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

Date of decision: 7th Sep, 2026

\# **CNR No. DLHC011320362024**

\+ ITA 89/2026

PR COMMISSIONER OF INCOME TAX 4 NEW DELHI

.....Appellant

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

versus

NTPC LTD .....Respondent

Through: Mr. Ved Jain, Mr. Ishan Khandelwal & Mr. Nischay Kantoor, Advocates.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

J U D G M E N T

DINESH MEHTA, J. (*ORAL*)

1. The appeal in hands emanates from order dated 14.02.2024 passed by Income Tax Appellate Tribunal, Delhi Bench ‘E’, New Delhi *(hereinafter referred to as ‘Tribunal’)*, whereby the Tribunal has upheld the order dated 25.09.2014 passed by the Commissioner of Income Tax (Appeals) *(hereinafter referred to as ‘CIT(A)’) vide* which the assessment order dated 28.03.2013, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 *(hereinafter referred to as ‘the Act of 1961’)* had been set aside.

2. Narrated precisely, the facts are that the appellant’s scrutiny

assessment for the assessment year 2007-08 was made by the Assessing Officer on 31.10.2007, whereafter a notice under Section 148 of the Act of 1961 was issued on 23.03.2012.

3. The initiation of said proceedings under Section 148 culminated into an order of assessment dated 28.03.2013 passed under Section 143(3) read with Section 147 of the Act of 1961, whereby additions on two counts were made against the respondent-assessee (i) Oil and Gas Exploration expenses of Rs. 7,70,00,000/- and (ii) preliminary expense of Rs. 9,89,12,000/-.

4. The respondent-assessee assailed the above referred assessment order by way of an appeal before the CIT(A), who vide its order dated 25.09.2014, set aside the reassessment proceedings by holding that the same were nothing but mere change of opinion. The revenue assailed the order of the Appellate Authority before the Tribunal by way of an appeal which appeal was rejected by the Tribunal *vide* order under challenge.

5. Ms. Naincy Jain, learned Junior Standing Counsel for the department submitted that the Tribunal has erred in rejecting department's appeal without considering merit of the additions. She contended that the Assessing Officer has committed no error of law in making additions on the above-mentioned 2 counts. Her argument has been that since the order of the predecessor Assessing Officer (dated 27.02.2009) suffered from legal infirmity, the subsequent Assessing Officer was justified in initiating reassessment proceedings.

6. She highlighted that there are catena of judgments of this Court that simply because the first assessment was made under Section 143(3) of the Act of 1961, the Assessing Officer is not precluded from initiating reassessment proceedings.

7. Mr. Nischay Kantoor, learned counsel for the respondent-assessee, on the other hand, submitted that the CIT(A) has recorded a clear finding that during the course of reassessment proceedings under Section 143(3) of the Act of 1961, the Assessing Officer had examined each aspect, including the issues relating to the Oil and Gas Exploration expenses and the Preliminary expenses and had issued a questionnaire in this regard and being satisfied, did not made any addition.

8. He argued that it is wrong to contend that specific question was not raised. He reiterated that the initiation of reassessment proceedings was nothing but a mere change of opinion and fell foul to catena of decisions of this Court and Hon'ble the Supreme Court.

9. Learned counsel placed for perusal of the Court, reasons for reassessment recorded by the Assessing Officer on 23.03.2012 and submitted that a simple look at the reasons shows that the same is a classic case of change of opinion.

10. Heard learned counsel for the parties.

11. A copy of the reasons so produced by Mr. Nischay Kantoor, learned Counsel for the respondent, is taken on record. The same is reproduced here *in-extenso* for the sake of ready reference:

> *"The original return declaring an income of Rs. 3794,55,74,739/- was filed on 30.10.2007. The revised return was filed on 31.10.2008 showing the total income of Rs. 2904,74,27,013/-. Assessment u/s 143(3) of the IT Act was made on 27.02.2009 at an income of Rs. 7786,34,59,000/-.*
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> *2. The scrutiny of the assessment record revealed following:-*
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> *(a) The assessee had claimed and allowed Rs. 7,70,00,000/- on account of Oil and Gas exploration expenses. As this gave an enduring benefit to the assessee, therefore, it should have been capitalized and added back to the income of the assessee. This mistake resulted in under assessment of income of Rs.*

7,70,00,000/- involving short levy of tax of Rs. 3,18,79,386/-.
(b) The assessee had debited preliminary expenses of Rs. 9,89,12,000/- under the head survey and investigation expenses written off in the profit and loss account. These expenses were deferred in 5 equal installments and after allowing 1/5th expenses of Rs. 1,97,82,400/- for the year balance expense of Rs. 7,91,29,600/- should have been disallowed. The mistake resulted in under assessment of income of Rs. 7,91,29,600/- involving short levy of tax of Rs. 3,27,61,078/-.
(c) As per Schedule 25 of profit and loss account, Rs. 20,20,00,000/- was shown as prior period income of the assessee, but the AO had added back Rs. 10,90,00,000/- only (after adjusting prior period expenses) instead of Rs. 20,50,00,000/-. As the assessee was following mercantile system of accounting, any income, which is received or deemed to be received, or which accrues during the previous year was to be added back to the income of the assessee. Therefore, prior period income of Rs. 9,30,00,000/- (Rs. 20,20,00,000 Rs. 10,90,00,000) should have been added back to the income of the assessee. The mistake resulted in under assessment of income of Rs. 9,30,00,000/- involving short levy of tax of Rs. 3,85,03,674/-.
3. I therefore, have reasons to believe that on account of failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment for the A. Y. 2007-08, an income of Rs. 24,91,29,600/-, has escaped assessment within the meaning of proviso to Section 147 of the Act."

12. A simple look at the above-quoted reasons leaves no manner of doubt that the Assessing Officer had initiated proceedings simply because he did not agree with the view which his predecessor had taken.

13. On perusal of para 4.2 of the order of the CIT(A), we find that the CIT(A) has recorded that the assessee had given answer to query nos. 7 & 8 during the course of filing its reply dated 24.02.2009 *qua* all the three reasons for which the reassessment proceedings were initiated.

14. Simply because the CIT(A) has not reproduced or recorded the corresponding question in its order dated 25.09.2014, it does not mean that

the Assessing Officer had not put any question raised any query in this regard.

15. We find ourselves unable to accept such contention of the revenue that no question relating to those issues was asked during scrutiny assessment. Had no question in this regard been put, the respondent-assessee had no occasion or requirement of giving or filing such reply before the Assessing Officer, during the assessment proceedings.

16. In view of the aforesaid and considering that the assessee had furnished satisfactory reply and the Assessing Officer being satisfied with the reply, furnished by the assessee during the course of scrutiny assessment, had chosen not to make any addition, the subsequent incumbent in the office, in our opinion, was not justified in initiating reassessment proceedings.

17. According to us, both the Appellate Authorities were fully justified in annulling the reassessment proceedings. We do not find any error in the orders passed by the CIT(A) so also by the Tribunal.

18. The appeal is, therefore, rejected.

DINESH MEHTA
(JUDGE)

RAJNEESH KUMAR GUPTA
(JUDGE)

SEPTEMBER 7, 2026/*nk*