

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
&
SMT. BEENA PILLAI, JUDICIAL MEMBER**

**I.T.A .No. 2149/Del/2013
(ASSESSMENT YEAR-2008-09)**

Rites Ltd., Rites Bhawan, Plot No. 1, Sector 29, Gurgaon. AAACR0830Q	vs	ACIT, LTU, New Delhi.
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**I.T.A .No.-2660/Del/2013
(ASSESSMENT YEAR-2008-09)**

DCIT, Circle 15(1), New Delhi.	vs	Rites Ltd., Rites Bhawan, Plot No. 1, Sector 29, Gurgaon. AAACR0830Q
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Appellant by	Sh. R.S. Singhvi, CA
Respondent by	Sh. Ramesh Chand, CIT(DR)

Date of Hearing	07.12.2015
Date of Pronouncement	20.01.2016

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER:

These are cross appeals filed by the Assessee & Revenue against the order dated 01/02/2013 passed by the ld. CIT(A)'s-XVIII, New Delhi for A.Y. 2008-09 on the following grounds:

Grounds of Assessee's appeal are as under:

1. *(i) That on the facts and circumstances of the case, the CIT(A) is not justified in confirming disallowance to the extent of Rs. 67,99,614/- in respect of claim of prior period expenses without proper appreciation of facts and opportunity to the appellant;*
 - (ii) That entire claim of prior period expenses is in respect of liability crystallized during the year and claim is in conformity with past history of the case.*
 - (iii) That observation of the CIT(A) that proper evidences were not filed in support of claim of prior period expenses is highly arbitrary, uncalled for any without any factual basis.*
2. *(i) That on the facts and circumstances of the case, the CIT(A) is not justified in confirming addition of Rs. 201.66 lacs being in the nature of contingent claim without proper appreciation of facts or legal principles.*
 - (ii) That the impugned claim is of contingent nature and there was counter claim by other party and both these issues were in dispute under arbitration proceedings, there is no case of any accrual of income.*
 - (iii) That the observation of the CIT(A) that evidence in respect of pending arbitration proceedings was not filed is not incorrect as necessary evidence in support of arbitration proceedings was placed on record during the appellate proceedings and as such order of CIT(A) is not sustainable.*
3. *(i) That on the facts and circumstances of the case, the CIT(A) was not justified in confirming addition of Rs. 71.26 crore even though no such income had accrued or received during the year under reference.*
 - (ii) That in respect of IRAQ dues, assessee became entitled to interest of Rs. 48.87 crores on the basis of approval of the claim in AY 2009-10 and same was duly declared and subjected to tax in AY 2009-10.*

- (iii) *That the whole basis of addition is illegal, arbitrary and merely of duplicating nature based on presumption and surmises.*
4. *That order of the lower authorities are not justified on facts and same are bad in law.”*

Grounds of Revenue’s appeal are as under:

1. *“The ld. CIT(A) erred in law and on facts in deleting the major part of the addition made by the Assessing Officer on account of prior period expenses and in ignoring the fact that as per mercantile system of accounting the assessee has to make provisions for the expenses.*
2. *The ld. CIT(A) has erred in law and on facts in deleting the above addition relying on the decision of the ITAT on the issue and in ignoring the fact that the matter is sub-judice before the Hon’ble High Court and has not come to its finality.*
3. *The appellant craves to be allowed to add any fresh grounds of appeal and/or delete or amend any of the ground of appeal.”*

2. Brief facts of the case are as under:

2.1 The assessee filed its return declaring a total income of Rs. 225,75,07,850/- on 26/09/2008. The same was processed u/s 143(1) of the Act. The case was selected for scrutiny and notice u/s 143(2) of the Act was issued and served upon the assessee. The assessee is engaged in the business of consultancy in all the transport sectors in addition to technical inspections, exports and leasing and foreign consultancy services. On examination of records the Assessing Officer observed that the assessee has debited an amount of Rs. 235.08 lacs towards prior period expenses in the profit and loss account. The assessee follows mercantile system of accounting and, therefore, the ld. Assessing Officer held that the

prior period expenses to be not allowable and income is to be taxed on accrual basis.

2.2 Further, the ld. Assessing Officer observed that assessee has shown receivables amounting to Rs. 201.66 lacs towards the interest on mobilization advance which had not been received by the assessee. The assessee had submitted that there was uncertainty regarding realization of this amount as there were claims and counter claims in respect of the same. The Assessing Officer did not agree to the submissions of the assessee and made an addition of Rs. 201.66 lacs as the assessee was following mercantile systems of accounting.

2.3 The ld. Assessing Officer further observed that the assessee had shown interest to an extent of Rs. 17.75 crores as receivables from BAAR Project. The ld. Assessing Officer rejected the assessee's contentions that the interest being shown as receivable amounts to a contingent liability and, therefore, cannot be treated as income for the year under consideration. The ld. Assessing Officer added an amount of Rs. 17.75 crores to the income of the assessee as interest in respect of BAAR Project.

3. Aggrieved by the order of the ld. Assessing Officer the assessee preferred an appeal before the ld. CIT(A).

3.1 The ld. CIT(A) after going through the contentions and submissions made by the assessee deleted the addition made in respect of prior period expenses to an extent of Rs. 1,67,08,386/-, for which the assessee had produced documents for admissibility of the same. In respect of the balance of Rs. 67,99,614/- the ld. CIT(A)

confirmed the addition as the assessee did not produce any explanation. In respect of the interest on mobilization advance, as interest on BAAR Project, the ld. CIT(A) confirmed the addition made by the ld. Assessing Officer as the assessee was following mercantile system of accounting.

4. Aggrieved by the order of the ld. CIT(A) the assessee as well as the Revenue is in appeal before us.

Ground No.1

5. The ld. AR submitted that the assessee is a Government undertaking providing engineering consultancy services, export of rolling stock, leasing services etc. The ld. AR further submitted that the assessee is engaged in executing various projects spread over different locations in India. The assessee had debited Rs.2,35,08,000/- to the profit & loss account relating to prior period expenses. The ld. AR submitted that the claims of prior period expenses and income are regular feature, which are processed, quantified after due process and approvals and thereafter these are recognized in the books of account.

5.1 The ld. AR submitted that such claims are being recognized in conformity with regular system, which are being followed consistently and the said claims of the assessee have always been accepted by the Revenue and allowed in the past assessment years, being A.Y. 2005-06, 2006-07 & 2007-08. The relevant orders of this Tribunal have been annexed to the paper book, at pages 29 to 38 and 49 to 51.

5.2. The ld. AR submitted that in the relevant year under consideration the assessee had debited prior period expenses amounting to Rs. 235.08 lacs. The ld. AR submitted that there was no double deduction, that the claim of the assessee had been incurred and crystallized during the year under consideration. The ld. AR submitted that the Assessing Officer has not brought on record any evidence to prove the same. The ld. AR also submitted that in case the expenses had been crystallized during the year they would not have been termed as prior period expenses.

5.3 The ld. AR has placed before us the decision of the Hon'ble High Court in assessee's own case, in ITA No. 293/2013 and 295/2013 for AY 2006-07 & 2007-08, wherein issue relating to prior period expenses have been dealt with. The Hon'ble High Court had upheld the view of the Tribunal of the addition being deleted under the head prior period expenses. In the year under consideration, the assessee has filed its reply which has been reproduced at page 2 para 3.3 of the assessment order, which is as under:

3.3 *"In response thereto the assessee has filed the following submission:*

"The prior period expenses have already been allowed to RITES in the earlier years. RITES, is a Govt. of India undertaking and in such organizations, there are well laid down procedures for providing income or liability after requisite approval is obtained from the designated authority. This has been the regular practice for many years and the same is applied uniformly in respect of income and expenses. The expenses/income is considered to be crystallized only in the year in which these are

approved by designated authority. The same view has been taken in earlier years by Appellate Authority and COD which are on the record.

This view is upheld by CIT(A) and ITAT in the case of ITDC and similar decisions in other cases like the decision of Gujarat High Court in the case of Saurashtra Cement and Chemicals Industries v. CIT, 213 ITR 525.

In view of the above, the claim for prior period expenses are justified and, therefore, be allowed.”

The Hon'ble High Court in assessee's own case for AY 2006-07 and 2007-08 has reproduced similar findings of the ld. CIT(A), in para 4 of the order. To avoid repetition the same is not reproduced herewith.

6. On the contrary, the ld. DR supported the orders of the ld. Assessing Officer and submitted that, as the assessee was following the mercantile system of accounting the Assessing Officer was right in considering the same as income in the hands of the assessee.

7. We have perused the records and considered the matter carefully. The assessee is a government undertaking. The assessee has been following mercantile system of accounting, as per which all items of income and expenditure are treated as accrued, only after the approval is granted by the competent authority. This system has been followed consistently in respect of both income and expenditure items. The system followed has been accepted by the department in the immediate preceding year. Therefore, in our view, it will not be appropriate to disturb the regular system being followed by the assessee. Moreover, the revenue has already

accepted the same basis adopted regarding the accrual of income and, therefore, different standards cannot be followed in respect of expenditure incurred in relation to the same income as it would give a distorted picture of the profit of the year. The ld.CIT(A) has also allowed the claim in part in his order.

7.1. The ld.AR has submitted that the issue may be sent back to the ld.AO for verification to an extent of Rs.67,99,614/-. The ld.DR does not object to this proposition, d by the ld.AR. Accordingly we set aside this ground to the ld.AO for verification and to allow the same following the principle of consistency.

7.2. This ground raised by the assessee therefore stands statistically allowed.

Ground No. 2:

8. The ld. AR submitted that the assessee had entered into a pre-closed contract in the year 2005-06 with a company known as M/s RPCL. The assessee further brought to the notice that the assessee had raised a claim of Rs. 22,195.43 lacs and M/s RPCL has raised counter claims of Rs. 46,910 lacs. The ld. AR further submitted that for the year under consideration the assessee has raised a claim of Rs. 18,441.31 lacs against the company and the company has raised counter claims of Rs. 64,453.06 lacs in a contract which has been rendered voidable due to commitment of fraud and hence has been terminated.

8.1 The ld. AR submitted that the arbitration proceedings are under process, and the respective amounts of claims and counter

claims against the company have been included as contingent liabilities.

8.2 The ld. AR submitted that an arbitral Tribunal has been constituted for resolving the issues between the assessee and M/s RML by the Hon'ble Jharkhand High Court vide its order dated 13/07/2006 which has been further modified vide order dated 03/05/2013. The ld. AR has also produced order sheet of the arbitral proceeding dated 29/11/2015 which shows that the proceedings have not yet been concluded and that the matter has been adjourned for January, 2016.

8.3 The ld. AR submitted that as the arbitration proceedings are still under process the counter claims are shown as contingent liabilities in the notes to the accounts. As the arbitration proceedings are still in process, the rights of the parties are therefore suspended till arbitration award is passed.

9. On the contrary, the ld. DR supported the order of ld.AO and submitted that as the assessee is following mercantile basis of accounting the addition made by the ld. Assessing Officer needs to be confirmed.

10. We have perused the relevant pages of the paper book and are convinced that as the amount has not been crystallized the same cannot be treated as income in the hands of the assessee. The assessee being a Government undertaking has been following a system of accounting as per which all items of income and expenditure are treated as accrued only after the approval is granted by competent authority. This system has been followed consistently

in respect of both income and expenditure items which has not been disputed by the Revenue in any of the preceding years. Therefore, we are of the considered opinion that the addition confirmed by the ld. CIT(A) is without any basis and needs to be deleted.

10.1 Accordingly, this ground of the assessee is allowed.

Ground No. 3:

11. This ground is directed against the addition of 17.26 lacs as accrued interest income on dues from Iraq. The ld. AR submitted that the dues of Rs. 117.75 crores are a part of loans and advances as due from Government of India. It is submitted that with a view of resolve the liquidity related problems of the Indian Project exporters due to non realization of their project receivables from Iraq and consequent to non servicing of rupee and foreign currency loan/facilities availed of by them from Axim Bank and SBI, Government of India agreed to pay the bankers a sum of Rs. 248.45 crores being the rupee equivalent of the certified receivables of the assessee, confirmed by the Central Bank of Iraq as of September, 2001 towards the part settlement in respect of fund based facilities in rupee and US dollars granted by the banks to assessee as one of the project exporters in connections with the contract which was also agreed to be paid by the Government of India.

11.1 The ld. AR further submitted that in pursuance of the Government agreeing to make the payments to the bankers under the above arrangements, the assessee assigned the project receivables standing to its credit in the accounts of Axim Bank with Central Bank of Iraq to the extent certified by the Central Bank of

Iraq as of September 30, 2001. It has been submitted that the Government of India paid a sum of Rs. 130.70 crores during the year 2001-02 that was used to repay the loans to the bankers. The balance sum of Rs. 117.75 crores accepted to be released in the form of bonds/cash were never issued/paid. The ld. AR submitted that the assessee paid the amount from its own fund to the bankers and this amount has become receivable from the Government of India to the assessee. The ld. AR submits that after a continuous follow up with the Ministries the Government agree to pay provided a separate cabinet note be put up against a balance amount of Rs. 117.75 crores.

11.2. The ld. AR in the paper book has relied upon a letter dated 28/03/2008, wherein a proposal to provide relief to the PSU's of the Ministry of Railways being the assessee on outstanding dues on deferred payment basis have been made. Initially, the proposal was to pay interest at 8.75% p.a. which was subsequently modified vide office memorandum dt. 03/06/08 placed at page 53 to 6% p.a.

11.3. The ld. AR at page 54 of the PB has placed an order dt. 04/12/2008, wherein an amount of Rs. 166.62 crores has been sanctioned pertinent to the above office memorandum. Accordingly, the said amount has been released and the relevant documents and a copy of the account payee cheque issued by the Government of India have been placed at page 52 to 57 of the PB. Thus, it is sufficiently clear that the assessee has been awarded an interest of Rs. 48.87 crores as against Rs. 71.26 crores which has been added by the ld. Assessing Officer.

12. We have perused all the above pages of the paper book and are convinced that the assessee has only released a total amount of Rs. 166.62 crores at an interest of Rs. 6% p.a. We are, therefore, inclined to delete the addition confirmed by the ld. CIT(A) to an extent of Rs. 71.26 crores as interest on the basis of the above discussions. Ground no. 3 of the assessee's appeal, therefore, stands allowed.

ITA no. 2660/D/2013:

Now we take up the Department's appeal.

13. The only ground raised by the Department in its appeal is relating to the prior period expenses which has been allowed to an extent of Rs. 1,67,08,386/-. The ld. CIT(A) has relied upon the orders of this Tribunal for A.Y. 1998-99, 2006-07 and 2007-08, wherein the Tribunal has held as under:

“3.3 We have perused the records and considered the matter carefully. The assessee is a government undertaking. The assessee has been following system of accounting as per which all items of income and expenditure are treated as accrued only after the approval is granted by the competent authority. This system has been followed consistently in respect of both income and expenditure items. The system followed has been accepted by the department in the immediate preceding year. Therefore, in our view, it will not be appropriate to disturb the revenue has already accepted the same basis adopted regarding the accrual of income and, therefore, different standards cannot be followed in respect of expenditure incurred in relation to the same income as it would give a distorted picture of the profit of the year. We are, therefore, unable to sustain the order of CIT(A) and the same is set aside and the claim of the assessee is allowed.”

13.1. This Tribunal in A.Y. 2005-06 has followed the findings of the Tribunal for A.Y. 1998-99. Respectfully following the decision of this Tribunal for the previous years being 1998-99, 2005-06 we do not find any infirmity in the findings of the ld. CIT(A).

14. We, therefore, dismissed this ground of appeal raised by the Revenue.

15. In the result, the assessee's appeal stands allowed accordingly and Revenue's appeal stands dismissed.

The order is pronounced in the open court on 20.01.2016

Sd/-

(N.K. SAINI)
ACCOUNTANT MEMBER

Dated: 20.01.2016

**Kavita, P.S.*

Sd/-

(BEENA PILLAI)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

