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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 502/2024

PRINCIPAL COMMISSIONER OF INCOME

TAX DELHI- 04

.....Appellant

Through: Mr. Abhishek Maratha, SSC
with Mr. Apoorv Agarwal, Mr.
Parth Samwal, JSCs, Ms. Nupur
Sharma, Mr. Gaurav Singh, Mr.
Bhanukaran Singh Jodha, Ms.
Muskaan Goel & Mr.
Himanshu Gaur, Advs.

versus

M/S NTPC LTD

.....Respondent

Through: Mr. Ved Jain, Mr. Nischay
Kantoor & Ms. Soniya Dodeja,
Advs.

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+ ITA 503/2024

PRINCIPAL COMMISSIONER OF INCOME

TAX DELHI-04

.....Appellant

Through: Mr. Abhishek Maratha, SSC
with Mr. Apoorv Agarwal, Mr.
Parth Samwal, JSCs, Ms. Nupur
Sharma, Mr. Gaurav Singh, Mr.
Bhanukaran Singh Jodha, Ms.
Muskaan Goel & Mr.
Himanshu Gaur, Advs.

versus

M/S NTPC LTD.

.....Respondent

Through: Mr. Ved Jain, Mr. Nischay
Kantoor & Ms. Soniya Dodeja,
Advs.



CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

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24.09.2024

CM APPL. 56047/2024 (3 Days Delay) & CM APPL. 56048/2024
(572 Days Delay in Refiling) in ITA 502/2024

Bearing in the mind the disclosures made, the delay of 03 days in filing the appeal and the delay of 572 days in re-filing the appeal is condoned.

Applications shall stand disposed of.

CM APPL. 56062/2024 (3 Days Delay) & CM APPL. 56063/2024
(464 Days Delay in Refiling) in ITA 503/2024

Bearing in the mind the disclosures made, the delay of 03 days in filing the appeal and the delay of 464 days in re-filing the appeal is condoned.

Applications shall stand disposed of.

ITA 502/2024 & ITA 503/2024

1. The Principal Commissioner impugns the order of the Income Tax Appellate Tribunal [**‘Tribunal’**] dated 05 August 2022.
2. The solitary question which is sought to be urged for our consideration pertains to the disallowance under Section 14A of the Income Tax Act, 1961 [**‘Act’**].
3. We take note of the following significant findings which have come to be recorded by the Commissioner of Income Tax (Appeals) [**‘CIT(A)’**] in this regard:-

“3.14.1 Ground No. 15 : Disallowance of expenditure u/s 14A of Income Tax Act : NTPC in its return of income had claimed income exempt u/s 10 of Income Tax Act towards income of Rs.1296.14 crore from 8.5% Tax Free State Govts. Bonds and dividend income of Rs.9.51 crores. The learned AO during the course of assessment



proceedings has desired to show cause, why proportionate disallowance of expenditure incurred in relation to income not included in total income should not be made as per Rule 8D of Income Tax Rules, 1962. The assessee submitted the following facts before the AO during assessment proceedings.

3.14.2 Background of Issue of Bonds : The Govt. of India, Ministry of Power circulated a Scheme, known as "One Time Settlement of State Electricity Boards (SEBs) dues" vide Ref. F.No. 32012/10/R001-Fin dated 20th May 2002, for settlement of old outstanding dues payable by SEBs to Central Public Sector Undertakings. As per the scheme, the various State Govts., through Reserve Bank of India had issued 8.5% Tax free State Govt. Special Bonds to NTPC amounting to Rs.16410. 70 crores as on 31.3.2004 and Government of Delhi was given Long Term Loan amounting to Rs. 1060.03 Crore. The details of the same have been furnished in Schedule 9 "Investment" and Schedule 14 "loans and Advances" of the Annual Accounts annexed with the Return of Income. The Bonds and loan have a maturity period of 15 years and interest on the amount is payable on half yearly basis. NTPC has received Interest of Rs.1220.88 crores from State Govt. Bonds and Rs.75.26 crore from Loan to Delhi State Govt. The Tax free status of the above Bonds has been granted by Central Board of Direct Taxes vide Notification No 158/2003/F.No.200/10/2003 ITA-I dated 27.06.2003 and tax free status to Long Term Loan has been granted vide CBDT notification no: 281/2004 dated 18.11.2004. The Bonds by State Government have been issued based on Tripartite Agreement (forming part of One Time Settlement scheme), made among, the President of India; acting through Joint Secretary, Ministry of Finance, Govt. of India, the Governor of the respective State Govt. acting through the Finance Secretary of the respective State Govt. and the Reserve Bank of India (RBI) and Long Term Loan to Govt. of Delhi has been given as per Bipartite Agreement signed between Govt. of India and Govt. of Delhi.

3.14.3 It may be noted that these tax free bonds have not been purchased by the assessee out of any funds borrowed for the purpose. Instead under the One Time Settlement Scheme the old and accumulated Debtors were converted into this Investment and these tax free bonds were issued to NTPC. In addition, dividend has been received from the investment made by NTPC in its subsidiary/ joint venture companies. Since no funds have been borrowed for the aforesaid investments, it is the accumulated funds of the assessee which are in the shape of tax free bonds and as such any disallowance of expenses would be not in accordance to law."

4. It is the aforesaid view which has ultimately been upheld by the Tribunal.



5. In view of the aforesaid, we find that the appeals fail to raise any substantial question of law. The appeals, consequently, shall stand dismissed.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

SEPTEMBER 24, 2024/RW