

**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. 4425/DEL/2014 (A.Y 2008-09)

(THROUGH VIDEO CONFERENCING)

Oil Industry Development Board 301, World Trade Centre, Babar Road New Delhi AAAJO0032A (APPELLANT)	Vs	DCIT Circle-31(1) New Delhi (RESPONDENT)
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ITA No. 3567/DEL/2014 (A.Y 2008-09)

ACIT Circle-31(1) New Delhi (APPELLANT)	Vs	Oil Industry Development Board 301, World Trade Centre, Babar Road, New Delhi AAAJO0032A (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	12.10.2020
Date of Pronouncement	09.12.2020

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee and the Revenue against the order dated 27/03/2014 passed by the CIT(A)-XXVI, New Delhi for Assessment Year 2008-09.

2. The grounds of appeal are as under:-

ITA No. 4425/DEL/2014 (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 575,37,61,042/- against the returned income of Rs. 531,47,22,540/-.*

(2) *That the Ld CIT (A) has erred in making addition of Rs. 13,28,38,502/- lying with DGH as the fund lying with DGH in custody could not have been brought to tax in the year under appeal since the appellant board is consistently following cash system of accounting for recognizing such income & it was never remitted by DGH to the appellant in the year under appeal. Consistency has to be followed by the tax department unless there is change in the facts of the case .*

(3) *It is contented that the accounting entries and method of treatment in the accounts could only be a guiding factor and it is not determining and conclusive evidence as to how the income has to be computed for the purpose of income tax.*

(4) *It is contented that addition of Rs 13,28,38,502/- on account of sale of data by DGH and treating the same as income in the current year under appeal is wrong and bad in law.”*

ITA No. 3567/DEL/2014 (Revenue's appeal)

(i) *The CIT(A) has erred in deleting disallowance of Rs. 30,62,00,000/- made by the A.O on account of Royalty payable to State Government being prior period expense.”*

3. There is a delay of 62 days in filing the present appeal of the assessee being ITA No.4425/Del/2014. 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 assessee has been notified as an eligible institution for the purpose of claiming deduction under Section 36(1)(xii) of the Income Tax Act, 1961 for and from A.Y. 2008-09 and accordingly any expenditure (other than capital expenditure) if it is spent for the purpose of the object for which it was established has to be allowed. The assessee, in the past, had been claiming the royalty payment on the basis of actual payment i.e. cash basis till Assessment Year 2007-08. However, from the Assessment Year 2008-09, the method of accounting in pursuance of C & AG directions was changed for some receipts and expenditure from cash to accrual method of accounting. Consequentially, the assessee claimed royalty payment on accrual basis on the basis of the quantification as per the existing guidelines of the Office of the Directory General of Hydrocarbon (DGH). The Assessing Officer made disallowance of Rs. 30,62,00,000/- as regards to expenditure on royalty as prior period expenses. The assessing Officer also added Rs. 13,28,38,502 on account of amount lying in the custody of DGH not accounted for by the OIIB.

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 there is only one issue in this appeal that income of Rs. 13.28 crores accrued but not received has not been accounted for by the Assessee. This system of accounting is being followed consistently and the Revenue has been accepted from the very beginning and no inconsistency was found. The Ld. AR further submitted that the same income has been accounted for in the very next year i.e. in A.Y. 2009-10 and the assessee paid tax accordingly. The Ld. AR submitted that taxability of that income in the next year has neither been disputed by the Assessing Officer nor

by the CIT(A). The Ld. AR submitted the Letter of DGH, Ledger, Bank statement and C&AG report during the assessment proceedings. The Ld. AR submitted that when system of accounting is being followed consistently, and tax rates in both the years i.e. A.Y. 2008-09 and AY 2009-10 are same, there is no loss to Revenue, hence addition may kindly be deleted. Otherwise, there will be double taxation on the same income i.e. first in the year under consideration and second in the next year i.e. A.Y. 2009-10 when the Assessee has accounted for this income. The Ld. AR relied upon the decision of the Tribunal in the case of ACIT vs. NBCC Ltd. [Appeal no. 5870-Del-2010] on similar issue held that as the tax rates were the same in both the years, department should not fritter away its energies in raising questions as to the year of deductibility/taxability. The Ld. AR also relied upon the Hon'ble jurisdictional High Court's decision in case of CIT vs. Shri Ram Pistons & Rings Ltd [220 CTR 404] wherein it is held that when there was no change in the rate of tax for the particular Assessment Year, the question, therefore, is only with regard to the year of deduction and it is not necessary to determine the year of taxability of the amount.

7. The Ld. DR submitted that the assessee has changed the accounting system without any proper cause or reason in the present assessment year. And thus, the Assessing Officer has rightly made addition in respect of funds lying with DGH. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

8. As regards to the Revenue's appeal, the Ld. DR submitted that the Tax statute categorically prohibits the allow ability of prior period expenses unless it is proved that the expenses and the liability thereof is crystallized during the relevant year under consideration. The Ld. DR submitted that the assessee Board failed to establish the fact that the liability was crystallized during the relevant year under consideration and thus, such prior period expenses are not allowable Income Tax Act. Therefore the Ld. DR relied upon the Assessment Order.

9. The Ld. AR submitted that the issue of allowability of prior period expenses in the current year is challenged by the Revenue. The CIT (A) very elaborately discussed the issue in his order in para 5 to 5.2 of the appeal order. 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. 30.62 crores made by the Assessing Officer. Considering the same analogy as relied by the CIT(A) while deleting the disallowance of Rs. 30.62 crores, the addition made on account of income amounting to Rs. 13.28 crores, which has already been accounted for in the next year, and thus prayed for deletion of the addition.

10. We have heard both the parties and perused the material available on record. Firstly we take up assessee's appeal. It is pertinent to note that the assessee has followed the same method of accounting which is receipt basis for taking remittance on DGH as an income. The change in account in policy in reference to CAG's observation/report was basically to strengthen the fund management of the Assessee Board. The assessee accounted for Rs. 4657 lacs as an income from the sale of data from DGH. From the perusal of the records it can be seen that from accounting purposes it is taken as outstanding on 31st March, 2008 and a sum of Rs. 13.28 crores was realized in the next assessment year and has been accounted for as income. This fact was nowhere denied by the Revenue. Thus, the CIT(A) has totally ignored this aspect and simply on the basis of change of accounting policy which is also changed according to the CAG report which is mandatory for the Assessee Board to follow, confirmed the addition. The same is not justified as the accounting policy principles were thoroughly followed by the Assessee Board and the income was reported for A.Y. 2009-10 which is next assessment year. There is

no revenue loss as well. Therefore, the Assessing Officer as well as the CIT(A) was not correct in making addition. Thus, appeal of the assessee being ITA No. 4425/Del/2014 is allowed.

11. Now, we come to the appeal filed by the Revenue. The CIT(A) has given a categorical finding that the royalty payable to Arunachal upto December 2008, the assessee has debited such expenses on the mercantile basis and since these liabilities of payment of royalties have been provided in the relevant year in pursuance of the DGH letters dated 23.03.2009 and 27.03.2009 having detailed working . Once the royalty expenses of Rs. 43.25 crores have been crystallized in the relevant Assessment Year, these are not the contingent liability when 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). The appeal filed by the Revenue being ITA No. 3567/Del/2014 is dismissed.

12. In result, appeal of the assessee is allowed and appeal of the revenue 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