

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' : NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.3583/DEL/2019
(Assessment Year: 2011-12)**

Pragati Power Corporation Ltd., vs. ACIT, Spl. Range 7,
Himadari Rajghat Power House Office Complex, New Delhi.
Rajghat,
New Delhi – 110 002.

(PAN : AACCP8035F)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ved Jain, Advocate
REVENUE BY : Shri Vivek Vardhan, Sr. DR

Date of Hearing : 14.03.2024
Date of Order : 18.03.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is filed against the order of the Id. CIT (Appeals)-38, New Delhi dated 18.02.2019 for the assessment year 2011-12.

2. The assessee has taken the following grounds of appeal :-

“1. That the order of the learned Commissioner of Income Tax (Appeals) is bad both on law and facts.

2. That the appellant assessee has not been afforded enough opportunity of being heard and as such natural justice denied.

3. That the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the assessing officer in initiating proceedings u/s 147 read with section 143(3) of the

Act, in complete disregard of the fact that the issue under appeal was duly discussed during the course of assessment proceedings u/s 143(2) of the Act and as such proceedings initiated u/s 147, itself are erroneous, illegal and liable to be quashed.

4. That the learned Commissioner of Income Tax (Appeals) has erred in sustaining in the addition of a sum of Rs.2,18,62,286/- into the income under the head "Income from other source" allegedly treated the income as income not derived from Industrial Undertaking in complete disregard of the evidence and facts brought on record during the course of assessment proceedings."

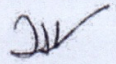
3. At the outset, in this case, Id. Counsel for the assessee challenged the validity of jurisdiction assumed by the AO in this case. He referred to the reasons for reopening which read as under :-

Reasons for the belief that income has escaped assessment in the case of M/s Pragati Power Corporation Limited PAN-AACCP8035F for the A.Y: 2011-12

In this case, the assessee filed its return of income on 29.09.2011 at income of Rs. 4,41,55,905/-. The assessment order u/s 143(3) was passed on 24.01.2014 at an income of Rs. 4,68,77,866/- and tax was charged on book profit of Rs. 126,34,90,753/- u/s 115JB. The assessee in this case is engaged in the field of power sector.

2. Subsequently, it was noticed that the assessee has shown other income of Rs. 8,08,15,142/- (Interest from Banks Rs. 5,58,43,977/- + Interest others Rs. 1,07,64,820/- + Miscellaneous income Rs. 1,10,97,466/-) in its P&L account but while calculating deduction u/s 80-IA(4)(iv) income, only Rs. 5,58,43,977/- under the head Interest from banks was reduced, Although the incomes on account of interest others and Misc. income, which also is not derived from the Industrial Undertaking, was also required to be added back. Thus, deduction of Rs. 2,18,62,286/- has been wrongly claimed and allowed to assessee.

3. After perusal of the above mentioned information & facts, I have reason to believe that an income of at least Rs. 2,18,62,286/- for A.Y. 2011-12 has escaped from assessment. Approval for initiating proceedings u/s 147 r.w. 149(1)(b) r.w.s. 151 of the Income Tax is requested from PCIT-7, New Delhi for determination of income of the assessee in AY 2011-12.


 (Rajesh Raina)
 ACIT, Circle 20(1), New Delhi

3.1 Referring to the above said reasons for reopening, Id. Counsel for the assessee submitted that assessment in this case was reopened after four years of the scrutiny assessment done in this case. In this regard, he referred to the provisions of section 147 of the Income-tax Act, 1961 (for short 'the Act') which read as under :-

“147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year.”

3.2 Ld. Counsel for the assessee further submitted that reasons recorded nowhere shows that there was any concealment or no disclosure of facts by the assessee. In this view of the matter, he submitted that reassessment is without jurisdiction

3.3 He further submitted that from a plain reading of the aforesaid reasons recorded by the AO, it is aptly clear that :

- (i) Nowhere in the reasons, the AO had recorded any observation or made any allegation that there was any failure on part of the assessee in fully and truly disclosing all material facts which were necessary for scrutiny assessment;
- (ii) Full compliance was done to the notices and queries raised by AO during the course of original assessment proceedings;
- (iii) There is no fresh tangible material distinct from what was very much available at the time of assessment proceedings u/s 143(3) of the Act;
- (iv) It is relevant to note the 2nd para of the reasons recorded which starts with “Subsequently it was notices that the assessee has shown.....” This itself proves that it was only on the basis of documents which were already available with the AO pursuant to assessment proceedings u/s 143(3) that the income was alleged to have escaped assessment.

3.4 He further submitted that the reassessment proceedings itself are illegal and liable to be quashed because of the following factors :-

- (i) There is no allegation of the AO that the assessee had failed to disclose fully and truly all material facts which were necessary for scrutiny assessment;
- (ii) Reopening of the assessment beyond a period of four years is barred by limitation when original assessment had been completed u/s 143(3) and there was no failure on part of the assessee to fully and truly disclose the material facts of the case; and
- (iii) When there is no fresh tangible material distinct from what was very much available, the reopening in such circumstances is impermissible.

4. Per contra, Id. DR for the Revenue relied upon the orders of the authorities below but he could not rebut the contentions of the assessee.

5. We have heard both the parties and perused the records. Upon careful consideration, we find ourselves in agreement with the submission of the Id. Counsel for the assessee that reopening of the assessment is not valid for the cogent reasons as submitted by the Id. Counsel for the assessee which remained unassailed by the Revenue. Accordingly, we quash the reassessment order.

8. Since we have already quashed the reassessment order, there is no need to adjudicate the other grounds on merits being academic

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 18th day of March, 2024.

SD/-

**(YOGESH KUMAR US)
JUDICIAL MEMBER**

SD/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 18TH day of March, 2024
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-38, New Delhi
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**