

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

**BEFORE
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
&
SHRI O.P.KANT, ACCOUNTANT MEMBER**

**ITA No.-5592/Del/2016
(Assessment Year: 2012-13)**

Oil Industries Development Board 301, World Trade Centre Babar Road New Delhi PAN : AAAJO0032A	vs	ACIT Circle-52(1) C.R.Building New Delhi
Assessee by		Sh. Shusheel Kumar Gupta, CA
Revenue by		M/s. Shefali Swroop, CIT (DR)

Date of Hearing	30.08.2018
Date of Pronouncement	27.11.2018

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.

This appeal is preferred by the assessee against order dated 02.05.2016 passed by the Ld. Commissioner of Income Tax (Appeals)-18, New Delhi for assessment year 2012-13.

2. The brief facts of the case are that the assessee is an autonomous institution under the Ministry of Petroleum, Oil & Natural Gas and has been constituted by an Act of the Parliament namely Oil Industries (Development) Act, 1974 and is engaged in

providing financial assistance for the development of oil industry. The capital fund of the assessee has been contributed by the Government of India out of the cess levied on crude oil from time to time. The return of income was filed for the captioned year declaring an income of Rs. 468,01,50,851/-. The case was selected for scrutiny and the assessment was completed at an income of Rs. 5,25,72,54,851/- after making the following disallowances –

- (1) Disallowance u/s 14A of the Act Rs. 4,65,04,000/-
- (2) Disallowance of capital expenditure u/s 36(1)(xii) Rs. 23,46,00,000/-
- (3) Disallowance of contingent liability u/s 37(1) Rs. 29,60,00,000/-

2.1 The disallowance u/s 36(1)(xii) amounting to Rs. 23,46,00,000/- was made on account of expenditure incurred on various schemes and projects which were sponsored by Govt. of India. The AO was of the opinion that this expenditure on various schemes and projects were outside the aims and objectives of the assessee board and were also capital in nature and, therefore, the same was not allowable as a deduction.

2.2 As regards disallowance of Rs. 29,60,00,000/- on account of contingent liability, the claim of expenditure was made by the assessee on the basis of provision made. The AO noted that the

same was not a crystallized liability and, therefore, the same was not allowable as a deduction.

2.3 Aggrieved, the assessee approached the Ld. CIT (Appeals) who upheld both the disallowances. Now, the assessee has approached the ITAT and has challenged the order of the Ld. CIT (Appeals) in upholding the two disallowances.

3.0 The Ld. Authorised Representative submitted that the assessee has been notified as an eligible institution for the purpose of claiming deduction u/s 36(1)(xii) of the Act. It was further submitted that on identical facts, in assessee's own case, the ITAT Delhi bench in assessment year 2009-10 had held that the benefit u/s 36(1)(xii) was available to the assessee and had allowed the assessee's claim.

3.1 Similarly with respect to other issue it was submitted that the Assessee Board is vested with the obligation for payment of royalty to the respective State Governments wherein the Oil wells are located. It was further submitted that the amount payable on account of royalty is determined by the Government with regard to the rate, quantity of crude oil etc. and further that the Assessee Board had no domain or control on this issue and it is the Ministry of Petroleum and Natural Gas which advises the Assessee Board about the payment of royalty to the respective State

Governments. It was submitted that this issue was also decided in favour of the assessee by the ITAT Delhi bench in assessee's own case for assessment year 2009-10.

4. In response the Ld. CIT DR placed reliance on the concurrent findings of both the lower authorities and referred to the relevant paragraphs of the impugned order while vehemently arguing that the disallowances had been rightly made.

5.0 We have heard the rival submissions and have also perused the material available on record. As far as the first issue in appeal i.e. the disallowance of Rs. 23,46,00,000/- pertaining to disallowance u/s 36(1)(xii) is concerned, it is seen that in assessee's appeal for assessment year 2010-11 in ITA no. 4221/Del/2014 this issue was restored to the file of the AO vide order dated 21.08.2017 with the following observations and directions :-

“13. AO disallowed expenditure of Rs.5,94,00,000/- on the ground that the Assessee Board has failed to demonstrate that it fulfilled all terms and conditions of allowability of such expenditure u/s 36(1)(xii). CIT (A) confirmed the disallowance made by the AO for the sole reason that assessee has to establish that the expenditure claimed are in the nature of revenue expenditure and incurred wholly and exclusively for the aims and objects of the Assessee Board.

14. The Id. AR for the assessee addressed short argument that when the assessee has created no assets nor any enduring benefit accrued to it rather the expenditure incurred are in the form of grants, sops, bounties, the same are revenue expenditure. When the Assessee Board has placed on record documents under Rule 46A to prove the justification of the expenses made in normal course of business, the disallowance is not sustainable. We are of the considered view that when the assessee has brought on record documentation to prove the justification of debit of expenses disallowed by the AO as well as by CIT (A), the AO is required to examine and verify these documents before deciding the issue in controversy. So, we remand this issue also to AO to decide after entertaining the documents relied upon by the Assessee Board under Rule 46A of the Rules after providing an opportunity of being heard to the assessee. Consequently, grounds no.7 & 8 are allowed for statistical purposes.

5.1 On identical facts and respectfully following the decision of the Co-ordinate bench in assessee's own case for assessment year 2010-11, as aforesaid, we restore this issue to the file of the assessing officer to examine and verify the assessee's claim after duly considering the documents which the Assessee Board may submit before the Assessing Officer in support of its claim and after providing proper opportunity of being heard to the assessee.

Accordingly ground nos. 2, 3 and 4 stand allowed for statistical purposes.

5.2 Coming to the second issue before us i.e. the disallowance of Rs. 29,60,00,000/- on account of royalty payable, it is seen that the Assessee Board had been claiming royalty payment on cash basis till assessment year 2007-08 but from assessment year 2008-09 the Assessee Board change its accounting system and thereafter started claiming royalty payment on accrual basis on the basis of quantification as per the existing guidelines of office of the Directorate General of Hydrocarbon (DGH). The assessing officer disallowed an amount of Rs. 29,60,00,000/- which was debited by the Assessee Board in the income and expenditure account on account of royalty payment to the State Governments on the ground that the same was in the nature of contingent liability as the quantification was done after the close of the financial year by the DGH. The Ld. CIT (Appeals) also upheld this disallowance. An identical issue had arisen before in assessee's own case before the ITAT in assessment year 2009-10 also and the ITAT in ITA no. 3568/Del/2014, vide order dated 21.08.2017, had restored the issue to the file of the AO by making the following observations:

“10. Moreover, when the AO has not disputed the genuineness of these expenses and has also not taken care of the fact that the exercise of allowing these expenses is revenue neutral, the addition thereof on account of disallowance of Rs.43,25,00,000/- is not sustainable in the eyes of law. In these circumstances, we find it necessary to restore the case back to the AO to allow the expenses incurred by the Assessee Board on account of payment of royalty to the State of Arunachal Pradesh and slate of Gujarat debited in its profit & loss account after due verification of the letter relied upon by the Assessee Board as well as Id. CIT (A). Consequently, Grounds No.1 & 2 of ITA No.3568/Del/2014 filed by the Revenue for AY 2009-10 and Consequently, Grounds No.2, 3 & 4 of ITA No.4221/Del/2014 filed by the assessee for AY 2010-11 are set aside to the AO.

5.3 In the present appeal also neither the AO nor the Ld. CIT (Appeals) has disputed the genuineness of these expenses. Therefore, it will be in fitness of things that following the principle of consistency, this issue is restored in this year also to the file of the AO to allow the claim of the assessee on account of payment of royalty after duly verifying the documents on which the assessee may seek to rely in this regard and after giving proper opportunity to the assessee to present its case. It is ordered accordingly. Accordingly, ground nos. 5 and 6 stand allowed for statistical purposes.

6. In the final result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 27.11.2018

Sd/-

Sd/-

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

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 27.11.2018

BR

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	26.11.2018
Date on which the typed draft is placed before the dictating Member	26.11.2018
Date on which the typed draft is placed before the Other Member	26.11.2018
Date on which the approved draft comes to the Sr. PS/PS	27.11.2018
Date on which the fair order is placed before the Dictating Member for pronouncement	27.11.2018
Date on which the fair order comes back to the Sr. PS/PS	30.11.2018
Date on which the final order is uploaded on the website of ITAT	30.11.2018
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	