

**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. 7326/Del/2018, A.Y. 2010-11**

ACIT, Circle-18(2), New Delhi	Vs.	M/s. NTPC Sail Power Company Ltd. 4 <sup>th</sup> Floor, NBCC Tower, 15 Bhikaji Cama Place New Delhi-110049
Appellant		Respondent

Respondent by	Ms. Sarita Kumari, CIT-DR
Appellant by	Sh. M.P.Rastogi, Adv. Sh. P.N. Shastari, CA

Date of hearing:	24.04.2023
Date of Pronouncement:	23.05.2023

**ORDER**

**Per Anubhav Sharma, JM :**

The appeal has been preferred by the Revenue against the order dated 10/09/2018 of CIT(A)-6, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No. CIT(A), Delhi-6/ 10194/17-18 arising out of an appeal before it against the order dated 29.11.2017 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT, Circle-18(2), New Delhi (hereinafter referred as the Ld. AO).

2. Heard and perused the record. At the opening of hearing the Ld. AR submitted that the cross objections filed separately challenging the re-opening is not pressed.

3. The Revenue is in appeal before the Tribunal raising following grounds :-

*“1. The Ld. CIT(A) has erred in deleting the addition made by the AO of Rs. 2031707651/- on account of additional depreciation claimed on Plant & Machinery.*

*2. That the appellant craves leave to add, alter or forgo any ground / (s) of appeal either before or at the time of hearing of the appeal.”*

4. Ld. DR could not dispute the fact that the appellant is engaged in generation of electric power through thermal power plants and that in the assessee's own case, the Coordinate Bench in ITA No. 1438/Del/2009 dated 30-04-2014, titled NTPC Ltd Vs DCIT, for Assessment year 2005-06 has held that electricity is a 'thing' and thus a power generation company is eligible to additional depreciation. However, the Assessment for AY 2010-11 was reopened purportedly for allowance of additional depreciation on plant and machinery which according to the learned AO was not allowable. The reason for re-opening the assessment as is apparent from the re-assessment order dated 29-11-2017 u/s 147 r.w.s. 143(3) of the Act, is that, there was an amendment of section 32(1)(iia) of the Act, by Finance Act 2012.

5. It can be observed that the prudent view is that the amendment by Finance Act 2012 was intended to remove the unintended ambiguity and thus clarificatory in nature making it is applicable right from AY 2005-06 onwards. The Department however has given the erroneous understanding that it is applicable from 1-4-2013 or AY 2013-14 and consequently additional depreciation is not allowable to assessees engaged in power generation.

6. The learned AO seems to have not taken note of the fact that the matter has been settled in favour of the company by the Tribunal in AY 2005-06. Hon'ble High Court of Delhi for AY 2012-13 has dismissed the appeal of the Revenue and held in favour of assessee on identical issue.

7. There is no error in the order of Ld. CIT(A) qua the deletion of addition. Hence there is no substance of the grounds of appeal. **Consequently, the appeal of revenue is dismissed.**

**Order pronounced in the open court on 23<sup>rd</sup> May, 2023.**

Sd/-

**(N.K.BILLAIYA)**  
**ACCOUNTANT MEMBER**

*Date:-23 .05.2023*

*\*Binita, SR.P.S\**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI