

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'E', NEW DELHI  
BEFORE  
SHRI N. K. SAINI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

I.T.A. No. 1037 & 1038/Del/2013  
(Assessment Years 2008-09 & 2009-10)

NTPC-SAIL Power Co. Pvt. Ltd., Vs. ACIT, Circle 13(1),  
4<sup>th</sup> Floor, NBCC Tower, New Delhi  
15, Bhikaji Cama Place,  
New Delhi-110 066

**GIR / PAN :AABCN5467A**

(Appellant)

(Respondent)

Appellant by : Shri M.P.Rastogi, Adv.  
Shri P. N. Shastri, CA

Respondent by : Shri Sunil Chandra Sharma, CIT DR

Date of hearing: 31/5/2016

Date of Pronouncement: 31/05/2016

**ORDER**

**PER BEENA A. PILLAI, JM:**

The above appeals have been preferred by the assessee against the order dated 26/12/2012 passed by Ld. id. CIT (A)-16, New Delhi for assessment year 2008-09 and 2009-10 on the following grounds of appeal:

**A. ITA No. 1037/del/2013 (A.Y: 2008-09):**

*“1. The learned CIT IAI has erred in confirming the disallowance of Rs.19.22 lakhs by AO, of a bill dated,*

*received and settled in current year and after the audit of last year accounts as 'prior period expense'.*

*2 The CIT(A) has erred confirming the disallowance by Assessing Officer of shortage of stores of Rs.5 lakhs provided in accounts as an unascertained liability."*

**B. ITA No. 1038/del/13 (A.Y. 2009-10):**

*"The Ld. CIT(A) has erred in confirming the disallowance of Rs.21.18 lacs by Assessing Officer, provided in accounts on account of lower realizable value of slow and non moving stocks of stores from their cost as an unascertained liability."*

2. As the issues involved in both the Assessment Years are common and factual background of the assessee in both the assessment years are also similar, we are inclined to dispose of the same by way of a common order.

The brief facts of the case are as under:

2.1 The assessee is a public sector undertaking and is a 50% joint-venture of NTPC and SAIL. The assessee owns captive thermal power plants located at Durgapur, Rourkela and Bhilai. The power generated in these plants is supplied to SAIL as per power purchase agreement entered into between the assessee company and SAIL. The assessee filed its return of income on 29/09/2008 and 30/09/2009 for the relevant assessment years 2008-09 and 2009-10 respectively declaring a total income of Rs.92,07,31,550/- and Rs.95,91,18,430/- respectively. The assessee had revised its return of income for assessment year 2008-09 on 10/02/2010 declaring a

total income of Rs. 92,07,31,550/-. The returns for the years under consideration were processed under section 143 (1) and the case was selected for scrutiny assessment. Accordingly, notices were issued to the assessee under section 142 (1) and 143(2) of the I T act.

**A.Y. 2008-09:**

3. During the assessment proceedings the Ld. AO observed that the assessee had taken a V-SAT-Internet connection from STPI connecting the power plant with the head office in the last year ended on 31/03/2007 and Bill dated 06/07/2007 for it was received by the assessee for the period up to 31/03/2007 during the assessment year 2008-09 the assessee thus contended that the bill was received and accepted during the year under consideration and thus the liability crystallized in the assessment year 2008-09. However, the AO disallowed the claim of the assessee on the ground that the liability did not pertain to assessment year 2008-09.

3.1 Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld.CIT (A).

3.2 The Ld.CIT(A) upheld the addition made by the Ld. A.O. on the ground that as the assessee was maintaining its account on Mercantile basis, the allowance must be granted in the year in which the liabilities accrued, irrespective of the question whether the disbursement has been made or not.

3.3 Aggrieved by the order of the Ld. CIT (A), the assessee is in appeal before us now:

3.4 The Ld. A.R. submitted that though the expenses relate to financial year 2006-07, since the bills were received in the financial year 2007-08, the expenses have been booked in the current year. The ld.AR submitted that assessee is a limited company and that the assessee received the bill for the connection from STPI on 06/07/2007 and, therefore, the liability has accrued to the assessee during the relevant assessment year. He submitted that the liability has crystallized in the year under consideration, as the accounts for the year ended 31<sup>st</sup> of March 2007 were already audited and closed on 17/05/2007, the liability being accepted after the close of the accounts for earlier year, could not be provided in the relevant previous year. The Ld. AR submitted that the expenses have been depicted as relating to earlier year for the purpose of transparency, however as it has been crystallized during the year under consideration, the prior period expenses should be allowed. The Ld. AR placed his reliance upon following decisions:

- Goetze (India) limited vs. DCIT reported in 112 TTJ 1 (Del),
- United phosphorus Ltd vs. JCIT reported in 81 ITD 553 (Ahd.),
- Saurashtra Cement and Chemical Industries Ltd vs. CIT reported in 213 ITR 523 (Guj.).

3.5 On the contrary the Ld. D.R. submitted that the assessee follows Mercantile system of accounting, under

which, the income and the expenses of the relevant year required to be booked within the same year. He submitted that since the expenditure does not relate to the previous year relevant to assessment year 2008-09, the prior period expenses should be disallowed and added back to the income of the assessee. The Ld. DR submitted that the moment the assessee has taken the connection from STPI, the contract has been accepted and the amount due and payable by the assessee as per the agreement stands crystallized, since the agreement has been entered into between the parties during the financial year 2006-07, the liability to make the payment stands crystallised during the financial year 2006-07. He thus submitted that it is not an acceptable position to allow the claim of the assessee for the year under consideration.

3.6 We have perused the orders passed by the authorities below and the arguments/submissions made by both the sides and the judgements relied upon by the assessee's counsel.

3.7 It is an admitted position that the assessee had entered into the agreement with STPI during the financial year 2006-07. It has also not been disputed by the Department that the bill in respect of the Internet Connection has been received by the assessee on 06/07/2007, i.e., during the financial year relevant to the assessment year under consideration. Further, as has been submitted by the Ld. AR that the bill was received by

the assessee after the close of the accounts for financial year 2006-07, the assessee could not have provided for the amount in the year 2006-07.

3.8 The Assessee has submitted before the Ld. CIT (A), as well as before us, that the bills were received after the close of the year, that is after the close of the accounting year and, therefore, they were accounted for in the subsequent year.

3.9 We have gone through the details furnished by the assessee in the tax audit report at pages 2 to 12 of the paper book as well as the bills received from STPI placed at pages 14 to 18. These documents furnished by the assessee justify the claim being accounted for in the year under consideration. We are, therefore, of the considered opinion that the assessee having explained that the bills were received after the close of the accounting year however, the liability was ascertained and crystallized in the previous year relevant to the Assessment Year under consideration, therefore, they were accounted for and it is mentioned in the "Notes" to the accounts that the expenses relate to the earlier period for the purpose of transparency, there was no justification in disallowing the same. It is also observed that the decision relied upon by the assessee in the case of Goetze (India) limited vs. DCIT (supra) supports the contention of the assessee. Respectfully following the decision relied upon by the Ld.

AR, we allow ground No. 1 of the assessee for assessment year 2008-09.

4. **Ground No. 2** for assessment year 2008-09 as well as **ground No. 1** for assessment year 2009-10 deal with the provision of shortage on store. This being a common issue for both the assessment years, they are being disposed off together.

4.1 The assessee had debited Rs. 5 lakhs and Rs.26,29,042/-for assessment years 2008-09 and 2009-10 respectively in the profit and loss account under the head provision of shortage on store and provision for obsolescence and diminishing in value of stores respectively. The Ld. AO disallowed the claim of the assessee on the ground that the assessee had not noted in the accounts that there is shortage in the store found on physical verification for assessment year 2008-09. For assessment year 2009-10, Ld. AO did not approve the diminishing in the value shown by the assessee. He thus held that it is a notional diminution in value written off in the books of account and added back the same for determination of real income of the assessee.

4.2 Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT (A) for both the assessment years.

4.3 The Ld.CIT (A) upheld the findings of the Ld. AO for assessment year 2008-09. For assessment year 2009-10,

the Ld.CIT (A) held that the diminution in the value of stores and the provision for obsolescence in the profit and loss account is not supported by any particular evidence and thus is not acceptable.

4.4 Aggrieved by the order of the Ld.CIT (A), the assessee is in appeal before us now.

4.5 For assessment year 2008-09 there was a shortage of stores on physical verification.

4.6 The Ld.AR submitted that the assessee follows a method of recording consumption and expenses of stores, on the basis of each issue of stores valued on cost, of the items. A number of items of the stores like lubricants and oils by their very nature, loses portion on account of evaporation and leakage. He submitted that there are a number of other items like nuts & bolts and washers etc., which are of small values, which get reduced by their very nature. Some others get spoiled, which are not fit for use. The Ld. AR submitted that all these items get reduced on its own, and cannot be termed as consumed for which, consumption vouchers can be issued. Ld. A.R. submitted that these reductions of items are determined on physical verification, which is separately recorded and provided in the accounts as shortage.

4.7 The Ld. DR submitted that for the purpose of transparent depiction and in order to balance the accounts with the quantum of physical stores inventory,

this amount is separately reflected in the accounts by reducing from the stock of inventory of stores. He further submitted that the shortage provided each year is not carried forward but adjusted in the carry forward. The ld. AR in his rejoinder submitted that assessee has been following this method of accounting since the inception and that the revenue has been accepting the same for all the previous years and subsequent years to the assessment years under consideration before us.

4.8 In respect of assessment year 2009-10 the Ld.AR submitted that during this year, the assessee had made provision for obsolescence and diminishing in value of stores. The Ld. AR submitted that in an organization like that of an assessee, the stores include a large number of items, which are old, obsolete, slow and non-moving for a long time. He submitted that the market/realizable value of such stocks are lower than their cost. The Ld. AR submitted that in order to value the stocks on lower of cost or market/realisable value, suitable provision for reduction in value of obsolescence and diminishing in value of stock has to be made. Accordingly the assessee worked out the amount of reduction in value of obsolescence and diminishing of stocks, which are old, obsolete, slow and non-moving for a long time.

4.10 The Ld.AR placed his reliance upon the following decisions:

- Milton Cycle Industries Ltd. vs. DCIT reported in 54 TTJ 380.
- National Aluminium Co. Ltd vs. DCIT reported in (2006) 101 TTJ 948 (ITAT-CTK).

4.11 The Ld.AR submitted that in order to review the reduction in the value, a committee of technical and financial personnel were set up for each unit held by the assessee. It is on the basis of this report provided by the committee that the provision is made in the P&L account. The Ld.AR submitted that the assessee has been following the same practice since its inception, which has not been disturbed by the revenue in the past as well as in the subsequent assessment years except for the year under consideration before us.

4.12 The Ld.AR further prayed that the provision made for the valuation of the stores for both the assessment years should be allowed considering the factual position.

4.13 On the contrary, the ld. DR submitted that the reduction in the value of items of stores determined on physical verification is contrary to the audit report. He supported the findings of the authorities below and prayed for the addition to be confirmed.

4.14 We have perused the orders of the authorities below, the submissions made by both the parties as well as the decisions relied upon by the Ld.AR.

4.15 It is an undisputed fact that the assessee's store consists of items, which are perishable in nature and/or

due to their oldness/obsolete, the same have lost their worth. It is also observed from the documents submitted before us today in respect of the stock write-off details by the Ld. AR that, as and when the stock has been re-used, the provision in respect of such stock has been written off as income under prior period for both the assessment years. From the list of stock physically taken, it is observed that some discrepancies in respect of certain items continue since 2006-07.

4.16 During the year under consideration the assessee has appointed a committee of experts to determine the correct value of old and obsolete stock, which had been piling up since the inception of its business. When it was felt that the assessee's book results were getting distorted, the committee so appointed made its recommendations and suggested item wise reduction in the value of stocks both of raw materials, store and spares. The assessee on the basis of such recommendations, reduce the value of such stock of raw materials and stores/spares and debited it to the P&L account. As submitted by the assessee the assessee has been consistently following this method of accounting in respect of obsolete/non-moving stocks in the store.

4.17 We find that Tribunal, Delhi Bench, in the case of Milton Cycle Industries Ltd. vs. Dy. CIT (1996) 54 TTJ (Del) 380 has held as under (short notes) :

*"We have heard the learned Representatives and also perused the relevant record. On a perusal of relevant facts and circumstances as detailed above, we are of the view that the change effected by the assessee is bona fide and aimed at obtaining correct business profit. It is nobody's case that assessee has not accumulated such stocks in the past. Undoubtedly, such stocks went on losing their values for the purposes of assessee's business thereby distorting assessee's profits year in and year out when a decision was taken to investigate the entire matter by appointing a committee of experts on whose recommendations, based on proper study of market condition, the assessee-company reduced the value of the impugned stocks to the extent of Rs.2,90,299 and this very value has been carried forward to the next year and assessed as such. Therefore, on a consideration of relevant facts and circumstances, we are of the view that the change effected by the assessee in the method of valuation of its stocks was bona fide, the same having been made on permanent basis and the changed method having been followed in the subsequent years. Therefore, we are of the view that assessee's claim was justified. We accordingly allow this ground of appeal"*

4.18 We find that the Hon'ble Delhi High Court in the case of cit vs. Bharat Commerce & Industries Ltd. (1999) 157 CTR (Del) 53: (1999) 240 ITR 256(Del) has held as under (short notes) :

*"An assessee is free to adopt a particular method of valuation of its closing stock which it has to follow regularly from year to year. At the same time it is well-settled that irrespective of the basis adopted for valuation for earlier years, the assessee has an option to change the method of valuation of closing stock, provided the change is bona fide and followed regularly thereafter. The Tribunal being the final fact-finding authority under the Act, the High Court in the*

*exercise of its advisory jurisdiction can neither go behind the facts stated by the Tribunal nor can disturb the same unless a challenge is provided specifically by a question framed in a reference against the validity of the impugned findings of fact on the ground that there is no evidence to support them or they are the result of a misdirection in law.*

*Held, that, in view of the findings of the Tribunal, the assessee had resorted to revaluation of the raw materials on the basis of specific instances of fall in value of the goods when such goods could not be sold even at cost price, there was nothing wrong in valuing the goods at an estimated realizable value. The assessee has an option to change the method of valuation of closing stock if the change is bona fide and followed regularly thereafter. The loss arising out of revaluation of closing stock was allowable."*

4.19 We further find that the Hon'ble Supreme Court in the case of Chainrup Sampatram vs. CIT (1953) 24 ITR 481(SC) has held as under (short notes) :

*"It is a misconception to think that any profit 'arises out of the valuation of the closing stock' and the situs of its arising or accrual is where the valuation is made. Valuation of unsold stock at the close of an accounting period is a necessary part of the process of determining the trading results of that period, and can in no sense be regarded as the "source" of such profits. Nor can the place where such valuation is made be regarded as the situs of their accrual. The source of the profits and gains of a business is indubitably the business, and the place of their accrual is where the business is carried on. As such profits can be correctly ascertained according to the method adopted by an assessee only after bringing into the trading account his closing stock wherever it may exist, the whole of the profits must be taken to accrue or arise at the place of carrying on the business."*

4.20 On the basis of the above detailed circumstances and relevant facts, we are of the view that the assessee's bona fides are aimed at obtaining correct business profit, it is nobody's case that assessee has not accumulated such stock in the past. Undoubtedly, such stocks went on losing their values for the purpose of assessee's business, thereby distorting assessee's profits year in and year out, when a decision was taken to investigate the entire matter by appointing a committee of experts on whose recommendations, based on proper study of market condition, the assessee has reduced the value of the stocks item wise and this value has been carried forward to the next year and assessed as such.

4.21 Respectfully followings the ratio laid down in the judgement referred above, we are of the considered opinion that assessee's claim was justified. We accordingly allow this ground of appeal.

5. In the result the appeals filed by the assessee for assessment years 2008-09 and 2009-10 stands allowed.

Order pronounced in open court on 31.05.2016.

Sd./-

(N. K. SAINI)  
ACCOUNTANT MEMBER  
Date:31.05. 2016  
Sp.

Sd./-

(BEENA A. PILLAI)  
JUDICIAL MEMBER

Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknayak Bhawan, Khan Market, New Delhi.

True copy.

By Order  
(ITAT, New Delhi)

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	31/5		Sr. PS/PS
2	Draft placed before author	31/5		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS	31/5/16		Sr. PS/PS
6	Kept for pronouncement	31/5		Sr. PS/PS
7	File sent to Bench Clerk	7/6		Sr. PS/PS
8	Date on which the file goes to Head Clerk			
9	Date on which file goes to A.R.			
10	Date of Dispatch of order			