

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

ITA Nos.1186/Del/2024
Assessment Year: 2020-21

PTC India Ltd., 2 nd Floor, NBCC Tower, 15 RK Puram, South West Delhi, RK Puram, Delhi	Vs.	DCIT, Circle-19(1), Delhi
PAN: AABCP7947F		
(Appellant)		(Respondent)

With

ITA Nos.2858/Del/2024
Assessment Year: 2020-21

DCIT, Delhi	Vs.	PTC India Ltd., 2 nd Floor, NBCC Tower, 15, RK Puram, South West Delhi, Delhi
PAN: AABCP7947F		
(Appellant)		(Respondent)

Assessee by	Sh. Salil Kapoor, Adv. Sh. Sumit Lalchandani, Adv. Ms. Ananya Kapoor, Adv.
Department by	Ms. Amish S. Gupta, CIT(DR)

Date of hearing	07.01.2026
Date of pronouncement	07.01.2026

ORDER
PER SATBEER SINGH GODARA, JM

These assessee's and Revenue's cross appeals ITA
Nos.1186/Del/2024 and 2858/Del/2024 for assessment year

2020-21, arise against the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre [in short, the “CIT(A)/NFAC”], Delhi’s DIN and order no. ITBA/NFAC/S/250/2023-24/1060534971(1), dated 06.02.2024 involving proceedings under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as ‘the Act’).

Heard both the parties. Case files perused.

2. The assessee’s former substantive ground in its appeal ITA No.1186/Del/2024 challenges both the learned lower authorities’ respective findings invoking section 14A read with Rule 8D disallowance of Rs.15,68,39,715/-; in assessment order dated 28.09.2022 and upheld in the lower appellate discussion.

3. That being the case, both the parties very fairly agree before us that the instant issue of section 14A read with Rule 8D disallowance is indeed a recurring one between the parties as the earlier learned coordinate bench’s order dated 19.11.2025 in assessment year 2018-19 dealing with identical cross appeals has already directed the Assessing Officer to re-compute the same after considering exempt income yielding investments in light of Crago Motors Pvt. Ltd. (2023) 453 ITR 554 (Delhi) and Vireet Investments

P. Ltd. (2017) 82 taxmann.com 415 (Delhi) (SB). We accordingly reiterate our past remand directions to restore the instant section 14A read with Rule 8D disallowance back to the learned Assessing Officer in very terms.

4. Learned counsel next invites our attention to page 109 in the paper-book raising the assessee's additional ground reading as under:

"1. The present appeal is filed by the Appellant before this Hon'ble Tribunal against the issues on which relief was not given by the Commissioner of Income Tax (Appeals) ["Ld. CIT(A)"] vide order passed under Section 250 of the Income-tax Act, 1961 ('the Act') dated 06.02.2024.

2. In this regard, the Appellant seeks to raise the following additional grounds in addition to the grounds already raised vide Form 36 with regards to the captioned matter-

Additional Grounds:

11. That in view of the fact and circumstances of the case and in law, the loss on account of extinguishing of Rs. 37.55 crore in Krishna Godavari Power Limited ('KGPL') is allowable for the deduction for the relevant AY 2020-21. The said deduction is allowable in respect of the said capital loss. After, allowing the benefit of indexation.

PTC India

12. That the Capital loss on account of extinguishment of said capital asset is allowable in A.Y. 2020-21 along with benefit of indexation, although the same is written off in the books of accounts in the subsequent A.Y. 2024-25. As such, the said loss is allowable after giving benefit of indexation.

3. It is humbly submitted that the Appellant company has written off above said capital loss in the Book of Accounts and claimed in the Profit and Loss Account for A.Y. 2024-25. The Appellant has no intention to make claim in two A.Y.(s). If the same is allowed in A.Y. 2020-21. The same shall be withdrawn for A.Y. 2024-25.

4. It is humbly submitted that the above-mentioned additional grounds are purely legal and the relevant facts are on record. It is submitted that the said additional grounds may kindly be admitted and adjudicated in the interest of justice. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. vs. CIT [229 ITR 383 (SC)].”

5. Mr. Kapoor next takes us to the Debt Recovery Tribunal-II, Hyderabad's order(s) as well as the National Company Law Tribunal, Hyderabad Bench-I order in IA No.1172 of 2019 in C.P. No. (IB)-249/7/HDB/2018 having taken value of its investment as “Nil” only thereby resulting in the capital loss claim in issue.

6. The Revenue's case, other the hand, is that all these assessee's evidence(s) require the Assessing Officer's factual verification and necessary reconciliation. We thus quote NTPC Vs. CIT (1998) 229 ITR 383 (SC) to admit the assessee's instant additional ground at this stage and restore the same back to the learned Assessing Officer for his appropriate adjudication within three effective opportunities of hearing at the appellant's risk and responsibility, in consequential proceedings. Ordered accordingly. This assessee's appeal ITA No. 1186/Del/2024 is allowed for statistical purposes.

7. We now advert to the Revenue's cross appeal ITA No. 2858/Del/2024 raising its sole substantive ground that the CIT(A) herein has erred in law and facts whilst reversing the Assessing Officer's action adding the assessee's surcharge on delay payments by debtors amounting to Rs.309,85,00,000/-, in the lower appellate discussion. We notice herein that this tribunal's earlier order dated 19.11.2025 (supra) has already upheld the learned CIT(A)'s identical action deleting the impugned addition as follows:

“20. In appeal filed by the Revenue, solitary ground of appeal taken is with respect to the deletion of the addition of INR 1,94,37,33,111/- made on account of surcharge on delayed payments from the debtors.

*21. Heard the contentions of both the parties and perused the material available on record. At the outset, it is seen from the order of Ld. CIT(A) that he has followed the order of Assessment Year 2015-16 vide order dated 26.09.2018 wherein Ld. CIT(A) has deleted the additions made by AO following the order of Co-ordinate Bench of the Tribunal. Ld. CIT(A) has observed that there is no change in the circumstances as existed in the preceding years and the year under appeal. It is further seen that Co-ordinate Bench of Tribunal in assessee's own case in ITA No. 809/Del/2015 while deleting the additions made, placed reliance on the judgement of the Hon'ble Punjab & Haryana High Court in the case of **DCIT vs M/s Dakshin Haryana Bijli Vitran Nigam Ltd. in ITA No.209/2014** dated **01.04.2014** however, has direct the AO to verify the year in which the surcharge income has been offered to tax. The relevant observation in para 5 to 7 of the order of Co-ordinate Bench of Tribunal is reproduced as under:-*

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 state 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 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 ensues 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.”

22. *In the instant case, admittedly there is no change in the facts and circumstances of the case as in the instant year also assessee has made provision of the unrealized surcharge. Ld. CIT(A) also by following the orders of the previous year, deleted the additions.*

23. *In view of these facts and by respectfully following the judgement of Co-ordinate Bench and by placing reliance on the judgement of Hon’ble Punjab & Haryana High Court in the case of Dakshin Haryana Bijli Vitran Nigam Ltd. (supra), we direct the AO to delete the additions made on account of surcharge on the delayed payments from debtors. However, we direct the AO to consider the claim of the assessee after verifying the facts as to when surcharge was realized and offered as income. With these directions, appeal of the Revenue is dismissed.*

24. *In the result, appeal of the Revenue is dismissed.”*

8. We adopt the above detailed discussion *mutatis mutandis* and direct the Assessing Officer to carry out his identical consequential verification regarding the assessee’s realization of impugned surcharge and its income offered therefrom as per law in very terms. This Revenue’s cross appeal ITA No.2858/Del/2024 is partly allowed for statistical purposes therefore.

9. To sum up, this assessee’s appeal ITA No.1186/Del/2024 is allowed for statistical purposes and the Revenue’s cross appeal ITA No.2858/Del/2024 is

partly allowed for statistical purposes. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 7th January, 2026

Sd/-
(AMITABH SHUKLA)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 9th January, 2026.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi