

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : SMC-II : NEW DELHI

BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER

ITA Nos.6542 & 6543/Del/2014
Assessment Years : 2008-09 & 2009-10

S. Power (P) Ltd.,
C/o M/s RRA Taxindia,
D-28, South Extension, Part-I,
New Delhi.

Vs. ITO,
Ward-7(1),
New Delhi.

PAN: AAACS1909H

(Appellant)

(Respondent)

Assessee By : Shri Rakesh Gupta &
Shri Somil Aggarwal, Advocates
Department By : Shri F.R. Meena, Sr. DR
Date of Hearing : 26.10.2016
Date of Pronouncement : 27.10.2016

ORDER

These appeals filed by the assessee against separate orders of the CIT(A), both dated 16.10.2014 relating to AYs 2008-09 and 2009-10, involve some common issues. I am, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

Assessment Year 2008-09

2. Briefly stated, the facts of the case are that the assessee filed return originally on 30.3.2009 declaring income of Rs.2,78,700/-, which was processed u/s 143(1) of the Act. Thereafter, the AO issued notice u/s 148 on the ground that the assessee claimed deduction of Repair and maintenance at Rs.4,31,314/- and Depreciation on building at Rs.1,60,563/-, which were not allowable u/s 24 of the Act as the income was computed by the assessee under the head 'Income from house property'. Eventually, the assessment was completed at a total income of Rs.15,21,230/-. The assessee succeeded partly before the Id. CIT(A).

3. First ground of the assessee's appeal assails the initiation of re-assessment proceedings. In order to consider the rival submissions made in this behalf, it is *sine qua non* to note down the reasons dated 22.3.2012 recorded by the AO, a copy of which is available at page 10 of the paper book, reading as under:-

“Reason to belief for escapement of Income & recorded u/s 147 of the I.T. Act, 1961-

M/s S. Power Pvt. Ltd C-60-B, Kalkaji, New Delhi-110019.

Assessment Year 2008-09 - PAN AAACS1909H

The assessee filed a return declaring total income of Rs.2,78,700/- on 31.03.2009. It was processed u/s 143(1) and no notice u/s 143(2) was issued to the assessee. From a perusal of the return, it is noticed that the assessee has claimed deduction for Repair and maintainance at Rs.3,75,049/- and Depreciation on Building at Rs.1,45,546/- which is not allowable under section 24 of the I.T. Act.

As the income has been computed by the assessee under the head of Income from Other sources after claiming 30% deduction under section 24a of the I.T. Act, 1961.

I have, therefore, reasons to believe that the income to the tune of Rs.5,20,595/- has escaped assessment. The escapement of income has been clearly on account of failure on the part of the assessee to truly and fully disclose all material facts necessary for assessment. Thus, it is a fit case for initiation of proceedings u/s 147 of the I.T. Act, 1961. Issue notice u/s 148 for the Asstt. Year 2008-09'.

4. A bare perusal of the reasons transpires that the assessee, in the opinion of the AO, claimed deduction of Repair and maintenance at Rs.3,75,049/- and Depreciation on building at Rs.1,54,546/- which was not allowable u/s 24 of the Act in the computation of income under the head 'Income from house property'. The assessee's computation of income is placed on page 2 of the paper book which divulges that the assessee did not claim such deductions in the computation of income from house property, as has been narrated by the AO in the reasons for re-assessment. Thus, it is clear that the reasons taken note of by the AO

are unfounded and are contrary to the actual state of affairs as depicted from the computation of total income. When the very reasons do not support a correct viewpoint of the AO, there can be no question of making an assessment u/s 147 of the Act.

5. It has been brought to my notice that similar reasons were recorded by the AO for framing assessment u/s 147 in respect of assessment year 2010-11. A copy of the order dated 29.4.2016 passed by the Tribunal in the assessee's own case for the AY 2010-11 in ITA No.6545/Del/2014 is available on record. The tribunal has quashed the reassessment. In the absence of any distinction in the facts for the instant and the later year having been brought to my notice by the ld. DR and respectfully following the precedent, I set aside the initiation of reassessment proceedings and the consequential reassessment order.

Assessment Year 2009-10

6. Both the sides are in agreement that the facts and circumstances of this appeal are, *mutatis mutandis*, similar to those for the AY 2008-09. For this year also, the AO initiated reassessment proceedings by

recording similar reasons. From computation of total income, it has been noticed that the assessee did not claim any deduction of Repair and maintenance and Depreciation on building in the computation of income u/s 24 of the Act. A copy of reasons leading to the reassessment has been placed on page 10 of the paper book, which are identical except for the change in the amounts. Following the view taken hereinabove, I quash the initiation of reassessment proceedings and the consequential proceedings flowing therefrom.

7. In view of the setting aside of the initiation of reassessment proceedings and the consequential orders, there is no need to dispose of other grounds of appeals on merits.

8. In the result, both the appeals are allowed.

The order pronounced in the open court on 27.10.2016.

Sd/-

[R.S. SYAL]
ACCOUNTANT MEMBER

Dated, 27th October, 2016.

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Copy forwarded to:

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

AR, ITAT, NEW DELHI.