

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, JM AND SHRI N. K. PRADHAN, AM

आयकर अपील सं/ I.T.A. No.665/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2010-11)

The Tata Power Company Ltd. Corporate Centre, Block B, 5 th Floor, 34, Sant Tukaram Road, Carnac Bunder, Mumbai-400009.	बनाम/ Vs.	ACIT, Circle 2(3)(1) Room No.552, Aayakar Bhavan, Maharshi Karve Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAC0054A		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Ms. Nyrica Trikannd
Revenue by:	Shri Vijay Kumar P. Menon (DR)

सुनवाई की तारीख / Date of Hearing: 02/12/2020

घोषणा की तारीख /Date of Pronouncement: 02/12/2020

आदेश / ORDER

PER AMARJIT SINGH, JM:

This is an appeal filed by the assessee against the order dated 26.11.2018 passed by the Commissioner of Income Tax (Appeals)-06 Mumbai [hereinafter referred to as the "CIT(A)"] and pertains to A.Y.2010-11.

2. The assessee has raised the following grounds:-

- 1.1. The learned CIT(A) erred in confirming the reopening of the assessment after four years from the end of the assessment year without appreciating the first proviso to section 147 of the Act
- 1.2. The learned C1T(A) erred in not appreciating that in terms of the proviso to section 147 of the Act, no reassessment can be made unless there is failure on the part of the company to disclose fully and truly all material facts necessary for the assessment.
- 1.3. The learned CIT(A) erred in not appreciating that re-opening of the assessment cannot be based merely on change of opinion as has been held Supreme Court in case of CIT v. Kelvinator (2010) 187 Taxman 312.
- 1.4. The learned CIT(A) erred in not appreciating that the assessing officer has not brought any new facts / materials on record, which has resulted into the re-opening the assessment.
- 1.5. The learned CIT(A) erred in not appreciating that mere fresh application of mind on the same set of facts or mere change of opinion does not confer jurisdiction to reopen assessment under section 147 of the Act.



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Ground No. 2 - Disallowance of minor items of loose furniture, tools, etc. costing less than INR 5,000 each total amounting to INR 68,62,780/-

- 2.1. The learned CIT(A) erred in confirming disallowance of INR 68,62,780. being minor items of loose furniture and tools costing upto INR 5,000 each and written off during the year on the basis that the same were capital in nature.
- 2.2. The learned CIT(A) failed to appreciate that in the said year. total additions to fixed assets amounted to INR 9,91,22,61,290/- as against the minor items of loose furniture, tools, etc written off INR 68,62,780/-. These items are individually too insignificant in value and need to be constantly replaced whereby they do not yield any lasting benefit to the Company and hence, are written off as revenue expenditure.
- 2.3. The learned CIT(A) did not consider the contentions of the appellant that this amount has not brought into existence any capital asset but it represents only expenditure on items required in connection with maintenance and repairs of its capital assets.
- 2.4. The learned CLT(A) failed to appreciate that the aforesaid minor items did not bring enduring benefit to the appellant exceeding 1 year and accordingly should be allowed as revenue expenditure under section 37(l) of the Act.
- 2.5. The learned CIT(A) failed to appreciate that minor items of furniture and loose tools pertain to routine operational activities of the company, which have a direct nexus with the profit earning process and therefore, the same should be allowed as revenue expenditure.

Ground No. 3- Miscellaneous grounds

- 3.1. The learned CIT(A) erred in not appreciating the submissions made by the appellant in the correct perspective.
- 3.2. The learned CIT(A) erred in dismissing the ground pertaining to initiation of penalty proceedings under section 274 read with section 271(1)(c) of the Act.
- 3.3. The appellant submits that each grounds of appeal are without prejudice to one another.

The appellant craves leave to add, alter, amend, substitute and/ or modify in any manner whatsoever all or any of the foregoing grounds of appeal either before or during the hearing of the appeal.

3. When this appeal was called out for hearing, the Id. Counsel of the assessee submitted that he has filed the necessary declaration under Direct



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Tax Vivad se Vishwas Act, 2020 (Act 3 of 2020) and is awaiting for final resolution of the matter under the said scheme. He submitted that upon completion of the necessary formalities, he will withdraw the appeal. In response to the suggestion from the Bench, he fairly accepted that he has no objection to the appeal being dismissed as withdrawn as long as his right for revival of the appeal are protected, in the event of, for some unfortunate reason, the matter being not settled under the *Vivad se Vishwas scheme*.

4. The Ld. DR also did not object to disgrace so suggested.
5. In view of the above, we dismiss the appeal as withdrawn, subject to be rider that in the unlikely event of matter not being resolved under the *Vivad se Vishwas scheme*, the assessee shall have liberty to approach the Tribunal for restoration of his appeal.
6. In the result, the appeal is dismissed as withdrawn – subject to the observation above.

Order pronounced in the open court on 02/12/2020

Sd/-

(N. K. PRADHAN)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 02/12/2020

Vijay Pal Singh (Sr.PS)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**