

आयकर अपीलीय अधिकरण , ' ए ' न्यायपीठ,चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

श्री जॉर्जमथन,न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 2129/Chny/2018

& CO. No: 123/Chny/2018

निर्धारण वर्ष/Assessment Year : 2005-06

Assistant Commissioner of Income
Tax,
Central Circle 1(1),
Chennai – 34.

M/s. PPN Power Generating Company
Vs. Ltd.,
II Floor, Jhaver Plaza,
I-A, Nungambakkam, High Road,
Chennai – 600 034.

[PAN: AABCP 8131D]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent & Cross
Objector)

Revenue by
Assessee by

: Shri. S. Bharath, CIT
: Shri. G. Baskar, Advocate

सुनवाईकीतारीख/Date of Hearing

: 29.11.2018

घोषणाकीतारीख/Date of Pronouncement

: 29.11.2018

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER :

The Revenue filed this appeal against the order of the
Commissioner of Income Tax (Appeals)-19, Chennai in ITA No. 69/17-18
dated 24.04.2018 for assessment year 2005-06.

2. M/s. PPN Power Generating Company Pvt. Ltd., the assessee, is engaged in generation of Electricity, located at Nagapattinam District. The assessee's original assessment was completed u/s. 143(3) dated 29.12.2008. This assessment was reopened and the reassessment was completed on 16.12.2011 u/s. 143(3) r.w. 147. Against that order, the assessee filed an appeal before the CIT(A), inter alia, challenging the validity of reopening the assessment u/s. 147. The CIT(A) dismissed the appeal holding that the essential criteria, for reopening an already completed assessment after four years, i.e., the failure on the part of the assessee to disclose fully and truly all the facts necessary for assessment being absent, the reassessment made is not legally correct. When reassessment itself has no legs to stand, the other grounds raised by the assessee have become infructuous and hence dismissed the appeal.

3. Aggrieved, the Revenue filed this appeal with the following grounds of appeal:

"1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

2. The Ld. CIT(A) erred in holding that the reopening of the assessment is not legally correct and thereby deleting the addition of the Rs.67,24,00,000/- made while computing book profit u/s 115JB of the IT Act by the Assessing Officer on account of provisions made towards "other operational expenses" in the assessment for AY 2005-06 passed u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961, in the assessee's case.

2.1 The Ld. CIT(A) ought to have appreciated that there is no presumption anywhere in the provisions of the Act to the effect that

just because the P & L account was prepared by the assessee and certified by the statutory auditors, the assessing officer has to accept the P&L account without verifying the contents of the Account from the angles of the Income tax Act and Income tax Rules.

2.2 The Ld. CIT(A) ought to have appreciated that provisions are towards unascertained liabilities and further the assessee company itself in its notes on accounts had clearly stated that the provisions is made towards anticipated contract losses and the provision is made on a conservative basis and as such it is clear that the provision is only contingent in nature and not an ascertained liability and warrants addition to the book profit returned as per the provision of section 1153B (2).

2.3 The Ld. CIT(A) ought to have appreciated that there is no change of opinion involved, there is a clear escapement of income and as such action of the AO in reopening the assessment is legally correct.

3. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored."

And the assessee filed a Cross Objection with the following grounds:

"1.1 The Order of the Commissioner of Income Tax (Appeals) cancelling the reassessment is just, fair and passed after proper appreciation of facts and law.

1.2 The Commissioner of Income Tax (Appeals) has rightly allowed the appeal since the re-opening of the assessment u/s. 148 was beyond four years and hence barred by limitation prescribed under the Income Tax Act.

1.3 The Commissioner of Income Tax (Appeals) was right in holding that the addition made in the re-assessment was based merely on a change of opinion of the Assessing Officer.

1.4 The Commissioner of Income Tax (Appeals) rightly observed & relied on the decisions of the Supreme Court and other High Courts.

2.1 The Commissioner of Income Tax (Appeals) ought to have also deleted the addition made to the book profits based on the detailed submissions made before him.

2.2 The Commissioner of Income Tax (Appeals) ought to have held that the addition of Rs. 67,24,00,000/- being the provision for "other operation expenses" could not be added to the book profits computation u/s 115JB, since the same is not a contingent liability as assumed by the Assessing Officer."

4. The Ld. DR canvassed the case on the lines of grounds of appeal filed by the Revenue. Per contra, the Ld. AR canvassed on the lines of CO, supra, and invited our attention to the Assessing Officer's letter dated 01.06.2010. The relevant portion is extracted as under:

"The reason for reopening the assessment for the Asst. year 2005-06 is given as under:

From the notes forming part of the accounts in Item 6.2, it is seen "Other operational expenses include provision for anticipated contract losses of Rs. 67,24,00,000/- on a conservative basis in the normal course of business". The losses were stated to be in respect of provision for additional fuel, provision for fixed transmission charges, provision for interest receivable, sundry debtors etc. During the assessment, the then Assessing Officer had not added back the above amount on the plea that it is ascertained liabilities. As per the book profit the provision was made towards anticipated contract losses and the provisions are only contingent in nature and not an ascertained liability. In view of the above, for the book profit the amount of Rs. 67,24,00,000/- was not added back, which escaped from assessment."

and submitted that the AO has not recorded any failure from the part of the assessee and hence the reassessment has been properly quashed and pleaded to sustain the same.

5. We heard the rival submissions. From the above, it is clear that the assessment was reopened after four years from the end of the relevant assessment year. However, from the above extracted portion, the AO has not recorded a clear finding as to what was the failure on the part of the assessee to disclose fully and truly all material facts so that a reassessment is warranted. Hence, as held by the Ld. CIT(A), the very essential criteria for reopening the assessment is absent. Therefore, the conclusion drawn by the Ld. CIT(A) does not require any interference. The Revenue's appeal is dismissed, consequentially, the CO is dismissed.

6. In the result, the Revenue's appeal and the assessee's CO are dismissed.

Order pronounced in the open court on 29th November, 2018 at Chennai.

Sd/-
(जॉर्जमाथन)

(GEORGE MATHAN)

न्यायिकसदस्य/Judicial Member

Sd/-

(एसजयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 29th November, 2018

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त) अपील(/CIT(A) |
| 4. आयकरआयुक्त/CIT | 5. विभागीयप्रतिनिधि/DR | 6. गार्डफाईल/GF |