

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

Before Sh. H. S. Sidhu, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 03/Del/2017 : Asstt. Year : 2010-11

Dakshin Haryana Bijli Vitran Nigam Ltd., Vidyut Sadan, Delhi Road, Hisar-125001 (Haryana)	Vs	Deputy Commissioner of Income Tax, Hisar Range, Hisar (Haryana)
(APPELLANT)		(RESPONDENT)
PAN No. AABCD0033C		

Assessee by : Sh. S. Krishnan, Adv.

Revenue by : Ms. Nidhi Srivastava, CIT DR

Date of Hearing: 19.12.2019

Date of Pronouncement: 09.01.2020

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT (A), Hisar dated 24.10.2016.

2. Following grounds have been raised by the assessee:

"On the facts and in the circumstances of the case and in law the CIT(A) erred in confirming the following additions made by the Assessing Officer by invoking section 43B of the Income Tax Act, 1961.

- a) Rs.24,67,66,886/- on account of outstanding liability in respect of Electricity Duty.*
- b) Rs.15,59,81,627/- on account of Municipal Tax."*

3. At the outset, the facts are undisputed by both the parties.

- a. Section 43B of the Income Tax Act, 1961 is not applicable to the outstanding payments on account of electricity duty as they do not fall under any head namely duty, cess or fee as defined in the said

section. The electricity duty is paid by the assessee only after collection of same from the subscriber as per the terms the electricity duty has to be collected by the assessee as an agent of the Government but not for his own consumption. The State Government can take necessary steps in accordance with law in case the assessee collects the duty from the customers and doesn't pay to the State Government. In this case, it was submitted the amounts have not been collected, hence the payments have been outstanding. Placing reliance on the judgment of the Hon'ble High Court of Kerala in the case of Kerala Electricity Board, Hon'ble High Court Kolkata in the case of CESC Ltd. 61 Taxman 92 and keeping in view the fact that the amounts have not been claimed in the P&L account no addition is warranted under this head.

- b. Regarding the payment of Municipal Tax, it was submitted that the amounts have not been claimed as deduction in the P&L account. The facts which have not been disputed, hence we hold that disallowance on the amount which has not been claimed under P&L account cannot be legally valid.

4. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 09/01/2020.

Sd/-

(H. S. Sidhu)
Judicial Member

Dated: 09/01/2020

Subodh

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR