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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER, AND SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 706/DEL/2018
[Assessment Year: 2012-13]

RITES Limited Scope Building, Scope Minar Laxmi Nagar, New Delhi	Vs.	The Addl.C.I.T Special Range - 7 New Delhi

PAN: AAACR 0830 Q

[Appellant] [Respondent]

Date of Hearing : 02.03.2021
Date of Pronouncement : 02.03.2021

Assessee by : Shri R.S .Singhvi, CA
Shri Satyajit Goyal, CA

Revenue by : Shri Gurmil Singh, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] - 07, New Delhi dated 05.12.2017 pertaining to Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal:

I(i). That on facts and circumstances of the case, the Ld. CIT(A) was not justified in confirming disallowance of CSR & SD expenses to the extent of Rs. 4,52,21,943/- u/s 37 on the misconceived ground that same have not been incurred for the purpose of business of the appellant.

(ii) That the appellant being a government of India undertaking and CSR and SD expenses having been incurred as per mandatory guidelines issued by Department of Public Enterprises, Ministry of heavy industry, the expenses are exclusively for the purpose of business and in accordance with provisions of section 37 of the Act.

(iii) That even otherwise, there being no dispute about genuineness of the expenses and same being incurred for the purpose of business, the impugned disallowance is on illegal and arbitrary basis without appreciating the facts of the case.

2.(i) That on the facts and circumstances of the case, the CIT(A) was not justified in confirming addition of Rs.201.66 crores as deemed income on mobilization advance even though no such income had accrued or received.

(ii) That in the absence of any legal or statutory right or acceptance of claim by other party, there is no case of any such income in the light of principle laid down by Supreme Court in the case of Excel Industries Ltd.(2013)358 ITR 295.

(iii) That alleged claims is of contingent nature and there is no justification for any addition on factual or legal basis.

(iv) That in any case, the impugned addition is in total disregard to decision of Hon'ble Delhi High Court in appellant's own case for AY 2008-09 wherein deletion of identical addition by Hon'ble ITAT has been upheld by High Court.

3(i). That on the facts and circumstances of the case, the CIT(A) was not justified in confirming disallowance u/s. 14A read with rule 8D to the extent of Rs. 57,52,225/-.

(ii) . That impugned disallowance is without recording any satisfaction in terms of provisions of ' sub-section 2 & 3 of sec. 14A of the Income Tax Act, 1961 or any finding regarding claim of any such expenses.

(iii) That even otherwise, there being no case of any claim of expenses in connection with earning of exempt income, the impugned disallowance is on illegal and arbitrary basis."

3. At the very outset, the ld. counsel for the assessee stated that all the issues involved in the appeal are fully covered in favour of the assessee and against the Revenue by the order of the Hon'ble Delhi High Court and ITAT, Delhi Benches.

4. The ld. DR fairly conceded to this.

5. We have carefully considered the orders of the authorities below and the orders of the Hon'ble High Court as well as the Tribunal, Delhi Benches, brought to our notice. We find force in the contention of the ld. counsel for the assessee. All the issues have been decided in favour of the assessee and against the revenue in earlier A.Ys. Accordingly, we will address each issue as under.

6. Ground No. 1 relates to disallowance of CSR and SD expenses.

7. A similar issue was considered by the Tribunal in A.Ys 2013-14 and 2014-15 in ITA No. 6448/DEL/2017 and ITA No. 6447/DEL/2017, and CO No. 78/DEL/2019 order dated 17.12.2020 vide Ground No. 2 of that appeal. The relevant findings of the Tribunal read as under:

"14. Undisputedly, assessee company in order to provide the best possible solutions for sustainable development of society executed projects during the years under assessment as under :-

(i) Construction of a youth facility house (residential) for SOS children's villages of India near Anangpur Village, Faridabad, Haryana.

(ii) Construction of Age Day Care and Wellness Centre – Residential Facility, Village Rongla, Patiala, Punjab (Phase B).

(iii) Construction of Kalyan Mandap for Central University of Karnataka. (iv) Construction of School Complex at Village Wazirpur, Manesar.

(v) Girls Residential School Complex, Khanpur Ghati.

(vi) Construction of Building of Asia Institute of Transport Development (AITD) at Dwarka, New Delhi.

(vii) Maintenance of Media Verge, C.R. Avenue, Kolkata.

15. Perusal of the assessment orders goes to prove that AO has mechanically disallowed the claim of expenditure made by the assessee company towards Corporate Social Responsibility (CSR) and sustainable development without analyzing the fact that assessee company being a Government undertaking is required to incur such expenses as per guidelines issued by the Department of

Public Enterprises by undertaking social welfare activities under the social security scheme. Assessee company has however claimed these expenses as business expenditure permissible under the Act.

16. It is contended by the ld. AR for the assessee that identical claim of CSR expenses has been duly accepted by the Revenue in the earlier years and there is no change in the facts and circumstances of case. Neither AO nor ld. DR for the Revenue has controverted this fact.

17. AO has disallowed claim of the assessee company qua CSR expenditure by misinterpreting the provisions contained under section 37(1) of the Act by observing that since CSR expenditure is not incurred for the purpose of carrying on the business, such expenditure cannot be allowed under the existing provisions of section 37 of the Act. Even Explanation 2 to section 37(1) of the Act is prospective in nature to be effective from 01.04.2015 and is applicable to the expenses incurred with reference to section 135 of the Companies Act, 2013 that too after 01.04.2015, so Explanation (2) to section 37(1) of the Act is not applicable to the present case also. Moreover, expenses claimed by the assessee company have been incurred as per guidelines of the Ministry concerned with approval of the Board to the best business interest of the assessee company. So AO, without examining the nature of the expenses, disallowed the claim mechanically even by ignoring the rule of consistency.

18. Moreover, CSR expenses have been incurred by the assessee on the direction of the Government of India and identical issue has been decided by the coordinate Bench of the Tribunal in case of M/s. HLL Lifecare Ltd. vs. ACIT in ITA No.123/Coch/2017 for AY 2012-13 order dated 11.06.2018 by returning following findings :-

"9.5 The CSR expenses has been incurred as per the directions of Government of India. The Hon'ble Kerala High Court in the case of Travancore Titanium Products Ltd. (supra) had held that a Government Undertaking is duty bound to comply with Governmental orders. The relevant findings of the Hon'ble jurisdictional High Court reads as follows :-

"Being a company under the control of the Government, it is bound to comply with all the Government orders and the Board of Directors itself is constituted with the Government secretaries and other nominees as members. Therefore, the claim of deduction has to be considered with reference to the peculiar circumstances of the company which has no discretion in regard to the payment of the service charges to the government as it is bound to comply with the government orders. So much so, we are of the view that the parameters applicable in the case of a private company that too with respect to the claim for business expenditure, are exactly not applicable in the case of Public Sector Company whether it is under the control of the State Government or Central Government. In fact, many public sector companies are not formed just to make profit alone but are supposed to achieve larger objectives for the

society and the State. By making payment of service charge, the respondent company has discharged only the obligation under Government orders. It cannot carryon business by violating Government orders and remain as a defaulter to the Government.

9.6 The ITAT Mumbai bench in the case of Hindustan Petroleum Corporation Ltd. (96 ITD 186) had held CSR expenditure incurred by Government Undertaking is an allowable deduction. The relevant finding of the ITAT Mumbai Benches reads as follows:-

"Expenditure incurred by assessee, a company owned by the Government of India and working under its control and directions, towards implementation of 20 point programme as per specific directions of the Government though voluntary in nature and not forced by any statutory obligation, is allowable as business expenditure. Merely because an expenditure is in the nature of donation, it does not cease to be an expenditure deductible under s. 37(1)."

9.7 The Commissioner of Income tax had mentioned in his order that "the Apex Court (313 ITR 334 SC) CIT Vs Madras Refineries Ltd., while hearing the allowability of CSR expenses observed that neither the High Court nor the Tribunal concerned had given specific finding to the effect that the said CSR expenditure is allowable as business expenditure ". In the above mentioned case, the Apex court has not given any decision on merits of the case. It had only given an observation and remitted the issue back to the Tribunal to give specific finding to the effect that the said CSR expenditure is allowable as business expenditure.

9.8 Since, the assessee had incurred CSR expenses to comply with the directions of Govt. of India, following the above observations made by High Court of Kerala and ITAT, Mumbai Bench, the expenditure incurred is incidental to the assessee's business and ought to be allowed as deduction u/s 37 of the I.T. Act."

19. Identical issue has also been decided by the coordinate Bench of the Tribunal in Hindustan Petroleum Corporation Ltd. vs. DCIT (2005) 96 ITD 186 (Mum.) by returning following findings:-

"It had been held by the Karnataka High Court in the case of Mysore Kirloskar Ltd. v. CIT [1987J 166 ITR 836/ 30 Taxman 467. that while 'the basic requirements for invoking sections 37(/) and 80G are quite different', but nonetheless the two sections are not mutually exclusive. Thus, there are overlapping areas between the donations given by the assessee and the business expenditure incurred by the assessee. In other words, there can be certain amounts. though in the nature of donations, and nonetheless, these amounts may be deductible under section 37(1) as well. Therefore, merely because the expenditure in question was in the nature of donation, or, as per the words of the Commissioner (Appeals), 'prompted by altruistic motives', it did not cease to be an expenditure deductible under section 37(1). In the case of Mysore Kirloskar Ltd. (supra), the High Court had observed that even if the contribution by the assessee is in the form of donations, but if it could be termed as expenditure of the category falling in section 37(/), then the right of the assessee to claim the whole of it as a deduction under section 37(1) cannot be declined. What is material

in this context is whether the expenditure in question was necessitated by business considerations or not. Once it is found that the expenditure was dictated by commercial expediencies, the deduction under section 37(1) cannot be declined. [Para 7] In the instant case, the expenditure on 20-Point Programme was incurred in view of specific directions of the Government of India. It could not but be in the business interest of the assessee to abide by the directions of the Government of India which also owned the assessee.

Further, the expenditure incurred for the implementation of 20-Point Programme was solely for the welfare of the oppressed classes of society, for which even the Constitution of India sanctions positive discrimination and for contribution to all around development of villages, which has always been the central theme of Government's development initiatives. An expenditure of such a nature cannot but be, 'a concrete expression of care and concern for the society at large and an expenditure to discharge the responsibilities of a 'good corporate citizen which brings goodwill of with the regulatory agencies and society at large, thereby creating an atmosphere in which the business can succeed in a greater measure with the aid of such goodwill'. [Para 9] Just because the expenditure was voluntary in nature and was not forced on the assessee by a statutory obligation, it could not cease to be a business expenditure. Therefore, the authorities below indeed erred in law in declining deduction of the expenditure incurred on 20-Point Programme which was, beyond dispute or controversy, at the instance of the Government, and was to

discharge the assessee s obligations towards society as a responsible corporate citizen. [Para 10]"

20. So, we find no illegality or perversity in the findings returned by the ld. CIT (A) in deleting the addition made by the AO on account of disallowance of CSR expenditure for AYs 2013- 14 & 2014-15. Ground No.2 of both the appeals filed by the Revenue are determined against the Revenue "

8. Respectfully following the aforementioned findings, Ground No. 1 with all its sub-grounds is allowed.

9. Ground No. 2 relates to the disallowance of interest on mobilisation advance.

10. An identical issue was considered by the Hon'ble Delhi High Court in assessee's own case in ITA No. 404 of 2016 for A.Y 2008-09. The relevant findings read as under:

"1. The ground urged by the revenue in this appeal under Section 260-A of the Income Tax Act relates to the interest on the mobilization amount claimed by the assessee. It is contended that recognition of revenue by the assessee was improper and having regard to the hybrid method of accounting adopted over the years, the interest amount had to be treated as income.

2. The facts are that the assessee had awarded a contract to M/s. RPCL (hereinafter 'RPCL'). It had, as part of the agreement, paid to RPCL a mobilization advance. The question before this Court is with regard to interest accrued upon such mobilization advance. Apparently, the RPCL claimed that it completed the contract, the assessee, however, disputed that position and terminated the claim. The RPCL made a demand for arbitration. This led to a claim by the assessee to the tune of `22195.43 lac. The RPCL counter-claimed to the tune of `46910.00 lac. Both A.O. and the CIT(A), rejected the assessee's contention holding that the amount had accrued and had to be reflected as income. The ITAT, however was of the opinion that the entitlement had not crystallized having regard to the contentious nature of the matter even though the assessee had adopted hybrid method of accounting. The relevant findings of the ITAT are as follows:

"We have perused the relevant pages of the paper book and are convinced that as the amount has not been crystallized the same cannot be treated as income in the hands of the assessee. The assessee being a Government undertaking has been following

> *a) system of accounting as per which all items of income and expenditure are treated as accrued only after the approval is granted by competent authority. This system has been followed consistently in respect of both income and expenditure items which has not been disputed by the Revenue in any of the preceding years. Therefore, we are of*

the considered opinion that the addition confirmed by the ld. CIT(A) is without any basis and needs to be deleted. Accordingly, this ground of the assessee is allowed."

3. It is urged by the revenue that the ITAT's reasoning is flawed. The learned counsel contends that rights of the assessee to receive the amount from RPCL had accrued which meant that appropriate recognition of the revenue had to be reflected. It was submitted that arbitrability of the dispute was questioned as there could be no doubt that under the contract, the mobilization advance was given by the assessee and therefore it was entitled to the interest.

4. It is evident from the above discussion that the entire matter is contentious in the sense that the third party - RPCL - which was awarded the contract claimed that it had performed it in accordance with the agreement with the parties. The assessee, however, felt otherwise and terminated the contract. There could be several likely outcomes in these proceedings – many of them possibility impinging upon the rights of the assessee to receive advance amount itself along with interest either in whole or in part. In these circumstances, the ITAT's conclusions that there was no crystallized right to receive any particular amount or amounts, cannot be faulted. No question of law arises. The appeal is, therefore, dismissed.

11. Respectfully following the aforementioned findings of the Hon'ble Jurisdictional High Court, Ground No. 2 with all its sub grounds is allowed.

12. Ground No. 3 relates to disallowance made u/s 14A of the Act.

13. An identical issue was considered by the Tribunal in ITA Nos. 2826/DEL/2014 for A.Y 2009-10, ITA No. 1125/DEL/2016 for A.Y 2010-11 and ITA Nos. 6447 & 6448/DEL/29017 for A.Y 2013-14. Relevant findings in A.Y 2009-10 read as under:

> "13. We have carefully considered the rival contention and also perused the orders of the lower authorities. During the course of assessment proceedings the assessee was asked that why provisions of Rule 8D should not be applied for disallowing some under section 14 A of the income tax act, despite the claim of the assessee that it has not incurred any expenditure for earning exempt income. According to the provisions of section 14A(2), the Ld. assessing officer before invoking the applicability of Rule 8D should have explained as to why the voluntary disallowances or no disallowances made by the assessee was unreasonable and unsatisfactory. We failed to find any such satisfaction recorded by the Ld. assessing officer. The satisfaction is mandatory in view of the judicial precedents of the jurisdictional High Court laid down

before us by the Ld. authorized representative. Therefore, respectfully following the judicial precedent of the jurisdictional High Court we direct the Ld. assessing officer to delete the disallowance of RS. 112 5844/- under section 14A of the income tax act applying the provisions of Rule 8D of the Income Tax Rules, 1962. Reversing the finding of the Ld. first appellate authority, we allow ground No. 2 of the appeal of the assessee."

14. Relevant findings in A.Y 2010-11 read as under:

"14. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We find the Assessing Officer in the instant case applying the provisions of section 14 A r.w. Rule 8D disallowed an amount of Rs.17,80,998/- being the expenditure incurred for earning the tax free income of Rs.1,02,89,859/-. We find the Ld. CIT(A) sustained the disallowance so made by the Assessing Officer. It is the submission by the Ld. Counsel for the assessee that the Assessing Officer has not recorded his satisfaction for making the disallowance. We find identical issue had come up before the Tribunal in assessee's own case for A.Y.2009-10. We find the Tribunal vide ITA No.2826/Del/2014 order dated 24.04.2017 while deleting the disallowance has observed as under :-

13. "We have carefully considered the rival contention and also perused the orders of the lower authorities. During the course of assessment proceedings the assessee was asked that why

provisions of Rule 8D should not be applied for disallowing some under section 14 A of the income tax act, despite the claim of the assessee that it has not incurred any expenditure for earning exempt income. According to the provisions of section 14A(2), the Ld. assessing officer before invoking the applicability of Rule 8D should have explained as to why the voluntary disallowances or no disallowances made by the assessee was unreasonable and unsatisfactory. We failed to find any such satisfaction recorded by the Ld. assessing officer. The satisfaction is mandatory in view of the judicial precedents of the jurisdictional High Court laid down before us by the Ld. authorized representative. Therefore, respectfully following the judicial precedent of the jurisdictional High Court we direct the Ld. assessing officer to delete the disallowance of Rs. 1125844/- under section 14A of the income tax act applying the provisions of Rule 8D of the Income Tax Rules, 1962. Reversing the finding of the Ld. first appellate authority, we allow ground No. 2 of the appeal of the assessee."

15. Relevant findings in A.Y 2013-14 read as under:

"12. Identical issue has been decided in favour of the assessee by the *coordinate Bench of the Tribunal in assessee's own case in ITA No.2826/Del/2014 & ITA No.3026/Del/2014 order dated 24.04.2017.* In the appeal at hand, it is admitted fact that substantial portion of the investments are made in the earlier years.

13. In these circumstances, finding no illegality or perversity in the deletion made by the ld. CIT (A) under section 14A for AYs 2013-14 & 2014-15,"

16. Respectfully following the aforementioned findings, Ground No. 3 with all its sub-grounds is allowed.

17. In the result, the appeal filed by the assessee in ITA No. 706/DEL/2018 is allowed.

The order is pronounced in the open court on 02.03.2021 in the presence of both the rival representatives.

Sd/- **sd/-**

(BHAVNESH SAINI)
JUDICIAL MEMBER

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 02nd March, 2021.

VL/

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

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