IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH 'E' : NEW DELHI)

BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER

AND

SH.ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 4708/Del/2019, A.Y. 2014-15

M/s. NTPC Electric Supply Co. Ltd.,NTPCBhawanCore-7, SCOPE Complex , 7, Institutional Area, Lodhi Road, New Delhi-110003 PAN : AABCN7520Q	Vs.	Principal Commissioner of Income Tax-06, New Delhi-110002
Appellant		Respondent

Appellant by	Sh. Ved Jain, Adv. Ms. Supriya Mehta, CA
Respondent by	Ms. Sarita Kumar, CIT-DR

Date of hearing:	17.04.2023
Date of Pronouncement:	15.05.2023

ORDER

Per Anubhav Sharma, JM :

The appeal has been preferred by the Assessee against the order dated 27/03/2019 of PCIT(A)-06, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') arising out of an assessment order dated 16.12.2016 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ITO, Ward-18(4), New Delhi (hereinafter referred as the Ld. AO).

2. The assessee is in appeal before the Tribunal raising following grounds :-

> 1. *"On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (CIT) under Section 263 of the Act is bad, both in the eye of law and on facts.*
> 2. *On the facts and circumstances of the case, the order passed by the learned CIT cancelling the assessment order passed by the A.O. is untenable in the absence of order of the A.O. being erroneous as well as prejudicial to the interest of the Revenue.*
> 3. *On the facts and circumstances of the case, the learned CIT has erred both on facts and in law in invoking revisionary power under Section 263 of the Act despite the fact that even after thorough examination, no specific findings have been given on the issue of how the order is erroneous and prejudicial to the interest of Revenue.*
> 4. *On the facts and circumstances of the case, the learned CIT has erred both on facts and in law in setting aside the matter to the file of the A.O. without giving a finding as to the error and prejudice caused to the revenue by the assessment order.*
> 5. *On the facts and circumstances of the case, the learned CIT has erred both on facts and in law in ignoring the fact that all the issues raised by him in notice under Section 263 were before the A.O. and as such the jurisdiction on this issue under Section 263 cannot be assumed.*
> 6. *On the facts and circumstances of the case, the learned CIT has erred both on facts and in law in ignoring the contention of the appellant that the alleged interest on refund as well as refund for the A.Y. 2011-12 was never received by the assessee company and hence cannot be taxed as income of the assessee.*
> *7. On the facts and circumstances of the case, the learned CIT has erred both on facts and in law in ignoring the contention of the appellant that the alleged interest on refund for the A.Y. 2011-12 was adjusted with the demand of A.Y. 2009-10 which was not even pending at the time when the adjustment is made.*
> *8. That the appellant craves leave to add, amend or alter any of the grounds of appeal."*

3. Facts in brief are that the assessee company filed its return of income on 28.11.2014. During the year under consideration, the assessee company has earned income from the head of Profits and gains from business which is duly disclosed in the computation of income. The assessment proceedings of the assessee company were also completed u/s 143(3) vide assessment order dated 16.12.2016. However, Ld. PCIT invoked revisionary powers by show causing why not to add income of Rs. 88,53,744/- on account of interest on income tax refund pertaining to

AY 2011-12 granted to the assessee as the assessee has failed to disclose such interest in its ITR filed. In response to the above mentioned show cause notice, the assessee submitted that no interest has been received by the assessee during the year under consideration. Infact the assessee itself has demanded the interest on refund be granted to the assessee as it has been pending since a long time. The assessee also submitted a copy of screenshot as reflected in tax database showing adjustment of refund and interest accrued thereon pertaining to AY 2011-12 with the demand of AY 2009-10. Assesee thus claimed that the whole of the income tax refund and interest on such refund was adjusted against the alleged demand of AY 2009-10. Assesee further claims that that no demand was pending for AY 2009-10. It was only by the Ld. AO that addition was made to the income of the assessee for AY 2009-10 which was subsequently deleted by CIT(A) on an appeal filed by the assessee. Thereafter, revenue also filed an appeal before the Tribunal wherein the Tribunal refused to interfere with the orders of CIT(A). Revenue further preferred an appeal before Delhi High Court which also decided the issues of AY 2009-10 in assessee's favour. Therefore no demand was pending for AY 2009- ID. Assessee claims that, however, Ld. AO has mistakenly adjusted the amount of refund with the alleged demand of AY 2009-10.

4. Heard and perused the record.

5. Ld. AR submitted that when no interest on income tax refund has been received by the assessee company during the year under consideration, no income shall be inferred to have been earned by the assessee and therefore the same falls outside the ambit of chargeability of tax provisions. It was also submitted that provisions of Income Computation and Disclosure Standards specifically provide that interest on refund shall be deemed to be the income of the previous year in which

such income is received. Therefore the order of PCIT passed u/s 263 of the Act holding that assessee had failed to disclose interest on income tax refund amounting to Rs. 88,53,744 as income of the assessee is bad in law and liable to be quashed.

6. At the time of final arguments on behalf of the assessee, Ld. Counsel has placed on record, Acknowledgement ITR for A.Y. 2020-21 and 2021-22 which shows that in these two assessment years income on account of interest on refund has been shown in the ITRs.

7. At, page no. 55 of the paper book there is a letter dated 07.03.2019 addressed to the ld. AO making a submission that assessee has not received any intimation of adjustment of demand from refund made. The case of assessee was that the Ld. AO has conveyed that the refund and interest reflecting in 26AS of A.Y. 2014-15, pertains to the AY 2011-12 which have been adjusted from the pending demand of AY 2009-10. The AO also provided the screen shot of income tax portal, reflecting adjustment of demand of Rs. 125,58,48,222/- for AY 2009-10 from the refund of Rs. 8,23,34,980/- for AY 2011-12. Same was filed before the Ld. PCIT. Further Revenue does not dispute the fact that the finality to the assessment for AY 2009-2010 has come after decision of Hon'ble Delhi high Court on 22/8/2017.

8. Ld. Revisional authority has however held in para 7 as follows;

> *" 7. As per 26AS statement a refund of Rs. 8,26,34,980/- was determined on 19.03.2014 to assessee for AY 2011-12 and interest of Rs. 88,53,744/- was shown. On perusal of 26AS statement it can be concluded that assessee company was in knowledge that interest of Rs. 88,53,744/- is accrued to them. On examination of computation of income, it is seen that assessee company has not disclosed interest on refund amounting to Rs. 88,53,744/-. Hence it can be concluded that assessee company had to disclose this amount of Rs. 88,53,744/- in the ITR which the assessee company has failed to*

do so."

9. The Bench is of considered opinion that what Ld. PCIT has failed to appreciate is that though for A.Y. 2011-12 interest on refund, reflected in 26AS statement but the Ld. AO has adjusted the refund and interest towards an outstanding demand for A.Y. 2009-10. No interest was paid. As the assessment and demand for A.Y. 2009-10 had not attained finality the assessee was justified to wait for the finality of assessment of AY 2009-10 and thereupon only the claim of refund along with interest u/s 244A for A.Y. 2011-12 would be quantifiable.

10. In fact question of taxability of interest on the refund has a view from Hon'ble Andhra Pradesh High Court in the case of **Shri M. Jaffer Saheb (Decd.), Guntakal vs. Commissioner of Income-Tax, Vijayawada**, RC no. 127 of 1997, decided on 19.12.2013, which holds that refund, although taxable on accrual basis should be spread over the years for which interest is granted.

11. Therefore, the assessee was justified to wait for the refund along with interest being calculated by the Ld. AO, after finalization of the appeals for the Y 2009-10. In this regard, it can be observed that vide application dated 02.05.2022 request has been made to the Ld. AO that appeal order be rectified on the credit of prepaid taxes in respect of recovery of Rs. 7,37,81,236/- made on 14.03.2015 from the refund u/s 143(1) for A.Y. 2011-12 against non-existing demand of A.Y. 2009-10 has not been given. Therefore, refund along with interest u/s 244A is sought from the Ld. AO.

12. The bench is of considered opinion that Ld. PCIT has fallen in error in exercising revisional powers on assumption that as interest is taxable on the accrual basis so once reflected in the 26AS it should have been reported in income. What Ld. PCIT has failed to appreciate is that

the principle of taxability on the basis of accrual of interest was not applicable in case of assessee and Ld. AO has not done anything which can be considered to be erroneous and prejudicial to the interest of the Revenue. The interest income on refund for AY 2011-12 in any case would be now determined on finalization of the appeal before Hon'ble High Court for AY 2009-10. Grounds are sustained and impugned order of Ld. PCIT is set aside. **Consequently, appeal of assessee is allowed.**

Order pronounced in the open court on 15th May, 2023.

Sd/-	**Sd/-**
(N.K.BILLAIYA)	**(ANUBHAV SHARMA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Date:-15.05.2023
Binita, SR.P.S
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI