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IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI

BEFORE SHRI K.C. SINGHAL AND SHRI G.S. PANNU

M.A. Nos.492 & 493/ Del of 2004
(In I.T.A Nos.1377 & 2188/Del of 2002)
Assessment Years: 1998-99 & 1999-2000

M/s National Thermal Power,
Corporation Ltd., New Delhi.

Vs
ACIT, Special Range-III,
New Delhi.

Applicant

Respondent

Applicant by: S/Shri S.E. Dastur, R. Muralidhar & Sanjeev Sapra
Respondent by: Shri Alok Kumar

ORDER

PER SINGHAL: JM

19/11/04
DGM (CF) Tax
3/12

By these miscellaneous applications, the assessee seeks rectification in the impugned order of the Tribunal dated 26th may, 2004 by submitting that mistake apparent from record has been committed by not adjudicating the alternate plea raised by the learned counsel for the assessee to the effect that various receipts ought to have been reduced from the income on the basis of net receipts in view of the decision of Special bench in the case of Lalsons Enterprises, 89 ITD 25 for the purpose of computing relief u/s 80IA. He has drawn our attention to written synopsis to point out that such plea was raised by him at the time of hearing. On the other hand, the learned DR has nothing to say in this regard except to rely on the order of the Tribunal.

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2. We have gone through our record and find that this plea was taken by the learned counsel for the assessee as is apparent from the written synopsis filed before us as well as copy of the order of Special bench in the case, of Lalsons Enterprises placed on the file. Hence, the order suffers from mistake apparent from record. Accordingly, we proceed to rectify the same.
3. The alternate plea of the assessee regarding netting of income is fully supported by the decision of the Special bench in the case of Lalsons Enterprises (supra). The Tribunal has held that netting would be allowed provided there is a direct nexus between the income earned and the expenditure incurred by the assessee. This aspect requires verification. Accordingly, the AO is directed to consider this alternate plea of the assessee after examining the facts of the case in the light of the aforesaid special bench decision.
4. In the result, Miscellaneous Application filed by the assessee stands allowed.

sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

sd/-
(K.C. SINGHAL)
JUDICIAL MEMBER

Dated: 11/11 November, 2004
Vijay

Copy to:

1. National Thermal Power Corpn. Ltd., Core-7, SCOPE Complex, 7, Institutional Area, Lodi Road, New Delhi.
2. ACIT, Special Range-III, New Delhi.
3. CIT
4. CIT(A)-XVI, New Delhi.
5. DR

Deputy Registrar

उप पंजीकार
Deputy Registrar
आयकर अपीलिय अदालत
Income Tax Appellate Tribunal
नई दिल्ली
New Delhi