

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI
(Through Video Conferencing)**

**BEFORE,
SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.7379/Del/2018
(ASSESSMENT YEAR 2014-15)**

Dy. Commissioner of Income Tax, Hisar Circle, Hisar.	Vs.	M/s Dakshin Haryana Bijli Vitran Nigam Ltd., Vidyut Nagar, Delhi Road, Hisar. PAN-AABCD 0033C
(Appellant)		(Respondent)

Appellant By	Sh. S. Krishnan, Adv. and Sh. V. Rajakumar, Adv.
Respondent by	Ms. Yagyasaini Kakkar, CIT- DR

ORDER

PER ANADEE NATH MISSHRA, AM:

(A) This appeal by Revenue is filed against the order of Learned Commissioner of Income Tax (Appeals), Hisar [Ld. CIT(A)", for short], dated 05.10.2018 for Assessment Year 2014-15. Grounds of appeal taken in this appeal of Assessee are as under:

"1. Whether on facts and in the circumstances of the case the Ld. CIT(Appeals) was right in deleting the addition of Rs.328,69,90,916/- made by the Assessing Officer on account of non- inclusion of "surcharge accrued/levied on electricity bills yet not realized during the year" in its

total income, even though the assessee has regularly been following the mercantile system of accounting ?

2. Whether on the facts and in the circumstances of the case, the Ld. CIT (Appeals) was right in allowing relief to the assessee on the issue of "Surcharge levied but not realized" ignoring the fact that the consumers have not challenged such levy of surcharge and thus assessee's right to receive surcharge has matured and the income become taxable due to accrue/arise in the year.

3. Whether on the facts and in the circumstances of the case, the Ld. CIT (Appeals) was right in deleting the above addition holding that the Hon'ble High Court has decided the issue in favour of the assessee in the assessee's own case, ignoring the fact that the issue has still not attained its finality, as the Revenue is in appeal on the issue before the Hon'ble Supreme Court in the assessee's own case for the A Y. 2006-07, which is still pending ?"

4. The appellant craves leave to add, or amend or modify the grounds of appeal subsequently during the pendency of the appeal."

(B) The only dispute in this appeal is with regard to the addition of Rs.328,69,90,916/-, on account of non-inclusion of "surcharge accrued/levied on electricity bills yet not realized during the year" in the assessee's total income. A perusal of ground no.3 of the appeal shows that Revenue has filed this appeal in Tribunal to keep the disputed issue alive, considering that at the time of filing of this appeal, the issue had not attained finality, as Revenue had taken this disputed matter, in the assessee's own case, before the Hon'ble Supreme Court, for Assessment Year 2006-07. In the

course of appellate proceedings in Income Tax Appellate Tribunal (“ITAT”, for short), a compilation of orders was filed from the assessee’s side which are listed below.

S. No.	Particulars
1.	Copy of ITAT Order for AY 2006-07 dated 30.11.2011 in ITA No.250/Del/2020
2.	Copy of Punjab and Haryana High Court dated 01.10.2014 for AY 2006-07 in ITA No.209-2014.
3.	Copy of Supreme Court order dated 17.07.2019 in SLP Nos. 15576/2019 & 15613/2019

(B.1) At the time of hearing before us, the Ld. Counsel for assessee drew our attention to order of Co-ordinate Bench of ITAT, Delhi, dated 30.11.2011, in which, in the assessee’s own case for Assessment Year 2006-07, in ITA No.250/Del/2010, the identical issue in dispute in similar facts and circumstances, was decided in favour of the assessee and against Revenue. The Ld. Counsel for assessee further drew our attention to order dated 01.10.2014 of Hon’ble High Court of Punjab & Haryana, in assessee’s own case, for Assessment Year 2006-07, in ITA No.209-2014 (O&M), dismissed Revenue’s appeal against aforesaid order dated

30.11.2011 of Co-ordinate Bench of ITAT, Delhi, deciding the identical issue in dispute in favour of the assessee and against Revenue, in similar facts and circumstances. The Ld. Counsel for the assessee further drew our attention to order dated 17.07.2019 of Hon'ble Supreme Court in assessee's own case for Assessment Year 2006-07, wherein the Special Leave Petition (SLP) filed by Revenue against the aforesaid order dated 01.10. 2014 of Hon'ble High Court of Punjab & Haryana was dismissed. Thus, the Ld. Counsel for the assessee contended that the issue in dispute in this present appeal before us has attained finality, and is squarely covered in favour of the assessee and against Revenue, in identical facts and circumstances, by the aforesaid orders dated 30.11.2011, 01.10.2014 & 17.07.2019 of Co-ordinate Bench of ITAT, Delhi; the Hon'ble High Court of Punjab & Haryana; and Hon'ble Supreme Court respectively, in the assessee's own case.

(C) The Ld. CIT-DR agreed with the contention of the Ld. Counsel for the assessee that the issue in dispute in the present appeal before us is squarely covered in favour of the assessee by the

aforesaid orders. However, she relied on the order of the Assessing Officer.

(D) We have heard both the sides. We have perused the materials on record. There is no dispute over the fact that issue in dispute in the present appeal before us is squarely covered in favour of the assessee and against Revenue, by the aforesaid orders dated 30.11.2011, 01.10.2014 & 17.07.2019 of Co-ordinate Bench of ITAT, Delhi; the Hon'ble High Court of Punjab & Haryana; and Hon'ble Supreme Court respectively. Neither side has brought any facts and circumstances for our consideration to distinguish the assessee's case in Assessment Year 2014-15 (to which this present appeal pertains) from Assessment Year 2006-07 to which the aforesaid orders dated 30.11.2011, 01.10.2014 & 17.07.2019 pertained. In view of the foregoing, and with utmost regards for Hon'ble Supreme Court; Hon'ble High Court of Punjab & Haryana; and Co-ordinate Bench of ITAT, Delhi; we decide the issue in dispute in the present appeal before us in favour of the assessee and against Revenue. Accordingly, we decline to interfere with the

impugned appellate order dated 05.10.2018 of the Ld. CIT(A), and dismiss this appeal filed by Revenue.

(E) In the result, this appeal filed by Revenue is dismissed.

This order was already pronounced orally on 3rd March, 2022 in Open Court, in the presence of representatives of both sides, after conclusion of the hearing. Now this order in writing is signed today on 03.03.2022.

Sd/-

(KUL BHARAT)

JUDICIAL MEMBER

Dated:03.03.2022

Pk

Copy forwarded to:

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

Sd/-

(ANADEE NATH MISSHRA)

ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DE