INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI
BEFORE
SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No. 347/Del/2022
Asstt. Year : 2018-19

NCML Varanasi Private Limited IFFCO Tower-1, B-Wing, 5th Floor, P.No. 3, Sector-29, Gurgaon, Haryana 122001 PAN AAFCN5105P	Vs.	ITO, Ward 1 (1) Haryana.
(Appellant)		(Respondent)

ITA No. 348/Del/2022
Asstt. Year : 2018-19

NCML Bhattu Pvt. Ltd. IFFCO Tower-1, B Wing, 5th Floor, P. No. 3 Sector 29 Gurgaon Haryana-122 001 PAN AAFCN5113K	Vs.	ITO, Ward-(3)(1) Haryana
(Appellant)		(Respondent)

Assessee by:	Shri Nitish Ranjan, CA
Department by :	Shri Om Prakash, Sr. DR
Date of Hearing	23.08.2022
Date of pronouncement	14.11.2022

O R D E R

Captioned appeals filed by two different assesses arise out of two separate orders passed by National Faceless Appeal Centre (NFAC), Delhi pertaining to assessment years 2018-19.

2. Briefly, the facts are, assesses hitherto are resident corporate entities and are wholly owned subsidiaries of National Commodities Management Services Ltd. (NCML). Both the assesses have entered into concession agreement with Food Corporation of India (FCI) for construction, operation and maintenance of Silo Complex for storage of food grain on behalf of FCI at Varanasi and Bhattu under design, build, finance, own and operate model for a period of 30 years. In terms with the concession agreements, the assessees have to construct Silo Complex within specified period from the date of signing of the concession agreements. For the assessment year under dispute, the assessees filed their return of income declaring NIL income and claiming refund of the tax deducted at source (TDS). While processing the return of income, the Centralised Processing Centre (CPC), Bangalore rejected assessee's claim of refund citing mismatch between the return of income and Form 26AS. Against the intimation issued under section 143(1) of the Act rejecting the claim of refund, assesses preferred appeals before learned Commissioner (Appeals). Before the first appellate authority, the assessees contended that as per the terms of the concession agreement with FCI, the assessees have to furnish bank

guarantee and for obtaining bank guarantee, the assessees have to keep certain amount as fixed deposits on which interest is earned. It was submitted, since the interest income earned on the fixed deposits is intrinsically connected with the business activity for construction and maintenance of Silo Complex, the interest income has been adjusted against the cost of construction and the balance amount has been shown as capital work in progress in the audited financial statement. Thus, it was submitted by the assessee that since the interest income has arisen in the assessment year under dispute, the assesees are entitled to claim refund of the TDS amount. In this regard, the assessees relied upon Rule 37BA of Income Tax Rules, 1962. Learned Commissioner (Appeals), however, did not find merit in the submissions of the assessee. He observed, since the interest income has not been offered to tax as revenue receipt, rather, it has been adjusted against cost of construction, the interest income corresponding to the TDS amount does not qualify as income for the assessment year under dispute. Thus, he held that TDS cannot be refunded to the assessees.

3.   I have considered rival submissions and perused material on record. In so far as the factual aspect relating to the issue in

dispute are concerned, it is a fact that both the assessees have entered into concession agreements with FCI for construction, operation and maintenance of Silo Complex. In terms of the concession agreements, the assessees are required to furnish bank guarantees for which the concerned banks have kept securities by way of fixed deposits. Thus, it cannot be denied that the fixed deposits kept with banks are in connection with the business activity of the assessee. That being the factual position emerging on record, the interest income earned has a direct nexus with the business activity of the assessee. In that view of the matter, the interest income earned by the assessee has to be treated as income from business and can be set off against the cost of construction. There is no doubt that the interest income pertained to the impugned assessment year and the concerned banks have deducted tax at source while crediting the interest income to the account of the assessee. The only reason on which the departmental authorities have rejected to grant refund of the TDS amount is, the interest income has been adjusted against the construction expenses. This, in my view, is unacceptable. In case of CIT vs. Jaypee DSC Ventures Ltd (2012) 17 taxman.com 257 (Delhi) the Hon'ble Jurisdictional High Court while considering

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identical nature of dispute has held that the interest income earned on fixed deposits kept as security for performance guarantee is taxable as business income and can be set off against project expenses. The ratio laid down by the Hon'ble Jurisdictional High court, as aforesaid, squarely applies to the fact of the present appeal. In view of the aforesaid, I direct the Assessing Officer to refund the TDS amount to the assessees.

4.   In the result the appeals are allowed.

Order pronounced in the open court on   14th November, 2022.

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sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER
</div>

Dated: 14/11/2022

Veena

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

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ASSISTANT REGISTRAR
ITAT, New Delhi
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Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	

Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	