



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA Nos. 181 to 183/LKW/2022
Assessment Years: 2014-15 to 2016-17

Uttar Pradesh Rajkiya Nirman Ltd Visheshwariya Bhawan, Vibhuti Khand, Gomti Nagar, Lucknow-226010.	v.	The Deputy Commissioner of Income Tax Range-6 Pratyakshkar Bhawan, Ram Tirath Marg, Lucknow-226001.
PAN:AAACU5701F		
(Appellant)		(Respondent)

Appellant by:	Shri K. R. Rastogi, C.A. & Shri Subham Rastogi, C.A.
Respondent by:	Smt Namita S. Pandey, CIT(DR)

ORDER

PER BENCH.:

These three appeals have been filed by the assessee. The appeal vide ITA. No.181/LKW/2022, pertains to assessment year 2014-15 and has been filed against the impugned appellate order dated 06.09.2022 (Din & Order No. ITBA/NFAC/S/250/2022-23/10452283001(1) of the Ld. CIT(A). The appeal vide ITA. No.182/LKW/2022, pertains to assessment year 2015-16 and has been filed against the impugned appellate order dated 26.08.2022 (Din & Order No. ITBA/NFAC/S/250/2022-23/1044969318(1) of the Ld. CIT(A). The appeal vide ITA. No.183/LKW/2022, pertains to assessment year 2016-17 and has been filed against the impugned appellate order dated 30.08.2022 (Din & Order No. ITBA/NFAC/S/250/2022-23/1045052247(1) of the Ld. CIT(A). The grounds of appeal are as under: -

“A.Y. 2014-15

(1) That directions issued by Ld. Commissioner of Income Tax (Appeals), NFAC, New Delhi “however, in this regard, it is clarified that the claim of credit of TDS deducted on such interest income, in the hands of appellant corporation, shall be examined by the JAO in the light of Provisions of Section 199 of the Act, read with Rule 37BA of the Income Tax Rules, 1962” are invalid as the same were issued without allowing an opportunity or issuing any notice in this regard during appellate proceeding.

WITHOUT PREJUDICE TO ABOVE

(2) The Ld. CIT(A), NFAC failed to appreciate that Assessee is eligible for TDS Credit w. r. t. Interest Income on “Client Fund” (State / Central Government Fund) Rs. 13,31,71,000/- which has not been offered as Assessee’s Income, as Interest Income is as per Government G. O. treated as Government Fund and either has to be appropriated towards the Construction cost as availability of Government Fund or refunded to Government.

(3) That Interest Income from Bank as per TDS has first considered as Income of the Assessee Company and TDS Account and Bank Account are duly debited as book entry. Thereafter as per GO Interest Earned on Client Fund transferred through Book Entry to Client Account (State / Central Government) for payment / application as Surplus Funds available. Accordingly, Net Interest Income is offered for Tax.

(4) That the State / Central Government providing for construction on Cost Plus Centage Basis are Not Taxable under Income Tax Act transfer of Corresponding Interest Income to Central / State Government Account w, r. t. respective work, provisions of TDS are not applicable as per Law. Therefore, Provisions of Section 199 read with Rule 37BA of I. T. Rules are not applicable in the present sets of facts and circumstances.

(5) The Ld. C. I. T. (A) erred on facts and in law in upholding the addition being disallowance of Rs. 74,874/- Provision for Gratuity, Rs. 2,11,874/- Unpaid Bonus and disallowance of Rs. 1,61,177/- Unpaid Service Tax, without appreciating that same were paid in time. However, due to technical mistake, the receipts could not be uploaded in appellate proceeding.”

A.Y. 2015-16

(1) That directions issued by Ld. Commissioner of Income Tax (Appeals), NFAC, New Delhi “however, in this regard, it is clarified that the claim of credit of TDS deducted on such interest income, in the hands of appellant corporation, shall be examined by the JAO in the light of Provisions of Section 199 of the Act, read with Rule 37BA of the Income Tax Rules, 1962” are invalid as the same were issued without allowing an opportunity or issuing any notice in this regard during appellate proceeding.

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(2) The Ld. CIT(A), NFAC failed to appreciate that Assessee is eligible for TDS Credit w. r. t. Interest Income on “Client Fund” (State / Central Government Fund) Rs. 76,12,50,315/which has not been offered as Assessee’s Income, as Interest Income is as per Government G. O. treated as Government Fund and either has to be appropriated towards the Construction cost as availability. of Government Fund or refunded to Government.

(3) That Interest Income from Bank as per TDS has first considered as Income Of the Assessee Company and TDS Account and Bank Account are duly debited as book entry. Thereafter as per GO Interest Earned on Client Fund transferred through Book Entry to Client Account (State / Central Government) for payment / application as Surplus Funds available. Accordingly, Net Interest Income is offered for Tax.

(4) That the State / Central Government providing Fund for Construction on Cost Plus Centage Basis are Not Taxable under Income Tax Act. Further, transfer of Corresponding interest Income to Central / State Government unit w. r. t. respective work, provisions of TOS are not applicable as Per Law. Therefore, Provisions of Section 199 read with Rule 37BA of I. T. Rules are not applicable in the present sets of facts and circumstances.

(5) The Ld. C.I.T. (A), NFAC fails to appreciate that Rs. 7,86,66,490/as Service Tax has been shown under the head "Operating Expenses", accordingly, no addition should be made under this head as Profitability of the Assessee Company in the form of Centage income earned is remain Unaffected.

(6) The Ld. C. I. T. (A), NFAC fails to appreciate that due to large volume of challans for payment of Service Tax, the same could not be uploaded in e-filing portal due to technical problem of non acceptance of large file. The assessee also requested for allowing physical hearing, so the same can be produced. Thus, there was a reasonable cause for non submitting of details of payment in e-filing portal."

A.Y. 2016-17

(1) That directions issued by Ld. Commissioner of Income Tax (Appeals), NFAC, New Delhi "however, in this regard, it is clarified that the claim of credit of TDS deducted on such interest income, in the hands of appellant corporation, shall be examined by the JAO in the light of Provisions of Section 199 of the Act, read with Rule 37BA of the Income Tax Rules, 1962" are invalid as the same were issued without allowing an opportunity or issuing any notice in this regard during appellate proceeding.

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(2) The Ld. CIT(A), NFAC failed to appreciate that Assessee is eligible for TDS Credit w. r. t. interest Income on "Client Fund" (State / Central Government Fund) Rs. 6,88,20,805/- which has not been offered as Assessee's Income, as Interest Income is as per Government G. O. treated as Government Fund and either has to be appropriated towards the Construction cost as availability of Government Fund or refunded to Government.

(3) That Interest Income from Bank as per TDS has first considered as Income of the Assessee Company and TDS Account and Bank Account are duly debited as book entry. Thereafter as per GO Interest Earned on Client Fund transferred through Book Entry to Client Account (State / Central Government) for payment / application as Surplus Funds available. Accordingly, Net Interest income is offered for Tax.

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Rule 37BA of I. T. Rules are not applicable in the present sets of facts and circumstances.

(5) The Ld. C. I. T. (A) erred on facts and in law in upholding the addition of Rs. 4,67,19,796/- being the difference in "Other Income" as shown in ITR and as per Independent Auditor's Report and addition of Rs. 60,537/- being "Prior Period Expenses" without appreciating that the Revised details submitted before Ld. A. O. as the Return Could not be revised due to lapse of time.

(6) The Ld. C.I.T. (A) fails to appreciate that the Revised Sheet has been filed before Ld. A. O. for which it is not necessary that Revised Return should be filed. Further Ld. C.I.T. (A) has power to consider the same."

1.1 The original grounds of appeal were subsequently revised by the assessee. The revised grounds of appeal are as under: -

"A.Y. 2014-15

(1) That directions issued by Ld. Commissioner of Income Tax (Appeals), NFAC, New Delhi "however, in this regard, it is clarified that the claim of credit of TDS deducted on such interest income, in the hands of appellant corporation, shall be examined by the JAO in the light of Provisions of Section 199 of the Act, read with Rule 37BA of the Income Tax Rules, 1962" are invalid as the same were issued without allowing an opportunity or issuing any notice in this regard during appellate proceeding.

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(6) The Ld. C.I.T. (A) fails to appreciate that the Revised Sheet has been filed before Ld. A. O. for which it is not necessary that Revised Return should be filed. Further Ld. C.I.T. (A) has power to consider the same."

1.2 For the sake of convenience, these three appeals are hereby disposed of through this consolidated order.

2. At the time of hearing, the Ld. Authorized Representative (AR) for the assessee drew our attention to ground no. 1 of the aforesaid revised grounds of appeal, which is common in all the three appeals. The Ld. AR for the Assessee submitted that the direction given by the Ld. CIT(A) to the Assessing Officer, to the effect that the claim of credit of TDS deducted on such interest income, in the hands of appellant corporation, shall be examined by the JAO (Jurisdictional Assessing Officer) in the light of Provisions of Section 199 of the Act, read with Rule 37BA of the Income Tax Rules, 1962; was prejudicial to the assessee and the aforesaid direction was given by the Ld. CIT(A) without providing any opportunity to the assessee and also without issuing notice during appellate proceedings before the Ld. CIT(A). He submitted that this issue should be restored back to the Ld. CIT(A) with the

direction to decide the issue afresh in accordance with law after providing reasonable opportunity to the assessee. He also submitted that the disputes raised in remaining grounds in the present three appeals in the impugned orders of the Ld. CIT(A) should also be restored back to the Ld. CIT(A) because these issues were decided by the Ld. CIT(A) without providing reasonable opportunity to the assessee. In effect, the Ld. AR for the Assessee submitted that all the issues in dispute in the present three appeals should be set aside to the file of the Ld. CIT(A) with the direction to pass afresh order on all the issues in accordance with law after providing reasonable opportunity to the assessee. The Ld. Departmental Representative expressed no objection to this.

2.1 In view of the foregoing, and in the specific facts and circumstances of the present appeals before us, all the issues in dispute in these three appeals are set aside and restored to the file of the Ld. CIT(A) with the direction to pass denovo order in accordance with law after providing reasonable opportunity to the assessee. All the grounds of appeals are treated as disposed of as aforesaid.

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

Order pronounced in the open Court on 07/02/2025.

Sd/-
[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER

Sd/-
[KUL BHARAT]
VICE PRESIDENT

DATED: 07/02/2025

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR
5. Guard File

By order

// True Copy//

Assistant Registrar