

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.5022/Del/2017
Assessment Year: 2013-14

NTPC Tamilnadu Energy Company Ltd. Vallur Thermal Power Project P.O. Vellivoyal Chavadi, Ponneri Taluk Tiruvallur Dist. Chennai-600103 PAN No.AABCN9916C	Vs	DCIT Circle – 18 (2) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Ajay Agarwal, CA
Respondent by	Sh. M.K. Pandey, Sr DR

Date of hearing:	03/07/2023
Date of Pronouncement:	07/07/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-6, Delhi dated 15.06.2017 pertaining to A.Y.2013-14.

2. The solitary grievance of the assessee is that the CIT(A) erred in restricting the claim of depreciation of Rs.25853522/- being

50% on certain assets on the ground that the business of the assessee was commenced on 29.11.2012.

3. Briefly stated the facts of the case are that the assessee is a joint venture of NTPC Limited and Tamil Nadu Electricity Board and was incorporated with the main objective of construction of power plant for generating electricity.

4. During the course of the assessment proceedings the assessee was asked to explain as to why depreciation claimed for full year not be restricted to half as the relevant project was commercially operating from 29.11.2012. The assessee filed a detailed reply which was dismissed by the AO who went on to disallow the claim of depreciation by 50% as he was of the firm belief that the assets have been used for less than 180 days.

5. Assessee carried the matter before the CIT(A) but without any success.

6. Before us the Counsel for the assessee moved an application requesting for the admission for additional evidences the bench called for report from the AO which is as under :-

✓ Sir,

Kindly refer to the trailing mail.

In this regard, it is submitted that the additional evidences furnished by the assessee now before the Hon'ble Bench of ITAT, has never been filed before the AO during the assessment proceedings or even before appellate proceedings with Ld CIT(A). Further, while permitting the assessee for admission of additional evidences, the Hon'ble ITAT should exercise their discretion in accordance with law and reason. The Tribunal must be satisfied that the additional evidences submitted now is bonafide and the same could not have been raised earlier for good reasons.

As may be seen, the assessee has failed to discharge its primary onus of submitting such evidences before lower authorities during the course of assessment proceedings without any reasonable cause despite sufficient opportunities was afforded.

As regard admission of additional evidence, it is submitted that the position of law is clear that no person is entitled to seek admission of additional evidence as a matter of right. The production of additional evidence is permitted when the following conditions satisfy:-

- (a) All facts relevant to the issue should have been found by the lower authorities.
- (b) Additional evidence should be the one which could not be raised earlier for bonafied reasons.

In view of the above, it is submitted that there is no vested right with the assessee to take up any new and additional evidence at this stage. Thus the filing additional evidences before Hon'ble ITAT is not acceptable. However, on merits the contention of the assessee may kindly be considered. Subject to verification of all facts related to it.

Regards

DCIT CIRCLE 16(1)

7. We have given a thoughtful consideration to the additional evidences. We are of the considered view that these additional evidences go to the root of the matter and could not have been fabricated post assessment/ first appellate proceedings as the same pertain to / given by State Government Authorities and National Stock Exchange. Based on these additional evidence we restore the issue to the files of the AO. The assessee is directed to furnish these evidences before the AO and the AO is directed to examine / verify the same and decide the issue afresh after affording a reasonable and sufficient opportunity of being heard to the assessee.

8. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on .07.2023.

[ASTHA CHANDRA]
JUDICIAL MEMBER

Dated: .06.2023

Neha

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Asst. Registrar
ITAT, New Delhi