$~10 to 13

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 07.03.2013

\+ W.P.(C) 14458/2006
\+ W.P.(C) 15688/2006
\+ W.P.(C) 15693/2006
\+ W.P.(C) 15714/2006

NTPC LTD ..... Petitioner

versus

DEPUTY COMMISSIONER OF INCOME TAX..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr S E Dastur, Sr. Adv. with Mr R Murlidhar, Ms Bindu Saxena, Mr Shailendra Swarup, Mr K K Patra and Ms Aparajita Swarup, Advs.

For the Respondent : Mr Sanjeev Sabharwal, sr. standing counsel with Mr Puneet Gupta, jr. standing counsel

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE R.V.EASWAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

These writ petitions are in respect of notices issued under Section 148 of the Income Tax Act, 1961 seeking to reopen concluded assessments under Section 147 of the said Act. These petitions pertain to the assessment years 1999-2000, 2001-02, 2002-03 and 2003-04. All the

impugned Section 148 notices were issued on 03.02.2006. Insofar as the assessment year 1999-2000 (pertaining to writ petition No.15693/2006) is concerned, the assessment is a proposed to be reopened after a lapse of four years from the end of the assessment year and therefore, the proviso to Section 147 would have to be considered. Insofar as the other three writ petitions are concerned, the proposed reopening is within the period of four years and, therefore, the issues relevant for the invocation of the proviso to Section 147 of the said Act would not require any consideration. It may be pointed out that in respect of the very same petitioner, virtually identical issues had come up for consideration before this Court in respect of the assessment year 2000-01. That writ petition was numbered as WP(C) 14562/2006 and a detailed judgment has been delivered on 10.01.2013 whereby the notice under Section 148 has been quashed and proceedings pursuant thereto have also been quashed.

2. We find that the said decision in WP(C) 14562/2006, inter alia, held that there was no failure on the part of the petitioner to fully and truly disclose all material particulars necessary for its assessment and, therefore, the condition precedent stipulated in the proviso to Section 147 had not been satisfied. As a result of which, the propond reopening

beyond the period of four years was impermissible in law. In addition to the above conclusion, this Court also held that the issuance of the notices under Section 148 of the said Act, in the facts and circumstances of the case, would amount to nothing but a mere change of opinion. This finding is apparent from paragraph 37 of the said decision wherein the following observations are made :-

> "The petitioner had disclosed fully and truly the entire process of manufacture and generation of electricity by the gas turbine unit as well as by the steam turbine unit. It was not as if it was a fact or a figure hidden in some books of accounts which the Assessing Officer could have, with due diligence, discovered but had not done so. The Assessing Officer had asked specific queries with regard to the manner of functioning of the two units and the petitioner had provided detailed answers. All facts were staring the Assessing Officer at his face. He could have drawn his own inferences and, in fact, he did by treating them as separate units. On the very same facts, he is now trying to draw a different set of inferences which is nothing but a mere change of opinion. The inspection report of September, 2004 does not indicate anything new. While considering the fuel cost argument in the earlier assessment year, when the matter travelled right up to the Tribunal, the entire factual position was examined by the Assessing Officer, the Commissioner of Income Tax (Appeals) as well as by the Tribunal and also by the Committee on Disputes and the two units were treated as separate units. We have already extracted the relevant portion of the Tribunal's order which

> notices the same. Therefore, in our view, this is not a case where the assessee/ petitioner can be said to have failed to disclose fully and truly all material facts necessary for assessment in respect of the assessment year 2000-01. Thus, this by itself, is sufficient for us to conclude that the exception carved out in the proviso to Section 147 is not attracted and, therefore, there is a bar from taking action under Section 147 inasmuch as the period of four years has expired. The impugned notice dated 03.02.2006 is, therefore, liable to be quashed on this ground."
>
> (underlining added)

It is apparent from the above that apart from the issue of full and true disclosure, this Court had also held that what the revenue was seeking to do was to change its opinion, which was impermissible in law.

3. The learned counsel for the respondent had sought to argue that the present writ petitions were different and distinct from the earlier writ petition which resulted in the judgment dated 10.01.2013 inasmuch as in respect of three of the years in question i.e., assessment years 2001-02 to 2003-04, the issue of the proviso to Section 147 pertaining to full and true disclosure was not attracted. It is only in respect of the assessment year 1999-2000 where the proviso would come into play. But, from the above observations it is clear that this Court had decided the case pertaining to assessment year 2000-01 not only on the aspect of full and true disclosure

but also on the aspect of change of opinion. It is a well accepted position that the issue of change of opinion is equally relevant for matters in which the reopening is sought beyond four years as it is to cases where the reopening is sought within four years of the end of the relevant assessment year. The material facts of the present writ petitions as also of WP(C) 14562/2006 are identical. Furthermore, the purported reasons which have been issued for the reopening of the assessments in respect of the years involved in the present writ petitions as also the assessment year 2000-01 involved in WP(C) 14562/2006 are common. Therefore, we are of the opinion that these writ petitions are fully covered by the decision in WP(C) 14562/2006 rendered on 10.01.2013. Consequently, the impugned notices dated 03.02.2006 issued under Section 148 of the said Act and all proceedings pursuant thereto are liable to be quashed.

4. We may point out that the learned counsel for the petitioner had drawn our attention to paragraph 24 of the judgment dated 10.01.2013 to indicate that the petitioner had also urged that the deduction under Section 80IA could not be withdrawn midstream inasmuch as it was the first year of deduction which was relevant and until and unless in the first year the deduction was withdrawn there would be no question of

withdrawal of the deduction in a subsequent year. However, that point had not been decided in the said judgment dated 10.01.2013 as it was not necessary for the purposes of quashing the said notices. Same is the case here. We need not examine that aspect of the matter inasmuch as we have already held that the said decision dated 10.01.2013 covers the present case entirely.

5. The learned counsel for the petitioner had also sought to argue an additional point with regard to the illegality of the re-assessment order. The contention raised by the learned counsel for the petitioner was that the petitioner, being a public sector undertaking, had moved an application seeking approval of the Committee On Disputes on 08.03.2006 in respect of the assessment year 1999-2000 to 2002-03. A letter had also been written to the assessing officer informing him of the application made before the Committee on Disputes. That letter was received by the assessing officer on 07.08.2006. The re-assessment orders were passed on 04.08.2006 and were dispatched on 12.08.2006. The argument of the learned counsel for the petitioner is that it is the date of dispatch of an order which is the relevant date and that happened to be 12.08.2006, which was subsequent to the information sent to the

assessing officer that an application seeking COD approval had already been filed. Based on this, the learned counsel for the petitioner submitted that once an application for COD approval had been made, no proceedings could be continued thereafter and the fact that the assessing officer was informed that such an application had been made meant that the assessing officer ought not to have passed the re-assessment order or, at least, ought not to have dispatched the same. This submission was made in the backdrop of the decision of the Supreme Court in ***ONGC Vs. Collector of Central Excise : 1994 (70) ELT 45***.

6. Here, again, we feel that it is not necessary for us to examine this aspect of the matter in view of the fact that the present writ petitions are entirely covered by the decision of this Court which was rendered on 10.01.2013 in WP(C) 14562/2006. We may also observe that even the grossing up issue has been fully dealt with in the said decision dated 10.01.2013 and it covers the grossing up issue raised in these writ petitions.

With these observations and for the foregoing reasons, these writ petitions are allowed and the impugned notices dated 03.02.2006 under

Section 148 of the said Act and all proceedings pursuant thereto are quashed.

BADAR DURREZ AHMED, J

R.V.EASWAR, J

MARCH 07, 2013
vld