

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.Nos.505 & 1013/Del./2017
Assessment Years 2011-2012 & 2012-2013

The Addl. CIT, Special Range-6, Room No.352, C.R. Building, I.P. Estate, New Delhi	vs.,	M/s. National Research Development Corporation, 20-22, Zamrudpur Community Centre, Kailash Colony Extn., New Delhi – 110 048. PAN AAACN2025K
(Appellant)		(Respondent)

For Revenue :	Ms. Rakhi Vimal, Sr. D.R.
For Assessee :	Shri Niren Gupta, C.A.

Date of Hearing :	20.02.2020
Date of Pronouncement :	26.02.2020

ORDER

PER BHAVNESH SAINI, J.M.

Both the appeals by Revenue are directed against the different Orders of the Ld. CIT(A)-6, Delhi, Dated 09.11.2016, for the A.Y. 2011-2012 and Dated 02.12.2016 for the A.Y. 2012-2013.

2. We have heard the Learned Representatives of both the parties and perused the material on record. The facts are same in both the appeals. Therefore, for the purpose of disposal of both the appeals, we decide the appeal for the A.Y. 2011-2012.

ITA.No.505/Del./2017 – A.Y. 2011-2012

(M/s. National Research Development Corporation, New Delhi.)

3. In this Departmental Appeal, the Department has challenged the deletion of addition of Rs.1.78 crores under section 37(1) of the I.T. Act, 1961 under the Head “*Salary Expenses*”.

3.1. The assessee challenged the disallowance of salary expenses of Rs.1.78 crores paid to its employees before the Ld. CIT(A). The assessee claimed that A.O. has erred by claiming that assessee is maintaining separate accounts for NRDC and Expenditure on Grants. The A.O. noted that as per Auditor’s Report that for man power costs, the assessee had violated the cap limit of Rs.1.23 crores for TPP and Rs.1.25 crores for IPP. The A.O. was of the view

that Government has sanctioned the grant for expenditure and put the cap limit for making the payments. The Corporation has transferred all excess expenses of Rs.178.33 lakhs to Schedule-‘O’ of Income and Expenditure Account and added it in the above figure of Rs.177.86 lakhs pertaining to NRSC. It is noted that assessee-company has been following the policy since long by maintaining the books of IPP and TPP separately, wherein un-spent money received in grant has always been shown as liabilities being advance from the Government and no profit is shown in the books of the Company. Further, it is clearly mentioned in the terms and conditions of sanction order that higher expenditure projected by the Company under these may be allocated to New Activities Head. However, the assessee company has debited the expenses on account of salary amounting to Rs.1.78 crores during the year under consideration, which was allocated to IPP and TPP projects. The A.O, therefore, noted that assessee has chosen to divert the expenditure from the Government grant head to the normal P & L A/c, thereby debiting this amount. Therefore,

it is clear that the sudden and huge rise in expenditure on account of wages is due to the debit of grants related expenditure amounting to Rs.1.78 crores, which would not otherwise have been claimed as a loss or adjusted against profits. The A.O. accordingly made the addition.

3.2. The assessee challenged the addition before the Ld. CIT(A). The written submissions of the assessee is reproduced in the appellate order, in which assessee explained that Corporation is carrying activities under Invention Promotion Programme ["IPP"] and Technology Promotion Programme ["TPP"] out of recurring/yearly grants-in-aid received from Department of Scientific and Industrial Research. As per the policy of the accounting policy of the Corporation expenses identifiable with specific grants have been charged to those grants as per approved annual plan. Other common expenses not identifiable with any grant have been apportioned equally among the various grants of the Corporation. All the employees are carrying work of the Corporation and grant activities. The gratuity expenses are always charged to Corporation and never

recouped for from any grants. None of the employees of the Corporation have fully designated to the said promotion activities. All the employees had been carrying both NRDC and other promotional activities. The Corporation was apportioning man-power cost of some employees to the said projects, including all other direct and indirect expenses pertaining to the said projects. The assessee has been consistently following the policy. The Government grants relating to specific assets have been shown as a deduction from the gross value of the assets concerned, in arriving at their book value and the related assets have been shown in the balance-sheet at a nominal value. Yearly grants-in-aid from the Government of India for the activities of IPP and TPP relating to revenue have been recognised in Income and Expenditure Account in a systematic basis and have been shown separately under the Head "*Un-spent Balances of Grants-in-Aid*" and are carried forward to subsequent years under the Head "*Current Liabilities and Provisions*" for adjustment against expenses. Excess of expenditure over the amount of grants received after adjusting income, if any,

related thereto, are carried forward to subsequent years under the Head “*Loans and Advances*” as amount receivable from Government of India. The utilisation of grants under TPP and IPP are shown separately in financial statements. The Corporation was allocating man power cost as per the past practice, however, the Ministry vide Order Dated 19.10.2010 had capped the said grant towards utilisation of salary. By the said letters the Ministry capped the manpower cost @ Rs.1.23 crores towards TPP and @ Rs.1.25 crores towards IPP. Thus, the Corporation restricted their allocation towards the said expenditure to that extent. Thus Corporation could not allocate the expenditure more than permitted limit. The grants have been received by Corporation on annual basis, the said grants have to be used by Corporation in accordance with the directions of the Government. Any excess of expenditure over grant received in accordance with the directions of the Government recoverable from Government and any short expenditure over grant received from Government of India is refundable to Government. Thus, grants received from Government of

India have no impact on the profitability of the Corporation and grants have been utilised as per the directions of the Government. The excess grant lying with the assessee is shown as liability which is adjusted from the next year grant. Further Corporation had requested the Government of India to clarify the stand that whether Corporation can recover this amount. The Ministry vide letter Dated 05.03.2014 had very clearly specified that man power cost over and above the sanctioned limit has to be borne by the Corporation only. Further it is clear from the Order of the A.O. itself that A.O. has passed order without even seeing the ledgers provided, if he would has made any effort to saw the ledgers, he may be able to understand the separate books of accounts were not maintained. The A.O. has just passed the Order by reading the Auditor's Report. Even he has not read the Auditor's Report completely. The books are maintained properly. Further Ministry had started putting a cap on utilisation of grant towards salary from the F.Y. 2008-2009. The assessee had been assessed under section 143(3) for financial year ending 31.03.2010 and same

methodology was followed and no objection have been raised by the A.O. and no disallowance have been made. All the employees whose salary have been claimed as an expense are old employees of the Corporation and the expenses booked are all genuine. Taxes have been deducted by the Corporation and paid for all the employees to whom salary have been paid by the Corporation. All the said employees are carrying work of the Corporation and grant activities. Therefore, the addition is wholly unjustified.

4. The Ld. CIT(A) considering the explanation of assessee and material on record, deleted the entire addition. His findings in para 3.2.3 is reproduced as under :

“I have considered the submissions of the Appellant and observations of the Assessing Officer. It is apparent that Assessee is not maintaining separate books of accounts for NRDC and grants since the Assessee is preparing only one Balance Sheet. The Assessee is receiving grants from Ministry of Science and Technology, Government of India. The grants should be used in

line with directions issued by the said parent Ministry. Ministry vide their letter dated 05th March 2014, have clarified the manpower cost over and above the capping should be borne by NRDC. The corporation is receiving grants on annual basis and the said grants should be used by corporation in accordance with the directions of the government. The grants had to be used in line with the directions of the government and an excess grant received is shown as liability, The company had followed the said practice earlier also and had also been assessed accordingly. There is no reason and justification in change in stand of Assessing officer. Further the observation of the Assessing officer that position would have changed had the Assessee followed the same policy hitherto consistently being followed by the Assessee is also incorrect, since it observed from the records produced that there is no change in the policy the Assessee had consistently followed.

Further as per records produced it is evident all the employees are employees of the corporation and Corporation can not allocate expenditure of salary more than the said limit set in the grants and expenditure more than the limit is the expenditure of the corporation.

In view of the facts discussed above it is established that the said expenditure of Rs 178 lacs under the head salary expenditure is justified and disallowance made by the Assessing Officer is uncalled for and is accordingly deleted.”

5. The Ld. D.R. relied upon the Order of the A.O. and submitted that excess salary is paid in contravention of rules and regulations of the Department of Scientific and Technology, Government of India governing Government Grants, therefore, it is not allowable under section 37 of the I.T. Act, 1961.

6. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the

authorities below and submitted that salary have been correctly allowed by the Ld. CIT(A).

7. After considering the rival submissions, we do not find any merit in the Departmental Appeal. The Assessee Corporation is receiving grants on annual basis and the said grants have been used by the Corporation in accordance with the directions of the Government. In preceding assessment year, A.O. has accepted the same claim of the assessee without any objection. Therefore, when same policy have been followed by the assessee and accepted by the A.O, he should not have taken a different stand. Further assessee has made it very specifically clear that salary is paid to all old employees who worked for the assessee and expenses are genuine. All TDS have been deducted on the salary and paid to the Government. All the employees have worked for assessee. It is, therefore, clear that assessee incurred the salary expenses which are exclusively for the purpose of business activities. No case is made out by the A.O. by making salary payment, if the same is offence or which is prohibited by Law. Therefore, Explanation-1 to

Section 37 of the I.T. Act, 1961, would not be attracted in the case of assessee, which is contended in the grounds of appeals by the Revenue. There is, thus, no justification to interfere with the Orders of the Ld. CIT(A). We confirm his finding and dismissed the appeal of the Revenue.

8. In the result, ITA.No.505/Del./2017 of the Revenue dismissed.

ITA.No.1013/Del./2017 - A.Y. 2012-2013 :

(M/s. National Research Development Corporation, New Delhi.)

9. In this Departmental Appeal, the Department has challenged the addition of Rs.2,37,60,000/- under section 37(1) of the I.T. Act, 1961, on account of payment of salary.

10. The Ld. CIT(A) following his Order for the F.Y. 2010-2011, deleted the addition.

11. In A.Y. 2011-2012, we have dismissed the Departmental Appeal on the same ground. Following the reasons for decision on the same, we dismiss the appeal of the Revenue.

12. In the result, ITA.No.1013/Del./2017 of the Revenue dismissed.

13. To sum-up, both the appeals of the Revenue are dismissed.

Order pronounced in the open Court.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 26th February, 2020

VBP/-

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2.	The respondent
3.	CIT(A) concerned
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5.	D.R. ITAT "E" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.