

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. KUL BHARAT, JUDICIAL MEMBER**

ITA No.6982/Del/2014
Assessment Year: 2007-08

DCIT Circle – 18(2) New Delhi	Vs.	NTPC Ltd. NTPC Bhawan Core-7 Scope Complex Lodhi Road, New Delhi-110003 PAN No.AAACN0255D
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Subhra Jyoti Chakraborty, CIT DR
Respondent by	Sh. Ved Jain, Advocate Ms. Supriya Mehta, CA

Date of hearing:	12/02/2024
Date of Pronouncement:	14/02/2024

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)- 16, Delhi dated 25.09.2014 pertaining to A.Y. 2007-08.

2. The solitary grievance of the revenue is that the CIT(A) erred in allowing the appeal of the assessee by holding that the proceedings initiated u/s.147 are bad in law.

3. Briefly stated the facts of the case are that the assessee is engaged in the business of power generation and filed its return of income declaring income of Rs.37945574739/- which was revised at Rs.29047427013/-. The assessment was completed u/s. 143 (3) of the Act at an income of Rs.77863459013/-. Subsequently proceedings u/s. 148 were initiated and the reasons recorded for reopening the assessment read as under :-

"(a) The assessee had claimed and allowed Rs. 7,70,00,000/- on account of Oil and Gas exploration expenses. As this gave an enduring benefit to the assessee, therefore, it should have been capitalized and added back to the income of the assessee. This mistake resulted in under assessment of income of Rs. 7,70,00,000/- involving short levy of tax of Rs. 3,18,79,386/-

(b) The assessee had debited preliminary expenses of Rs. 9,89,12,000/- under the head survey and investigation expenses written off in the profit and loss account. These expenses were deferred in 5 equal installments and after allowing 1/5th expenses of Rs. 1,97,82,400/- for the year balance expense of Rs. 7,91,29,600/- should have been disallowed. The mistake resulted in under assessment of income of Rs. 7,91,29,600/- involving short levy of tax of Rs. 3,27,61,078/-.

(c) As per Schedule 25 of profit and loss account, Rs. 20,20,00,000/- was shown as prior period income of the assessee, but the AO had added back Rs. 10,90,00,000/- only (after adjusting prior period expenses) instead of Rs. 20,50,00,000/-. As the assessee was following mercantile system of accounting, any income, which is

received or deemed to be received, or which accrues during the previous year was to be added back to the income of the assessee. Therefore, prior period income of Rs. 9,30,00,000/- (Rs. 20,20,00,000 Rs. 10,90,00,000) should have been added back to the income of the assessee. The mistake resulted in under assessment of income of Rs. 9,30,00,000/- involving short levy of tax of Rs. 3,85,03,674/-.

4. The reopening was challenged before the CIT(A) and the CIT(A) was convinced that the reasons recorded for reopening the assessment are nothing but change of opinion and accordingly held the reopening is bad in law.
5. Before us the DR strongly supported the findings of the AO and in his written submission relied upon seven decisions of Hon'ble High Courts.
6. The Counsel for the assessee heavily relied upon the findings of the CIT(A).
7. We have carefully perused the orders of the authorities below. The plain reading of the reasons for reopening the assessment mentioned elsewhere show that the AO himself has mentioned "the scrutiny of the assessment recorded revealed" this itself shows that there was no new tangible material available and the AO has simply changed the opinion from the previous AO itself.

8. Moreover during the course of the original assessment proceedings vide notice dated 17.11.2008 at point 7 and 8 the AO had raised specific queries which are reasons for the reopening of the assessment and the assessee has specifically replied to the queries so raised.

9. Considering the facts in totality we do not find any reason to interfere with the findings of the CIT(A). The appeal by the revenue is dismissed.

Order pronounced in the open court on 14.02.2024.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

NEHA

Date:- .02.2024

Copy forwarded to:

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

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI