

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "B" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA.No.6428/Del./2016
Assessment Year 2010-2011

The Deputy Commissioner of Income Tax, Hisar. (Appellant)	vs	Dakshin Haryana Bijli Vitran Nigam Ltd., Vidyut Sadan, Hisar. PAN AABCD0033C (Respondent)
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For Revenue :	Ms. Nidhi Srivastava, CIT-D.R.
For Assessee :	Shri S. Krishnan, Advocate.

Date of Hearing :	03.12.2019
Date of Pronouncement :	03.12.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A), Hisar, Dated 24.10.2016, for the A.Y. 2010-2011.

2. We have heard the Learned Representatives of both the parties and perused the Orders of the authorities below.

3. On Ground No.1, Revenue challenged the Order of the Ld. CIT(A) in deleting the addition of Rs.128,23,35,706/- made by the A.O. on account of provision of surcharge levied but not realised.

4. During the course of assessment proceedings, A.O. noted that as per notes to Schedule-10 of the Audit Report, the impugned amount, being surcharge assessed but not realized had been withdrawn from income from surcharge and adjusted against surcharge levied but not realized. As the assessee-company was following mercantile system of accounting, the assessee was required to explain as to why this provision made should not be disallowed and added back to the income of the assessee-company. The assessee pleaded that in A.Y. 2006-2007 the Ld. CIT(A) has deleted the similar addition and that ITAT has also decided the issue in favour of the assessee. The A.O, however, did not accept the contention of assessee. The assessee filed detailed written submissions before the Ld. CIT(A) which is incorporated in the appellate order. The assessee, therefore,

pleaded that no addition could be made on account of hypothetical income.

4.1. The Ld. CIT(A) after examining the facts of the case found that the Ld. CIT(A), Rohtak vide Order Dated 11.08.2014 in the case of assessee for the A.Y. 2005-2006 had deleted the addition on account of provision of surcharge levied but not realized. The Ld. CIT(A), Rohtak, vide Order Dated 06.11.2009 for A.Y. 2006-2007 in the case of assessee had deleted the similar addition. Similarly, the Ld. CIT(A), Rohtak, vide Orders Dated 03.01.2011 for the A.Y. 2007-2008, 11.08.2011 for the A.Y. 2008-2009, 14.10.2013 for the A.Y. 2009-2010 and Ld. CIT(A), Faridabad, vide Order Dated 31.03.2014 for the A.Y. 2011-2012 have also deleted the said addition. The ITAT in its Order for the A.Y. 2006-2007 Dated 30.11.2011 in the case of assessee has also held that the amount of surcharge not realized by the assessee does not amount to accrual of receipt taxable as income. Similarly, the ITAT in the case of the assessee for the A.Y. 2007-2008 vide Order Dated 27.06.2012 has dismissed the appeal of Revenue and held

that amount be not taxable. Similar order have been passed by ITAT in ITA.No.4606/2011 for the A.Y. 2008-2009 in the case of assessee vide Order Dated 10.02.2012. It was also noted that the Hon'ble High Court of Punjab & Haryana in the case of the assessee in ITA.No.209/2014 Dated 01.10.2014 has affirmed the Order of ITAT and dismissed the appeal filed by the Revenue. The Ld. CIT(A) following the above orders deleted the addition and allowed the appeal of assessee.

5. On Ground No.2, the Revenue challenged the Order of the Ld. CIT(A) in deleting the addition of Rs.290,34,36,858/- whereby A.O. on account of payment of wheeling and SLDC charges to the HVPNL without deduction of tax at source as required under section 194J of the Act.

6. The A.O. made the aforesaid addition by considering the issue in detail. The assessee pleaded that TDS is not required to be deducted on the same and that ITAT had decided the issue in favour of the assessee. The detailed written submissions of the assessee is reproduced

in the appellate order. The Ld. CIT(A) considering the facts of the case found that Ld. CIT(A), Rohtak in the Order Dated 03.01.2011 for the A.Y. 2007-2008 on the basis of the decision of the ITAT in the case of assessee itself has held that assessee was not required to deduct tax at source within Section 194J in respect of payment of wheeling and SLDC charges to the HVPNL and directed the A.O. to delete the addition. Further, the Ld. CIT(A), Rohtak in Order Dated 11.08.2011 for A.Y. 2008-2009, vide Order Dated 04.10.2013 for the A.Y. 2009-2010 and Ld. CIT(A), Faridabad, in its Order Dated 31.03.2016 for the A.Y. 2011-2012 have deleted the similar addition. The ITAT decided the issue in favour of the assessee in the Order for the A.Ys. 2007-2008 and 2008-2009. The ITAT, Jaipur Bench has also decided similar issue in the case of Jaipur Vidyut Vitaran Nigam Ltd. The Ld. CIT(A) following the above order deleted the addition and allowed this ground of appeal of assessee.

7. Learned Counsel for the Assessee, at the outset submitted that Ground No.1 is covered by the Order of ITAT

as noted in the appellate order which is confirmed by the Hon'ble High Court and SLP of the Department have been dismissed vide Judgment Dated 17.07.2019 [PB-32].

7.1. He has submitted on Ground on Ground No.2 that the issue is covered by the Order of ITAT as noted above. Copies of these Orders are placed on record.

8. The Ld. D.R. stated that both the issues are covered by the aforesaid decisions as noted by the Ld. CIT(A) in the appellate order.

9. Considering the facts of the case, we are of the view that both the issues are covered in favour of the assessee by the aforesaid decisions referred to by the Ld. CIT(A) and in the submissions of the Learned Counsel for the Assessee. The Departmental Appeal fails and is dismissed.

10. In the result, appeal of the Department dismissed.

Order pronounced in the open Court.

Sd/-
(B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 03rd December, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "B" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.