

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

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 5591/DEL/2016 (A.Y 2011-12)

(THROUGH VIDEO CONFERENCING)

Oil Industry Development Board 301, World Trade Centre, Babar Road, New Delhi AAAJ00032A (APPELLANT)	Vs	ACIT Circle-52(1) New Delhi (RESPONDENT)
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ITA No. 4074/DEL/2016 (A.Y 2011-12)

ACIT Circle-52(1) New Delhi (APPELLANT)	Vs	Oil Industry Development Board 301, World Trade Centre, Babar Road, New Delhi AAAJ00032A (RESPONDENT)
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Appellant by	Sh. D. C. Garg & Sh. Susheel Kumar Gupta, CAs
Respondent by	Sh. Pramita. B. Biswas, CIT(A) DR

Date of Hearing	13.10.2020
Date of Pronouncement	0912.2020

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee and the Revenue against the order dated 01/04/2016 passed by the CIT(A)-18, New Delhi for Assessment Year 2011-12.

2. The grounds of appeal are as under:-

ITA No. 5591/DEL/2016 (Assessee's appeal)

(1) That Ld CIT (A) has erred both on facts and in law in framing the assessment at an income of Rs 549,21,38,834/- against the returned income of Rs. 477,61,36,190/-

(2) That the Ld. CIT (A) has erred in considering that the expenditure of Rs.15,88,00,000/- incurred by the appellant board on the schemes and projects are outside its aims and objectives and also capital in nature.

(3)) That Ld CIT (A) has no merits in finding that expenditure of Rs 15,88,00,000/- on schemes and projects is of capital nature as neither appellant board has created any asset nor any enduring benefit or wealth accretion has been derived by the appellant board rather such grants , sops, bounties are foregone forever thus permanent outflow once expended by the appellant board.

(4) That Ld CIT(A) has erred in upholding disallowance of Rs 15,88,00,000/- u/s 36(1) (xii) , request is hereby placed through this appeal to submit further documents u/r 46A to support justification of debit of expenses being made in the normal course of business respecting applicable accounting standards.

(5) That the Ld CIT(A) has erred in making addition of Rs 61,684/- while framing the assessment.”

ITA No. 4074/DEL/2016 (Revenue's appeal)

(i) The Ld. CIT(A) has erred in deleting the addition of Rs. 1,79,41,000/- made by the AO on account of 14A of the Act.

(ii) The Ld. CIT(A) has erred in not considering that the assessee has made huge expenditure under the head establishment and administrative expenses in his P&L A/c., which has indirect nexus with the amount invested in mutual funds & Shares.

(iii) *The Ld. CIT(A) has erred in deleting disallowance of Rs. 14,95,00,000/- made by the AO on account of Royalty payment to Assam Govt, in contravention of the accounting standards with regard to prior period expense.*

(iv) *The Ld. CIT(A) has erred in deleting the addition of Rs. 38,97,00,000/- on account of contingent liability, which do not constitute expenditure and hence cannot be allowable u/s 37(1) of the Act.*

3. There is a delay of 121 days in filing the present appeal of the assessee being ITA No.5591/Del/2016. The assessee filed application for condonation of delay along with the affidavit thereby explaining the reason for delay. The Ld. DR did not object to the same. It is observed that the reason explained for delay is genuine. Hence, delay in filing the present appeal by the assessee is condoned.

4. Firstly we are taking up the Appeal filed by the assessee. The assessee is a statutory body constituted by an Act of Parliament, is engaged in providing financial assistance for the development of Oil Industry. The return showing income of Rs. 477,36,190/- was filed on 29.09.2011 by the assessee. During the year, the Assessing Officer treated the expenditure on direct operations as appropriation of profits and held that the same cannot be held as laid out wholly and exclusively for the purpose of business within the meaning of Section 37(1) of the Income Tax Act, 1961. The Assessing Officer also invoked the provisions of Section 14A for disallowance of expenditure in earning the exempted income. The Assessing Officer further treated the provision for Royalty payable to State of Assam as a contingent liability and accordingly disallowed the same.

5. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

6. The Ld. AR submitted that as regards to assessee's appeal the issue is related to expenditure of Rs. 15,88,00,000/- incurred by the assessee board on the schemes and projects and the same is capital in nature. The Ld. AR submitted that the assessee Board has not created any assets or any enduring benefit or wealth accretion was derived by the assessee board. The Ld. AR submitted that these expenditure are covered under Section 36(1)(xii) of the Act and similar reliefs have been granted by the Tribunal in A.Ys. 2003-04, 2004-05, 2005-06, 2006-07 and 2007-08 as well and the revenue has not challenged the same. The Ld. AR further submitted that the assessee is submitting the additional documents under Rule 46A to support justification of debit of expenses being made in the normal course of business respecting applicable accounting standards. The Ld. AR also relied upon the decision of the Tribunal in assessee's own case for A.Y. 2009-10 and 2010-11 being ITA Nos. 3568 & 4221/Del/2014 order dated 21.08.2017 wherein the Tribunal remanded this issue to the file of the Assessing Officer.

7. The Ld. DR relied upon the assessment order and the order of the CIT(A).

8. We have heard both the parties and perused all the relevant material available on record. From the perusal of records it can be seen that the assessee at this juncture has filed certain documents under Rule 46A to support justification of debit of expenses being made in the normal course of business respecting applicable Accounting Standards. In similar situation, the Tribunal in A.Y. 2009-10 and 2010-11 held as under:

"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 ld. AR for the assessee addressed shot 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.”*

The fact in the present case is also identical to that of A.Ys. 2009-10 and 2010-11, hence we also remand back this issue to the file of the Assessing Officer to decide the issue after examining the documents relied upon by the assessee board under Rule 46A of the Income Tax Rules, 1962. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Thus, Ground Nos. 2 to 4 are partly allowed for statistical purpose. As regards to Ground No. 5 relating to addition of Rs. 61,644 towards non credit of TDS, the same is also required to be verified by the Assessing Officer as the additional documents are filed towards the same by the Assessee during the course of hearing. Therefore, we direct the Assessing Officer to verify the documents and if the evidence produced is justified then the TDS credit should be given to the assessee. Ground No. 5 is partly allowed. Thus, appeal filed by the assessee being ITA No. 5591/Del/2016 is partly allowed for statistical purpose.

9. As regards to Revenue's appeal Ground Nos. 1 and 2 related to disallowance under Section 14A, the Ld. DR submitted that the Assessing Officer has rightly made an addition of Rs. 1,79,41,000/- . The Ld. DR submitted that the contention of the assessee before the Assessing Officer was there was no expenditure incurred in relation to income which does not form part of total income, the amount of expenditure in relation to such income shall be worked out in accordance to sub-Rule (2). Rule 8D(2)(iii) gives a method as to how the proportionate expenses is to be worked out after averaging out the total of investment as on the first and last day of the relevant previous year. The Assessing Officer observed that it is not necessary to pinpoint the expenditure in a case where assessee claims that no expenses has been incurred for earning exempt income. Thus, the CIT(A) was not correct in deleting the addition on account of Section 14A of the Act.

10. The Ld. AR submitted that the Assessing Officer was not correct in observing that the assessee board has made equity investment in the shares/securities amounting to Rs. 35,882 lacs and Rs. 35,882 lacs on 1st and last day of the year, thereby giving a new version to the brought forward investment of the preceding year thus, there is no reason of any expense, efforts or correlative nexus during the said assessment year for earning such income and moreover no dividend has been credited in the income statement of the year. The Ld. AR further submitted that during the assessment year, the assessee Board had not earned any exempt income and accordingly provisions of Section 14A have no application. The Ld. AR relied upon the order of the CIT(A). The Ld. AR further relied upon the following decisions:

- i) Cheminvest Ltd. v. CIT [2015] 378 ITR 33 (Delhi HC)
- ii) CIT v. Walfort Share and Stock Brokers (P.) Ltd. [2010] 326 ITR 1
- iii) Maxopp Investments Ltd. v. CIT [2018] 402 ITR 640 (SC)

11. We have heard both the parties and perused all the relevant material

available on record. In order to attract the applicability of section 14A of the Act, an assessee has to incur expenditure. In the present case the income pertains to income on dividend, which by no stretch of imagination can be treated to be an expenditure to attract the provisions of section 14A of the Act. The Hon'ble Supreme Court in case of Maxopp Investments Ltd. (supra) and Walfort Share and Stock Brokers (P.) Ltd. reiterated the same. The CIT(A) was rightly deleted this addition as there is no exempt income in this particular assessment year. Therefore, there is no need to interfere with the finding of the CIT(A). Ground Nos. 1 and 2 of the Revenue's appeal are dismissed.

12. As regards to Ground No. 2 of the Revenue's appeal relating to disallowance of Rs. 14,95,00,000/- made by the Assessing Officer on account of Royalty payment to Assam Govt. in contravention of the accounting standards with regard to prior period expense, the Ld. DR submitted that the assessee has used the mix accounting system. The Ld. DR submitted that the Income Tax Act categorically prohibits the allowability of prior period expenses unless it is proved that the expenses and the liability thereof is crystallized during the relevant year under consideration. Thus, the CIT(A) was not correct in deleting the said addition.

13. The Ld. AR relied upon the order of the CIT(A). The Ld. AR relied upon the decision of the Tribunal in NBCC Ltd case and judgment of the Hon'ble Jurisdictional High Court in Shri Ram Piston's case as stated above, along with all the cases cited by the CIT(A) in his order i.e. Woodward Governor India Pvt. Ltd. [312 ITR 254(SC)], Realest Builders & Services Ltd. [170 Taxmann 218 (SC)] and SAS Hotels & Enterprises Ltd.(Appeal no. 1030 of 2010) (Madras High Court). Hence the CIT(A) correctly deleted the disallowance of expenses amounting to Rs. 14,95,00,000/- made by the Assessing Officer.

14. We have heard both the parties and perused all the relevant material available on record. The CIT(A) has given a categorical finding that royalty

payment is an additional payment and the same was not disputed by the Revenue. Once the royalty expenses of Rs. 14.95 crores have been crystallized in the present Assessment Year, the genuineness of the same is not questioned by the Revenue authorities. Hence, there is no need to interfere the findings of the CIT(A). Ground No. 3 of the Revenue's appeal is dismissed.

15. As regards to Ground No. 4 relating to addition of Rs. 38,97,00,000/- on account of contingent liability, which do not constitute expenditure and not allowable u/s 37 (1) of the Act, the Ld. DR submitted that in the present case the expenses on account of royalty payable to Government of Arunachal Pradesh & Gujarat has been debited on estimated basis as assessee is not able to furnish any documentary evidence or explain basis as to how the expenditure on royalty has been crystallized. Thus, the CIT(A) was not right in deleting the said addition.

16. The Ld. AR relied upon the order of the CIT(A).

17. We have heard both the parties and perused all the relevant material available on record. The CIT(A) has given a categorical finding that the Assessee Board is under an obligation of payment of royalty to the respective State Governments wherein oil wells are located. The amount payable on account of royalty is determined by the Government with regard to the rate, quantity of crude oil extracted etc. The assessee Board does not have any domain or control on this issued. It is the Ministry of Petroleum & Natural Gases which advises the Board about the payment of royalty to the respective State Governments which is evident from the letters produced by the Assessee Board during the Assessment Proceedings and the appellate proceedings. Thus, the CIT(A) has rightly deleted the said addition. There is no need to interfere with the finding of the CIT(A). Ground No. 4 of the Revenue's appeal is dismissed.

18. In result, appeal of the assessee being ITA No. 5591/Del/2016 is partly allowed for statistical purpose and appeal of the Revenue being ITA No. 4074/Del/2016 is dismissed.

Order pronounced in the Open Court on this 09th Day of December, 2020.

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 09/12/2020
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

