

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU “B” BENCH, BENGALURU**

**Before Shri Waseem Ahmed, Accountant Member
and
Shri Soundararajan K. Judicial Member**

ITA No. 328/Bang/2024 (Assessment Year: 2020-21)		
ACIT, Circle - 4(3)(1) Room No. 437, 4th Floor BMTC Bldg building Koramangala Bangalore 560095	vs.	Karnataka Renewable Energy Development Ltd. 39, Shanti Gruha, Bharat Scouts & Guides Campus Palace Road, Bengaluru 560001 PAN – AACCK3953F
(Appellant)		(Respondent)

Assessee by:	Shri Ganesh S., Advocate
Revenue by:	Shri Vilas V. Shinde, CIT-DR

Date of hearing:	28.05.2024
Date of pronouncement:	13.06.2024

ORDER

Per: Soundararajan K., J.M.

This appeal filed by the Revenue challenges the order dated 29.12.2023 passed by the National Faceless Appeal Centre, Delhi (‘CIT(A)’) under Section 250 of the Income Tax Act, 1961 (the Act) in respect of assessment Year (AY) 2020-21.

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

- “1. The order of the Ld. CIT(A)/NFAC in so far as it is prejudicial to the interest of the Revenue is opposed to law and the fact and circumstances of the case.*
- 2. Whether on the facts and circumstances of the case, the Ld. CIT/ANFAC was justified in giving relief to the assessee on the*

ground of addition made on interest received on FDs of Rs. 14,38,03.521/- by relying on the decision of Hon'ble High Court of Karnataka in the case of CIT vs M/s Kamataka State Agricultural Produce processing and Export Corporation Ltd. for the A.Y. 2008-09, which is not accepted by the Department and further appeal is pending as SLP before the Hon'ble Supreme Court.

- 3. On the facts and circumstances of the case, the Ld. CIT(A)/NFAC ought to have appreciated that the assessee is receiving interest on FDs which are made out of grants received from Government of Karnataka and it does not become the grant itself and interest earned through FDs are to be treated as income from other sources as per the Income-tax Act, therefore the interest on such FDs have rightly been taxed as income,*
- 4. Whether on facts and circumstances of the case, the Ld. CIT(A) was justified in giving a finding that the expenditure of Rs.5,00,00,000/- incurred towards setting up Karnataka Visveswaraya Solar Award in order to create a global market system to tap the benefits of solar power and promote clean energy as revenue expenditure, since the sponsorship expenses of Rs.5,00,00,000/- is a one-time expenditure and not incurred in the course of day to day functioning of business, therefore the said expenditure is in fact capital in nature and hence the expenditure is not an allowable expenditure and the same have been rightly disallowed.*
- 5. Whether on facts and circumstances of the case, the Ld. CIT(A)/NFAC ought to have appreciated that the assessee has not offered any income out of above item of expenditure mentioned in Point No. 4. Hence, relief should not be granted.*
- 6. The other grounds may be urged at the time of hearing is prayed that the order of CIT(A)/NFAC in so far as it is related to above grounds may be reversed and that of AO may be restored.*
- 7. The appellant craves, leaves to add, alter, amend and or delete any of the grounds that may be urged.”*

3. The brief facts of the case are that the assessee is a Government of Karnataka undertaking and they are the nodal agency for the government to propagate the non-conventional energy sources, i.e. solar and wind mill

energy by setting up/helping to set up wind mills and solar power plants. The respondent assessee commenced its operation of business from 1996. During the course of their activity the assessee had received grants from the government and after spending the grants, the unutilised grants available with them was deposited in the banks by way of fixed deposits and the interest income received from the deposits were credited into the grant account which was not offered to tax as income. Similarly the assessee also contributed a sum of Rs. 5 crores to the corpus fund of the International Solar Alliance to present the “Karnataka Visveswaraya SolarAward” for the “Best Floating Solar Project in ISA Member Countries”. The assessee made their contribution as directed by the Government and also because the award is given to achieve the business objects of the assessee. The Government also contributed an equal amount of Rs.5 crores. Therefore the assessee had treated the same as revenue expenditure and claimed deduction. The Id. Assessing Officer (AO) had treated the interest income as income and treated the contribution given to the corpus as capital expenditure of the assessee and therefore the assessee challenged the said order before the CIT(A) and contended that the above said amounts are not liable to be taxed under the provisions of the Act. The learned CIT(A) considered the facts of the case in detail and relied on the orders of the coordinate bench of this Tribunal dated 31.07.2023 wherein similar dispute was decided and allowed the appeal in favour of the assessee. The Revenue has preferred this appeal challenging the said order of the CIT(A) on the above said grounds.

4. The learned D.R. submitted that the earlier order of the Hon'ble Jurisdictional High Court in the case of *CIT vs M/s Karnataka State Agricultural Produce processing and Export Corporation Ltd.* was not accepted by the department and the same was challenged by way of SLP

before the Hon'ble Supreme Court and it is pending for consideration and therefore the interest received on the unutilised grants are income under the provisions of the Act. The learned D.R. further submitted that the expenditure has been incurred by the assessee for setting up the Karnataka Visveswaraya Solar Award, which is an onetime expenditure and therefore the same is in capital nature and not an eligible expenditure.

5. The learned A.R. of the assessee submitted that the interest received out of the unutilised grants is also a government grant and therefore not to be treated as income under the provisions of the Act. The learned A.R. further submitted that the main objective of the assessee is to promote the non-conventional energy sources and in order to furtherance of the said object the assessee had contributed an amount of Rs. 5 crores for setting up an award, as directed by the Government of Karnataka and therefore the same is a revenue expenditure eligible for deduction. The assessee also filed a paper book and enclosed the written submission and the orders of this Tribunal for assessment years 2014-15, 2015-16, 2017-18 and 2018-19 and the proceedings of the Government of Kerala. The learned A.R. also relied on the judgement of the Hon'ble Supreme Court and the Hon'ble Rajasthan High Court in support of his argument and prayed to dismiss the appeal filed by the Revenue.

6. We heard the rival contentions and perused the materials available on record. The learned CIT(A) in his order dated 29.12.2023 had given a detailed finding in respect of the above two issues on which the Revenue has filed this appeal.

7. In respect of the first dispute that the interest income received on the unutilised grants given by the Government of Karnataka, the learned CIT(A) had given its findings as follows:

“5.1.3 I have gone through the submissions of the appellant, findings of the AO and judicial precedents on the subject matter. It is noted that this issue is identical in the case of the appellant for AY 2014-15. On further appeal, the CIT(A) decided the issue in favour of the appellant but the revenue went in appeal against the order of Commissioner(Appeals). The ITAT, 'C' Bench, Bengaluru vide order dated 29.05.2020 in ITA No. 1347/Bang/2019 has dismissed the appeal of revenue. Further, the Hon'ble ITAT has decided similar issue in favour of the appellant for A.Y. 2015- 16, 2017-18 and 2018-19 vide order dated 31.07.2023 in ITA No.387/396/397/Bangalore/2023. Considering that there is no change in the facts, circumstances and nature of interest earned during the year under consideration as compared to the AY 2014-15,2015-16, 2017-18 and 2018-19, respectfully following the decision of the jurisdictional Tribunal in appellant's own case as mentioned above, it is held that the interest earned on parking of unutilized grant in aid in bank as fixed deposit is not the income of the appellant but is part of the grant in aid. The addition of Rs.14,38,03,521/- is accordingly deleted. The grounds of appeal raised are allowed.”

8. We have gone through the above said findings and found that the same is based on the earlier order of this Tribunal in which this Tribunal had held that the interest earned from the unutilised grant-in-aid is also a part of the grant-in-aid and therefore the same is not an income under the provisions of the Act. The said orders dated 29.05.2020 and 31.07.2023 are in respect of the assessee's own case for AYs 2014-15, 2015-16, 2017-18 and 2018-19. We also find no materials to take a different view in the present appeal and also the department has not furnished any orders of the Hon'ble High Court or Supreme Court overruling the orders of the Coordinated Bench of this Tribunal. We, therefore, fully agreed with the view of the learned CIT(A) and confirm the order of the learned CIT(A) on the interest income issue.

9. The next issue is with regard to the expenditure incurred towards sponsorship by treating the same as capital expenditure instead of revenue

expenditure by the AO, which was reversed by the learned CIT(A) in favour of the assessee by treating the same as revenue expenditure. The learned CIT(A) in its order dated 29.12.2023 in paragraphs 5.2.5 and 5.2.6 had categorically held as under: -

“5.2.5 I have carefully gone through the assessment order, submissions of the appellant and facts of the case. The appellant has paid Rs.5,00,00,000/- towards participation in exhibitions and sponsorship to International Solar Alliance(ISA) for setting up Karnataka Visveswaraya Solar Award and has claimed the same as revenue expenditure for the year under consideration. However, the AO has treated the said expenditure as Capital Revenue and has disallowed the same. The appellant has claimed that the said payment was paid to the International Solar Alliance as per the direction of the Government of Karnataka in sponsoring the award namely "Karnataka Visveswaraya Solar Award". The first issue here is that whether the said expense is for business purpose or not. On perusal of the memorandum and articles of the appellant, it is seen that giving of awards, prizes etc. is one of the ancillary object of the company. Considering the statutory obligation of the appellant and the fact that the main object of the appellant is to promote solar energy, contribution of Rs.5,00,00,000/- to ISA for sponsoring the award "Karnataka Visveswaraya Solar Award" is held to be a business expense.

5.2.6 Since, sponsoring of the said award does not lead to any directly attributable benefit which are likely to accrue in future years and is not leading to any measurable advantage of enduring nature, the claim of the appellant that the contribution of Rs.5,00,00,000/- to ISA is a revenue expense is acceptable. Accordingly, the disallowance made by the AO of Rs.5,00,00,000/- treating the same as capital expenditure is deleted. The grounds of appeal raised are allowed.”

10. We find that the learned CIT(A) had given a finding that the sponsorship expenditure incurred by the assessee is in the nature of revenue expenditure since the same has been incurred in giving award, price, etc. pursuant to the objectives of the assessee and therefore there is a statutory obligation on the part of the assessee to promote solar energy for which the

contribution was made and therefore the same would amounts to business expenses and eligible for deduction as revenue expenditure. In support of its finding the CIT(A) also relied on the judgement of the Hon'ble Supreme Court in 1971 (8) TMI 13 in the case of *Lakshmi Ji Sugar Mills Co. Pvt. Ltd.* v. *CIT* and the judgement of the Rajasthan High Court reported in 2003 (11) TMI 6 in the case of *CIT vs. Raj Spinning and Weaving Mills Ltd.*

11. The above said view of the learned CIT(A) was also approved by the coordinate bench of this Tribunal in its order in ITA Nos. 387, 396 & 397/Bang/2023 dated 31.07.2023, in the Respondent's case, wherein it was held as under: -

"18. We have heard the rival submissions and perused the material on record. It is an admitted fact that the assessee is into the core activity of propagating renewable energy programmes since March, 1996, and is a nodal agency of Government of Karnataka. In propagation of renewable energy, the assessee had incurred expenditure for publishing advertisement in newspaper for popularization of renewable energy. The CIT(A), after going through the Board's approval for incurring the expenditure and also the ledger account, bills, etc., had allowed the claim of the expenditure as revenue in nature. The CIT(A) has also found the inauguration function of 600MW capacity at Pavagada Solar Park is an expenditure incurred which is in the revenue field. The above finding of the CIT(A) is factual in nature which was not controverted by the Revenue. Accordingly, we affirm the order of the CIT(A) on this issue."

12. We have perused the findings of the Id CIT(A) and found that the same is a well reasoned one and also in accordance with the principals laid down by the coordinated bench of this Tribunal in the order dated 31.07.2023 in ITA Nos 387, 396 and 397/BANG/2023 and therefore we affirm the order of the Id CIT(A). In so far as the learned D.R.'s contention that the judgement of the Hon'ble Jurisdictional High Court was under challenge before the Hon'ble Supreme Court, we are of the view that the same would not be a

reason for reversing the order of the ld CIT(A) when there are earlier decisions of the coordinated bench in favour of the assessee that too in the assessee's own case.

13. We, therefore, find that the order of the learned CIT(A) on the above two issues are in accordance with the provisions of the Act and also in consonance with the view of this Tribunal and therefore, we dismiss the appeal filed by the Revenue as without any merits.

14. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 13th June, 2024.

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Soundararajan K.)
Judicial Member

Bengaluru, Dated: 13th June, 2024

Copy to:

1. The Appellant
2. The Respondent
3. The CIT, concerned
4. The DR, ITAT, Bengaluru
5. Guard File

By Order

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Assistant Registrar
ITAT, Bengaluru

n.p.