in respect of impunged matters before us.

2.3 The issue under consideration before the Coordinate Bench for for A.Y 2009-10 and 2010-11 are as under:- ITA No. 247/JP/2014 (Assessment Year 2009-10): "In the facts and circumstances of the case the learned Commissioner (Appeals) has erred in not allowing credit of TDS of Rs. 4502798, deducted by our Bank on interest and deposited to the Income Tax Department and holding that the interest belongs to Police Department and the provisions of section 199 are applicable.' ITA No. 248/JP/2014 (Assessment Year 2010-11) "In the facts and circumstances of the case the learned Commissioner (Appeals) has erred in not allowing credit of TDS of Rs. 1741463, deducted by our Bank on interest and deposited to the Income Tax Department and holding that the interest belongs to Polce department and the provisions of section 199 are applicable." The facts under consideration before the Coordinate Bench were that during the year under consideration the assessee deposited funds received from HUDCO in FDRs with the Bank as the same were lying idle and got the interest of Rs. 2,18,15,365 and on the said

interest the Bank of Rajasthan had deducted TDS of Rs. 45,02,798. The assessee did not offer the interest income of Rs. 2,18,15,365 for the purpose of tax in the return of income as the assessee was merely acting as a nodal agency for the State of Rajasthan and has deposited the amount with the bank for and on behalf of State of Rajasthan. It was also the case of the assessee that the interest income accrued on the FDRs was not taxable. The assessee has submitted that the assessee is entitled to the refund of entire amount of Rs. 45,02,798 in the assessment year 2009-10. In the context of above facts, the Coordinate Bench relied on the decision of Hon'ble Delhi High Court in case of CIT vs. Relcom (2015) 234 Taxman 693 (Delhi) and its relevant findings are as under:- "In the present case the amount was deposited as FDR's by the assessee on behalf of State of Rajasthan with the Bank of Rajasthan and on the FDR's deposit the interest has been accrued. The TDS was deducted by the Bank on the interest accrued on the FDRs. In our view, the Revenue is taking the hyper technical plea of not returning the TDS to the assessee on the pretext that the amount has been deposited with the bank on behalf of State of Rajasthan. Since the State of Rajasthan is not a taxable entity, therefore, refund of TDS cannot be given to the State of Rajasthan. It is not disputed that the assessee after realizing the interest income from the bank has given back the amount to the State of Rajasthan. Similarly it is also undisputed that the refund of TDS has not been claimed by the State of Rajasthan and is only claimed by the assessee being the nodal agency of the State of Rajasthan for this project. In our view, no prejudice will be caused to any person if the TDS is refunded to the assessee being the nodal agency with the undertaking to return the amount to the State of Rajasthan. In view of thereof and also in view of the judgment referred hereinabove, the TDS deducted by the Income Tax Department is directed to be paid to the assessee and we accordingly hold the same. In this view of the matter, the appeal of the assessee is allowed"

2.4 The facts of the instant case are pari materia to the facts of the case before the Coordinate Bench in respect of assessee's own case for A.Ys 2009-10 and 2010-11. The Revenue has not brought to our notice any contrary authority on the said issue. Hence, we do not see a reason to deviate from the view taken by the Coordinate Bench in assessee's own case.

2.5 Undisputedly, the interest income has not been brought to tax by the Revenue accepting the assessee's contention that the receipt of funds and interest thereon is in the fudiciary capacity on behalf of the State of Rajasthan. The State of Rajasthan being not a taxable entity, there should not be any TDS at first place. For reasons best known to the assessee and the bank, the TDS

has been deducted. Given that interest income is not taxable either in the hands of the assessee or the state of Rajasthan, the TDS has to be refunded. Since the assessee is acting as the nodal agency and all funds have been routed through it, the refund of TDS has to be routed through it to the State of Rajasthan. Accordingly, we direct the Revenue to refund the TDS of Rs. 38440/- to the assessee with the undertaking to return the said amount to the State of Rajasthan."

Thus, it is now settled precedent that the interest earned by the assessee on the fixed deposit of the amount which is received from the Government for disbursement to the various schemes/projects for which the assessee is a Nodal Agency to implement such projects/schemes such interest will not be the income of the assessee. Accordingly, following the decisions of Hon'ble Karnataka High Court as well as Coordinate Bench of this Tribunal (supra) we hold that the interest received by the assessee is not assessable to tax but it was received on behalf of the Government and will be forming part of the funds to be disbursed for implementation of various schemes and projects for public welfare. Hence, the addition made by the assessee is deleted. This issue is common for both the years, therefore, it stands adjudicated for assessment years 2013-14 & 2014-15.

6. Ground no. 2 is regarding the status of the assessee is a Government company. As we have already discussed the facts and memorandum of association wherein the objects of the assessee has been set out. From the objects and purpose of creating the assessee it is clear that the state Government is helping more than 98% shares of the assessee, therefore, this issue though is only academic in nature, however, once the Government is holding more than 98% shares then the assessee company is a Government company.

In the result, both the appeals filed by the assessee are allowed.

8. The ld. DR did not brought to our notice any contrary decision or did not brought on record, the finding of the higher court in the case of the assessee for the issue which has already been decided in favour of the assessee, therefore, we see no merit in the Ground No. 1 and Ground No.

2 which has been raised are already decided in the assessee's own case as discussed as hereinabove by the co ordinate bench. On being consistent we see no reason to deviate the finding recorded in the order of the Co-ordinate Bench in the case of the assessee and therefore, the appeal of the revenue stands dismissed.

Order pronounced in the open Court on 10/05/2024.

Sd/-	Sd/-
(राठोड कमलेश जयन्तभाई)	(डा॰ एस. सीतालक्ष्मी)
(Rathod Kamlesh Jayantbhai)	(Dr. S. Seethalakshmi)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 10/05/2024.
*Santosh/ Ganesh Kumar
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- ACIT, Circle-6, Jaipur.
2. प्रत्यर्थी / The Respondent- Rajasthan Urban Drinking Water Sewerage and Infrastructure Corporation Limited, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 597/JPR/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar