



2026:DHC:1220-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision : 09.02.2026*

+ ITA 113/2026, CM APPL. 8916/2026, CM APPL. 8917/2026

+ ITA 82/2026, CM APPL. 6918/2026, CM APPL. 6919/2026

PR COMMISSIONER OF INCOME TAX - 4, NEW DELHI

.....Appellant

Through: Mr. Shlok Chandra, SSC, Ms. Naincy
Jain and Ms. Madhavi Shukla, JSCs

versus

M/S NTPC LTD

.....Respondent

Through: Mr. Nischay Kantoor, Ms. Soniya
Dodeja and Mr. Sparsh Kapoor,
Advs.**CORAM:****HON'BLE MR. JUSTICE DINESH MEHTA****HON'BLE MR. JUSTICE VINOD KUMAR****JUDGMENT****DINESH MEHTA, J. (ORAL)**

1. By way of the present appeals filed under Section 260A of the Income Tax Act, 1961 (*hereinafter referred to as 'the Act of 1961'*), the appellant-Income Tax Department has assailed the common order dated 16.02.2024 for Assessment Years 2011-12 and 2012-13, passed by Income Tax Appellate Tribunal, 'E' Bench, New Delhi (*hereinafter referred to as 'the Tribunal'*), whereby the appeals filed by the respondent-National Thermal Power Corporation (*hereinafter referred to as 'NTPC'*) were allowed.

2. The small issue involved in the matter, maybe having larger revenue



involvement, is as to whether the Assessing Officer (AO) can initiate reassessment proceedings on the basis of an objection raised by the audit party of the Income Tax Department.

3. For the sake of convenience of disposal, the facts pertaining to AY 2012-13 in ITA no. 113/2026 are being taken into consideration :-

3.1. An assessment order dated 21.02.2014 under Section 143(3) read with Section 147 of the Act of 1961 for the Assessment Year (AY) 2012-13 was passed by the AO wherein the respondent's entitlement of exemption under Section 80-IA particularly relating to carry forward loss and permissibility of exemption of its Combined Cycle Gas Power Plant Station was considered in great detail.

3.2. After deep enquiry into the matter, the AO disallowed the exemption *qua* such issues and passed the above-referred assessment orders dated 21.02.2014 for both the years.

4. Thereafter, the respondent-assessee preferred an appeal against such disallowances before the Commissioner of Income Tax (Appeals) (*hereinafter referred to as the 'CIT(A)'*), who rejected the respondent's appeals.

5. The Tribunal however, held in assessee's favour and the same has attained finality sans any challenge thereto.

6. In the meantime, an audit objection was raised that the NTPC has added back the proportionate corporate expenses to its profit which was impermissible in law.

7. On receipt of the aforesaid audit objection, the AO issued a notice(s) under Section 147/148 of the Act of 1961 on 07.10.2016 for both the years, *qua* which the NTPC raised an objection about the very initiation of



reassessment proceedings on the basis of audit objection.

8. The AO, however, brushed aside such objection and passed assessment order dated 29.12.2017 under Section 143(3) read with Section 147 of the Act of 1961 and raised a demand as proposed in the show cause notice. Against the said reassessment order of the AO, the respondent preferred an appeal before the CIT(A) who rejected the appeal filed by the NTPC vide order dated 18.04.2023, whereafter the assessee preferred an appeal before the Tribunal which came to be allowed vide the impugned order dated 16.02.2024.

9. While allowing the appeal filed by the NTPC, the Tribunal held that the initiation of reassessment proceedings under Section 147/148 of the Act of 1961 for Assessment Year 2012-13 is based on a mere change of opinion and the same was not permissible in view of the various judgments.

10. Mr. Shlok Chandra, learned Senior Standing counsel for the appellant argued that the Tribunal has erred in law in holding that the reassessment proceedings have been initiated on mere change of opinion.

11. He submitted that an audit objection should be construed to be a new fact which has come to the notice of the AO and hence, the initiation of reassessment proceedings cannot be held to be based on a mere change of opinion. He argued that because of the inadvertence or otherwise of the AO, the Revenue has been deprived of tax of Rs.150 Crores for both years combined (AY 2011-12 and AY 2012-13) and therefore, a liberal view should have been taken by the Tribunal and the proceedings ought not to have been quashed on technical ground, as has been done.

12. Mr. Nischay Kantoor, learned counsel for the respondent-assessee on the other hand, submitted that the law has to be interpreted and taken into



account the way it exists. He further submitted that the audit objection cannot be treated to be an information and even if the same is taken to be an information, then also, so far as the notice under Section 147/148 of the Act of 1961, which has been issued for AY 2011-12 is concerned, the same is without jurisdiction inasmuch as a period of four years had since elapsed from the end of assessment year (31.03.2012) when the notice (dated 07.10.2016) was issued.

13. Learned counsel for the respondent-assessee also submitted that the issue of exemption under Section 80-IA has been examined in a threadbare manner and as many as 15-18 pages have been used discussing such issue and that even the audit party had seen said order of the AO, when the issue was examined. He argued that based on very same facts, the audit party has taken a different view which is nothing but a difference of opinion and the same cannot be a reason to initiate re-assessment proceedings.

14. Mr. Kantoor learned counsel for the respondent-assessee relied upon the following judgments in support of his submissions :

- i. Indian And Eastern Newspaper Society v. CIT reported in (1979) 119 ITR 996.
- ii. FIS Global Business Solutions India Pvt. Ltd. (formerly known as Efunds international India Pvt. Ltd.) v. Assistant Commissioner of Income Tax reported in (2018) 408 ITR 75 (Del).
- iii. Jal Hotels Co. Ltd. v. Assistant Director of Income Tax reported in 2009 (5) TMI 24 – Delhi High Court.
- iv. Deepak Kapoor v. Principal Commissioner of Income Tax-2, New Delhi & Ors. reported in (2023) 450 ITR 301 (Del).



v. Principal Commissioner of Income Tax, Delhi-08 v. S. Chand & Co. Ltd. reported in 2018 (2) TMI 1802- Delhi High Court.

15. Heard learned counsel for the parties.

16. There is no gainsaying the fact that the reassessment proceedings have been kick-started pursuant to the objection raised by the audit party on the issue of adding back the corporate expenses *qua* some of the combined cycle gas power plants and also the fact that during scrutiny proceedings and reassessment proceedings under Section 143(3) of the Act of 1961, the AO had already conducted threadbare inquiry and disallowed the exemption.

17. Although, he disallowed the exemption under Section 80-IA of the Act of 1961 on different counts and maybe he did not think it appropriate to disallow the exemption on the ground of corporate expenses being added back as opined by the audit party, but in any case the same was an opinion of the audit party. The initiation of the reassessment proceedings on the basis of audit party's objection or opinion can at the best be construed to be an opinion of expert. The audit objection is, therefore, nothing but an opinion and consequently, the initiation of reassessment proceedings too is nothing more than a change of opinion.

18. As per the law in vogue at the relevant time, the provision expressly used the language 'reason to believe' and the same has been interpreted by Hon'ble the Supreme Court and this Court that 'reason to believe' must be of the AO himself and must be based on sound reasoning. The reason and satisfaction has to be that of the authority exercising jurisdiction and not borrowed.

19. So far as the judgments relied upon by Mr. Nishchay Kantoor are concerned, we find that the issue in hands has been dealt by Hon'ble the



Supreme Court in its judgment rendered in the case of ***Indian and Eastern Newspaper Society vs. CIT*** reported in [1979] 119 ITR 996, wherein it has been held that the Assessing Officer while dealing with any objection or opinion on law rendered by the audit party has to reasonably believe for himself if the income has escaped assessment on the basis of his true evaluation of the law. The Assessing Officer must independently evaluate the legal position and form his own belief that income has escaped assessment. A mere change of opinion on the same material already considered cannot justify reopening as the “Information” precedes and gives rise to the “reason to believe”.

20. Having gone through the first assessment order and taking note of the fact that the issue of allowability of exemption under Section 80-IA of the Act of 1961 had been thoroughly examined by the AO from various angles rather all angles which the AO could conceive, if for one reason or the other, the AO could not envisage this fact or had omitted to consider it while rejecting or partially rejecting respondent’s claim, the same cannot confer a right upon the AO to invoke provisions of Section 147/148 of the Act of 1961.

21. The Income Tax Department could have perhaps taken recourse to proceedings under Section 263 of the Act of 1961 on such count subject of course to the statutory inhibitions, but resorting to the provisions of Section 147/148 of the Act of 1961 was impermissible in law.

22. Mr. Shlok Chandra, has cited in the case of ***Dalmia (P) Ltd. v. Commissioner of Income, Delhi*** reported in [2011] 14 taxmann.com 106 (Delhi). A reproduction of para no. 19 would be gainful, which reads as under :-



“19. It is well settled that audit objection on the point of fact can be a valid ground for reopening of assessment. In the case of New Light Trading Co. v. CIT [2001] 117 Taxman 741/[2002] 256 ITR 391 (Delhi), a Division Bench of this court after referring to the decision of Supreme Court in CIT v. P.VS. Beedies (P.) Ltd. [1999] 237 ITR 13/103 Taxman 294, has held as under (at page 393):

"In the case of P. V. S. Beedies Pvt. Ltd. [1999] 237 ITR 13, the apex court held that the audit party can point out a fact, which has been overlooked by the Income-tax Officer in the assessment. Though there cannot be any interpretation of law by the audit party, it is entitled to point out a factual error or omission in the assessment and reopening of a case on the basis of factual error or omission pointed out by the audit party is permissible under law. As the Tribunal has rightly noticed, this was not a case of the Assessing Officer merely acting at the behest of the audit party or on its report. It has independently examined the materials collected by the audit party in its report and has come to an independent conclusion that there was escapement of income. The answer to the question is, therefore, in the affirmative, in favour of the Revenue and against the assessee."

23. A simple look at the above judgment reveals that in said case, the audit party had pointed out a new fact whereas in the instant case, the audit party has not pointed out or unravelled a new fact. As a matter of fact, it brought to the notice of the AO, a new aspect of the matter, which is nothing but an expression of opinion, on the same factual background.

24. Though we have dealt with the case cited by Mr. Chandra, but we are not oblivious of the legal position that no re-assessment proceedings can be triggered on the basis of an audit objection. For which, a host of judgments have been cited by learned counsel for the respondents.

25. Learned Senior Standing Counsel has submitted that a huge demand was created against the assessee and if the appeal is rejected, it would be a big loss to the exchequer. To this we will only respond—however big may be the amount but nothing is bigger than the letter of law.

26. As an upshot of discussion foregoing, we do not find any illegality in



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the impugned orders dated 16.02.2024 passed by the Tribunal.

27. The appeals, therefore, fail and are dismissed accordingly.

28. Pending applications (if any) stand disposed of.

DINESH MEHTA, J

VINOD KUMAR, J

FEBRUARY 9, 2026/ss