

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
DELHI**

**BEFORE: DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
&
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA Nos.49, 50 & 132/Del/2023
(Assessment Years: 2016-17 to 2018-19)**

The DCIT, Circle 16(1), New Delhi	Vs.	M/s. National Highways & Infrastructure Development Corp India, 3 rd floor, PTI Building, 4 Parliament Street, Delhi 110001
PAN/GIR No. AAECN 7759 E		
(Appellant)	..	(Respondent)

Assessee by	Shri Piyush Kaushik, Adv. Shri Sanjay Goel, CA Shri Akash Bansal, CA
Revenue by	Shri Jyoti Chakraborty, CIT(DR)
Date of Hearing	02/11/2023
Date of Pronouncement	06/11/2023

ORDER

PER DR. B.R.R. KUMAR :

The present appeals have been filed by the Revenue against the orders of Id. CIT(A)/NFAC, New Delhi dated 01.12.2019.

2. The issue involved in ITA Nos. 49, 50 & 132/Del/2023, are similar, they were heard together and being adjudicated by a common order. In ITA No. 132/Del/2023, following grounds have been raised by the Revenue:

1. Whether in the facts and circumstances of the case, Ld. CIT(A) was justified in deleting the addition of Rs. 191,34,88,102/- made on account of interest income generated on the funds received from Gol ignoring the fact that the assessee has not

M/s. National Highways & Infrastructure Development Corp India included the same in its ITR as income from interest as per provision of section 194A of the Income Tax Act?

2. Whether in the facts and circumstances of the case, Ld. CIT (A) was justified in deleting the addition of Rs. 191,34,88,102/- made on account of interest income generated on the funds from Gol ignoring the fact that tax is attracted at the point when the income is earned and Taxability of income is not dependent upon its destination or the manner of its utilization?

3. Whether in the facts and circumstances of the case, Ld. CIT(A) was justified in not disallowing the credit of TDS claimed by the assessee in respect of TDS deducted on Rs. 191,34,88,102/-which was held to be not belonging to the assessee?

3. The assessee company, National Highways Infrastructure Development Corporation (NHIDCL), is a fully owned company of the Ministry of Road Transport & Highways, Government of India set up under Companies Act, 2013. The company has started 18.07.2014, engaged with the business of developing National Highways and other Infrastructure in the Northeast.

4. During the year assessee as an interest income of Rs. 'xyz' on account of the surplus funds kept in the bank. The AO made addition of the interest in the hands of the assessee treating it as the income from other sources u/s. 56 of the Income Tax Act.

5. Before the Ld. CIT(A), the assessee submitted that it is a Nodal Agency of Govt. Of India and earning agency charges on the basis of circular issued by MoRTH for the services rendered to the Govt of India. The funds for the execution of the road and infrastructure projects are financed by the Govt. of India. The appellant has to incur the establishment expenditure towards payments of salary, rents and other establishment expenses, these operating expenses, are met from agency charges receivable in lieu of supervision and management of assigned highway stretches.

6. The appellant company held the funds provided by the Govt. of India in fiduciary capacity. The NHIDCL gets the funds sanctioned from the GOI for doing specific government projects and that money has to be invested for the said projects only, they can't be used for any other business purpose. For fulfilling the purpose, those funds are deposited into the separate bank account and considering them as the government

fund through which expenses related to the project assigned are undertaken. The amount of Interest generated on the deposited amount is credited to the government fund only as it is the part of the government fund and not the income of NHIDCL. Some agency charges are provided to NHIDCL which is clearly stated as the income of the NHIDCL. The interest received on the amount deposited in government fund is received after the deduction of TDS. The NHIDCL credits the amount of interest income including the amount of TDS deducted in the government fund

7. The Id. CIT(A) held that on perusal of each sanction letter obtained from the MoRTH, it is clearly mentioned that it shall be ensured that the expenditure against each sanction is incurred only on the work sanctioned by the ministry for the specific project for which specifically the fund has been sanctioned. However, the funds received from GOI for project execution are kept in a separate bank account linked with the flexi account. The appellant Company, out of the fund received from Gol for the project execution regularly distribute the amount to various contractors and generates asset as defined by MoRTH. Further, the said funds are kept in the bank during the period when there is time lag between the receipt of fund and disbursing the same for the projects. This is in accordance with the SOP as mentioned in the Office memorandum dt. 24h July 2015 issued by MoRTH. The relevant extract is reproduced as under:

"Large number of projects in various States have been entrusted to NHIDCL for respective agencies for which funds are allocated at periodic intervals. NHIDCL would set up a separate project account at HQ Level. The funds obtained from MoRTH for various projects would be deposited in the same account."

8. As per MoRTH Letter No. A-I 2025/27/2019-NHIDCL Cell dated 03.06.2019 it has been clarified that the Interest on Project funds needs to be deposited in Consolidated Funds of India (CFI) and it has also been clarified that entire compound interest which has accrued on this account to date shall be deposited in CFI. The appellant further clarified that vide Transaction No. 2710200003234 Dt. 27.10.2020 the appellant company had already deposited the Interest earned on deposits on the MoRTH funds, for the period up to 31.03.2020 in the Consolidated Funds of India (CFI). Hence, it

proves that the ownership of Interest earned clearly belongs to Government of India. The copy of the Minutes of the meeting held on Dt. 16.10.2020 under the chairmanship of AS&FA has also been submitted by the appellant.

9. The appellant on the basis of the above submissions raised the following points:-
1. The Appellant Company works as agency on behalf of GoI for building the Roads & other Infrastructure.
 2. The Appellant Company receives funds from GoI for the execution of the Road and Infrastructure Projects in Fiduciary Capacity i.e., as a Nodal Agency.
 3. The Appellant Company cannot utilise funds received from GoI as per its own will and can be utilised only for the specified purposes as defined by GoI.
 4. The funds received from GoI for project execution are kept in a separate bank account linked with the flexi account.
 5. Further, the Ministry has now clarified that entire compound interest which has accrued on this account TO DATE shall be deposited in Consolidated Funds of India.
 6. Further, the Company has already deposited the Interest on deposits for the period up to 31.03.2020 in the Consolidated Fund of India.
10. Looking into the facts of the case and from the contentions of the appellant made in its submissions, it becomes abundantly clear that the ownership of the funds provided by MoRTH/GoI alongwith the consequential income earned in the form of interest, clearly lies with the MoRTH/GoI. Further, the act of the appellant company to deposit the interest earned up to 31.03.2020 in CFI and clarification by MoRTH to deposit the any Interest to CFI clearly demonstrate that the Interest earned on the deposits from the funds provided by MoRTH/GoI was never the income of the appellant company. The appellant company has also stated that it has nowhere in the submission accepted the interest income as its income. The assessee has produced the proof of payment of such interest received into the Consolidated Fund of India account. The sample of same reproduced below:-

 bharatkosh.gov.in Government of India Receipt Portal	
RECEIPT	
Transaction Ref.No. 2710200003234	Dated: Oct 27 2020 8:10PM
Received from <u>M/S. NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED</u> with Transaction Ref.No. <u>2710200003234</u>	
Dated <u>Oct 27 2020 8:10PM</u> the sum of <u>INR 6392383345 (Six Hundred Thirty-Nine Crores Twenty-Three Lakhs Eighty-Three Thousand Three Hundred Forty-Five Only)</u> through Internet based Online payment in the account of <u>Misc Interest Receipts, , INTEREST ON DEPOSIT IN BANK FOR THE PERIOD UPTO 31.3.2020.</u>	
Disclaimer:- This is a system generated electronic receipt, hence no physical signature is required for the purpose of authentication	

11. The appellant has also relied upon various judicial pronouncements which are as under:-

- (1) Commissioner of Income-tax v. Delhi State Industrial Development [2007] 162 Taxman 275 (Delhi//2007) 295 |TR 419 (Delhi)
- (2) CIT v/s Anr. V. Karnataka Urban Infrastructure Development & Finance Limited (2006) [284 ITR 582](Karnataka High Court)
- (3) M/S Rajasthan Urban Drinking ... vs. Assistant Commissioner of Income Tax [ITAT Jaipur ITA No. 713 & 714/JP/2018] (Feb-2019)]
- (4) Deputy Commissioner of Income ... vs Rajasthan Avs Vikas & Infrastructure Ltd (ITAT Jaipur ITA No. 486/JP/2018] (May 2018)
- (5) Karnataka Urban Infrastructure Development & Finance Corpn. V. Assistant Commissioner of Income-tax, Circle 11(3) IN THE ITAT BANGALORE [2006] 7 SOT 879 (BANG.)

(6) Council of Handicrafts Development Corporation vs. ITO Exemptions, Ward-1(3) New Delhi [ITA No. 2723/DEL/2019 (2020)]

(7) At the end even if hypothetically for the sake of discussion the contention of the revenue is assumed to be correct then also the jurisdictional ITAT in the very recent judgment Council of Handicrafts Development Corporation vs. ITO Exemptions, Ward-1(3) New Delhi [TA No. 2723/DEL/2019 (2020)], has decided that when an assessee collects certain income on behalf of Government and remits the income back to the government and TDS is deducted in the name of assessee then in all practical purposes income collected by the assessee is its income in hands of the assessee and income paid back to the Government is its expenses and the TDS credit/refund will be provided to the assessee in whose name TDS has been deducted. Hence, in this situation also there would be no income chargeable to tax.

12. The jurisdictional ITAT in the very recent judgment Council of Handicrafts Development Corporation Vs. ITO Exemptions, Ward-1(3) New Delhi [ITA No. 2723/Del/2019 (2020)] has held as under:-

"7. We have heard both the parties and perused the material available on record. Facts briefly show that the assessee was collecting rent on behalf of Government of India from the tenants and then remits that rent as it is back to the Government. The building is owned by the Government of India. The assessee is not the beneficial owner of the rent as property was given by the Government to the assessee for its use. The assessee was merely collecting the rent. Thus, the rent collected by the assessee is definitively its income and rent paid back to the Government is its expenses. It is a lease in & lease out agreement/understanding. Therefore, on the rent paid to the assessee by the tenants, tax is deductible under Section 194I of the Income Tax Act, 1961. As assessee pays the same to the Government, it does not need to deduct tax at source on its repayment to the Government. Thus, in all practical purposes rent collected by the assessee from its tenants and rent paid to the Government (actual transfer of rent to the Government) is its outgo. Therefore, tax deducted by the Tenant should be granted as refund to the assessee as rent collected is its income in hands of the assessee and rent paid to the Government is its expenses. Therefore, the Assessing Officer as well as the CIT(A) was not right in denying the credit of TDS to the assessee. Hence, the appeal of the assessee is allowed."

13. The ITAT has held that when an assessee collects certain income on behalf of Government and remits the income back to the government and TDS is deducted in the name of assessee then in all practical purposes income collected by the assessee is its income in hands of the assessee and the rent paid back to the Government is its

expenses and the TDS credit/refund will be provided to the assessee in whose name TDS has been deducted. Hence, in this situation also there would be no income chargeable to tax.

14. Therefore, considering the facts of case and respectfully following the judicial pronouncements relied upon by the appellant company as well as the judgement of Hon'ble Jurisdictional High Court in the case of Delhi State Industrial Development [supra] and the decision of ITAT in the case of Council of Handicrafts Development Corporation (Supra), the Id. CIT(A) held that the interest income generated on funds owned by Gol is not an income in the hands of the appellant company but it is the income of Gol and accordingly it is not required to be taxed in the hands of the Appellant Company. Therefore, the Id. CIT(A) held tht the action of the AO treating the interest income in the hands of the appellant is not sustainable on the facts of the case as well as the law.

15. Before us, it has been submitted the "Entire interest earned" has already been deposited in to the consolidated fund of India by way of challans. Since the entire amounts received as interest stands deposited in the consolidated fund of India, we hold that no addition is called for in the hands of the assessee. For the limited purpose of reconciliation of the interest earned and deposited in the CFI, we direct the assessee to furnish the entire details of receipt of interest income earned, TDS deducted and the total amounts deposited in CFI before the AO in a consolidated statement, which the AO shall verify and accord the benefit.

In the result, the appeals of the Revenue are dismissed.

Order pronounced in the open court on 06/11/2023.

Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

Sd/-
(DR.B.R.R. KUMAR)
ACCOUNTANT MEMBER

Delhi; Dated 06/11/2023

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Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Delhi.
4. CIT
5. DR, ITAT, Delhi
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Delhi