

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “A” BENCH, AHMEDABAD**

**BEFORE SHRI P.M. JAGTAP, VICE PRESIDENT AND  
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.2081/Ahd/2012  
Assessment Year: 2008-09**

Uttar Gujarat Vij Company Ltd., vs. Income Tax Officer,  
Visnagar Road, Ward – 4(4), Baroda.  
Mehsana – 384 001.  
[PAN – AAACU 6551 F]

**ITA No.2570/Ahd/2014  
Assessment Year: 2011-12**

Uttar Gujarat Vij Company Ltd., vs. Asstt. Commissioner of Income Tax  
Visnagar Road, Circle-4, Baroda.  
Mehsana – 384 001.  
[PAN – AAACU 6551 F]

**ITA No.2523/Ahd/2014  
Assessment Year: 2011-12**

Asstt. Commissioner of Income Tax vs. Uttar Gujarat Vij Company Ltd.,  
Circle-4, Baroda. Visnagar Road,  
Mehsana – 384 001.  
[PAN – AAACU 6551 F]

**ITA No.295/Ahd/2016  
Assessment Year: 2008-09**

Asstt. Commissioner of Income Tax vs. Uttar Gujarat Vij Company Ltd.,  
Circle-4, Baroda. Sardar Patel Vidyut Bhavan,  
Race Course Circle,  
Baroda.  
[PAN – AAACU 6551 F]  
(Appellants) (Respondents)

Assessee by : Shri M.K. Patel, A.R.  
Revenaeue by : Shri Vijay Kumar Jaiswal, CIT DR

Date of hearing : 27.06.2022  
Date of pronouncement : 20.07.2022

**ORDER**

**PER SUCHITRA KAMBLE, JUDICIAL MEMBER :**

Out of these four appeals, ITA No.2081/Ahd/2012 is filed by the assessee against order dated 07.06.2012 passed by the CIT(A)-III, Baroda for the A.Y. 2008-09, ITA Nos.2570/Ahd/2014 & 2523/Ahd/2014 are cross appeals filed by the assessee and Revenue respectively against order dated 20.06.2014 passed by the CIT(A)-III, Baroda for A.Y. 2011-12 and ITA No.295/Ahd/2016 is filed by the Revenue against order dated 13.11.2015 passed by the CIT(A)-2, Vadodara for the A.Y. 2008-09. All these appeals were heard together and, therefore, as a matter of convenience, all these four appeals are being disposed of by way of this consolidated order.

2. First we take up the appeal filed by the assessee for the Assessment Year 2008-09 i.e. ITA No.2081/Ahd/2012 and the grounds raised in this appeal are reproduced as under :-

- “1.0 *The learned Commissioner of Income Tax (Appeals) erred in law and on facts has confirmed the reduction of the amount of Capital Grants & Subsidies and Consumers' Contribution aggregating to Rs.2,76,74,39,000/- from the total cost of the Plant & Machinery for the purpose of allowing depreciation and has thereby confirmed the restriction of the appellant's claim of depreciation to Rs.41,46,04,133/- as against Rs.77,03,58,974/- claimed by the appellant.*
- 2.0 *The Commissioner of Income Tax (Appeals) erred in law and on facts has confirmed the disallowance amounting to Rs.35,000/- under the head small & low value items written off on the ground that the same is not revenue expenditure.*
- 3.0 *The Commissioner of Income Tax (Appeals) erred in law and on facts has confirmed the disallowance of Miscellaneous losses and write offs amounting to Rs.18,98,964/- on the ground that the claim has not been substantiated by any documentary evidences.*
- 4.0 *The Commissioner of Income Tax (Appeals) erred in law and on facts has set aside the issue relating to the additions of Rs.13,95,25,000/- accounted as prior period income already taxed as income in earlier years despite the fact that all the facts necessary for deciding the issue were submitted at the time of hearing of the appeal.*

*5.0 The learned Commissioner of Income Tax (Appeals) erred in law and on facts has dismissed the ground relating to the initiation of penalty proceedings under section 271(1)(c) of the I T Act.”*

3. Facts are that the assessee is engaged in distribution of electricity in villages/form and city (rose) areas in 9 districts of Gujarat. The assessee company is wholly owned subsidiary of Gujarat Urja Vikas Nigam Limited (erstwhile Gujarat Electricity Board). The return of income was filed on 30.09.2008 declaring total income at Nil. Subsequently, the return was revised 4 times, twice on 24.03.2009 and twice on 29.04.2009. The case was selected for scrutiny assessment and notice under Section 143(2) was issued on 17.08.2009. The first notice under Section 142(1) was issued on 30.07.2010 along with questionnaire. The assessee filed its details/information before the Assessing Officer. The Assessing Officer has made the addition of Rs.8,88,31,839/- on account of disallowance of excess depreciation, addition of Rs.35,000 in respect of miscellaneous expenses as well as made addition of Rs.29,64,000/- towards extra ordinary items towards losses on account of flood, cyclone, fire etc. and addition of Rs.18,98,964/- towards miscellaneous losses and write-offs.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR at the time of hearing submitted that as regards ground no.1, the same is to be restored to the file of the Assessing Officer as in the earlier yea i.e. A.Y. 2008-09 in case of Madhya Gujarat Vij Company Limited vs. ITO (ITA No.1709/Ahd/2012) the similar issue was remanded back to the file of the Assessing Officer with the directions that the Assessing Officer should determine the proportionate amount and grant relating to each asset in respect of capital subsidy grant as well as consumers' contribution as capital in nature.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. The facts of the present assessee's case are identical to that of Madhya

Gujarat Vij Company Limited (supra) decided by the Tribunal. Here also, the uniform rate of 15% was adopted by the CIT(A). As per provisions of Section 43(1) of the Act the capital grant should be reduced from the cost/WDB of the relevant asset and thereafter the depreciation has to be calculated which is capital grant receipt in respect of asset on which depreciation is allowable at the rate different from 15% should be worked out as per the applicable rate. Here also the Ld. DR could not point out any mistake in the above submissions of the assessee which are in consonance with law. Therefore, we restore the matter back to the file of Assessing Officer for adjudication after verifying the proportionate amount and grant relating to different asset and applying the actual rate of depreciation which relate to these assets. Ground no.1 is partly allowed for statistical purpose.

8. As regards Ground no.2 relating to disallowance amounting to Rs.35,000/-, the Ld. AR submitted that similar issue has been allowed by the Tribunal in Madhya Gujarat Vij Company Limited (supra)

9. Ld. DR relied upon the assessment order and the order of the CIT(A).

10. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee had claimed Rs.35,000/- towards small and low value items written off under the head "other misc expenses" in the Profit & Loss account and the same was properly quantified by the assessee. Similar expenses were allowed in subsidiary company i.e. Madhya Gujarat Vij Company Limited (supra). The facts are identical and hence ground no.2 is allowed.

11. As regards ground no.3 relating to disallowance of miscellaneous losses and write-offs amounting to Rs.18,98,964/-, Ld. AR submitted that similar loss and write-offs were allowed in case of subsidiary company of the assessee by the Tribunal.

12. The Ld. DR relied upon the assessment order and the order of the CIT(A).

13. We have heard both the parties and perused all the relevant material available on record. In the subsidiary company of the assessee, similar miscellaneous losses

and write-offs were allowed on the ground that these losses are on account of loss of materials through pilferage, shortage of material in transit, shortage arising on physical verification, obsolescence of material/stores, loss in sale of scrap etc. These are loss which incurred in the day-to-day business activities and is purely revenue in nature. Thus, following the observation made in Madhya Gujarat Vij Company Limited (supra) by the Tribunal the facts are similar in the present assessee's case as well. Hence, ground no.3 is allowed.

14. As regards ground no.4 relating to addition of Rs.13,95,25,000/- accounted as prior period income which is already taxed as income in earlier years, the Ld. AR submitted that this prior period income were already taxed by the Revenue in earlier year and cannot be made as addition in the present A.Y. as it will amount to double taxation.

15. Ld. DR relied upon the assessment order and the order of the CIT(A).

16. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the CIT(A) has directed the Assessing Officer to verify the contentions of the assessee and if the prior period income was already taxed then the said relief should be granted to the assessee in the present Assessment Year. There is no need to interfere with the said finding and the Assessing Officer was rightly directed to verify the issue, so if any prior period income was already taxed then the said relief should be given to the assessee. Ground no.4 is dismissed.

17. As regards ground no.5, the same is not pressed by the Ld. AR and hence dismissed.

18. Thus, ITA No.2081/Ahd/2012 filed by the assessee is partly allowed for statistical purposes.

19. As regards appeal filed by the assessee for the Assessment Year 2011-12 i.e. ITA No.2570/Ahd/2014, the grounds raised in this appeal are reproduced as under :-

- “1.0 *The learned Commissioner of Income Tax (Appeals) erred in law and on facts has confirmed the additions of Rs.28,81,30,950/- on account of Capital Grants & Subsidies and Consumers' Contribution on the ground that the appellant should transfer 15% of the total Grants/subsidies/consumer contribution received during the year as against 10% offered by the appellant.*
- 2.0 *The learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the additions with respect to the interest income from other loans amounting to Rs.1,35,74,000/-/Rs.69,50,000/- (????) as income from Other Sources as against the Business income.*
- 3.0 *The learned Commissioner of Income Tax (Appeals) erred in law and on facts has dismissed the ground relating to charging interest under section 234B and 234C of the Income Tax Act, 1961.”*

20. The Ld. AR submitted that ground no.1 is identical to ground no.1 of A.Y. 2008-09, therefore, as per the direction given by us hereinabove we are remanding back this issue to the file of the Assessing Officer with the similar observations. Hence, ground no.1 in A.Y. 2011-12 in assessee's appeal is partly allowed for statistical purposes.

21. As regards ground no.2 relating to addition in respect of interest income from other loans amounting to Rs.69,50,000/- as income from other sources as against the business income, the Ld. AR submitted that the loan to staff members and the interest incurred from the said loans are in the nature of business income as the staff members are part and parcel of the business activities of the assessee.

22. Ld. AR relied upon the decision of the Hon'ble High Court of Orissa in the case of Odisha Power Generation Corporation Limited vs. ACIT (ITA Nos.1, 2, 3 of 2015 and ITA Nos.24 & 25 of 2009 order dated 11.03.2022) wherein the interest income earned by the company from advance given to its employees are considered to be part of business income as per the contentions of the Ld. AR. Ld. AR also relied upon the decision of Ahmedabad Tribunal in the case of Gujarat Energy Transmission Corporation Limited vs. DCIT (ITA No.3441/Ahd/2015 order dated 30.09.2020) wherein the interest on staff loan advances were part of the business income and the Tribunal has directed the Assessing Officer to verify the same in light of decision of

Hon'ble Gujarat High Court in the case of Gujarat Urja Vikas Nigam Limited vs. CIT vide Tax Appeal No.63/2020, order dated 16.03.2020.

23. The Ld. DR submitted that the loans and advances are not part of business and, therefore, interest income derived from these loans and advances is rightly come under the head income from other sources. Ld. DR relied upon the Assessment Order and the order of the CIT(A).

24. We have heard both the parties and perused all the relevant material available on record. The Hon'ble High Court of Gujarat in the case of Gujarat Urja Vikas Nigam Limited (supra) has categorically held that the interest earned on loan and advance from deposits with Mega Power Project towards SITS sharing and power are directly related to business of the assessee. But the said component does not include interest on small loans and advances. The decision given by the Ld. AR in case of Odisha Power Generation Corporation Limited vs. ACIT (supra) has also not specifically mentioned about the nomenclature of interest derived from loans and advances to the staff. Though the contentions of the assessee therein were quoted by the Hon'ble Orissa High Court but whether the same was accepted is not mentioned in the order. Thus, the decisions quoted by the Ld. AR will not be helpful in the present assessee's case. Loans to staff members cannot be treated as business expenses and therefore interest on these loans and advances given to staff members cannot be treated as business income. The CIT(A) has given detailed finding to this issue and there is no need to interfere with the same. Ground no.2 for A.Y. 2011-12 filed by the assessee is dismissed.

25. As regards ground no.3 related to charging of interest under Section 234B & 234C, the same is consequential, hence not adjudicated at this juncture.

26. Thus, ITA No.2570/Ahd/2014 filed by the assessee for A.Y. 2011-12 is partly allowed for statistical purposes.

27. As regards appeal filed by the Revenue for the Assessment Year 2011-12 i.e. ITA No.2523/Ahd/2014, the grounds raised in this appeal are reproduced as under :-

- “1(i) *On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition of Rs.2,75,95,00,000/- made by the AO on account of disallowance of increase in power purchase cost by erroneously holding that the assessee had been able to prove the genuineness of entire purchase cost of fuel power debited in its books of account without appreciating the fact that the assessee had failed to furnish any documentary evidences in support of its claim of power purchase and the plea of the assessee during the remand proceedings before the AO that the reason of increase in power purchase cost was due to increase in number of unit was altogether a new which clearly implies that the assessment proceedings were not taken seriously by the assessee and it is a case of deliberate negligence on the part of the assessee to provide explanation and evidences called for by the AO.*
- (ii) *On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deciding the appeal on the rejoinder submitted by the assessee to the remand report of the AO without according any opportunity to the AO to comment on the rejoinder of the assessee.*
2. *On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in treating income from miscellaneous receipts of Rs.10,01,86,000/- as business income instead of Income from other sources as by the AO by merely accepting the submission of the assessee and out appreciating the fact that the assessee had failed to substantiate its with cogent and acceptable reasons and documentary evidence.”*

28. In this appeal ground no.1 related to deleting addition of Rs.2,75,95,00,000/- on account of disallowance and increase in power purchase cost. The Ld. DR submitted that the purchase claim made by the assessee is without any support of documentary evidences and the assessee failed to prove genuineness of the entire purchase cost of fuel power debited in its books of account. Ld. DR submitted that the CIT(A) failed to appreciate that the assessee has not given the details of purchase cost before the Assessing Officer.

29. The Ld. AR relied upon the order of the CIT(A).

30. We have heard both the parties and perused all the relevant material available on record. There is a categorical finding given by the CIT(A) after calling the remand report from the Assessing Officer that the assessee furnished ledger account of power purchase, reconciliation of actual and estimated units of power purchase, together

with copies of journal vouchers and invoices for power purchase which were not produced before the Assessing Officer at the time of assessment proceedings. The CIT(A) further observed that the claim of the assessee was rightly proved with the additional bills, reconciliation of bills and invoices was produced before the CIT(A). In the remand report the Assessing Officer has not pointed out any discrepancy to these details but simply submitted that the addition be sustained without verifying these documents. The CIT(A) has given detailed finding and there is no need to interfere with the same. Hence, ground no.1 of Revenue's appeal for A.Y. 2011-12 is dismissed.

31. As regards ground no.2 of Revenue's appeal for AY 2011-12 related to income from miscellaneous receipts of Rs.10,01,86,000/- as business income instead of income from other sources, the Ld. DR submitted that the CIT(A) has merely accepted these submissions without taking cogent and acceptable reason in consonance with the documentary evidences produced by the assessee.

32. Ld. AR relied upon the order of the CIT(A) and submitted that these miscellaneous receipts from customers and suppliers are in respect of penalty and other charges and thus the same is rightly deleted by the CIT(A).

33. We have heard both the parties and perused all the relevant material available on record. The miscellaneous receipts received from the assessee from the customers/suppliers relating to penalty and other charges were received during the regular course of business of the assessee and thus the same are taxed as business income. The evidences produced by the assessee during the assessment proceedings were totally ignored by the Assessing Officer and hence the CIT(A) has rightly directed the Assessing Officer to tax this amounts as business income. There is no need to interfere with the findings of the CIT(A). Ground no.2 of Revenue's appeal for A.Y. 2011-12 is dismissed.

34. Thus, ITA No.2523/Ahd/2014 filed by the Revenue for A.Y. 2011-12 is dismissed.

35. Now we take up ITA No. No.295/Ahd/2016 for A.Y. 2008-09 filed by the Revenue, grounds of which are reproduced as under :-

- "1 Whether on the facts and in the circumstances of the case and in law, the CIT(A) was correct in deleting penalty u/s.271(1)(c) of the Act amounting to Rs.3,01,94,000/- without appreciating the fact that prior to substituted explanation 04 to Section 271 of the Act w.e.f. 01.04.2016, penalty u/s. 271(1)(c) of the Act is leviable on income in respect of which particulars have been concealed or inaccurate particulars have been furnished and has the effect of reducing the loss declared in the return.*
- 2. Whether on the facts and in the circumstances of the case and in law, the CIT(A) was correct in deleting penalty u/s.271(1)(c) of the Act amounting to Rs.3,01,94,000/- without appreciating the fact that prior to substituted explanation 04 to Section 271 of the Act w.e.f. 01.04.2016, section 271(1)(c) of the Act did not debar the A.O. from levying penalty u/s. 271(1)(c) of the Act, just because the assessee had paid tax on the income computed under deeming provision of section 115JB of the Act."*

36. As regards this appeal filed by the Revenue for A.Y. 2008-09 related to penalty in respect of excess depreciation which was disallowed by the Assessing Officer, in light of ITA No.2081/Ahd/2012 in respect of Ground no.1 therein we are remanding back the main quantum issue to the file of the Assessing Officer. Therefore, the penalty issue at present does not sustain. Besides this, the CIT(A) has rightly deleted the penalty as the final computation under Section 115JB of the Act and disallowance of depreciation made by the Assessing Officer had no effect on income computed under Section 115JB of the Act. Hence, ITA No.295/Ahd/2016 for A.Y. 2008-09 filed by the Revenue is dismissed.

37. In the result, ITA No.2081/Ahd/2012 for A.Y. 2008-09 and ITA No.2570/Ahd/2014 for A.Y. 2011-12 filed by the assessee are partly allowed for statistical purposes. ITA No. 2523/Ahd/2014 for A.Y. 2011-12 and ITA No. 295/Ahd/2016 for A.Y. 2008-09 filed by the Revenue are dismissed.

Order pronounced in the open Court on this 20<sup>th</sup> day of July, 2022.

*Sd/-*  
**(P.M. JAGTAP)**  
Vice President

*Sd/-*  
**(SUCHITRA KAMBLE)**  
Judicial Member

**Ahmedabad, the 20<sup>th</sup> day of July, 2022**

**PBN/\***

*Copies to:* (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Ahmedabad benches, Ahmedabad*