

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

Before Sh. Challa Nagendra Prasad, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 3425/Del/2018 : Asstt. Year: 2015-16

DCIT (Exemption), Circle, Ghaziabad (APPELLANT)	Vs	M/s. Sewa-THDC, Pragati Puram, Bypass Road, Rishikesh-249201 (RESPONDENT)
PAN No. AADAS 8383 A		

CO No. 129/Del/2018 : Asstt. Year: 2015-16

M/s. Sewa-THDC, Pragati Puram, Bypass Road, Rishikesh-249201 (APPELLANT)	Vs	DCIT (Exemption), Circle, Ghaziabad (RESPONDENT)
PAN No. AADAS 8383 A		

Assessee by : Sh. Swarn Singh, CA

Revenue by : Sh. Vivek Kumar Upadhyay, Sr. DR

Date of Hearing: 27.12.2023

Date of Pronouncement: 11.01.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue and cross objection by the assessee against the order of Id. CIT(A), Dehradun dated 16.03.2018 for the A.Y. 2015-16.

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

"1. The Ld. CIT(A) has erred in law and facts in deleting the additions of Rs. 1,50,00,000/- made by the AO against the Swach Bharat Fund directly transferred to the Balance sheet without taking it into Income & expenditure account of the assessee.

2. The Ld. CIT(A) has erred in law and facts in deleting the addition of Rs. 3,31,57,338/- made by the AO, received from R & R fund disaster relief and the same has been directly transferred to the Balance Sheet without taking it into Income & expenditure account of the assessee.

3. The order of Ld. CIT(A) be cancelled and the order of the AO be restored."

3. The assessee has raised the following grounds of appeal in Cross objection:

"1. That the Ld. C.I.T.(A) has erred in law and on facts in rejecting the following legal grounds of appeal which goes to the root of the matter and necessary facts were available on records:

a) That the case was selected for scrutiny by the I.T.O.-1(4)(2), Rishikesh, who was not "Assessing Officer" in terms of section 2(7A) of the Income Tax Act, 1961 and could not have exercised jurisdiction over the assessee at the relevant time, therefore, the impugned assessment order is illegal, void-ab-initio and liable to be quashed.

b) That the Notice issued u/s 143(2) of the Income Tax Act, 1961 dated 29.07.2016 by I.T.O., Ward-1(4), Rishikesh, is illegal, unsustainable in law and nonest in law and subsequent notices issued under section 143(2) dated 19.04.2017 and 21.07.2017 are barred by limitation, therefore, the impugned assessment order against the time barred notice is illegal, unsustainable in law, void-ab-initio and liable to be quashed.

c) That neither any Show Cause was given to the assessee for transfer the case from I.T.O.-1(4)(2), Rishikesh to Dy. C.I.T. (Exemption Circle), Ghaziabad nor any order under section 127 of the Income Tax Act, 1961 was passed in this regard, therefore, the Impugned assessment order is illegal, void-ab-initio and liable to be quashed.

d) That the case was converted from limited scrutiny to complete scrutiny in contravention to the C.B.D.T. Circular, therefore, the impugned assessment is unsustainable in law and the addition/disallowance made therein are liable to be deleted."

4. The society is engaged in developing and welfare of public in general of whole country and particularly population of catchments area operational rehabilitation area of THDCL project. The Society is registered u/s 12AA and 80G and enjoying exemption under the I.T Act, 1961. The Assessing Officer enquired about the fund of Rs. 1.50 crore for Swach Bharat Abhiyan and amount of Rs. 10.33 crores from R & R Disaster Relief.

5. The assessee submitted that they have accumulated Rs.1.50 crores u/s 11(2) of Income tax Act, 1961 till the previous year ending A.Y. 2018-19 for carrying out the construction of Public Toilets under the Central Government Scheme "Swach Bharat Abhiyan'. Thus the fund so accumulated is not incorporated to income & Expenditure and directly transferred to balance sheet is EARMARKED FUND. The application of income worked out to be more than 85% of the total income after setting apart the above of Rs. 1.50 crore.

6. With regard to the fund of Rs. 10,33,98,945/- from R&R, it was submitted that the amount was directly controlled by Ministry of power, thus all the expenses as well as accrued from the fund had not been incorporated to the income & Expenditure account.

7. The AO considered the reply of the assessee but did not found it acceptable as the income so received through government must be part of income of the society however, the same has been directly transferred to the balance sheet without routing through income & expenditure account. Therefore, the

fund received of Rs. 1,50,00,000/- under "Swachh Bharat Abhiyan" was added to the income of the assessee. Further the AO held that the reply of the assessee not to be tenable as the assessee has registered u/s 12AA in its own name and all the accounts should be maintained separately and therefore the fund should have been transferred to income & expenditure accounts of the assessee before transferring into the balance sheet.

8. Aggrieved, the assessee filed appeal before the Id. CIT(A), who deleted the addition made by the AO.

9. Aggrieved, the Revenue filed appeal before the ITAT.

10. Before us, Id. DR supported the order of the Assessing Officer. On the other hand, the Id. AR relied on the order of the Id. CIT(A).

11. Heard the arguments of both the parties and perused the material available on record.

12. The submissions of the assessee before the Revenue Authorities is as under:

"....the appellant society had received total gross receipt of Rs.22,46,00,000/- from M/s. THDC India Limited Rs.19,628/- as grant and Rs.6,05,142/- as interest out of this gross receipts of Rs.22,52,24,779/- total expenditure towards objects of the society amounted to Rs. 17,92,81,427/- showing excess of Expenditure over Income for the year of Rs.4,59,43,344/-. Out of this excess over expenditure during the year under consideration for the year under consideration an amount of Rs. 1,50,00,000/-was set apart and accumulated under section

11(2) of Income Tax Act, 1961 and appropriate Notice on form 10 and copy of resolution of management dated 26/06/2015 was submitted to the department on 11/08/2015. Copy of form 10 alongwith management committee resolution is enclosed at P.B. No

33-34 Therefore, the amount of Rs. 1,50,00,000/- was set apart accumulated from the excess of income over expenditure i.e. surplus of the year under consideration and again including the said amount in the Income will result in DOUBLE BOOKING/ACCOUNTING of same income."

13. After going through the submissions, the Id. CIT(A) held that *"the issue relevant to this assessment year arose after the Uttarakhand floods. Under the chairmanship of Ministry of State for Power, Senior Officers and CMDs of PSUs, all the PSUs and department agree to make a contribution of Rs. 25 crores to rebuild the state of Uttarakhand. It was decided that the project selected for funding the society would be decided in consultation with the State Government and would be as per needs of the State Government. It was further decided to nominate THDCIL as nodal agency. The assessee society became the agency who holds funds and based on the requirement of the State Government, it would disburse the funds. In case any fund remained unused, the society had to return the funds to the contributing agency. The first addition made by the AO is on account of a sum of Rs. 1,50,00,000/- under Swachh Bharat Abhiyan Fund. The AO has stated that this Swachh Bharat Abhiyan has not been incorporated in the income & expenditure account and directly transferred to the balance sheet. Given this, the AO had added this fund received of Rs. 1,50,00,000/- to the income of the assessee. It may be mentioned that this fund is for the society to be used for its aims and objectives. The amount that the society receives from the various PSUs and departments for the rebuilding of the State of Uttarakhand are not part of its aim and objectives and*

merely holder of the funds. Returning to the issue of Rs. 1,50,00,000/- of Swachh Bharat Abhiyan Fund, **I have examined the accounts of the assessee. This is even submitted to the AO. There is no doubt that this sum of Rs. 1,50,00,000- has been routed through the income & expenditure account, therefore, this point made by the AO does not have any legs to stand on. The AO has not pointed out any other deficiency and therefore, this addition must be deleted.**"

14. Since, the Id. CIT(A) has given a categorical, undisputed finding that after examination of the accounts, the sum of Rs.1.5 Cr. has been duly routed through the income & expenditure account, we decline to interfere with the order of the Id. CIT(A) on this issue.

15. In the result, the appeal of the Revenue on this ground is dismissed.

16. With regard to the addition of Rs.3.31 Cr. made by the AO, the assessee submitted the following details before the Id. CIT(A):

"State of Uttrakhand was severally hit by natural calamity and Flash Floods in the Management Authority undertook several projects of rehabilitation and reconstruction of State of Uttrakhand.

The Letter No. 28/27/2013 coord dated 08.07.2013 [PB-35] was issued by Under Secretary, Govt. of India, Ministry of Power to the Chairman and Managing Director of NTPC/PGVICIL/NHPC/THDC/SGVN/PFC/REC/ NEEPCO conveying the decision of the meeting held on 25.06.2013 under the Chairmanship of Minister of State for Power with

the Senior Officers and CMDs of Power Sector PSUs in which all the PSUs/Department agreed to make a contribution of Rs.25.00 crore to rebuilding the state of Uttarakhand. It was decided that the project selected for funding the society would be decided in consultation with the State Government and would be as per needs of the State Government. It was further decided to nominate THDCIL as Nodal Agency. Copy of the said letter dated 08.07.2013 is enclosed at Paper Book No 35. Again a meeting was held on 26.07.2013 for implementing/rehabilitation (R&R) efforts by Public Sector Undertaking in the Power Sector was held under the aegis of National Disastrous Management Authority, Govt. of India and it was decided that Power Sector undertakings will contribute Rs.25.00 Crores for Disastrous R & R in Uttarakhand as under:

<i>(a) NTPC</i>	<i>10.00 Cr</i>
<i>(b) Power Grid Corporation</i>	<i>5.00 Cr</i>
<i>(c) Power Finance Corporation</i>	<i>3.00 Cr</i>
<i>(d) Rural electrification Corporation</i>	<i>2.00 Cr</i>
<i>(e) THDC India Limited</i>	<i>1.00 Cr</i>
<i>(f) NHPC</i>	<i>1.00 Cr</i>
<i>(g) DVC</i>	<i>1.00 Cr</i>
<i>(h) NEEPCO</i>	<i>1.00 Cr</i>
<i>(i) SJVN</i>	<i>1.00 Cr</i>

Several other decisions were also taken in the said meeting some of which are summarized as under:

- 1. THDCIL was nominated as Nodal Agency to facilitate decision with regard to implementation of R & R Projects.*
- 2. A Core Committee was formed comprising of Secretary NDMA or the,*
- 3. Representative as Chairman CGM (Technical) THDCIL as convener.*
- 4. G.M., NTPC*
- 5. G.M. Power Grid Corporation.*
- 6. G.M. Power Finance Corporation.*
- 7. G.M. NHPC.*

Identify and short listed the project will be normally executed with THDCIL and a separate saving Bank Account for the above purpose will be opened in the name of THDC India Limited and interest earned on the said amount will go for funding of approved project. Copy of the minutes of the said meeting held on 26.07.2013 is enclosed at Paper Book No 36-39 bearing No.

NDN/Minutes/R&R/2013 dated 02.08.2013.

Vide Letter No. CMD:THDCIL:501:607 dated 13/08/2013 Chairman & Managing Director THDC India Limited wrote to the Secretary, NDMA, Government of India and stated operational problems in operating the savings bank account for the purpose of receiving R & R Funds and decided to open a separate Bank Account for carrying out R & R projects in the name of Sewa.

THDC, which is a charitable organization under section 12A of the Income Tax Act 1961. It was further stated that it will not be clubbed with other activities or transaction carried out by SEWA-THDC. All the rules and regulations of THDCIL with regard to propriety of public expenditure are

applicable for SEAW-THDC. THDCIL would be fully responsible for accountal.

It is humbly submitted that funds received from the PSUs for the purpose of R&R projects were never forming part of income of the appellant, because the appellant was not owner of those funds but merely facilitating the collection of R & R funds in a separate Savings account and its disbursal on the directions of Nodal Agency THDCIL and Core Committee. As soon as the rehabilitation work R & R projects were completed the balance amount in the said account was to be returned back to the respective PSUs. Copy of letters from the following PSUs are enclosed in this regard:

- 1. Copy of Letter of SGV No. Cc/CS/10/2013-1813 dated 03.09.2013. [PB 40]*
- 2. Copy of letter No. 02: 14 : CSR & SD: Sewa THDC dated 05.10.2107 written by Power Finance Corportion Ltd. [PB 41-42]*
- 3. No. REC/CSR/2017-18/1045 dated 01.03.2018 written by REC Corporation Ltd. [PB 43]*

The progress of projects executed through the R&R funds were monitored by central power sector PSUs, please refer copy of minutes of core committee meeting held on 24.07.2014. [PB-44-53]. From the facts and circumstances of the case, it is clear that all the funds received for R & R activities in the state of Uttarakhand were never owned by the appellant society, these were disbursed on the directions of the core committee of Public Sector undertaking and THDCIL India Ltd. (Nodal Agency) appointed by the Central Government and after the activities, the balance was to be refunded back to the respective Public Sector Undertakings. M/s. Sewa THDCIL was merely facilitator for opening the Saving Bank Account for this purpose, therefore, on the basis of principles of

divergence of income at source by over riding title, the amount received for R & R activities in the state of Uttarakhand i.e. R & R funds was not the income of the appellant and hence not to be included in the income and expenditure account for this reason the said amount is outstanding as on 31.03.2015 was shown on the liability side of the Balance Sheet for Sewa THDC i.e. for appellant. Reliance in this regard is placed on the following Judgments:

1. Judgment of Hon'ble Allahabad High Court in the case of U.P. Bhoomi Sudhar Nigam Vs. CIT [2006] 280 ITR 197. [PB. 104-109]

2. Judgment of the Hon'ble Supreme Court in the case of Siddheshwar Sakari Sahkar Karkhana Ltd. Vs. CIT [2004] 139 Taxman 434 (SC) [PB. 110-125]

3. Judgment of the Hon'ble Supreme Court in the case of Commissioner of Income Tax vs Sitaldas Tirathdas [1961] 41 ITR 367 (SC) [PB. 126-130] In which the Hon'ble Supreme Court has held as under:

".....These are the cases which have considered the problem from various angles. Some of them appear to have applied the principle correctly and some, not. But we do not propose to examine the correctness of the decisions in the light of the facts in them. In our opinion, the true test is whether the amount sought to be deducted, in truth, never reached the assessee as his income. Obligations, no doubt, there are in every case, but it is the nature of the obligation which is the decisive fact. There is a difference between an amount which a person is obliged to apply out of his income and an amount which by the nature of the obligation cannot be said to be a part of the income of the assessee. Where by the obligation income is diverted before it reaches the assessee, it is deductible; but where the income is required to be applied to discharge an

obligation after such income reaches the assessee, the same consequence, in law, does not follow. It is the first kind of payment which can truly be excused and not the second. The second payment is merely an obligation to pay another a portion of one's own income, which has been received and is since applied. The first is a case in which the income never reaches the assessee, who even if he were to collect it, does so, not as part of his income, but for and on behalf of the person to whom it is payable. In our opinion, the present case is one in which the wife and children of the assessee who continued to be members of the family received a portion of the income of the assessee, after the assessee had received the income as his own. The case is one of application of a portion of the income to discharge an obligation and not a case in which by an overriding charge the assessee became only a collector of another's income. The matter in the present case would have been different, if such an overriding charge had existed either upon the property or upon its income, which is not the case. In our opinion, the case falls outside the rule in Bejoy Singh Dudhuria's case (supra) and rather falls within the rule stated by the Judicial Committee in P.C. Mullick's case (supra)..."

On the facts and circumstances of the case, it is humbly prayed that the addition made by the Ld. A.O. Amounting to Rs. 3,31,57,338/- in relation to R & R Funds may kindly be deleted.

17. After going through the submissions, the Id. CIT(A) held that the amount that the THDCIL received as a nodal agency for rebuilding of the State of Uttarakhand for the calamitous floods. The assessee is CSR arm of THDCIL and holds these funds as liability. It cannot use these funds for its own aims and objectives. The Id. CIT(A) held that the AO does not appear to have appreciated this point and made this addition stating that

these funds should have been transferred to the income & expenditure account and accounts should have been maintained separately. Since, the assessee is not allowed to use these funds for its own aims and objectives, it is not reasonable to expect it to route through its income & expenditure account. This is a peculiar fact which needs to be appreciated in the context in which the assessee has handled these funds. Therefore, the assessee's action of taking this amount directly to its balance sheet is correct.

18. The Id. CIT(A) further held that the assessee has to return these funds to the agency/PSU/Department who have contributed to the funds. The letters from the Chairman DVC and minutes of meetings for implementing reconstruction and rehabilitation (R&R) efforts by PSUs that shows clearly that the assessee merely holds these funds on behalf of these participating agencies and can spend these funds only as per the mandate provided to it. It was held that the assessee does not even spend these funds on its own but passed it to the designated state agency who will inturn spend these funds.

19. We have gone through the various correspondences of the Power Finance Corporation, REC, NDMA, NTPC and the assessee being nominated as the nodal agency to facilitate the implementation of R&R projects. After carefully perusing the facts on record, we hold that the assessee is not the owner of the funds but holding the same in fiduciary capacity, hence, no addition is called for on this account. The order of the Id. CIT(A) on this issue is affirmed.

20. Since, the appeal of the Revenue is dismissed, the Cross Objection of the assessee is dismissed as infructuous.

Order Pronounced in the Open Court on 11/01/2024.

**Sd/-
(C.N Prasad)
Judicial Member**

**Sd/-
(Dr. B. R. R. Kumar)
Accountant Member**

Dated: 11/01/2024

Subodh Kumar/NV, Sr. PS

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, DELHI**