THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'F' NEW DELHI

BEFORE SHRI G.S. PANNU, VICE-PRESIDENT AND SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 809/Del/2015	Assessment Year: 2011-12
ITA No.2690/Del/2016	Assessment Year: 2012-13
ITA No.3120/Del/2016	Assessment Year: 2013-14
ITA No.7432/Del/2017	Assessment Year: 2014-15
ITA No.7605/Del/2018	Asst. period : (09.01.2024)

DCIT, Circle-19(2), New Delhi	**Vs.**	PTC India Ltd., 2nd Floor, NBCC Tower, 15-Bhikaji Cama Place, New Delhi
PAN :AABCP7947F		
(Appellant)		**(Respondent)**

ITA No 2506/Del/2016	Assessment Year: 2012-13
ITA No.2507/Del/2016	Assessment period : 14.11.2023
ITA No 7474/Del/2017	Assessment Year: 2012-13
ITA No.7530/Del/2018	Assessment period : 09.01.2024

PTC India Ltd., 2nd Floor, NBCC Tower, 15-Bhikaji Cama Place, New Delhi	**Vs.**	DCIT, Circle-19(2), New Delhi
PAN :AABCP7947F		
(Appellant)		**(Respondent)**

Assessee by	S/Shri Salil Kapoor, Sanat Kapoor, Tarun Chanana, Sumit Lalchandani & Ms. Ananya Kapoor, Advs.
Department by	Shri P N Barnwal, CIT DR

Date of hearing	27.03.2024
Date of pronouncement	27.05.2024

ORDER

PER ANUBHAV SHARMA**: JUDICIAL MEMBER:**

These are appeals preferred by the assessee as well as the Revenue against the orders of the Commissioner of Income Tax (Appeals) (hereinafter referred to as Ld. First Appellate Authority or 'the ld. FAA' for short) in appeals filed before him against the orders of the ld. Assessing Officer (hereinafter referred to as the Ld. AO, for short). Further details of the orders of the lower authorities are as under:-

ITA No.	CIT(A) who passed the order	Appeal No. & Date of order of the CIT(A)	AO who passed the assessment order & Date of order	Section of the IT Act under which the AO passed the order
2506/Del/2016	CIT(A)-7, New Delhi	877/CIT(A)-7/Del/14-15 date 29.02.2016	DCIT, Cir. 19(1) & (2), New Delhi, 02.03.2015	143(3)
2507/Del/2016	CIT(A)-7, New Delhi	629/CIT(A)-7/Del/15-16, date: 31.03.2016	DCIT, Cir.19(2), New Delhi. Date: 18.01.2016	- Do -
7474/Del/2017	- Do -	10603/401/CIT(A)-7/Del/2016-17 date 04.10.2017	DCIT, Cir. 19(2) New Delhi, date	- Do -

			16.12.2016	
7530/Del/2018	CIT(A)-38, New Delhi	230/2017-18 date 26.09.2018	Addl.CIT, Spl. Range-7, New Delhi, date 31.12.2017	- Do-
809/Del/2015	CIT(A)-XVII, Delhi	115/13-14 Date: 05.11.2014	DCIT, Cir.14 (1), New Delhi, date 31.12.2013	- Do -
2690/Del/2016	CIT(A)-7, New Delhi.	877/CIT(A)-7/Del/14-15 date 29.02.2016	DCIT, Cir.19(1) & (2), New Delhi date: 02.03.2015	- Do -
3120/Del/2016	CIT(A)-7, New Delhi,	629/CIT(A)-7/Del/15-16 date: 31.03.2016	DCIT, Cir.19(2), New Delhi. Date: 18.01.2016	- Do -
7432/Del/2017	CIT(A)-7, New Delhi,	10603/401/CIT(A)-7/Del/2016-17 date: 04.10.2017	DCIT, Cir.19(2), New Delhi. Date: 16.12.2016	- Do -
7605/Del/2018	CIT(A)-38, Delhi	230/2017-18 date: 26.09.2018	Addl.CIT, Spl. Range-7, New Delhi. Date: 31.12.2017	143(3)

2. Learned counsel appearing for the assessee mentioned that issues involved in all these appeals are common. The first being chargeability of income-tax attributable to surcharge income offered by the assessee on receipt basis. Second issue is disallowance of certain expenses by invoking the provisions of Rule 8D read with section 14A of the Income-Tax Act, 1961. Thus the appeals are

decided by this common order and facts of AY 2011-12, are being considered as lead year case facts.

3. In regard to the first issue of chargeability of surcharge as income of the assessee it can be seen that the agreement for sale/purchase of energy with customers contains the clause for surcharge for delayed payment. Surcharge is to be calculated @ 15% per annum on all payments outstanding after the specified period on a day to day basis. It is the case of assessee that , the Assessing Officer has grossly erred in law and on facts of the case in making addition of Rs.27,18,55,862/ in AY 2011-12 on account of surcharge to the declared income, alleging it, as accrued income. Ld. DR has though defended it. What comes up is that while doing so the Assessing Officer has also rejected the assessee's method of accounting for surcharge and did not take into account the accounting standards as applicable to the assessee company.

4. Ld. AR has submitted that the company accounts for the surcharge only when it is actually accepted/paid by the customer as it depends on the customer from whom the money is due, as the prime object of this levy is the realization of dues. It was submitted that

inspite of the provision of surcharge in the agreement the reality differs and this is the practice of the industry and the company is also following this practice to levy on need basis as exception. It was submitted that in the agreements, surcharge is specified at 15% p.a. but the realization varies from case to case when the payments are actually made by the customer. The amount of surcharge so received is offered as income of the year in the year of receipt. The company has paid tax diligently on all such surcharge income received from time to time.

5. Learned counsel for the assessee has pointed out that in so far as the issue of taxability of surcharge income is concerned, the issue is squarely covered by the judgment of Hon'ble Punjab & Haryana High Court in **ITA No. 209 of 2014 dated Ist of April 2014 in the case of CIT vs. Dakshin Haryana Bijli Vitran Nigam Ltd., Hissar** wherein the Hon'ble High Court while affirming the order of ITAT has observed as under:

> "The question that calls for an answer, in the facts of this case, is whether surcharge for delayed payment reflected in the bills raised by the assessee and its accounts, would invite payment of a tax dehors recovery/payment/receipt of surcharge. The Assessing Officer, took a view that a surcharge levied upon delayed payments of bills is reflected in the bills and the accounts of the assessee, the fact that the surcharge may or may not be paid or recovered or may eventually be waived, is entirely irrelevant as the assessee maintains a mercantile system of accounting.

Aggrieved by the aforesaid finding, the assessee filed an appeal. The CIT(Appeals) vide order dated 06.11.2009, set aside the addition made by the Assessing Officer by holding as follows:-

> "The issue involved and the submissions made by the appellant have been considered. It is undisputed that the appellant is following mercantile system of accounting: it is levying surcharge on delayed payment of bills by the consumers; the surcharge is taken as income as and when it is collected, however a provision for charge is made as noted above under the head 'provision of surcharge not realized'. This method has been regularly followed by the appellant. During appeal proceedings before the undersigned the appellant has produced bills pertaining to as many as 50 parties of various places and has shown that the bills are accepted even without payment of surcharge by the consumers and that surcharge is shown in the books as income as and when it is collected/received. It is settled law that, "Income-tax is a levy on income. No doubt, the Income-tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt, but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book keeping an entry is made about a 'hypothetical income". Which does not materialize. Where income has, in fact, been received and is subsequently given up, in such circumstances that it remains the income of the recipient, even though given up, the tax may be payable. Where, however, the income can be said not to have resulted at all, there is obviously neither accrual nor receipt of income, even though an entry to that effect might, in certain circumstances, have been made in the books of account in view of the aforesaid and the Accounting Standard (AS)-1 and Accounting Standard (AS)-9, issued by the institute of Chartered Accountant of India the addition made by the Assessing Officer is deleted."

The revenue thereafter filed an appeal before the ITAT, which affirmed the order passed by the CIT (Appeals) and dismissed the appeal. A relevant extract from the order passed by the ITAT is as follows:-

> "In our considered opinion, all the above judgment clearly favour the stand taken by the assessee. We may hasten to mention that looking at the intricacies the facts may vary, therefore, basic principles of accrual or mercantile system as laid down by various authorities are to be applied in a careful manner. The assessee being a sate PSU; the surcharge on delayed payment being disputable item; was not mandatorily payable at the time of payment of electricity consumption bill; was not an accrued receipt in view of the accounting policy accepted by the revenue. Therefore, such amount of surcharge cannot be held to be taxable as it is not the real income of the assessee and is hypothetical by nature in given facts and circumstances.
>
> In view of the foregoing, we are of the view that the amount of surcharge not realized by the assessee, does not amount to accrued of receipt taxable as income, CIT(A) has rightly deleted the addition, which we uphold."

We have duly considered arguments but are unable to accept the the contentions advanced by counsel for the appellant. Admittedly, Rs.2,25,18,23,535/-

was added by the assessing officer as reflecting levy of surcharge on delayed payment of bills. Admittedly, this amount has neither been paid nor recovered by the assessee. Admittedly, the surcharge is a disputable item and may at any time be reduced or waived and, therefore, despite the fact that the assessee maintains a mercantile system of accounting, the ITAT and the CIT (Appeals) have rightly set aside the order passed by the assessing officer adding surcharge to the income of the assessee. It would be appropriate to point out that income tax is fundamentally a levy on income and though the Act may prescribe different points in time at which liability to taxation enures still remains a tax on receipt of income. A hypothetical income that may or may not materialize should not be made subject matter of tax merely because of an entry in the accounts books maintained by an assessee. A reference in this regard may be made to a judgment of the Hon'ble Supreme Court in "**Commissioner of Income-tax Vs. Shoorji Vallabhdas and Co."** [1962] 046 ITR 0144, wherein it has held as follows:-

> "Income-tax is a levy on income. Though the Income-tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt, yet the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a "hypothetical income", which does not materialize. Where income has, in fact, been received and is subsequently given up in such circumstances that it remains the income of the recipient, even though given up, the tax may be payable. Where, however, the income can be said not to have resulted at all, there is obviously neither accrual nor receipt of income, even through an entry to that effect might, in certain circumstances, have been made in the books of account."

In view of what has been recorded hereinabove, we find no error in the impugned orders and while dismissing the appeal record that as and when the assessee receives payment of surcharge, it would be obliged to pay tax on such amount."

6. After considering the facts of the case of assessee before us and those in the case **CIT vs. Dakshin Haryana Bijli Vitran Nigam Ltd. (supra),** we are of the view that there is parity in the facts of both the cases and the proposition of law, held by Hon'ble Punjab and Haryana High Court, squarely applies to the issue before us.

7. In the case of Dakshin Haryana Bijli Vitran Nigam Ltd. (supra) there was CAG audit which fact is missing in present so Assessing Officer has to verify the fact as to when the surcharge was realized

and offered as income. Thus while allowing the grounds in all the appeal covered by this issue, we direct the assessing officer to consider the claim of the assessee after verifying the year in which the surcharge income has been offered to tax.

8. The second issue is with respect to the invocation of Rule 8D read with Rule 14A of the Act, for making disallowance. The assessee as well as the Revenue, both are in appeal so far as assessment years 2011-12 to 2015-16 is concerned. The Revenue is aggrieved with the findings of the learned first appellate authority wherein relief is granted to assessee by reducing the quantum of disallowances made by the assessing officer and the assessee is aggrieved with the additions sustained.

9. Learned counsel for the assessee contended that disallowances of Rule 8D read with Rule 14A of the Act has been dealt with by the ITAT in assessment years 2008-09 to 2010-11. In all these assessment years, the ITAT has restored the additional evidences, filed by the assessee before the ITAT, which is a certificate of the CA certifying the quantum of expenses incurred vis-a-vis earning of exempt income. The learned counsel has further drawn our attention to the application

of the assessee dated 01.02.2019 and requested that additional evidence i.e. the certificate of the CA issued with respect to the expenses incurred for the purpose of exempt income may kindly be taken on record.

10. Considering the totality of the facts and circumstances, we admit the additional evidence filed by the assessee i.e. the certificate of the CA and restore the issue to the assessing officer for examining it afresh. Needless to say that the Assessing Officer will grant sufficient opportunity to the assessee while giving effect to the directions of this order.

11. In Assessment Year 2014-15, Ld. Counsel has raised additional contention that the investments were made from the own funds of the assessee and not from the borrowed funds and hence no disallowances is permissible in view of the judgment of Hon'ble Punjab & Haryana High Court in the case of **CIT vs. HDFC Bank 366 Income Tax Return 505 (Bom.)**. That being the settled position of law to which Ld. DR has not rebutted anything. We direct the assessing officer also to examine the position of own funds in the impugned years while deciding the disallowance made under Section 14A of the Act.

12. In view of the above, all the appeals are allowed for statistical purposes with consequences to follow as per the determination of two issues, as above.

Order pronounced in the open court on 27/05/2024.

Sd/-	**Sd/-**
(G.S. PANNU)	**(ANUBHAV SHARMA)**
VICE-PRESIDENT	**JUDICIAL MEMBER**

Dated: 27th May, 2024.
Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi