IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "f", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

	I.T.A. No.4149/DEL/2014	
	A.Y. : 2007-08	
M/S RITES LTD., RITES BHAWAN, PLOT NO. 1, SECTOR-29, GURGAON-122001 HARYANA (PAN: AAACR0830Q)	VS.	DCIT, CIRCLE 15(1), NEW DELHI C.R. BUILDING, NEW DELHI – 110 002
(ASSESSEE)		**(RESPONDENT)**

Assessee by : Sh. R.S. Singhvi, CA
Department by : Sh. F.R. Meena, Sr. DR

ORDER

PER H.S. SIDHU : JM

This Appeal is filed by the Assessee against the Order dated 16.6.2014 of the Ld. CIT(A)-XVIII, New Delhi relevant to assessment year 2007-08 on the following grounds:-

1(i) That on the facts and circumstances of the case, the Ld. CIT(A) was not justified in confirming initiation of proceedings u/s. 148 without appreciation of facts and legal provisions.

(ii) That initiation of proceedings u/s. 148 being barred by limitation, the same is illegal and without jurisdiction.

(iii) That even otherwise, reassessments proceedings were merely on the basis of change of opinion and not on the basis of new fact or evidence and as such same are not in conformity with scope of sec. 148 of the Income Tax Act, 1961.

2(i) That on the facts and circumstances of the case, action of the lower authorities in sustaining addition of Rs. 201.66 lacs is illegal, arbitrary and without any basis.

(ii) That there is no case of accrual of any income and as such there is no legal basis for impugned addition.

3. That orders of the lower authorities are not justified on facts and same are bad in law.

2. The brief facts of the case are that the assessee filed its e-Return declaring a total income of Rs. 175,65,69,970/- on 30/10/2007 and the same was followed by revised return which was filed on 27.3.2009 declaring income of Rs. 175,73,31,970/-. The same was processed u/s 143(1) of the I.T. Act, 1961 The case was selected for scrutiny and notice dated 23.9.2008 u/s 143(2) of the Act was issued. Subsequently, notices u/s. 143(2) / 142(1) of the Act alongwith questionnaire was issued from time to time. In response to these statutory notices, the representatives of the Company attended the assessment proceedings from time to time and filed the details as called for. 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. 113.31 lacs towards prior period expenses in the profit and loss account. The assessee follows mercantile system of accounting and, therefore, the Assessing Officer held that assessee has squarely failed to establish that prior period expenses of Rs. 1,13,54,696/- crystallized for payment in this assessment year, hence, the claim of deduction on account of prior period expenses of Rs. 1,13,54,696/- was disallowed and assessee's income was assessed at Rs. 176,86,56,670/- u/s. 143(3) of the I.T. Act, 1961 vide assessment Order dated 10.12.2010. Subsequently, it was noticed by the AO that "perusal of Schedule 'M' of notes to Account, Para No. 14.2 reveals that interest of Rs. 201.66 lacs (Rs. 379.28 – 177.62 lacs) on mobilization advance was due from the executing agency and was not recognized as income by the assessee. This amount should have been included in the income of the assessee and taxed accordingly. Accordingly, the AO observed that he has reason to believe that income of Rs. 201.66 lacs (Rs. 379.28 lacs – Rs. 177.62 lacs) has escaped assessment within meaning of section 147 and accordingly, after recording the reasons, notice u/s. 148 of the Act was issued on 23.3.2012 and reasons so recoded were also communicated to the assessee. The assessee filed its objection against the initiation of reassessment proceedings on 13.3.2013 which after due consideration were disposed off vide this office letter

dated 13.3.2013. Subsequently, notice u/s. 143(2) and 142(1) were issued. In response to the same statutory notices the Representatives of the assessee attended the proceedings and submitted the documents. The assessee in its submission dated 13.3.2013 before the AO has stated that it is not justifiable to make addition of Rs. 201.66 lacs by contemplating interest on mobilization advance on notional and hypothetical basis even though there were no such income or entry in the books of account. AO held that reply of the assessee was not found tenable and added back the addition of Rs. 201.66 lacs for the assessment year 2007-08 and re-assessed the income u/s. 147/143(3) of the Act at a total income of Rs. 178,88,22,670/- vide his order dated 16.3.2013.

3. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the ld. CIT(A), who vide his impugned order dated 16.6.2014 has dismissed the appeal of the assessee.

4. Aggrieved with the order of the Ld. CIT(A), the Assessee is in appeal before the Tribunal.

5. At the threshold, Ld. Counsel of the assessee only argued the ground no. 2 relating to addition of Rs. 201.66 lacs and stated that the said issue is squarely covered in favor of the assessee by the decision dated 20.1.2016 of the ITAT, 'F' Bench, New Delhi in assessee's own case for the assessment year 2008-09 passed in ITA No. 2149/Del/2013 & Ors. He further stated that against the order of the Tribunal dated 20.1.2016, as aforesaid, the Department went in Appeal

before the Hon'ble Delhi High Court and the Hon'ble High Court has dismissed the Department's Appeal title as Pr. CIT-7 vs. RITES Ltd. passed in ITA No. 404/2016 vide order dated 6.12.2016. In view of above, he requested that the order of the Hon'ble High Court, as aforesaid may be followed and addition in dispute may be deleted and appeal of the assessee may be allowed accordingly.

6. At the time of hearing, Ld. DR relied upon the order of the authorities below.

7. We have heard both the Counsel and perused the relevant records available with us, especially the orders of the revenue authorities and the order of the Tribunal and the Hon'ble High Court in assessee's own case. We find that the ITAT, 'F' Bench, New Delhi vide its decision dated 20.1.2016 in assessee's own case for the assessment year 2008-09 passed in ITA No. 2149/Del/2013 & Ors has held as under:-

> *"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 assesee. 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."

7.1 We further find that the Hon'ble High Court of Delhi has dismissed the Department's Appeal title as Pr. CIT-7 vs. RITES Ltd. passed in ITA No. 404/2016 vide order dated 6.12.2016 by holding as under:-

"3. It is urged by the revenue that the ITAT's reasoning is flawed. The learned counsel contends that rights of the assessee to receive the amount from RPCL had accrued which meant that appropriate recognition of the revenue had to be reflected. It was submitted that arbitrarily of the dispute was questioned as there could be no doubt that under the contract, the mobilization advance was given by

the assessee and therefore it was entitled to the interest.

4. *It is evident from the above discussion that the entire matter is contentious in the sense that the third party – RPCL – which was awarded the contract claimed that it has performed it in accordance with the agreement with the parties. The assessee, however, felt otherwise and terminated the contract. There could be several likely outcomes in these proceedings – many of them possibility impinging upon the rights of the assessee to receive advance amount itself along with interest either in whole or in part. In these circumstances, the ITAT's conclusions that there was no crystallized right to receive any particular amount or amounts, cannot be faulted.*

No question of law arises. The appeal, is therefore, dismissed."

8. After perusing the aforesaid findings of the ITAT, Delhi Bench and Hon'ble Delhi High Court in assessee's own case, we are of the considered opinion that the issue in dispute is squarely covered by the aforesaid findings, hence, respectfully following the aforesaid precedents of the ITAT, 'F' Bench, Delhi in assessee's own case and the decision dated 6.12.2016 of the Hon'ble Jurisdictional High Court in assessee's own case title as Pr. CIT-7 vs. RITES Ltd. in ITA No. 404/2016, we allow the appeal of the Assessee.

9. In the result, the Appeal filed by the Assessee stand allowed.

Order pronounced in the Open Court on 07/04/2017.

SD/- **Sd/-**

[PRASHANT MAHARISHI] **[H.S. SIDHU]**
ACCOUNTANT MEMBER **JUDICIAL MEMBER**

Date 07/04/2017

"SRBHATNAGAR"

Copy forwarded to: -

1. Assessee -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches