

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "G" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA.Nos.70, 71, 1389 & 1390/Del./2003
Assessment Years 1994-95, 1995-96, 1996-97 & 1997-98

ITA.Nos.2572 & 2573/Del./2004
Assessment Years 1998-1999 & 1999-2000

ITA.Nos.924 & 925/Del./2005
Assessment Years 2000-2001 & 2001-2002

ITA.Nos.2483 & 2394/Del./2007
Assessment Years 2002-2003 & 2003-2004

ITA.No.999/Del./2011
Assessment Year 2007-2008

ITA.No.1614/Del./2012
Assessment Year 2008-2009

&

ITA.Nos.800, 801, 802 & 803/Del./2013
Assessment Years 2004-05, 2005-06, 2006-07 & 2009-2010

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| Noida Power Company Limited, Commercial Complex, Block-H, Alpha II Sector, Greater Noida City PIN - 201 308 PAN AAACN4984D | vs | The Additional Commissioner of Income Tax, Noida Range, Noida. |
| (Appellant) | | (Respondent) |

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| For Assessee : | Ms. Sushmita Basu, C.A. |
| For Revenue : | Shri S.S. Rana, CIT-D.R. |

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| Date of Hearing : | 23.08.2018 |
| Date of Pronouncement : | 28.08.2018 |

ORDER

PER BENCH :

We have heard the Learned Representatives of both the parties.

2. The assessee made a request in writing to the Hon'ble President, ITAT for withdrawal of all the above appeals filed on behalf of the assessee. Accordingly, these appeals were fixed before this Bench.

3. Learned Counsel for the Assessee filed written submissions for all the above years, which is taken on record, in which, the assessee briefly explained that the aforesaid appeals arise out of the Order of the Hon'ble Allahabad High Court wherein the Hon'ble High Court remanded the issue for claim of power purchase price to the Tribunal for reconsideration. The assessee entered into an agreement with UPPCL to purchase power. The UPPCL raised invoice on the

assessee for supply of power at certain rates in respective years. The assessee disputed the rates before the Appropriate Forum for this purpose. For income tax purpose, following the mercantile system of accounting, the assessee claimed power purchase cost at rates billed by UPPCL. However, in its books of account, assessee debited the power purchase cost at the rates fixed in the agreement or rates determined by various committees formed for this purpose/Uttar Pradesh Electricity Regulatory Commission ("UPERC") which was always lower than the invoice amount.

4. The A.O. in all the years allowed the power purchase cost at the rates at which power purchase was debited in the P & L A/c and not the invoice amount as claimed by the assessee. The assessee contested the action of the A.O. and hence, these appeals. The assessee challenged the rates at which UPPCL raised the invoice and the matter travelled to the Hon'ble Allahabad High Court. The Hon'ble High Court referred the matter for determination of rates to

Uttar Pradesh Electricity Regulatory Commission. The assessee accepted the rate of determination by the said Commission which was affirmed by the jurisdictional High Court. The UPPCL filed appeals before the Hon'ble Supreme Court against the order of High Court. Recently, the Hon'ble Supreme Court passed the order in the aforesaid appeals and decided the issue in favour of the assessee-company. In other words, the rates determined by Regulatory Commission become final on the affirmation by the Hon'ble Supreme Court. Copy of the Orders are filed on record. Since the decision of the Hon'ble Supreme Court - on electricity rates to be billed by UPPCL - has been in favour of the assessee, the present appeals before the Tribunal claiming billed amount have become academic. It is, therefore, prayed in the application that in view of the subsequent events i.e., decision of the Hon'ble Supreme Court, the issue involved in all the appeals is no longer a live issue and have become academic, therefore, no fruitful purpose will be served in pursuing the appeals on merit. The assessee, therefore, prayed for leave to the Tribunal

to withdraw the present appeals without going into the merits of the case. The applications of the assessee for withdrawal of all the appeals are taken on record. During the course of hearing also, Learned Counsel for the Assessee prayed that above appeals of the assessee may be withdrawn, to which, Ld. D.R. has no objection.

5. Considering the facts of the case in the light of above submissions made by the Learned Counsel for the Assessee for withdrawal of all the above appeals, we dismiss all the above appeals of the assessee as withdrawn.

6. In the result, all the appeals of the Assessee are dismissed as withdrawn.

Order pronounced in the open Court.

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 28th August, 2018

VBP/-

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| 1. | The appellant |
| 2. | The respondent |
| 3. | CIT(A) concerned |
| 4. | CIT concerned |
| 5. | D.R. ITAT "G" Bench |
| 6. | Guard File |

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.