

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

**Before Dr. B. R. R. Kumar, Accountant Member,**

**Sh. Sudhir Kumar, Judicial Member**

**ITA No. 3176/Del/2019 : Asstt. Year: 2006-07**

NTPC Ltd., Core-7, Scope Complex, 7, Institutional Area, Lodhi Road, New Delhi-110003	Vs	DCIT, Circle-13(1), New Delhi-110002
(APPELLANT)		(RESPONDENT)
<b>PAN No. AAACN0255D</b>		

**Assessee by : Sh. Ved Jain, Adv. &**

**Ms. Supreya Mehta, CA**

**Revenue by : Sh. M. G. Joseph Gangte, CIT-DR**

**Date of Hearing: 21.05.2024**

**Date of Pronouncement: 24.05.2024**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of Id. CIT(A)-34, New Delhi dated 18.02.2019.

2. Following grounds have been raised by the assessee:

*"1. On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eye of law and on facts.*

*2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO despite the fact that the reopening by the AO and consequent reassessment without complying with the statutory conditions prescribed under Section 147 read with Section 148 of the Act is bad in law.*

*3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO ignoring the fact that the AO has erred both on facts and in law in making reassessment under Section 147 of*



*the Act as the reasons recorded for reopening the assessment does not meet the requirements of Section 147 of the Act.*

*4. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the reassessment proceedings initiated under section 148 are bad in law as there is no live nexus between the reasons recorded and the belief formed by the AO*

*5. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the order passed by the learned AO under section 148 of the Income tax Act is barred by limitation since the same is passed beyond the specified time limit*

*6. On the facts and circumstances of the case, the notice issued under section 148 is illegal having been issued on the basis of reasons containing no whisper as to how the assessee has failed to disclose fully and truly all material facts, the notice having been issued after four years from the end of the relevant assessment year.*

*7. (i) On the facts and circumstances of the case, the reassessment proceedings initiated by the AO and upheld by the learned CIT(A) are bad in the eyes of law, as the reasons recorded for the issue of notice under section 148 are based merely on account of change of opinion.*

*(ii) On the facts and circumstances of the case, the learned CIT(A) has erred in law and on facts in upholding the reassessment proceedings, despite the fact that there has been no omission on the part of the assessee in disclosing fully and truly all material facts necessary for the assessment.*

*8. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in rejecting the contention of the assessee that the reassessment proceedings initiated beyond a period of four years from the end of the relevant assessment year despite the fact that original assessment being framed under section 143(3) is bad in law in view of proviso to section 147 of the Act.*

*9. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the action of the learned AO under section 148 of the Income tax Act is illegal, that the same has been passed without assumption of valid jurisdiction.*

*10. (i) On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the*



*addition of Rs. 234,54,25,745/- made by AO on account of exchange rate variation.*

*(ii) That the said addition has been confirmed arbitrarily rejecting the explanation and evidences brought on records by the assessee.*

*11. (i) On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the disallowance of Rs. 80,00,000/- made by AO on account of stores written off and loss on maturity of current investments.*

*(ii) That the said addition has been confirmed arbitrarily rejecting the explanation and evidences brought on records by the assessee.*

*12. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in upholding the action of the learned AO without application of his own mind.*

*13. On the facts and circumstances of the case, the learned CIT(A) has grossly erred both on facts and in law in confirming the above addition by indulging in surmises and conjecture and, only on the basis of presumption and assumption.*

*14. On the facts and circumstances of the case, the learned CIT(A) has grossly erred both on facts and in law in confirming the action of the learned AO that the order has been passed without affording adequate opportunity of being heard to the assessee in violation of principles of natural justice."*

3. At the outset, the only question required to be adjudicated is that,

***"Whether the notice issued by the revenue authorities after the expiry of four years from the end of the relevant assessment year is valid and was any there escapement of income chargeable to tax by reason of the failure on the part of the assessee or not?"***



4. The pertinent facts required for the adjudication of the case are as under:

- ❖ Assessment Year : 2006-07
- ❖ Date of filing of original return : 14.11.2006
- ❖ Date of filing of revised return : 20.03.2007
- ❖ Date of passing of order u/s 143(3) : 26.11.2007
- ❖ Date of intimation of audit objections to the assessee : 08.09.2008
- ❖ Date of reply of the assessee on the audit objection : 11.09.2008
- ❖ Date of issue of notice u/s 148 : 18.03.2013

5. The audit objection raised by the Revenue audit party is as under:

*"Sub: Reply to objection raised by Revenue Audit party – reg.*

*On **perusal of your assessment record**, the Revenue Audit party has noticed certain discrepancies in the asstt. year(s) mentioned in the table given below, the reply of which may please be furnished before the undersigned in Room No. 406, C.R. Building, New Delhi on or before 15-09-2008.*

Sl. No.	A.Y.	Gist of audit observations
1.	2006-07	<p>1-Audit scrutiny of the assessment records revealed that the assessee claimed and was allowed deduction of Rs. 234,54,25,754/- on account of book adjustment in r/o ERV depreciation under the head prior period adjustment in computation of income. As the amount represents book adjustment in r/o ERV note backed by the actual remittance, the claim should have been disallowed.</p> <p>2-Audit scrutiny revealed that the assessee</p>



		<p><i>had claimed and was allowed deduction of Rs. 80,00,000/- on account of stores written off and loss on maturity of current investment. These expenses were of capital nature and required to be disallowed.</i></p> <p><i>3-Audit scrutiny revealed that the assessee had claimed and was allowed deduction of Rs.10,00,00,000/- on account of bond issue and foreign currency bond issue expenses. These expenses were of capital nature and required to be disallowed.</i></p>
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*Please note that in case of non-furnishing of the above reply, it shall be presumed that the above mentioned discrepancies noticed by the Revenue Audit party are correct and necessary remedial as per the provisions of Income tax Act shall be initiated on the basis of available record."*

*Sd/-*

*(R. K. Sharma)*

*Asstt. Commissioner of Income Tax*

*Circle-13(1), New Delhi*

6. Thus, it can be seen that the objections raised by the Revenue Audit of the CAG raised three issues **on verification of the assessment records** viz. depreciation, stores written off & bond issue expenses which were claimed as revenue in nature.

7. The objections were conveyed to the assessee and the assessee replied vide letter dated 11.09.2008 with regard to book adjustment of the assets, reasons for claiming, written off stores and bond issue expenses. The assessee submitted that the stores have been written off every year of the obsolete items after the approval of competent authority consisting of teams of quality assurance officers, material management



employees and finance division. The assessee has submitted that the bond issue expenses have been infact considered as capital expenditure whereas the audit party has wrongly presumed that the assessee has claimed it as revenue expenditure. With regard to the depreciation, the assessee has submitted that the book adjustment in the depreciation was based on the adjustment of exchange rate difference.

8. After receipt of the reply from the assessee on 11.09.2008, the revenue has not responded either in affirmative or in negative. On 26.11.2013, the Assessing Officer has recorded the reasons for reopening of the escaped income.

9. The reasons recorded by the Assessing Officer are as under:

*"Reasons for belief that income has escaped assessment:*

*M/s NTPC Ltd. filed at an income of Rs. 46,64,46,84,220/- assessed u/s 143(3) of the IT Act in November, 2008.*

*1. From perusal of records of the assessee for AY 2006-07, it was found that the assessee had claimed Rs.2,34,54,25,754/- as deduction on account of book adjustment in respect of ERV depreciation under the head prior period adjustment in computation of income. As amount represented book adjustment in r/o of ERV not Backed by the actual remittance, the claim should have been disallowed. Hence, underassessment of income of Rs. 2,34,54,25,754/-.*

*2. The assessee had claimed a deduction of Rs. 80,00,000/- on account of stores written off and loss on maturity of current investment. These expenses were capital in nature and required to be disallowed. Hence under assessment of income of Rs. 80,00,000/-.*



*On the basis of examination of the facts and circumstances for AY 2006-07, as above, **I have reason to believe that the income has escaped assessment on account of failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment within the meaning of provisions of section 147 of the IT Act, 1961.***

*Since, four years have expired from the end of the relevant assessment year and the assessment was made u/s 143(3) of the IT Act, as per provisions of section 151(1) of the IT Act, necessary approval of the Commissioner of Income Tax, Delhi-V Now Delhi is solicited for issue of notice u/s 148 of the IT Act, for A.Y. 2006-07."*

*Sd/-*

*Dy. Commissioner of income Tax*

10. From the above, it can be observed that out of the three issues raised by the Revenue Audit Party viz. depreciation, stores written off & bond issue expenses which were claimed as revenue in nature, the Assessing Officer has recorded reasons on the issue of depreciation and stores written off. After recording the reasons, the Assessing Officer has issued notice u/s 148 on 18.03.2013. The same reasons have been provided to the assessee on 26.11.2013 in response to the request of the assessee.

11. With regard to issue of notice, the provisions of Section 147 of the Income Tax Act, 1961 are examined which are reproduced as under:

**“Income escaping assessment.**

**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 re-compute 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:*

**Provided further** that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year.”

12. From the perusal of the record, we observe that the issue of depreciation and written off of stores are already part of the record before the Assessing Officer while completing the assessment u/s 143(3). The depreciation claimed is available clearly in the depreciation schedule and the writing off of stores is decipherable from the P&L account. Thus, we find that there was no failure on the part of the assessee to disclose fully and truly all the material facts required for assessment for the year. The audit party has raised objections only after going through the assessment record before them. There was no new information available to the revenue nor there was any default on the assessee to disclose all the required material facts.

**13. Hence, we hereby hold that the notice issued u/s 148 on 18.03.2013 after the expiry of four years from the end of the relevant assessment year, a period of 4 years for**



**the Assessment Year 2006-07 after completion of the assessment u/s 143(3) on 26.11.2007 is invalid and hence the entire assessment is liable to be quashed.**

14. We observe that the notice would have been valid, had it been issued before 31.03.2011 as the proviso to Section 147 are not attracted if the notice is issued before expiry of 4 years. The revenue gladly waited for a period of 5 years for the reasons best known to them to issue notice in the year 2013 after the receipt audit objections u/s 148 in the year 2008.

15. In the result, the appeal of the assessee is allowed.  
Order Pronounced in the Open Court on 24/05/2024.

**Sd/-**

**(Sudhir Kumar)  
Judicial Member**

**Dated: 24/05/2024**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

**Sd/-**

**(Dr. B. R. R. Kumar)  
Accountant Member**

**ASSISTANT REGISTRAR**

