

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH 'DB': DEHRADUN**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.61 & 57/DDN/2023, A.Y. 2016-17 & 2017-18

M/s. Kumaon Mandal Vikash Nigam Limited 01, Oak Park Campus, Mallital, Nainital, Uttarakhand, PAN: AABCK4290L	Vs.	Assistant Commissioner of Income Tax, Circle-3, Income Tax Office, Mallital, Nainital
(Appellant)		(Respondent)

Appellant by	Sh. Pavan Kumar Nath, Adv.
Respondent by	Sh. A.S.Rana, Sr. DR

Date of Hearing	13/02/2025
Date of Pronouncement	/02/2025

ORDER

PER AVDHESH KUMAR MISHRA, AM

Since common facts and grounds are involved in these appeals; therefore, these cases are being taken up together and are being disposed of by this common order.

2. These appeals for the Assessment Years (hereinafter, the 'AY') 2016-17 & 2017-18 filed by the assessee are directed against orders dated 12.05.2023 passed by the Commissioner of Income Tax (Appeals), NFAC, New Delhi [hereinafter, the 'CIT(A)'].

3. Three grounds of appeals have been raised in these appeals. However, except the issue of disallowance of interest paid on Government loans, no other grounds were pressed in these years. Thus, non-pressed grounds stand dismissed in both years. Now, we are tasked to decide the sole issue that whether the disallowance of interest payable on Government loans is allowable expenditure. The case with the ITA No. 61/DDN/2023 for AY 2016-17 is taken as a lead case.

4. The facts of the case giving rise to these appeals are that the assessee, a Government Corporation filed its Income Tax Returns (hereinafter, the 'ITR') of the relevant years. These cases were picked up for scrutiny and consequential assessments were completed under section 143(3) of the Income Tax Act, 1961 (hereinafter, the 'Act'), wherein various additions/disallowances were made. During the course of the assessment, the Assessing Officer (hereinafter, the 'AO') noted that the assessee had claimed interest expenditure on the said loan @ Rs.1,12,80,692/- every year. However, such interest was never paid in any year since such loan was taken from the State Government. The assessee had further claimed that the loan taken from the U. P. Government was interest bearing loan and part of the said loan taken from the U. P. Government was advanced to its subsidiaries; such as U.P. Digital Ltd., Transcable Ltd., Teletronix Ltd. etc. on interest. Remaining amount of loan taken from the U. P. Government had been claimed to have been used in assessee's business. During the course of assessment proceedings, the assessee had claimed that it had

charged interest from its subsidiaries on the said advances and also claimed interest expenditure loan taken from the U. P. Government. However, the assessee had not provided the breakup of interest charged from its subsidiaries along with the loans advanced to them. Therefore, the AO had held that the loan taken from the U. P. Government had not been used for earning interest; therefore, he disallowed consequential claim of interest expenditure of Rs.1,12,80,692/- in both years. In fact, the assessee was neither paying any interest to the U. P. Government nor receiving any interest from its subsidiaries whom part of borrowed fund was advanced as interest bearing loan.

4.1 The relevant finding of the AO, in this regard, in the AY 2016-17 is reproduced herein below per proper appreciation of the facts:

“16. On perusal of Balance Sheet for AY 2006-07 it revealed that assessee company has shown-

(A) unsecured loan Rs.12,78,31,611/- as on 31.03.2005;(B)unsecured loan Rs.18,25,87,611/- as on 31.03.2006;(C) interest accrued & due thereon Rs.10,07,83,849/- as on 31.03.2005(D) interest accrued & due thereon Rs.11,20,64,541/- as on 31.03.2006.

It is further observed that the amount (C) is almost 78.84% of the amount (A) and the amount (D) is almost 61.37% of the amount (B). The amount in question i.e. Rs. 1,12,80,692/- is the difference (C) and (D). In view of the above it appears that the amount of Rs.1,12,80,692/- is being consistently debited in the Profit& Loss since long back, as per the A/R. The A/R explained that the assessee company receives loans from Government and is obliged to pay interest thereon. This stated loan is further given to subsidiary companies such as M/s U. P. Digital Ltd., M/s Transcable Ltd., M/s Teletronix Ltd, etc. and the assessee company also charges interest on loans given to subsidiary companies. However, the A/R did not provide

any documentary evidence from the 'Rajya Akashmik Nidhi of Govt. explaining the method of charging the interest.

17. The assessee was also asked to furnish all relevant documentary evidences in support of such expense claimed. In this regard the A/R explained that this amount represents the interest payable by the assessee to the State Govt. as interest on loan received by it, but in actual such payment never made in actual. It is a practice continuing from past years to debit this amount in the Profit & Loss A/c and it is going on. In support, the A/R also furnished Profit & Loss A/c for AY 2006-07 wherein it is found that identical amount was debited under same head. The A/R accepted that this amount has actually not been paid to the Govt. as interest.

18. The assessee was confronted that why such amount of expense will not be disallowed as it is actually not paid. In reply, the A/R further explained that while the assessee company received Govt. Loan at the same time part of it was advanced to its subsidiary companies such as M/s. U.P.Digital Ltd., M/s Transcable Ltd., M/s Teletronix Ltd. etc. as loan, as per the directions issued by State Govt. time to time. Basically the Govt. loan is distributed to these Govt. undertakings through the assessee company. As the assessee is liable to pay interest in Govt. loan similarly the companies, which are receiving the loan from the assessee company are also liable to pay interest on the loan they received. So, while in the Profit & Loss A/c the assessee company is debiting the interest payable by it on loan received, at the same time it is also crediting the interest receivable by it from such subsidiary companies. But in actual, it neither pays interest to Govt. nor it receives interest from other undertakings. Just for the purpose of accounting such system of debiting and crediting of interest in the Profit & Loss A/c is continuing since past years. During the year under scrutiny also the assessee credited interest amounting to Rs.53,62,500/- as interest received from subsidiary companies.

19. On perusal of the Profit & Loss A/c it is observed that on the debit side the amount of Rs.1,12,80,692/- is there specifically under the head of 'Other borrowing cost', but on the credit side there is no such amount found credited specifically as Interest earned on Govt. loan advanced or something like that. On the credit side the assessee credited an amount of Its.1,26,53,701/ as interest income, without providing any bifurcation of the same. In absence of any bifurcation of total interest received pertaining

portion received from subsidiary companies cannot be ascertainable. The Account Officer also could not provide the breakup of total interest earned into amount of interest from other undertakings and interest income on savings and others and conclusive proof thereof. He only expressed that total interest credited includes the interest accrued on Govt. loan advanced to the other subsidiary companies.

20. On perusal of the accounts it is evident that a particular expense is debited which actually not been incurred. On the other hand, it is not evident that a particular income is credited which actually not been earned, as claimed by the representatives of the assessee. In view of the above, the explanation furnished by the A/R as well as the Accounts Officer, justifying the amount debited under the head of other borrowing cost, is found to be not acceptable, hence rejected. Accordingly, the amount of Rs.1,12,80,692/- is disallowed as bogus expense claimed and being added back to the total income. Penalty proceedings u/s 271(1)(c) initiated separately for furnishing of inaccurate particulars of income.”

4.2 In appeals, the Ld. CIT(A) upheld the disallowance of Rs.1,12,80,692/- made in both years, which was challenged by the appellant assessee.

5. Before us, the Ld. Counsel; at outset, submitted that the interest shown as payable in the Profit & Loss Account of the assessee in both years were on accrual basis. It was contended that the appellant assessee had passed only accounting entries in its books of account in consonance with the accounting method followed consistently over the years. It was submitted that the U. P. Government had never changed the nature of loan and waived of the interest amount payable thereon to it. Therefore, the appellant assessee, maintaining its books of accounts on mercantile basis, was bound to claim the payable interest as expenditure on accrual basis in its books of account. Further, the Ld. Counsel submitted that similar disallowances had never been made in

preceding and subsequent years, though there was claim of such interest expenditure of Rs.1,12,80,692/- since years and the AO had always allowed it except in these years. Further, it was submitted that the Office of the Comptroller & Auditor General who conducted audit almost all years, had never raised any audit objection on this score. He had further contended that the U. P. Government's loan used for the business of assessee would not generate any interest income to the assessee. Therefore, the reasoning of the AO for disallowance of interest was not justified. Emphasizing on the principle of consistency and mercantile system of accounting followed by the assessee, the Ld. Counsel prayed for deletion of the disallowance of interest expenditure of Rs.1,12,80,692/- in both years.

6. The Ld. Senior Departmental Representative (hereinafter, the 'Sr.DR') placing reliance on the finding of the AO and Ld. CIT(A), prayed for dismissal of the appeal.

7. We have heard both the parties and have perused the material available on record. We do find merit in the submission/contention/argument of the Ld. Counsel that the assessee is bound to record the interest payable on loans taken from the UP Government as the assessee has followed mercantile system of accounting. The appropriation of the loan here will not determine the allowability of interest expenditure as the AO has not commented on the fact that the appellant assessee's balance-sheet has not have non-interest-bearing fund/surplus. Further, the Revenue (AO/CIT(A)/Sr. DR) has not

brought anything on the record to demonstrate that either the nature of the said interest-bearing loan has been changed by the lender; UP Government or the appellant assessee is not required to pay any interest on the said loan. It was not brought on the record by the Revenue (AO/CIT(A)/Sr. DR) that either the UP Government has waived the interest on the said loan or the UP Government has converted the said loan into non-interest-bearing loan/grant-in-aid, etc. Here, we not find any material on the record which supports the AO's stand on the disallowance of interest of Rs.1,12,80,692/- in both years particularly when the AO, without questioning the accounting method of the appellant assessee followed over the years, has acted against the principle of consistency.

8. In view of the above, we are of the considered view that the Ld. CIT(A) is not justified in sustaining the disallowance of Rs.1,12,80,692/- in both years. We therefore, set aside the impugned order and delete the disallowance of interest of Rs.1,12,80,692/- made in both years.

9. In the result, both appeals of the assessee are allowed.

Order pronounced in open Court on 27th February, 2025

Sd/-

(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-

(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Dated: 27/02/2025

Binita, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, DEHRADUN