

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA No. 7866/Del/2017
(Assessment Year: 2005-06)

DCIT, Circle-17(2), New Delhi	Vs.	National Projects Construction Corporation Ltd, 30-31, Raja House, Nehru Place, New Delhi PAN: AAACR6117Q
(Appellant)		(Respondent)

Department by :	Shri Gaurav Pundir, Sr. DR
Assessee by:	Shri Ram Avtar Sharma, CA
Date of Hearing	29/07/2021
Date of pronouncement	23/08/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the ld. Dy. Commissioner of Income Tax, Circle 17 (2) New Delhi (the Ld. AO) against the order of the Ld. Commissioner of Income Tax (Appeals)-38, New Delhi, dated 8.09.2017 for assessment year 2005-06, raising the following grounds of appeal:-

- "1. Whether on facts and in circumstances of the case, the Ld. CIT (A) is legally justified in deleting disallowance of Rs. 2,48,75,688/- on account of 'interest accrued but not due' u/s 37 of the Income Tax Act, 1961 (the Act) by ignoring the detailed findings of the Assessing Officer (the AO) on the issue in assessment order dated 15.02.2013?
2. Whether on facts and in circumstances of the case, the Ld. CIT (A) is legally justified in deleting disallowance of Rs. 2,48,75,688/- on account of interest accrued but not due u/s 37 of the Act, without appreciating the fact that as per terms and conditions of 'Term Loan' interest liability in question i.e. 'Interest accrued but not due' has not arisen / crystallised during the year but will be accrued only in the next year?"

2. The brief facts of the case shows that assessee is a company engaged in the business of construction of dams etc. for Central and State Governments. It filed its return of income on 24.10.2005 at a loss of Rs. 54,24,37,245/-. On account of selection of scrutiny the assessment was passed under Section 143(3) of the Income Tax Act, 1961 (the Act) at a loss of Rs. 52,38,83,750/-.
3. Subsequently, the assessment was re-opened by issue of notice under Section 148 of the Act for the reason that assessee has claimed interest of Rs.42,22,00,000/- on loan from Central Government and it was found that the interest that should have been charged from profit and loss account should be only Rs. 39,73,00,000/- whereas the assessee has claimed deduction of Rs. 42.22 crores and, therefore, the loss was over assessed by Rs. 2,48,75,688/-. In response to the various notices the assessee submitted that assessee has claimed the deduction of interest of Rs. 42.22 crores, which consisted interest accrued and due of Rs. 36.13 crores and interest accrued but not due of Rs. 6 crores. It was further stated that as per the requirement of Schedule VI of the Companies Act, 1956, interest accrued and due is to be shown as un-secured loan and interest accrued but not due is to be shown as a current liability. It was stated that both the interests are accrued and are charged from the profit and loss account and are deductible. The Assessing Officer rejected the explanation of the assessee and made the above adjustment by making the addition as per order dated 15th February, 2013 passed under Section 143(3) read with Section 148 of the Act.
4. The assessee preferred an appeal before the Id. CIT (Appeals) who deleted the addition. Therefore, the Revenue is in appeal.
5. The Id. DR supported the order of the Id. Assessing Officer whereas the Id. AR supported the orders of the Id. CIT (Appeals).
6. We have carefully considered the rival contentions and perused the orders of the lower authorities. The assessee has claimed deduction of Rs. 42,22,53,613/- being total interest accrued and due of Rs. 36.13 crores and interest accrued but not due of Rs.6.08 crores. The Id. Assessing Officer noted that there is a difference between the figure of interest accrued and not due for the two financial years and thereby made an addition of

Rs.2,48,75,688/- holding that interest accrued but not due outstanding as on 31.03.2005 cannot be allowed as a deduction to the assessee. We find that in para 3.2.3 the ld. CIT (Appeals) has correctly accorded the reasons for deleting the above disallowance. It is also apparent that the ld. Assessing Officer got confused because of the disclosure of the requirement of Schedule VI of the Companies Act, 1956. Undisputedly the interest accrued and due as well as interest accrued but not due both are allowable to the assessee as deduction as assessee has accrued liability of interest on the above loans. Merely because of the interest is not due for the payment it cannot be disallowed. Therefore, we do not find any merit in the appeal of the ld. Assessing Officer and, therefore, we confirm the order of the ld. CIT (Appeals) in deleting the disallowance of Rs.2.45 crores on account of interest accrued but not due as allowable expenses.

7. In the result, appeal by the ld. Assessing Officer is dismissed.

Order pronounced in the open court on 23/08/2021.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated : 23/08/2021

MEHTA

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1. Appellant;
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	23.08.2021
Date on which the typed draft is placed before the dictating member	23.08.2021
Date on which the typed draft is placed before the other member	23.08.2021
Date on which the approved draft comes to the Sr. PS/ PS	23.08.2021
Date on which the fair order is placed before the dictating member for pronouncement	23.08.2021
Date on which the fair order comes back to the Sr. PS/ PS	23.08.2021
Date on which the final order is uploaded on the website of ITAT	23.08.2021
date on which the file goes to the Bench Clerk	23.08.2021
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	