

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

AND

SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA No. 5743/DEL/2014
A.Y. 2005-06

ACIT, HISAR,
CIRCLE, HISAR

(APPELLANT)

VS. M/S DAKSHIN HARYANA BIJLI VITRAN
NIGAM LIMITED,
HISAR
(PANAABCD0033C)
(RESPONDENT)

AND

C.O. NO. 182/DEL/2017
(IN ITA NO. 5743/DEL/2014)
A.Y. 2005-06

M/S DAKSHIN HARYANA BIJLI VITRAN VS.
NIGAM LIMITED,
HISAR
(PANAABCD0033C)
(APPELLANT)

ACIT, HISAR,
CIRCLE, HISAR

(RESPONDENT)

Department by : Ms. Rachna Singh, CIT(DR)

Assessee by : Sh. Krishnan, Adv.

ORDER

PER H.S. SIDHU, JM :

This appeal by the Revenue and Cross Objection by the Assessee both are directed against the Order of the Ld. Commissioner of Income Tax (Appeals), Rohtak dated 11.08.2014 pertaining to Assessment Year 2005-06. Since the issues involved in this

appeal and cross objection are inter-connected, hence, the same are disposed of by this common order for the sake of convenience, by first dealing with Revenue's Appeal.

2. The grounds raised in the Revenue's Appeal read as under:-

1. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 195,95,85,359/- made on account of provisions for unrealized surcharge levied on account of delay in payment of bills.*
2. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not appreciating that being a company, the assessee is obliged to follow mercantile system of accounting as per Companies Act.*
3. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not appreciating that the assessee has levied basic charge on account of use of electricity and the surcharge in the same bill and has same powers under the Electricity Act/ Rules of recovery in respect of both. However, by accounting unrealised part of basic charge as income and not accounting the unrealized part of basic charge as income and not*

accounting the unrealised surcharge also an income, the assessee is violating the principles of accounting as envisaged in section 145(2).

4. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not appreciating that the practice adopted by the assessee in respect of unrealized surcharge, tantamount to following cash method of accounting which is a violation of principles of accountancy in case of a company assessee.*
5. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not appreciating that the assessee has not treated the said unrealized surcharge as bad debt.*
6. *The appellant craves leave to add or amend the grounds of appeal before the appeal is heard and disposed of.*
- 7.

3. The grounds raised in the Assessee's Cross Objection read as under:-

1. On the facts and in the circumstances of the case and in law, the reassessment proceedings are barred by proviso to section 147 of the Act.

2. On the facts and in the circumstances of the case and in law, the AO erred in initiating reassessment proceedings in the subject case, despite there being no failure to disclose fully and truly, all facts relevant for assessment, which position was duly accepted by the AO himself in order dated 4.2.2013.

The subject proceedings being without sanction in law, merit to be quashed.

4. The brief facts of the case are that the assessee filed its return declaring loss of Rs. 163,32,42,391/- on 31.10.2015 which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred as Act) on 11.10.2006. The assessee filed revised return declaring loss of Rs. 222,90,10,540/- on 18.10.2006 which was also processed u/s. 143(1) of the Act on 28.12.2006. Thereafter the assessee still filed another revised return on 22.3.2007 declaring loss to the tune of Rs. 124,33,57,290/- which was also processed on 30.3.2007. AO completed the assessment u/s. 143(3) of the Act on 19.11.2007 at a returned loss of Rs. 124,33,57,290/- and unabsorbed business loss and depreciation were allowed to be carried forward. AO observed that assessee raises bills for consumption of electricity periodically; which are to be paid by the consumers; by the specified date. if the payments are made after the specified date(s), surcharge is levied by the assessee company on such bills. It has transpired from the records that during the year, an amount

of Rs. 1,95,95,85,359/- was transferred to provision for surcharge not realized. AO further observed that the assessee has been maintaining its books with mercantile system of accounting and its right to receive surcharge has matured and hence the income embedded in the receipt is due to accrue or arise, though income may not be realized. Hence, the assessee's right to receive the aforesaid charge during the year was includible in the total income of the assessee as mercantile system of account has been followed, but the said income has not been declared for the year under consideration. Thereafter, after recording the reasons u/s. 147 of the Act on the above points, notice u/s. 148 of the Act was issued on 9.3.2012 and in response to the said notice, the assessee filed its return on 14.5.2012 declaring loss of Rs. 124,33,57,290/-. Notice u/s. 143(2) of the Act was issued on 18.10.2012 and in response to the same, the AR of the assessee attended the assessment proceedings. Statutory notices u/s. 143(2)/142(1) of the Act alongwith detailed questionnaire were issued and further in response to the same, the AR of the assessee attended the proceedings. In this case the assessee company is a government undertaking incorporated on 15.3.1999 and is carrying out business of distribution of electricity in ten districts of Southern Haryana. The AR of the assessee filed the requisite information / documents alongwith books of account. Thereafter, the AO observed that as per notes to Schedule 10 of the Audit Report, a sum of Rs. 1,95,95,85,359/- being surcharge assessed but not realized has been withdrawn from (income from surcharge) and adjusted against (surcharge

levied but not realized). As the assessee company is following mercantile system of accounting the assessee was asked to explain why this provision made should not be disallowed and added back to the income of the assessee company and after receiving the explanation from the assessee, the AO observed that assessee started following this practice from the AY 2004-05 and earlier the assessee was following the system of booking income on account of (unpaid as well as paid) surcharge on mercantile basis i.e. on equal footing with (actual) electricity dues. As the assessee company is following mercantile system of accounting, the provision made on account of surcharge levied but not realized amounting to Rs. 1,95,95,85,359/- was disallowed and added back to the income of the assessee vide order dated 04.2.2013 passed u/s. 143(3)/147 of the Act. Aggrieved with the assessment order dated 4.2.2013, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 11.8.2014 has allowed the appeal of the assessee by respectfully following the Tribunals orders passed in previous years in the case of the assessee. Against the impugned order, the Revenue is in appeal before us and Assessee has filed the Cross objection on the legal ground stating therein that reassessment proceedings are barred by proviso to section 147 of the Act.

5. At the time of hearing, Ld. Counsel for the assessee stated that the Ld. CIT(A) has passed the impugned order and deleted the addition by respectfully following the order of the Tribunal passed in assessee's own case dated 30.11.2011, 27.6.2012 and 10.2.2012 for the assessment

years 2006-07, 2007-08 and 2008-09 respectively. In order to support this contention, Ld. Counsel for the assessee has filed a Paper Book attaching therewith the copies of the aforesaid decisions of the ITAT.

6. Ld. DR could not controvert the fact that issue in dispute is squarely covered in favour of the assessee by assessee's own case in respect of assessment years 2006-07 to 2008-09 by the Tribunal's decision, but she relied upon the order of the AO and reiterated the contentions raised in the grounds of appeal and pleaded for reversal of the order of the Ld. CIT(A) by filing the written submissions cited various case laws therein.

7. We have heard both the parties and perused the records especially the impugned order as well the Tribunal's orders and the submission filed by the Ld. DR and the case laws cited therein. We find considerable cogency in the submissions of the Ld. Counsel of the assessee that the Tribunal in assessee's own case has decided the similar and identical issue in favour of the Assessee and against the Revenue vide orders dated 30.11.2011, 27.6.2012 and 10.2.2012 for the assessment years 2006-07, 2007-08 and 2008-09 respectively in assessee's own case. We further find that the assessee has also succeeded in appeal on the similar and identical issue for the assessment year 2006-07, 2007-08, 2008-09 and 2009-10 vide earlier CIT(A)'s order dated 6.11.2009, 03.1.2011, 11.8.2011 and 4.10.2013 respectively. We further note that the books of accounts of the assessee are regularly audited by the CAG and Tax auditors and the same has been duly accepted them. We further find that the case laws cited by the Ld. DR in the written submissions are on different set of facts and circumstances, hence, the same are not applicable in the present case. However, the assessee's case is fully covered by the Coordinate Bench decisions of the Tribunal in assessee's own case of assessment years 2006-07 to 2008-09. In view of the above, we are of the considered view that Ld. CIT(A) has rightly deleted

the addition in dispute by respectfully following the decision of the previous CIT(A) as well as the ITAT decisions in assessee's own case of assessment years 2006-07 to 2008-09, hence, the impugned order does not need any interference on our part, therefore, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground raised by the Revenue.

ASSESSEE'S CROSS OBJECTION

8. As regards, Assessee's Cross Objection is concerned, since we have already dismissed the Revenue's Appeal as aforesaid on merit and also the grounds raised by the Assessee in Cross Objection were not raised before the Ld. CIT(A), during the appellate proceedings, hence, the same have become infructuous, hence, we reject the same.

9. In the result, the Appeal filed by the Revenue as well as Cross Objection filed by the Assessee are dismissed.

Order pronounced on 16/01/2018.

Sd/-

**(O.P. KANT)
ACCOUNTANT MEMBER**

Sd/-

**(H.S. SIDHU]
JUDICIAL MEMBER**

Date:16/01/2018

"SRBHATNAGAR"

Copy forwarded to:-

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

TRUE COPY
By Order,

Assistant Registrar,
ITAT, Delhi Benches

