

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'D', NEW DELHI**

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER  
AND  
SH. KULDIP SINGH, JUDICIAL MEMBER**

ITA No.1125/Del/2016  
Assessment Year: 2010-11

M/s. Rites Ltd. Rites Bhawan Plot No.-1 Sector-29, Gurgaon-122001 Haryana PAN no.AAACR0830Q <b>(APPELLANT)</b>	Vs	DCIT Circle – 15 (1) New Delhi <b>(RESPONDENT)</b>
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Appellant by	Sh. Satyajeet Goel, CA
Respondent by	Smt. Naina Soin Kapil, Sr. DR Sh. J. K. Mishra, CIT DR

Date of hearing:	04/09/2019
Date of Pronouncement:	13/09/2019

**ORDER**

**PER R.K. PANDA, AM:**

This appeal filed by the assessee is directed against the order dated 19.01.2016 of the CIT(A)-7, New Delhi relating to A. Y. 2010-11.

2. Ground of appeal No. 1.1 to 1.4 are as under :-

*1.(i) That on the facts and circumstances of the case, the CIT(A) was not justified in confirming addition of Rs.201.66 crores as*

*deemed income on mobilization advance even though no such income had accrued or received.*

*(ii) That in the absence of any legal or statutory right or acceptance of claim by other party, there is no case of any such income in the light of principle laid down by Supreme Court in the case of Excel Industries Ltd.(2013)358 ITR 295.*

*(iii) That alleged claims is of contingent nature and there is no justification for any addition on factual or legal basis.*

*(iv) That in any case, if such addition is considered as income, deduction should be allowed in respect of counter claim by other party.*

3. Facts of the case, in brief, are that the assessee is a company engaged in the business of technical and engineering consultancy and export sale. It filed its return of income on 27.09.2010 declaring total income of Rs.208,85,63,579/-. During the course of assessment proceedings the Assessing Officer noted from the consolidated notes to accounts point no.12.0 of Schedule N that interest of Rs.201.66 lacs [ Rs.984.26 lacs – 782.60 lacs (previous year)] on mobilization advance due from the executing agency has not been recognized as income although the same has become due during the F.Y. 2009-10 relevant to A.Y. 2010-11. According to the Assessing Officer this amount should have been included in the income of the assessee. He, therefore, confronted the same to the assessee. It was explained by the assessee that the above is in reference to the fraud committed by an agency in earlier year and there is also

uncertainty about the realization and the matter is under arbitration. However, the Assessing Officer rejected the contention of the assessee on the ground that the assessee follows mercantile system of accounting and therefore, the amount of Rs.2,01,66,000/- should have been recognized by the assessee as income during the previous year relevant to A.Y.2010-11. He accordingly made addition of Rs.2,01,66,000/- to the total income of the assessee. In appeal the Ld. CIT(A) following the order of his predecessor for assessment year 2009-10 confirmed the addition made by the Assessing Officer.

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

5. The Ld. Counsel for the assessee at the outset submitted that the Tribunal in assessee's own case for A. Y.2008-09 deleted the addition sustained by the CIT(A) on the ground that the amount has not been crystalised and, therefore, the same cannot be treated as income in the hands of the assessee. Further the assessee being a Government undertaking is following a system of accounting as per which the items of income and expenditure are treated as accrued only after the approval is granted by the competent authority. He submitted that the decision of the Tribunal was challenged by the revenue and the Hon'ble High Court in ITA No.404/2-16 order dated 06.12.2016 dismissed the appeal filed by the revenue. Therefore, this being a covered matter in favour of the assessee,

the grounds raised by the assessee should be allowed.

6. The Ld. DR on the other hand heavily relied on the order of the Assessing Officer and the CIT(A). She however conceded that the Tribunal has decided the issue in favour of the assessee for A.Y.2008-09 and 2009-10 and the appeal filed by the revenue against the order of the Tribunal for A.Y.2008-09 has been dismissed by the Hon'ble High Court.

7. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We find the Assessing Officer made addition of Rs.2,01,66,000/- being interest on mobilization advance on the ground that assessee is following mercantile system of accounting and, therefore, the amount of Rs.2,01,66,000/- should have been recognized by the assessee as income for the impugned assessment year on accrual basis. We find the Ld. CIT(A) upheld the addition made by the Assessing Officer following the order of his predecessor for A. Y.2008-09 and 2009-10. We find the Tribunal in assessee's own case for A.Y 2008-09 has deleted the addition and the appeal by the Revenue, the Hon'ble High Court dismissed the appeal of the revenue by observing 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 arbitrability 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 had 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."*

8. We further find the Tribunal in assessee's own case for A.Y2009-10 in ITA No.2826/Del/2014 order dated 24.04.2017 has also deleted the addition made by the Assessing Officer and sustained by the CIT(A). In view of the above discussion and considering the fact that the order of the Tribunal for A. Y.2008-09 has been upheld by the Hon'ble High Court, therefore, we set aside the order of the CIT(A) and direct the Assessing Officer to delete the addition.

9. Ground of appeal No. 2.1 to 2.2 are as under :-

*2(i). That on the facts and circumstances of the case, the CIT(A) was not justified in confirming disallowance u/s. 14A read with rule 8D to the extent of Rs. 17,80,998/-.*

*(ii). That impugned disallowance is without recording any satisfaction in terms of provisions of sub-section 2 & 3 of sec. 14A of the Income Tax Act, 1961 or any finding regarding claim of any such expenses.*

10. Facts of the case, in brief, are that the assessee during the year has shown tax free dividend income of Rs.1,02,89,859/- and claimed the same as exempt u/s. 10 (34) of the IT Act. On being questioned by the Assessing Officer it was submitted that no expenditure has been incurred to earn the said exempt income. However, the Assessing Officer was not satisfied with the above explanation. Applying the provision of section 14 A r.w. Rule 8D the Assessing Officer disallowed an amount of Rs.17,80,998/- and added the same to the total income of the assessee. In appeal the Ld. CIT(A) upheld the action of the Assessing Officer.

11. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

12. The Ld. Counsel for the assessee submitted that in absence of recording any satisfaction the Assessing Officer cannot make disallowance u/s 14A r.w Rule 8D. He submitted that under identical circumstances the Tribunal in assessee's own case for A.Y.2009-10 in ITA No.2826/Del/2014 order dated 24.04.2017 has deleted such disallowance. He

accordingly submitted that this being a covered matter in favour of the assessee, the ground raised by the assessee should be allowed.

13. The Ld. DR on the other hand strongly supported the order of the AO and CIT(A).

14. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We find the Assessing Officer in the instant case applying the provisions of section 14 A r.w. Rule 8D disallowed an amount of Rs.17,80,998/-being the expenditure incurred for earning the tax free income of Rs.1,02,89,859/-. We find the Ld. CIT(A) sustained the disallowance so made by the Assessing Officer. It is the submission by the Ld. Counsel for the assessee that the Assessing Officer has not recorded his satisfaction for making the disallowance. We find identical issue had come up before the Tribunal in assessee's own case for A.Y.2009-10. We find the Tribunal vide ITA No.2826/Del/2014 order dated 24.04.2017 while deleting the disallowance has observed as under :-

13. *“We have carefully considered the rival contention and also perused the orders of the lower authorities. During the course of assessment proceedings the assessee was asked that why provisions of Rule 8D should not be applied for disallowing some under section 14 A of the income tax act, despite the claim of the assessee that it has not incurred any*

*expenditure for earning exempt income. According to the provisions of section 14A(2), the Ld. assessing officer before invoking the applicability of Rule 8D should have explained as to why the voluntary disallowances or no disallowances made by the assessee was unreasonable and unsatisfactory. We failed to find any such satisfaction recorded by the Ld. assessing officer. The satisfaction is mandatory in view of the judicial precedents of the jurisdictional High Court laid down before us by the Ld. authorized representative. Therefore, respectfully following the judicial precedent of the jurisdictional High Court we direct the Ld. assessing officer to delete the disallowance of Rs.1125844/- under section 14A of the income tax act applying the provisions of Rule 8D of the Income Tax Rules, 1962. Reversing the finding of the Ld. first appellate authority, we allow ground No. 2 of the appeal of the assessee.”*

15. Since, the facts of the instant case are identical to the facts of the case decided by the Tribunal in assessee’s own case in the preceding year, therefore, respectfully following the same. The grounds raised by the assessee are allowed.

16. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 13.09.2019.

Sd/-  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

\*Neha\*  
Date:- 13.09.2019

Sd/-  
**(R.K PANDA)**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	16.09.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	