

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No(s). 4817/2007

M/S N.T.P.C.LTD.

Appellant(s)

VERSUS

CENTRAL ELECTRICITY REGULATORY COMMISSION & ANR.

Respondent(s)

O R D E R

We have heard Mr. M.G. Ramachandran, learned counsel appearing for the appellant and the learned counsel appearing for Respondent No.2 at length today.

As it appears from the facts that the Tanda Thermal Power Station was acquired by the appellant - herein under a Statutory Transfer Scheme notified by the Government of Uttar Pradesh in exercise of the powers vested under the Uttar Pradesh Electricity Reforms Act, 1999 on 14-1-2000 from the Uttar Pradesh State Electricity Board which is the predecessor of Respondent No.2 - herein, at a cost of Rs.607.00 Crores.

It is not in dispute that the transaction between the parties before us is a bona fide one and there is no dispute at all with regard thereto.

The only question which we have to decide in this appeal is whether the appellant - M/s. National Thermal Power Corporation Limited, for the purpose of depreciation, was entitled to consider any value other than the transfer consideration paid by the appellant or the amount as has been specifically directed by the Central Electricity Regulatory Commission in its impugned Judgment.

It appears to us that in pursuance of the powers vested under Section 23 of the Uttar Pradesh State Electricity Reforms Act, 1999, the State Government issued the Uttar Pradesh Reforms (Transfer of Tanda Generating Undertaking) Scheme, 2000 and by virtue of the said Statutory Scheme, the Tanda Thermal Power Station was transferred and vested in the State Government and thereafter vested in the appellant - herein on the terms set out in Clause 3 of the Transfer Scheme. The said clause recognized the

consideration for the assets transferred as Rs.1000.00 Crores. However, by another transfer scheme, the Uttar Pradesh State Electricity Board (UPSEB) was re-organized and the power purchase functions of UPSEB came to be vested in Uttar Pradesh Power Corporation Limited (UPPCL). The Tariff Regulations, 2001 framed by the Central Commission under the Electricity Regulatory Commission Act deciding on the terms and conditions of tariff for determination of tariff came into force. It is not necessary for us to deal with such matter and the only question with regard to depreciation has to be dealt with in the matter which has been placed before us by the respective learned counsel appearing for the parties. During the pendency of the review petition before the Commission, Memorandum of Understanding (MOU) reached between the appellant and Respondent No.2 - herein in regard to the consequences of the reduction of capital cost of Tanda Station determined by the Central Commission at Rs.607.00 Crores as against the transfer price of Rs.1000.00 Crores under the Notification dated 14-1-2000 and depreciation of an amount of Rs.175.91 Crores charged upto the date of transfer shall be considered for limiting the cumulative depreciation amount claimed to be 90% of the project cost of Rs.607.00 Crores.

The Central Commission decided the petition which was filed by the appellant - herein and the said Commission modified the Order dated 28-6-2002 in certain aspects. While the Central Commission accepted the transfer price of Rs. 607.00 Crores but for the purpose of depreciation restricted the computation to Rs.431.09 Crores. Challenging the said Order of the Commission, the appellant approached this Court and the said question has to be decided by us.

We have applied the principles of accountancy in the matter in question and further taking into consideration the decisions which have been submitted by Mr. M.G. Ramachandran, learned counsel appearing for the appellant who had pointed out that what is relevant is the purchase consideration paid by the NTPC which is admittedly Rs.607.00 Crores and not Rs.431.09 Crores. The Appellate Tribunal, according to him, has wrongly distinguished the decision

of this Hon'ble Court relied upon by the appellant before the said Tribunal which is reported in AIR 1959 SC 1232 (Jogta Coal Company vs. Commission of Income Tax) and another decision reported in (1972) 2 SCC 436 (Guzdar Khajura Coal Mines Limited vs. Commissioner of Income Tax) wherein it has been laid down that the purchase value should be the basis for computing the depreciation.

The Appellate Tribunal has merely stated that the treatment for depreciation under the Income Tax Act and for determination of tariff under the Electricity Act are different. However, such point which has been decided by the Tribunal, in our considered view, cannot come within the purview of accounting principle and, therefore, it has been noted that the Judgments which have been relied upon before us substantially support the claim of the appellant - herein and accordingly, we set aside the order so passed by the Tribunal. As a consequence thereof, whatever consequential orders are necessary to be passed in the matter, the concerned Authorities shall take necessary steps in the matter.

The appeal is allowed in the afore-stated terms.

.....J
(PINAKI CHANDRA GHOSE)

.....J
(DEEPAK GUPTA)

NEW DELHI;
22nd MARCH, 2017.

ITEM NO.103

COURT NO.6

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 4817/2007

M/S N.T.P.C.LTD.

Appellant(s)

VERSUS

CENTRAL ELECTRICITY REGULATORY COMMISSION & ANR. Respondent(s)

(With Office Report)

Date : 22/03/2017 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE

HON'BLE MR. JUSTICE DEEPAK GUPTA

For Appellant(s)

Mr. M.G. Ramachandran, Adv.

Mr. K. V. Mohan, AOR

Ms. Pooja Saigal, Adv.

For Respondent(s)

Mr. Pradeep Misra, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

(VISHAL ANAND)
COURT MASTER

(SNEH LATA SHARMA)
COURT MASTER

(Signed Order is placed on the file)