

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER &  
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

**ITA Nos. 2566 to 2573/Del/2024**

**(Assessment Years: 2010-11 to 2013-14 & 2015-16 to 2018-19)**

Indian Renewable Energy Development Agency Ltd. 3 <sup>rd</sup> Floor, August KrantiBhawan, Bhikaji Cama Place, New Delhi - 110066	Vs.	DCIT, Circle 10(1) C.R. Building New Delhi – 110095
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAACH384C		
Appellant	..	Respondent

**ITA Nos. 2910 to 2917/Del/2024**

**(Assessment Years: 2010-11 to 2013-14 & 2015-16 to 2018-19)**

DCIT, Circle 10(1) Room No. 389A, 3 <sup>rd</sup> Floor, C.R. Building, IP Estate New Delhi – 110001	Vs.	M/s Indian Renewable Energy Development Agency Limited Core 4A, First Floor, East Court, Lodi Road, H.O. Kasturba Nagar, South East Delhi, 110003
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAACH384C		
Appellant	..	Respondent

Appellant by :	Sh. Rohit Jain, Adv. Ms. Deepashree Rao, Adv. Sh. Shivam Gupta, CA
Respondent by :	Sh. Mukesh Kumar Jha, CIT, DR

Date of Hearing	16.12.2025
Date of Pronouncement	31.12.2025

## ORDER

### **PER ANUBHAV SHARMA, JM:**

These are appeals preferred by the Assessee and the Revenue against the orders of the Ld. National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as the First Appellate Authority or ‘the Id. FAA’ for short) in appeals filed before him against the orders of the Id. Assessing Officer (hereinafter referred to as the Ld. AO, for short) passed u/s 143(3) of the Income-tax Act, 1961 (hereafter referred to as ‘the Act’). Further details of the orders of the lower authorities are as under:-

ITA No. & AY	Ld. FAA who passed the appellate order	Appeal No. & Date of order of the Ld. FAA	AO who passed the assessment order & Date of order
2566/Del/24 2010-11	NFAC, Delhi 22.03.2024	ITBA/NFAC/S/250/2023- 24/1063205290(1) 22.03.2024	DCIT, LTU, New Delhi, 31.01.2013
2567/Del/24 2011-12	NFAC, Delhi 22.03.2024	ITBA/NFAC/S/250/2023- 24/1063206067(1)22.03.20	DCIT, Circle -1, LTU, New Delhi, 31.12.2013

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2568/Del/24 2012-13	NFAC, Delhi 22.03.2024	ITBA/NFAC/S/250/2023- 24/1063206349(1)22.03.20 24	DCIT, Circle -1, LTU, New Delhi, 11.03.2015
2569/D/24 2013-14	NFAC, Delhi 22.03.2024	ITBA/NFAC/S/250/2023- 24/1063206656(1)22.03.20 24	DCIT, CC-1, New Delhi, dated 07.03.2016
2570/D/24 2015-16	NFAC, Delhi 22.03.2024	ITBA/NFAC/S/250/2023- 24/1063206922(1)22.03.20 24	DCIT, CC-1, New Delhi, dated 13.12.2017
2571/D/24 2016-17	NFAC, Delhi 22.03.2024	DIN & Order No : ITBA/NFAC/S/250/2023- 24/1063207133(1) 22.03.2024	ACIT, CC-1, New Delhi, dated 17.12.2018
2572/D/24 2017-18	NFAC, Delhi 22.03.2024	DIN & Order No : ITBA/NFAC/S/250/2023- 24/1063207672(1) 22.03.2024	ACIT, CC-1, New Delhi, dated 19.12.2019
2573/D/24 2018-19	NFAC, Delhi 22.03.2024	DIN & Order No : ITBA/NFAC/S/250/2023- 24/1063207944(1) 22.03.2024	NFAC, Delhi 24.03.2021
2910/D/2024 2010-11	NFAC, Delhi 22.03.2024	DIN & Order No : ITBA/NFAC/S/250/2023- 24/1063205290(1) 22.03.2024	DCIT, LTU, New Delhi, dated 31.01.2013
2911/D/2024 23011-12	NFAC, Delhi 22.03.2024	DIN & Order No : ITBA/NFAC/S/250/2023- 24/1063206067(1) 22.03.2024	DCIT, Circle 1, LTU, New Delhi, dated 31.12.2013
2912/D/2024 2012-13	NFAC, Delhi 22.03.2024	DIN & Order No : ITBA/NFAC/S/250/2023- 24/1063206349(1) 22.03.2024	DCIT, Circle 1, LTU, New Delhi, dated 11.03.2015
2913/D/2024 2013-14	NFAC, Delhi 22.03.2024	DIN & Order No : ITBA/NFAC/S/250/2023- 24/1063206656(1) 22.03.2024	DCIT, Circle 1, LTU, New Delhi, dated 07.03.2016
2914/D/2024 2015-16	NFAC, Delhi 22.03.2024	DIN & Order No : ITBA/NFAC/S/250/2023- 24/1063206922(1) 22.03.2024	ACIT, Circle 1, LTU, New Delhi, dated 13.12.2017
2915/D/2024 2016-17	NFAC, Delhi 22.03.2024	DIN & Order No : ITBA/NFAC/S/250/2023- 24/1063207133(1)	ACIT, Circle 1, LTU, New Delhi, dated 17.12.2018

		22.03.2024	
2916/D/2024 2017-18	NFAC, Delhi 22.03.2024	DIN & Order No : ITBA/NFAC/S/250/2023- 24/1063207672(1) 22.03.2024	ACIT, Circle 1, LTU, New Delhi, dated 19.12.2019
2917/D/2024 2018-19	NFAC, Delhi 22.03.2024	DIN & Order No : ITBA/NFAC/S/250/2023- 24/1063207944(1) 22.03.2024	NFAC, Delhi 24.03.2021

2. The appeals were heard together and as grounds are substantially common the appeals are being disposed together with assessment year 2010-11, being considered main case and facts where ever relevant shall be narrated in the order. Pertinent to mention is that Id. Counsel has heavily relied written submissions filed and we shall consider same as pleading of assessee for understanding the facts providing the background of issues while the Id. DR has relied the impugned findings in favour of department.

2.1 The assessee, Indian Renewable Energy Development Agency Limited (IREDA), is a Public-Sector Enterprise engaged in promoting and financing projects in New and Renewable Sources of Energy (NRSE). IREDA, a Public Sector Enterprise under the Ministry of New & Renewable Energy (MRE) was established in March 1987 to promote and finance projects in New and Renewable Sources of Energy (NRSE). IREDA's Mission is to be a pioneering, participant friendly and competitive institution for financing and

promoting self-sustaining investment in energy generation from renewable sources and energy efficiency for sustainable development.

3. During the assessment year 2010-11, the year under consideration, the assessee had total (gross) business income of Rs.345,25,02,758, from its core business operations of financing, which was, in the audited financial statements, for the purposes of presentation classified in two different schedules as under:

Sr. No.	Schedule	Amount Rs.	Pg. No. of PB
1.	Schedule K: Income from Operations	320,99,96,239	36
2.	Schedule L: Other Income	24,25,06,519	37
	Total	345,25,02,758	

4. In the previous year relevant to the assessment year 2010-11, the assessee filed return of income on 29.09.2010 declaring total income of Rs.129,63,24,480/-. In the return of income, the assessee claimed deduction of Rs.29,53,53,159/- under section 36(1)(viii) of the Act, being 20% of the profits from long-term financing business. Ld. Counsel explained the said deduction was computed as under:

(A) Firstly, the assessee only considered Rs.320,32,47,862 [eligible amount] for the purposes of claiming deduction, i.e., income from

operations as reported in Schedule K *less* the amount of income of Rs.67,48,377/- in respect of MNRE service charges;

(B) Secondly, the business profits derived from eligible amount as above was determined by apportioning the total taxable business profits in the ratio of eligible amount (i.e., Rs.320.32 crs) as divided by the gross receipts (i.e., Rs.345.25 crs);

(C) Thirdly, 20% of the profits as determined in (B) above was taken as the amount eligible for deduction.

The eligible deduction of Rs.29,53,57,000 was thus computed as under:

Sr. No.	Schedule	Amount (Rs.)
1.	Business Income as per computation (before deduction u/s 36(1)(viii))	159,16,77,636
2.	Eligible Amount (out of Schedule K:Income from Operations)	320,32,47,862
3.	Gross Income [Total of Schedule K + Schedule L: Other Income]	345,25,02,758
4.	Amount eligible for deduction u/s 36(1)(viii): 1 X (2/3)	147,67,65,796
5	Deduction u/s 36(1)(viii) – 20% of Amount at 4 above	29,53,53,159

5. However by impugned assessment order dated 31.01.2013, passed under section 143(3) of the Income Tax Act, 1961 ('the Act' the assessing

officer proceeded to assess the income of the assessee at Rs.159,23,67,050/-.

In the assessment order, the assessing officer held as under:

(a) That the incomes reported in schedule K aggregating to Rs.24,25,06,519/-to the extent of income aggregating to Rs.23,22,36,762/-was held to be income from other sources as against the same being shown as business income by the assessee;

(b) AO held that the assessee is not at all eligible for deduction under section 36(1)(viii) of the Act and consequently, denied the entire claim of deduction under that section.

6. On further appeal, the CIT(A) partly allowed the appeal of the assessee and held certain incomes to be business income and certain other incomes to be income from other sources, resulting in cross appeal being filed by the assessee and the Revenue. Accordingly, following issue relevant to Assessment Years involved are framed for adjudication of all the appeals.

7. **Issue No.1:** Whether the assessee is eligible for claiming deduction u/s 36(1)(viii) of the Act and the issue arises out of the appeals of revenue and is common to all the years involved.

7.1 **Issue No.2:** The issue arises of appeal of assessee as to if, the re-characterization of following incomes as 'income from other sources' against 'business income' claimed by the assessee is erroneous.

2(a) Interest on short term deposits.

2(b) Interest on staff loans.

2(c) Incomes under the head business service charges which includes following:

**Business Service Charges**

Refund of management fees	Rs.78,26,350/-
Lead institution fees	Rs. 85,453/-
Fees based activity	Rs.25,10,326/-
Miscellaneous Income- others	Rs.1,20,26,745/-
Interest rate swap income	Rs.2,04,96,481/-

7.2 **Issue No. 3:** The issue arises out of appeal of department as to if, ld. CIT(A) committed error in considering the following incomes as business income against income from other sources held by ld. AO.

3(a) Interest on foreign deposits

3(b) miscellaneous income (transfer from UNDP grant)

7.3 **Issue No. 4:** Whether the disallowance u/s 14A relevant in AY: 2017-18 and 2018-19 is justified.

7.4 **Issue No. 5:** Whether the depreciation on building, residential flat at Jungpura, New Delhi is erroneously allowed by Ld. CIT(A). Issue is common in all the appeals of the Revenue.

7.5 **Issue No. 6:** Whether the Id. CIT(A) committed error in allowance of Hindi Development Expenditure. (AY 2013-14 to AY 2018-19).

7.6 **Issue No. 7:** Whether the Id. CIT(A) committed error in deleting the disallowance u/s 40(a)(ia) of the Act on the ground that disallowance is only attracted in case of non deduction and not short deduction of tax at source. (AY 2011-12).

**Issue No. 1:**

8. In regard to this issue revenue does not dispute that assessee is a financial corporation and providing long term finance for financial projects in new and renewable sources of energy and the same certainly falls in category of '*development of infrastructure facility*' which is 'eligible business' u/s 36(1) Explanation (b). Revenue does not dispute that assessee is giving long

term loans and advances as per the definition of long term finances provided in Explanation (h) to Section 36(1) of the Act.

8.1 Further as an admitted fact, up to year 1999 to 2000 proviso to Section 36(1)(viii) of the Act mandated requirement of a specific approval from CBDT for claiming deduction u/s 36(1)(viii) of the Act and the same was omitted vide Finance Act, 1999 w.e.f 01.04.2000. Then CBDT had admittedly granted approval for AY: 1988-89 to 1994 -1995 onwards till 1999-2000 copy of which are placed in paper book at page No. 453, 454 & 455. Subsequently, CBDT informed assessee vide letter dated 17.06.1998, copy of which is available at page 455 that there is no further requirement of approval. This alone justifies the claim of assessee for eligibility for claiming deduction u/s 36(1)(viii) of the Act.

8.2 Next, as a matter of fact in AY: 2020-21 to 2023-24 assessee is found eligible to claim deduction u/s 36(1)(viii) of the Act and the copy of assessment orders in that regard have been placed before us in the form of paper book. Thus, on principle of consistency also this issue deserves to be sustained in favour of the assessee.

8.3 Even otherwise too the copy of memorandum and Article of Association of the assessee company provided to us show that assessee was established exclusively to promote new and renewable and non conventional sources of energy and various financial activities, incidental and supplemental for providing financial support fall in the scope of memorandum and Article of Association. Ld. DR has relied these only to counter the nature of income characterized as income from other sources instead of business income but the fact remains that the primary object of the assessee company is to work as a financial corporation engaged in providing long term finance for industrial or agricultural development or development of infrastructure facility in the form of financial projects in new and renewable sources of energy. Accordingly the corresponding grounds arising out appeals of the department deserve no merit. Same are rejected.

**Issue No. 2:**

9. In regard to this issue it is undisputed that the assessee-company is engaged in the business of promoting, developing and extending financial assistance for setting up projects relating to new and renewable sources of

energy and energy efficiency/conservation. The business activities of the assessee, thus, necessarily include the following:

- Arranging funds from various sources, like capital, loans, deposits, grants, etc.;
- Administering the available funds/ monies optimally to maximize returns and wealth of the stakeholders;
- Advancing funds as financial assistance in various forms like capital, loans, debentures, bonds, securities, properties, etc., after processing/ evaluating/ analyzing the project to be assisted/ invested in;
- Invest and deal in available funds/ assets of the company in various forms like securities, properties, shares, etc.;
- Acting as a financial intermediary and promoting/ organizing consultancy services;

9.1 The memorandum and Article of Association of the assessee company provide objects, incidental or ancillary to the main object of financing projects in new and renewable sources of energy. Having considered the facts and circumstances we are of the considered view that once we hold that assessee is eligible for claiming deduction u/s 36(1)(viii) of the Act for being engaged in eligible business then the burden on the revenue is to specifically

assert as to how the revenue claimed to be generated from eligible business by the assessee otherwise does not fall in line of eligible business. What is essential to understand is that when the Act specifically provides what shall be 'eligible business' then in case of financial corporation which is a public sector company and a 'specified entity' then every activity connected with the object to grant financial support, assistance, consultancy services etc. involving the funds of the financial institution would give rise to eligible business profits. Rather when an assessee is specialized in all financial activities focusing on renewable and non conventional sources of energy the presumption should be that revenue from operations or incomes reported are outcome of eligible business activity only.

10. Still for conclusiveness we take up each disputed head independently and the first being '**interest on short term deposits**'. The assessee receives equity from Government of India and raises other borrowings in the nature of tax-free bonds, loans etc., which are utilized for disbursement of loans to eligible projects. However, there are intervals between receipt of funds and their disbursements and instead of keeping such unutilized amounts in their own custody, the assessee invests/ keeps them in short-term deposits and

government securities to bridge the gap between the receipts and the requirements of funds resulting in interest income, which is a part of the integrated business activity of promoting and providing finance for self-sustaining investment in energy generation from renewable sources and energy efficiency for sustainable development. The interest on short-term deposits and government securities-also mitigates the cost of interest expenditure payable by the assessee to the bond holders, which in turn would reduce the overall financing cost of the new projects.

10.1 We are satisfied with submissions of Id. Counsel that the act of keeping money with the banks was merely a mode of keeping the available funds as inextricable/ inseparable part of finance/ investment business of the assessee. No doubt in case of a finance/ investment business, funds and fund flow management is the heart and soul of the entire business activity. Such funds inter alia, kept in bank deposits to be utilized progressively for finance and investment activity to third parties. Such funds kept in bankdeposits would necessarily yield interest/ other income, which cannot be separated from the principal business of investment and finance.

10.2 It appears that the CIT(A) erroneously applied the principle of "derived from" without appreciating that in so far as the aforesaid streams of income is concerned, the dispute is not at all whether the same is derived from long-term finance eligible for deduction under section 36(1)(viii) of the Act. The CIT(A) failed to appreciate that the assessee claimed deduction under section 36(1)(viii) only in respect of income from long-term finance aggregating to Rs.320.32 crores reported as part of Schedule K and did not claim deduction in respect of incomes reported in Schedule L. Therefore, the dispute was limited to determining whether the income is business income or income from other sources. In view of the aforesaid, interest income of Rs.3,28,17,176/- arising consequent to activity of management and deployment of business funds of the assessee is nothing but inextricably linked to and is integral part and parcel finance and investment business and hence assessable as 'business income'.

11. In regard to **interest on staff loans** it comes up that during the assessment year 2010-11, the assessee received interest of Rs.14,47,116/- on various loans/advances given to staff viz., house building advance, car advance, scooter advance, household advances, etc. Such loans were

advanced to the employees under comprehensive rules framed for each such advance laying down the modalities of giving loan/ advance including the entitlement of an employee based on his eligibility. Copy of relevant extracts of Employees Handbook capturing various aspects of staff loan schemes operated by the assessee are filed @ pages 440 to 444 of the paper book. Such advances/loans are given as part of employees' welfare scheme which is critical and necessary not only for retaining good personnel/ staff but also for better efficiency and performance. Such loans, are provided in the course of day to day running and operations of the business of the assessee, which cannot prosper and grow without the support of the employees/ personnel employed in the organization. Interest received on such loans/advances given to the employees is thus inextricably linked to and is part and parcel of business operations of the assessee and is thus, assessable in its entirety as 'business income' and not as 'income from other sources'. In this regard, emphatic reliance was placed on the decision of **Hon'ble Gujarat High Court** in the case of **PCIT vs. Paschim Gujarat Vij Company Ltd.: [2025] 174 taxmann.com 748 (Gujarat)** wherein interest on staff loans earned by an electricity company was held to be 'business income'. Further reliance as placed on the decision of **Co-ordinate Bench of the Tribunal** in the case of

**Maruti Udyog Limited V. DCIT: [2005] 92 ITD 119** also held assessee wherein it has been held that interest on loan/advances to employees is assessable as ‘business income’.

12. Taking the case of **income from business service charges**, we find that in AY: 2010-11 this head involves the following:

Sr. No.	Details of Income	Amount
(a)	Refund of management fees	R.78,26,350
(b)	Lead institution fees	Rs.85,453
(c)	Fees based activity	Rs.25,10,326
(d)	Interest rate swap income	Rs.2,04,96,481
(e)	Miscellaneous income – others	Rs.1,20,26,745
	Total	Rs.4,29,45,355

12.1 As with regard to head of **refund of management fee** of Rs.78,26,350:23. The assessee’s counsel explained that for carrying out the business activity, the assessee, in addition to financial support from Govt. of India, also secures finance from various bilateral and multilateral agencies such as World Bank, Asian Development Bank (ADB), International Bank for Reconstruction and Development (IBRD), Kreditanstalt fuer Wiederaufbau (KfW) etc. In line with the above policy, the assessee had availed line of credit of Euro 50 million from KfW in terms of loan agreement dated 11.12.2008. The terms of the said loan agreement required

the assessee to pay management fees @ 0.25% of loan amount to KfW which was refundable in case disbursement of loan was affected by the assessee within 1 year from the date of the loan agreement. Since disbursement of loan amount in the aforesaid case was made by the lender within 1 year, the assessee was entitled to refund of the management fees paid earlier. Consequently, an amount of Rs.85,91,250/-, being management fees paid earlier, was refunded to the assessee by KfW on 11.12.2009. The amount so refunded was duly offered to tax by the assessee as business income under section 41(1) of the Act in the relevant assessment year 2010-11 as under:

- Refund of management fees - Rs. 78,26,350
- Foreign exchange difference - Rs.7,64,900

12.2 The assessing officer proceeded to recharacterize the aforesaid amount refunded as 'income from other sources', without appreciating that the same merely represented write back of expense which was earlier claimed and allowed as business deduction. Further, the CIT(A) confirmed the aforesaid variation made by the assessing officer on the premise that the assessee was unable to provide any explanation in respect of the said amount. In view of the above, as the refund of management fee of

Rs.78,26,350/-, was mere write back of expense which was earlier claimed and allowed as business deduction was rightly offered to tax as business income in terms of section 41(1) of the Act and the action of the assessing officer calls for being reversed.

12.3 In regard to head of **lead institution fee** Rs.85,453/-. The assessee charges various types of other fees in the capacity of a lender for providing finance to the borrowers, such as processing charges, management fees, documentation charges etc. The assessee, as a matter of practice, provides financial assistance either independently or jointly along with other lenders commonly known as 'consortium financing'. In consortium financing, a group of lenders jointly lend money to the borrower wherein one lender acts as the 'lead lender'. The lead lender is generally entitled to certain additional benefits/ consideration such as lead institution fees. A lead institution fee in lending is a charge paid to the lead bank for managing a large, syndicated loan or financing deal, covering its significant coordination, structuring, and administrative work and is determined as a fixed percentage of the loan amount, which is separate from standard interest. In the relevant assessment year, the assessee inter-alia earned/ received lead institution fees of

Rs.85,453 in terms of a consortium lending agreement entered into with Meenakshi Power, wherein the assessee acted as the lead lender. Such lead institution fees was duly offered to tax as business income by the assessee.

12.3.1 The assessing officer, proceeded to recharacterize the aforesaid amount refunded as income from other sources' and further, the CIT(A) confirmed the aforesaid variation made by the assessing officer on the premise that the assessee was unable to provide any explanation in respect of the said amount. As explained above the lead institution fee of Rs.85,453 undisputedly has direct nexus with the financing/lending activity of the assessee being earned as part of consortium financial action and directly related to the lending/financing activity undertaken by the assessee.

13. In regard to head of **fee based activity**, we find that in the course of its lending business, the assessee apart from charging interest, also receives various types of other incidental fees/charges in the capacity of a lender. In the relevant assessment year 2010-11, the assessee inter-alia received income from fees based activity amounting to Rs.25,10,326 which comprised of two components viz., i) Documentation charges - Rs.8,62,500; and ii) Share from

Renewable Energy & Energy Efficiency Partnership ('REEEP') -  
Rs.16,47,826.

13.1 Documentation Charges were recovered by assessee from the borrowers to cover the administrative and verification costs of preparing and validating loan agreements, loan agreements, and other necessary documents. These charges, often paid upfront or at the time of loan disbursement, are certainly a cost of the loan process, ensuring that the loans are granted after due diligence and add security to loan transaction. Documentation charges thus being directly related and purely incidental to the financing operations undertaken by the assessee, was rightly offered to tax as business income by the assessee.

13.2 The share from REEEP arises out of financing operation, as assessee had collaborated with the Renewable Energy and Energy Efficiency Partnership (REEEP), which is a Vienna-based Quasi-International Organisation that advances markets for renewable energy and energy efficiency with a particular emphasis on the emerging markets and developing countries. As part of the said collaboration, the assessee received a remuneration of Rs.16,47,826 for implementation of the project "Roadmap

for implementation of REC mechanism in India”. It was appraised that the Govt. of India, as part of National Action Plan on Climate Change (NAPCC), resolved to promote deployment of renewable energy. The Govt., further, decided to develop Renewable Energy Certificates (REC) mechanism to enable inter-state sale of electricity. Hence, Ministry of New & Renewable Energy engaged M/s. ABPS Infrastructure Advisory Pvt. Ltd. (ABPS Infra) for development of conceptual framework for REC mechanism in India. The conceptual framework for ABPS Infra has been acknowledged by MNRE and Forum of Regulators for further implementation. Therefore, the primary purpose of the proposal was to develop Mechanism for Implementation of REC in India'. Subsequently, the assessee, in partnership with ABPS Infra implemented the above project titled "Roadmap for implementation of REC mechanism in India". In this regard, copy of letter dated 04.02.2013 was filed by the assessee before the assessing officer giving detailed explanation on amount received and expended on account of REEEP which is filed @ pages 114 to 117 of the Paper Book (Refer pages 115 to 116). The aforesaid amount of Rs.16,47,826 being thus received by the assessee in the regular course of its financing business, was rightly offered to tax as business income, and Id. Tax authorities failed to appreciate its true nature.

14. In regard to head of **interest rate swap income** we find that in the relevant assessment year, the assessee had inter-alia entered into an Interest Rate Swap (IRS) agreement with Standard Chartered Bank for KfW line of credit, denominated in Euros, for hedging purposes on account of which interest Rs.2,04,96,481/- was earned. The same pertains to currency and interest rate swap availed by the assessee with a view to reduce the burden of high interest rate on the foreign denominated line of credit. The appellant contracted with Standard Chartered Bank whereby the assessee swapped fixed-rate payments for floating-rate payments and at the time of settlement of this contract, net gain accrued to the assessee, which reduced the effective interest cost incurred by the assessee on account of high interest rates prevailing in the domestic market vis-à-vis international market. The currency and interest rate swap was availed by the assessee to merely reduce the interest cost on loans, which is an operating business expense. Accordingly, the gain settlement of such contracts is operating in nature and was rightly offered to tax as business income.

14.1 In fact, as a matter of practice, gain/loss on interest rate swap has always been considered by the assessee for the purpose of determination of

business income of the assessee in the past and subsequent assessment years).

As in the immediately preceding assessment year 2009-10, loss on interest rate swap amounting to Rs.4,65,32,259 was debited to the profit & loss account and claimed as business deduction, which was allowed as such by the assessing officer in the assessment order dated 28.11.2011, passed under section 143(3) of the Act.

15. In regard to head of **miscellaneous income** as part of income from business service charges, reported in AY: 2010-11 assessee has made following credit to profit and loss account:

Sr. No.	Particulars	Amount
(i)	Unspent Subsidy transferred to income	Rs.84,09,795
(ii)	Credit given by bank due to early repayment of loan	Rs.25,82,442
(iii)	Stale cheques reversed	Rs.4,15,521
(iv)	Miscellaneous receipts	Rs.6,18,987
	Total	Rs.1,20,26,745

**15.1 Unspent subsidy transferred to income** - The assessee, for the purpose of carrying out its business activities of financing, receives various types of grants/ subsidies from Ministry of New & Renewable Energy, Govt. of India ('MNRE') under various schemes/ missions formulated/ by such Ministry. Certain portion of the grants/subsidies received by the assessee

from MNRE for various projects remain unutilized/ unexpended during the time span of the relevant scheme/ mission under which such grant/subsidy is received. Accordingly, when the scheme/mission so operated by MNRE comes to an end, the unspent amount of grant/subsidy becomes available to the assessee unconditionally. Accordingly, such unspent amount is recognized as business income by the assessee and is duly offered to tax as business income. Since this surplus is arising out of primary purpose of encouraging Renewable Energy the aforesaid amounts finds direct nexus with the lending/financing activities undertaken by the assessee, the same was rightly offered to tax as business income. We also find substance in contention that even otherwise, the aforesaid amounts being in the nature of capital grants were in any case in the nature of capital receipt, not liable to tax under the provisions of the Act and could not have been assessed to tax under the head 'income from other sources'.

**15.2 Interest saving on early repayment of loan** has arisen out of differences that surface in the closing balance of the loan accounts as per the assessee and as per the lender banks at the closure of financial year. Such differences occur on account of various reasons such as difference in charge

of interest on the outstanding loan amount etc. We find that by offering such differential amount as income, the assessee in essence only reduces its claim of interest expenditure as accounted for in its books of account and in reality, no actual income arises to the assessee.

15.3 **Stale cheques** reversed has been offered as part of Miscellaneous Income-Others which remained to be presented for payment. The said cheques having been issued in the regular course of business, was offered to tax as business income in terms of section 41(1) of the Act on reversal of the same. Revenue cannot dispute that write back of income is contemplated and allowed only under section 41(1) of the Act for the purpose of determination of 'business income' under Chapter IV of the Act so its characterization as 'income from other sources' is unsustainable income.

15.4 As a result of aforesaid discussion we are inclined to conclude that tax authorities have failed to understand the actual source of aforesaid incomes which was nothing but the diversified supplemental and incidental activities that were bound to taken up for attaining the fundamental institutional objective for which assessee came into existence and erroneously changed the

nature of these incomes from ‘business income’ to ‘income from other sources.” **Corresponding grounds in appeals of assessee are sustained.**

### **Issue No. 3**

16. As with regard to characterization of income of interest on foreign deposits ( Euro and US) to the extent of Rs.96,92,690/- held by the Ld. CIT(A) to be business income and for which department is in appeal we find that this amount is earned on account of ADB loan deposits, KFW loan deposits, World Bank Loan Deposits, various loan of credit. Assessee availed loans for development or renewable energy projects in wind, cogeneration and solar thermal sectors. Financing is done by assessee in Indian currency. To maintain foreign exchange fluctuation foreign currency loan assessee entered into agreements with Bank of Baroda and Canara Bank and in term of the agreement the US dollar loan were deposited with Bank of Baroda London and Canara Bank London branches of which assessee earned interest income. Similarly, currency deposits in which the lines of credits were deposited by assessee, interest income was earned by the assessee.

16.1 Now these arrangement were made by the assessee with the sole purpose of maintaining its profitability and hedge against the risk of foreign

exchange fluctuation. As the arrangement were outcome of the business activity of the assessee to subside the foreign exchange fluctuation risk at the time of repayment of loan, the hedging was not independent activity. More so, when the interest expenditure in respect of all these foreign currency loans was duly allowed as taken by the AO while computing the business profits. The Id. AR has pointed out that in fact in the immediately preceding assessment year 2009-10, loss on interest rate swap amounting to Rs.4,65,32,259/- was debited to the profit & loss account and claimed as business deduction, which was allowed as such by the assessing officer in the assessment order dated 28.11.2011, passed under Section 143(3) of the Act.

17. Coming to the issue of **miscellaneous income transferred from UNDP Hilly Hydro Capital Grant** sustained in favour of assessee. The background to same is that the Government of India, had accorded sanction for creation of revolving fund equivalent to \$1.4 million and amount equivalent to Rs.601.44 lacs was disbursed to the assessee in December' 1997 (Financial Year 1997-98). As per the terms and conditions of the sanction letter, the fund had to be primarily utilized to finance, in order of priority, the following small hydroelectric (hydel) projects:

- (a) Demonstration projects identified and recommended by IND-HHP/MNRE;
- (b) Other pipeline projects identified and recommended by IND-HHP/MNRE; and
- (c) Any other project from the hilly regions in the project zone of IND-HHP/MNRE posed to the assessee.

17.1 Subsequently, the Ministry for New & Renewable Energy (MNRE) vide letter dated 05.06.2002, clarified certain issues regarding accounting of the aforesaid revolving fund as under:

- (a) Assessee may consider the above grant as a capital grant;
- (b) Interest accrued from the fund shall be credited to the fund account and shall not be viewed as income of the assessee. The interest income earned by the fund is to be utilized for further disbursement to SHP Projects;
- (c) The above grant does not belong to the Govt. of India; and
- (d) Assessee can maintain a Memorandum Account.

17.2 In compliance with the above terms of sanction and the clarification, the assessee had sanctioned and disbursed Rs.820 lacs (which included the grant amount inclusive of interest accrued on such unutilized funds) to 3

small hydro projects. The interest income earned from the loan so extended to the 3 hydro projects was not considered as income by the assessee but the same was credited to UNDP SHP Hilly Hydro Capital Grant. Accordingly, the assessee credited the entire grant amount and interest earned thereon to UNDP SHP Capital Grant Account and had not considered the same as income. Subsequently, the purpose of UNDP grant given by MNRE stood fulfilled and the 3 projects sanctioned under this grant were commissioned and entire amount of loan was repaid by the borrowers. Thereafter, the MNRE vide letter dated 19.03.2010, clarified that the initial grant extended to the assessee was non-refundable and the assessee was free to utilize the same for advancing loans to other small hydro projects in hilly areas. Further, the assessee was permitted to give appropriate treatment to interest accrued on such funds. In light of the above, the assessee, in the relevant assessment year 2010-11, treated the total interest accrued on the aforesaid grant amounting to Rs.646.90 lacs as revenue income and reflected the same in the Statement of Profit & Loss under the head "Miscellaneous Income" and offered the same to tax. Further, the initial grant of Rs: 601.44 lakhs equivalent to \$1.4 million was retained as capital grant by the assessee.

17.3 It comes up that the aforesaid amount of Rs.6,46,89,710/- essentially represents interest earned on loans advanced by the assessee to small hydro projects in hilly areas and is thus income directly generated from financing and lending activities undertaken by the assessee. Accordingly, any interest accruing to the assessee on such grant was inextricably linked with the main business activity undertaken by the assessee which is providing long-term finance to power generation/distribution projects.

17.4 What is material is that in the impugned assessment order dated 31.01.2013 the assessing officer while considering the head of Miscellaneous Income (transfer from UNDP grant) amounting to Rs.6,46,89,710/- held the same to be taxable under the head "Income from other sources" contrary to "business income" as declared by the assessee. On appeal, the CIT(A) though benefitted the assessee but completely misconceived the facts and presumed that the said amount represented grant received from World Bank for acquiring fixed assets instead of interest accrued on loans advanced to small hydro projects and incorrectly directed the assessing officer to verify as to whether the said amount was reduced by the assessee from the cost of

assets purchased. AS for convenient reference, the relevant extracts of the impugned CIT(A) order are transcribed as under:

*“5.6. Misc. Income - Transferred from Capital Grants Rs.6,46,89,710/-*

*5.6.1 During the course of appellate proceeding the appellant filed detailed written submission reproduced herein under:-*

*5.6.2 The above submission made by the appellant has been carefully perused and considered and I am of the considered view that miscellaneous income of Rs.6,46,89,710/- in the nature of capital grants received by the appellant from world bank for acquiring fixed asset cannot be treated as income of the appellant being capital receipt provided depreciation in respect of such asset acquired has been claimed after deducting the amount of capital grant from the cost of fixed assets while computing depreciation. The A.O. is directed to verify as to whether the capital grant received by the appellant has been reduced from the cost of asset purchased while computing depreciation allowable under the I.T. Act and if yes, the capital grant received by the appellant credited to the profit and loss account, in my considered opinion cannot be treated as income of the appellant for the relevant previous year.”*

17.5 Thus there is substance in contention of Id. Counsel that both the lower authorities failed to correctly comprehend the true nature of the Miscellaneous Income of Rs.6,46,89,710/- and confused the same with grant

received by the assessee from World Bank, which was not at all the issue in dispute. However, we are satisfied that impugned Miscellaneous Income of Rs.6,46,89,710/- was rightly offered to tax as business income by the assessee. Ground thus raised corresponding to this issue are decided against the revenue.

#### **Issue No. 4**

18. In regard to this ground we find that assessee has made suo moto disallowance though as per assessee having earned no exempt income during relevant year assessee was not supposed to make any disallowance and this aspect was brought to the knowledge of the Assessing Officer during the assessment proceedings. However, still Assessing Officer increased the disallowance by adopting 1% of the average value of investments as opposed to 0.5% adopted by the assessee which has been sustained by the CIT(A). On going through the impugned assessment order apparently there is no satisfaction recorded by the Assessing Officer as to how the disallowance made by the assessee on suo moto was incorrect and non of the financials of the assessee have been discussed in that regard while law as stand settled require recording of satisfaction by the Assessing officer to disturb the suo

moto disallowance for which relevance can be placed on the decision of Hon'ble Delhi High Court in the case of Coforge Limited Vs. ACIT, 436 ITR 546 (Delhi). Even otherwise when there was no exempt income no disallowance was required. Thus, the issue in corresponding grounds in AY: 2017-18 & 2018-19 raised by the assessee deserves to be sustained.

### **Issue No. 5**

19. The issue arises out depreciation of building disallowed during the assessment year 2010-11, the assessee claimed depreciation of Rs.6,89,411 in respect of building viz., residential flat at Jangpura, New Delhi, which was not yet registered in the name of the assessee. The assessing officer, in the impugned assessment order, disallowed the said claim of depreciation on the ground that the building was not registered in the name of the assessee. On appeal preferred against the aforesaid order, the CIT(A), deleted the disallowance made by the assessing officer and held the assessee to be eligible for claiming depreciation in view of decision of Hon'ble Supreme Court in Mysore Minerals Ltd. v. CIT: [1999] 106 Taxman and 166 (SC) and the order passed by his predecessor in assessee's cases(s) for earlier assessment years.

19.1 It is undisputed that the said building was in exclusive dominion and control of the assessee and was used for the purposes of business. Admittedly, the said residential flat was acquired by the assessee long back, by way of an agreement to sell entered into with Hindustan Prefab Limited ('HPL') however, the said residential flat could not yet be registered in the name of the assessee. Assessee claims that to get the said property registered in its own name, all earnest efforts were and are being made by the assessee, even till now, however, the said residential flat is still not registered in the name of the assessee. In fact, the statutory auditor of the assessee, in its report for the financial year 2024-25, has duly mentioned that the assessee is making due efforts to get the said residential flat registered in its name. The decisive factor for determining whether a person is eligible for claiming depreciation under section 32 of the Act shall be 'beneficial ownership' contrary to 'registered ownership'. and it is pertinent to note that the assessee has always been allowed depreciation in respect of the said building in subsequent AYs as well, viz., AYs 2020-21 & 2021-22. In fact in subsequent AYs 2020-21 and 2021-22, the assessing officer allowed the claim of depreciation after raising specific queries on the said issue. So the ground has no substance.

## **Issue No. 6**

20. During the relevant assessment years the assessee incurred an expenses for development and promotion of Hindi language among its employees and the same was disallowed by the Assessing Officer alleging the same was not related to assessee's business which has been deleted by the CIT(A). We find that assessee is a public sector enterprise and is bound to follow Government of India annual program for promoting Hindi language in official work. The directions of the Government of India for transacting the official work in Hindi language requires organizing events promoting uses of language and imparting training to employees. Compliance of directions of the Government of India certainly if result in any expenditure the same relate to the assessee's business as otherwise defiance can lead to repercussion effecting the reputation and profitability too. The order of Id. CIT(A) requires no interference and the corresponding grounds raised by the revenue in AYs: 2013-14 to 2018-19 deserves to be rejected.

## **Issue No. 7**

21. In regard to this ground we find that in Financial Year 2010-11 assessee had made deduction @ 1% as TDS u/s 194I of the Act and which

according to Assessing Officer was incorrect and the deduction should have been @ 2% in respect of rental expenditure on hiring plant and machinery and u/s 194C in respect of security charges. CIT(A) has deleted the disallowance on the ground that disallowance u/s 40(a)(ia) of the Act is only attracted in case of non deduction and not where there is alleged short deduction of tax at source. Ld. CIT(A) has relied various judicial decisions and we find that same requires no interference as no contrary legal proposition has been set up by the department. Thus, corresponding grounds raised by the revenue for AY: 2011-12 deserves to be rejected.

22. In the light of the aforesaid determination of the issues we allow the appeals of the assessee and dismiss the appeals of the department with consequence to follow.

Order pronounced in the open court on 31.12.2025

Sd/-  
(Amitabh Shukla)  
ACCOUNTANT MEMBER

Sd/-  
(Anubhav Sharma)  
JUDICIAL MEMBER

Dated 31.12.2025  
Rohit, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI