

**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND ARUN KHODPIA, ACCOUNTANT MEMBER**

ITA No.338/CTK/2016: Assessment Year :2011-12

ITA No.276/CTK/2017: Assessment Year :2012-13

ITA No.43/CTK/2018: Assessment Year :2013-14

M/s. Orissa Power Transmission Corporation Ltd., Janapath, Bhubaneswar.	Vs.	ACIT, Circle-2(2), Bhubaneswar.
PAN/GIR No.AAACO 7873 L		
(Appellant)	..	(Respondent)

Assessee by : Shri Sidhartha Ranjan, AR
Revenue by : Shri M.K.Gautam, CIT (DR)

Date of Hearing : 13/6/ 2022
Date of Pronouncement : 13/6/2022

ORDER

Per Bench

These are appeals filed by the assessee against the orders of the CIT(A)-3, Bhubaneswar dated 30.5.2016 in Appeal No.0261/2015-16 for the assessment year 2011-12, dated 9.3.2017 in Appeal No.0333/15-16 for the assessment year 2012-13 and dated 13.10.2017 in Appeal No.0152/16-17 for the assessment year 2013-14, respectively.

2. Shri Sidhartha Ranjan, appeared on behalf of the assessee and Shri M.K.Gautam, Id CIT DR appeared on behalf of the revenue.

3. It was submitted by Id AR that for all the three assessment years, there are basically two issues i.e. (i) against the action of the Id CIT(A) in treating part of the interest income received by the assessee from its short term fixed deposit as income under the head " income from other sources" as against the claim of the assessee being income under the head " income from business" and (ii) against the action of the Id CIT(A) in confirming the disallowance made by the AO under the head " prior period expenses".

4. In regard to the issue of interest income from fixed deposits assessed as income under the head " income from other sources" as against "income from business" as claimed by the assessee, it was submitted by Id AR that the assessee had deposited its funds in short term deposits with the bank for period ranges between 10 days to 91 days. It was the submission that the assessee's accounts with the bank was also known as "Flexi Account" whereby the bank also uses to transfer excess of the funds in the account over and above the average requirements to Fixed Deposits by the bank itself. It was the submission that the AO had disallowed all the interest received by the assessee from its deposits with the bank, which had been claimed by the assessee as "business income". It was the submission that the Assessing Officer had treated the same as liable to be taxed under the head " income from other sources". It was fairly agreed by Id AR that for the assessment years 2011-12 & 2012-13, the assessee was incurring losses and, therefore, whether the such income was assessed under the

head " income from other sources" or "income from business", the issue was only academic insofar as the assessee was entitled to set off under section 72 of the Act of the interest income even though assessed under the head " income from other sources" against its business loss. It was the submission that in the assessment year 2013-14, the assessee was in profit and consequently, the interest income, if assessed under the head "income from other sources" would not be available to set off but would be assessed under the head " business income". It was the submission that such interest income assessed under the head "income from other sources" would also not be available for set off against carry forward losses. It was the submission that the interest earned by the assessee against the loans taken for the business of the assessee was treated as business expenditure by the Assessing Officer. It is the primary arguments of Id AR that the interest on loans taken by the assessee having been treated as business expenditure, interest earned by the assessee on the deposits made was also liable to be set off against the said interest expenditure i.e netting of the interest income. It was the alternative prayer that the interest earned being out of short term deposits and flexi deposits; the same was liable to be treated as business income as the deposits were made for the short time and for the purposes of business of the assessee. Id A.R. placed before us the judgement of Hon'ble Supreme Court in the case of National Co-operative Development Corporation vs CIT in Civil Appeal Nos.5105-5107 of

2009 order dated 11.9.2020, wherein, the Hon'ble Supreme Court has in para 38 held as follows:

"28. To decide the aforesaid question, it would be appropriate to advert to the very purpose for which the statutory appellant-Corporation has been set up. It is in this context that we have set out the functions of the appellant-Corporation in para 3 hereinabove, i.e., to advance loans or grant subsidies to State Governments for financing cooperative societies, etc. There is no other function which the appellant-Corporation carries out nor does it generate any funds of its own from any other business. In a sense the role is confined to receiving funds from the Central Government and appropriately advancing die same as loans, grants or subsidies. In a larger canvas the appellant-Corporation plans, promotes and makes financial programmes for the benefit of these societies and other entities to which such loans, grants and subsidies are advanced. We may say it is really in the nature of an intermediary with expertise in the financial sector to carry forward the intent of the Central Government to assist State Governments, Cooperative Societies, etc. Since this is the business activity, that is what has persuaded us to opine that the income generated in the form of interest on the unutilised capital is in the nature of business income. The objectives are wholly socio-economic and the amounts received including grants come with a prior stipulation for the funds received to be passed on to the downstream entities. This is the reason they have been treated as capital receipts. However, we are unable to opine that since this is a pass-through entity on the basis of a statutory obligation, the advancement of loans and grants is not a business activity, when really it is the only business activity. Once it is business activity, the interest generated on the unutilised capital has been held by us to be the business income."

5. Ld AR also filed a copy of the decision of the 'SMC' Bench of Jaipur Tribunal in the case of Shri Devasamparambil Hassainar Kuttty vs ACIT in ITA No.827/JP/2014 order dated 30.7.2019, had following the decision of Co-ordinate Bench of this Tribunal in the case of Mod Construction Co. vs ACIT (ITA No.389/JP/2012 dated 25.4.2017) held as follows:

"We have heard the rival contentions and pursued the material available on record. Firstly, regarding interest on income tax refund and interest on sales tax refund, the same has rightly been treated by the Ld. CIT (A) as income from other sources and we do not see any infirmity in the same. Regarding interest on FDR, it is noted that the FDRs were placed with the Banks to obtain bank guarantee which was necessarily required to be furnished to the various government department and in absence of such bank guarantee, the assessee could not have proceeded with the execution of contracts with the government department. Further, there is no finding hat the surplus funds have been invested by the assessee in the FDRs. Any interest on such FDR, therefore, must be treated as inextricably linked with the business of the assessee and therefore to be treated as business income and not as income from other sources. It is noted that similar view has been taken by Co-ordinate Bench in case of M/s Maya Construction (supra). The contention the Id. AR is therefore accepted and the order of Id CIT(A) to this extent stand modified."

6. It was the submission that the interest income earned by the assessee from short term deposits may be treated as "income from business" or alternatively, the assessee may be granted the set off of the interest income against the interest expenditure.

7. In reply, Id CIT DR submitted that one of the primary activities of the assessee was that the deposits were made as per the requirement of electricity supply Act and the assessee has not shown that the deposits were made as condition prescribed under the Electricity Supply Act. It was the further submission that the Id CIT(A) had in page 4 of 14 for the assessment year 2011-12 of his order, granted the assessee the benefit of treatment of the interest income from the miscellaneous deposits , delayed payment charges from customers, interest on advance to suppliers and

interest on advance to contractors as business income. It was the submission that the Id CIT(A) has treated the interest on fixed deposits, interest on SLDC Development Fund and interest on Flexi Account as liable to be assessed as "income from other sources". The rest of the interest income has been treated as business income. It was the submission that the assessee has not been able to prove how any portion of other interest incomes were in any way linked to the business activities of the assessee. It was the further submission that the AO has also raised a specific query as to how the deposits were part of the statutory compliance. The assessee has not been able to show anything either before the AO, or the Id CIT(A) and also before the ITAT. It was the submission that the Id CIT(A) has been extremely reasonable in his order and same should be upheld.

8. We have considered the rival submissions. At the outset, what is the noticed here is that the deposits are short term. The maximum period of the deposits is 91 days. It is not as if the assessee is attempting to make money out of making deposits in the bank. The assessee is admittedly a loss making concern and desperate attempting to shore up its account. In this process, it is also admitted that the assessee has substantial loan liability and the interest therefrom is a huge outgo and if at all the deposits are considered as surplus deposits, the assessee would have benefited by repaying this loan to reduce the interest liability. Further, the facts remains that these are short term deposits. Obviously, the assessee needs these

surplus funds in the immediate future. To lower its funds burden, it put certain portion of short term deposits and has earned interest income. Thus, this amount should rightly be granted the netting of the interest. The funds that have been deposited by the assessee are not extra funds but these are part of the loans, therefore, the netting is a right principle to be applied against the interest income. The arguments of Id AR that the amount in Flexi account are not deposited by the assessee but the amount transferred to the bank also hold water. Admittedly, when the money transferred to flexi account from current account generate certain interest income. This interest income is also liable to be set off against the interest outgoing. In these circumstances, we are not adjudicating as to whether this interest income is to be assessed under the head " income from business" or "income from other sources" as these interest income have gone to reduce the interest burden on the assessee's loans taken and the set off is to be granted to the assessee against interest outgo. In these circumstances, the disallowance as made by the AO and confirmed by the Id CIT(A) on this issue stands deleted. The AO is directed to give the benefit of set off of the interest income against the interest expenditure. Our view finds support from the decision of Hon'ble Supreme Court in the case of National Co-operative Development Corporation (supra), wherein, the Hon'ble Supreme Court has held in para 38 of its order that "income has to be determined on the principles of commercial accountancy. In the case

of a business, the profits must be arrived at on ordinary commercial principles. The scheme of the I.T.Act requires the determination of "real income" on the basis of ordinary commercial principles of accountancy. To determine the 'real income', permissible expenses are required to be set off".

9. Coming to the issue of 'prior period expenses', it was submitted by Id AR that the assessee organization functions all over the State of Odisha. The assessee sometimes receives intimation of the expenses incurred on a later date. Consequently, depreciation of the earlier years has been claimed during the current year based on the actual intimation of the installation and start of the operation. It was the submission that certain other expenses in the form of back pay revision have also been claimed. It was the submission that these are expenses actually incurred by the assessee though it relates to earlier years. It was the submission that the assessee has no objection, if this issue is restored to the file of the Assessing Officer for allowance in the year to which it relates.

10. In reply, Id CIT DR drew our attention to page 28 of PB, which was breakup of the prior period expenses. It was the submission that the depreciation was on account of demerger of the GRIDCO, certain business loss/unabsorbed depreciation had been allocated to the assessee. It was the submission that the depreciation relates to earlier years and the assessee having not claimed it during the earlier years, the same was not

liable to be allowed during the relevant assessment years. It was the submission that similarly, the pay arrears, details of the arrears were available to the assessee for the earlier years and the assessee having not claimed it then should not be granted the benefit during the relevant assessment years. He vehemently supported the order of the AO as well as Id CIT(A). It was the submission that the house rent details yearwise was also available to the assessee in 2008 itself. Similarly, in regard to the arrear of leave salary and arrears of bonus was also available.

11. We have considered the rival submissions. Admittedly, as per the provisions of section 32 of the I.T.Act, 1961, whether the assessee claimed the depreciation or not, the depreciation is compulsory to be allowed to the assessee. It is also an admitted fact that the assessee has been formed on account of demerger from GRIDCO. The depreciation breakup of the earlier years relate to the depreciation allowable to the assessee in respect of demerger of GRIDCO. These figures would not have been available to the AO for granting the depreciation u/s 32 of the Act, especially when this has come to his notice only during the relevant assessment year. Similarly, it is admitted that certain expenses have been incurred during the earlier years but that does not mean that the assessee loses the benefit of such expenses. Admittedly, the stand of the AO that prior period expenses relate to earlier years cannot be considered during the relevant assessment year is a valid stand. This being so, the issue in respect of prior period expenses

is restored to the file of the AO with a direction that said expenses are to be considered and allowed for such of the earlier years in respect of which the said expenses relate to. Hence, this issue stands partly allowed.

12. In the result, appeals of the assessee are partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 13/6/2022.

Sd/-
(Arun Khodpia)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 13 /06/2022
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : M/s. Orissa Power Transmission Corporation Ltd., Janapath, Bhubaneswar.
2. The Respondent. ACIT, Circle-2(2), Bhubaneswar
3. The CIT(A)-3, Bhubaneswar
4. Pr.CIT-3, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack