

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA Nos: 330 & 331/Ahd/2023
Assessment Years: 2017-18 & 2018-19**

Dakshin Gujarat Vij Co. Ltd. ADD: Urja Sadan, Nana Varachha Road Kaposara, Char Rasta, Surat-395006, Gujarat PAN: AABCD8912C (Appellant)	Vs	The DCIT, Circle-1(1)(1), Vadodara (Respondent)
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**ITA Nos: 404 & 405/Ahd/2023
Assessment Years: 2017-18 & 2018-19**

The ACIT, Circle-1(1)(1), Vadodara (Appellant)	Vs	Dakshin Gujarat Vij Co. Ltd. ADD: Urja Sadan, Nana Varachha Road Kaposara, Char Rasta, Surat-395006, Gujarat PAN: AABCD8912C (Respondent)
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**Assessee Represented : Shri M.K. Patel, Adv.
Revenue Represented : Shri Kamlesh Makwana, CIT-DR**

Date of hearing : 24-01-2024
Date of pronouncement : 31-01-2024

आदेश/ORDER

PER T.R. SENTHIL KUMAR :-

These cross appeals are filed by the Assessee and Revenue as against separate appellate orders both dated 30.03.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as “CIT(A)”), arising out of the assessment orders passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) relating to the Assessment Years (A.Ys) 2017-18 & 2018-19. Since common issues are involved in all these appeals, the same are disposed of by this common order.

2. We take up ITA No. 330/Ahd/2023 (Assessee’s appeal) relating to the Assessment Year 2017-18 as the lead case. The brief facts of the case is that the assessee is a company engaged in the business of distribution of electricity. The assessee company filed its e-Return of Income on 26.10.2017 declaring Nil income after setting off unabsorbed depreciation loss to the extent of Rs.36,26,50,987/, but a book profit of Rs.136,80,76,197/-. The case was selected for scrutiny and assessment order u/s. 143(3) was passed on 30.12.2019 by making additions and disallowances in the assessment order as follows:

1	<i>Addition on account of Govt. Grant</i>	<i>Rs. 60,71,40,000/-</i>
2	<i>Consumer Contribution towards cost of capital asset</i>	<i>Rs. 88,88,08,000/-</i>
3	<i>Disallowance of additional depreciation</i>	<i>Rs.49,52,66,000/-</i>
4	<i>Capitalization of interest on Capital work in progress</i>	<i>Rs.16,37,41,000/-</i>

2.1. Similarly additions made on account of computation of book profit u/s. 115JB namely addition on account of [i] Govt. Grant of Rs.60,71,40,000/- and [ii] Consumer Contribution towards cost of capital asset Rs.88,88,08,000/-. Thus the Assessing Officer determined the total income under normal computation at Rs.251,76,05,987/- and book profits u/s. 115JB at Rs.286,40,24,194/-.

3. Aggrieved against the assessment order, the assessee filed an appeal before Ld. CIT(A), who is partly allowed the assessee appeal and partly confirmed the addition. Aggrieved against the appellate order, both the Assessee and Revenue are in appeal before us.

3.1. The Grounds of Appeal are raised by the Assessee in ITA No. 330/Ahd/2023 are as follows:

1.0 The learned Commissioner of Income Tax (Appeals) erred in law and on facts has confirmed the additions of Rs.60,71,40,000/- on account of Capital Grants & Subsidies and Rs.88,88,08,000/- on account of 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.

The learned Commissioner (Appeals) erred in law and on facts in not considering that the facts of the year under consideration were totally different from that of all the earlier years where similar additions were made.

1.1 The learned Commissioner of Income Tax (Appeals) erred in law and on facts has confirmed similar additions made under section 115JB of the IT Act despite the fact that in all the earlier years the additions have been deleted.

2.0 The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in confirming that the appellant is not eligible for additional depreciation amounting to Rs.49,52,66,000/- as per section 32(1)(ia) of the IT Act on the flimsy ground that no details were submitted to show that conditions for claiming additional depreciations were satisfied.

2.1 The learned Commissioner of Income Tax (Appeals) ought to have appreciated that all the conditions stated to have been remained unsatisfied were duly verified and examined while allowing the normal claim of depreciation.

3.0 The learned Commissioner of Income Tax (Appeals) erred in law and on facts has confirmed the additions of the interest income from staff loans and advances amounting to Rs.83,43,000/-, Sale of Scrap amounting to Rs.8,08,000/- and Miscellaneous Receipts amounting to Rs.19,75,52,000/- treating the same as income from other sources.

4.0 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 270A of the IT Act.

5.0 The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in confirming the charging of interest under section 234A, 234B, 234C and 234D of the Income Tax Act, 1961.

6.0 The appellant craves leave to add to, alter, delete or modify any of the ground of appeal either before or at the time of hearing of this appeal.

3.2. At the out set, the Ld. Counsel Sri. Mehul K. Patel appearing for the assessee submitted that the issues in the appeals are mostly covered by the Co-ordinate Bench decisions on identical issues in assessee's own case in ITA No. 2858/Ahd/2015 and Ors. dated 22.07.2022 relating to the Assessment Years 2010-11 to 2012-13 and ITA No.553 to 555/Ahd/2020 and Ors. dated 17.02.2023 relating to the Assessment Years 2013-14 to 2015-16. Ld CIT DR Shri Kamlesh Makwana appearing for the Revenue also confirmed the same.

4. **Ground no. 1:** Confirming the addition of 15% Capital Grants as against 10% offered by the assessee. The Ld. Assessing Officer made addition of Rs. 60,71,40,000/- on account of Capital Grants and Subsidies and Consumers' Contribution of Rs.88,88,08,000/=

on the ground that the assessee should transfer 15% of the total Grants/subsidies/consumer contribution received during the year as against 10% offered by the assessee. The Assessing Officer followed the earlier assessment year and thereby made the disallowance, which has been confirmed by the Ld. CIT(A). Hence the assessee is in appeal before us.

4.1. Ld. Counsel for the assessee submitted that this issue was considered by the Co-ordinate Bench of this Tribunal in assessee's own case in ITA Nos.553 to 555/Ahd/2020 and Ors. dated 17.02.2023 which has followed earlier years order in ITA No.2858/Ahd/2015 and Ors. dated 22.07.2022 relating to the Assessment Years 2010-11 to 2012-13 wherein this issue was set aside to the Ld. A.O. as follows:

"..... 16. We find that on the identical issue as submitted by the Ld. A.R. in ITA No. 652/Ahd/2013 for A.Y. 2009-10 the Coordinate Bench has been pleased to set-aside the issue to the file of the Ld. AO for adjudication afresh for verifying the proportionate amount of grant relevant to different asset. The relevant observation of the Coordinate Bench is as follows:

"13. The Learned AO finalized the issue by making an addition of Rs.24,17,88,400/- which was, in turn, confirmed by the Learned CIT(A) and added to the total income of the assessee. While confirming the addition, the Learned CIT(A) observed as follows:

"6.3 I have considered the submissions. It has been accepted by the appellant that the grants were for capital purpose and for capital projects specified by the Government. In Schedule-3 of the printed balance sheet as on 31.3.2009, it is clearly mentioned that grants were towards cost of capital assets. Appellant's contention that the grants were not actually for meeting cost of assets is therefore not at all tenable. After insertion of Explanation 10 below section 43(1) by the Finance (No.2) Act, 1998 w.e.f. 1.4.1999, decisions relied upon by the appellant in the case of P. 3. Chemicals etc. are no longer applicable and cost of assets met

directly or indirectly by the Central Government or State Government in the form of subsidy or grant or reimbursement (by whatever name called) is not to be included in the "actual cost of asset" to the assessee. Accordingly, depreciation is to be allowed only after making necessary adjustment in "written down value"/"actual cost" of block of assets in accordance with Explanation 10 below section 43(1). In the case of Dakshin Gujarat Vij Co. Ltd. for A.Y.2006-07 referred to by the Assessing Officer, CIT(A) distinguished the treatment to be meted out to revenue grants and capital grants and held that revenue grants are to be taxed in entirety in the year of receipt and capital grant towards assets are to be reduced from "actual cost" of assets as per Explanation 10 below section 43(1). In the case of Dakshin Gujarat Vij Co. Ltd., after noting that grants were only towards cost of capital assets, CIT(A) had held that such grants ought to have been reduced from the cost of capital assets and by not doing so, extra depreciation @ 15% of grants had been claimed. Since 10% of the grants had already been offered as income by the assessee, in the decision in the case of Dakshin Gujarat Vij Co. Ltd., CIT(A) had directed addition to be made after reducing income already offered from 15% of the grants. The AO has made addition in the present case as per this appellate order. Hence following the same, the addition made by the AO is upheld and this ground of appeal is dismissed."

However, at the very onset of the proceeding, the Learned AR has taken us to the order passed by the Co-ordinate Bench in ITA No.704/Ahd/2012 for A.Y. 2008-09 in assessee's own case where we find that the issue has been set aside to the file of the Learned AO for adjudication afresh after verifying proportionate amount of grant relating to different asset. The Learned AR prayed for similar relief. The argument advanced by the Learned AR has been failed to be contradicted by the Learned DR. We find following observation was made by the Hon'ble Co-ordinate Bench while granting relief to the assessee:

"15. The ground no.3 of the appeal of the assessee is directed against the order of the CIT(A) in confirming the action of the AO in transferring 15% of the capital grants as income although the disallowance made under this head has been restricted to Rs.18,93,11,850/- as against the disallowance of Rs.30,97,61,800/- made by the AO.

16. The brief facts of the case are that on verification of subsidies and grants, the AO observed that the assessee has shown deferred government grants, subsidies, contribution at Rs.7305.70 lakhs as on 1.4.2007 and the assessee had shown

Rs.15941.67 lakhs at the end of the year i.e. as on 31.3.2008. On show cause by the AO to explain the treatment in accounts of the subsidy, grants the assessee stated that during the year capital grant received from Government of Gujarat and other. The assessee submitted that in order to improve various functions associated with the generation, transmission and distribution of electricity, and also because the PSUs connected with power section were making consistent losses, the Government decided to introduce reforms in the direction of State PSUs. Accordingly, under the provision of Gujarat Electricity Industrial (Reorganisation & Regulation) Act, 2000, the erstwhile GEB was split into seven companies, for the purpose of financial restructuring plan, and the approval was accorded to provide some financial/capital support to GUVNL. The grant was given in terms of the power reforms for the overall development of the power sector. Such grant was not granted to actually meet the cost of assets. Further, the grant was given to the holding company, GUVNL and then it was allocated to the assessee company, one of the subsidiary companies. The assessee was not entitled to an amount beyond a certain limit, even if it is spent large amount on purchase of fixed assets. Further, the grant was not with reference to any particular fixed assets. It was further submitted that the resolution sanctioning the grant nowhere indicated that the grant was meant to offset the cost of the capital assets purchased by the company. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of CIT Vs. P.J. Chemicals Ltd., 121 CTR 201, wherein the decision of the Gujarat High Court in the case of CIT Grace Paper Industries P. Ltd., 83 CTR 1, which was affirmed by the Hon'ble Supreme Court by observing that the amount of subsidies and grants received by the assessee cannot be reduced from the cost of assets. It was further submitted that the subsidy received under scheme cannot be reduced from the actual cost of the assets by applying the provisions of section 43(1) of the Income Tax Act. The AO did not accept the submission of the assessee and held that the submission of the assessee that the grant was not capital in nature, is factually incorrect, and from the resolution, it was clear that the grant received from the State Government was in the nature of capital grant and it should have been reduced from the capital assets. The decisions quoted by the assessee are not applicable after insertion of Explanation 10 of section 43(1) of the Act, as they pertained to earlier years prior to insertion of Explanation 10 of section 43(1) of the Act. After insertion of Explanation 10 of section 43(1) of the Act, the position of law was very clear. Since the assessee failed to reduce the capital grant against the cost of capital assets, and

claimed excess depreciation, which was disallowed and worked out at 15% of the capital assets.

17. On appeal, the CIT(A) held that in assessee's case, 10% of grant under three heads namely "Subsidy towards cost of capital assets", "Grants towards cost of capital assets" and "Consumer contribution for capital assets" i.e. the grants appearing in Schedule -3 of the balance sheet as on 31.3.2008 were offered for tax. The amount of grant on which 10% was calculated was on the opening balance of grants of Rs.73,05,70,492/-, and the grants received during the year was Rs.103,56,34,226/-, aggregating to Rs.176,62,04,718/-. As these grants were towards cost of capital assets, 15% of the same should have been reduced from the depreciation claimed on account of making adjustment in the 'actual cost' of assts as per Explanation 10 below section 43(1). Since the assessee has already offered for tax, 10% of the opening balance of grants plus grants received during the year under these three heads of Schedule-3 grants, such amount offered for tax was to be reduced from the excess depreciation to be disallowed at the rate of 15% of Rs.176,62,04,718/- i.e. Rs.26,49,30,708/-. The net disallowance on this count worked out Rs.26,49,30,708/- minus Rs.17,20,37,655/-, the amount already offered for taxation i.e. Rs.9,28,93,053/-. Since no portion of grant of Rs.6427.94 lakhs being capital grant for capital support appearing in Schedule-2 of the balance sheet as on 31.3.2008 was offered as income nor it was reduced from the cost of assets, 15% of the same i.e. Rs.964.191 lakh needed to be disallowed as excess depreciation claimed in respect of the same. The total disallowance towards excess depreciation, therefore, worked out to Rs.9.289 crores plus Rs.9.641 crores i.e. Rs.18.93 crores. Thus, instead of net addition of Rs.30,97,61,800/- made by the AO, addition of Rs.18.93 crore was directed to be made on this count.

18. Before us, the AR of the assessee argued that uniform rate of 15% cannot be applied for making disallowance. He submitted that the grant should be apportioned according to the value of the asset given in the balance sheet. He argued that the rate of depreciation on land was zero percent, building was 5% and the plant & machinery was 15%, and hence, the disallowance at the uniform rate at 15% is not justified.

19. On the other hand, the DR argued and submitted that the order of the CIT(A) was correct, and he after appreciating the entire facts had reduced the disallowance from Rs.30.97 crores to Rs.18.93 crores.

20. We find that in the instant case, the CIT(A) held that excess depreciation claimed on account of capital grant comes to Rs.18.93 crores being 15% of Rs.176,62,04,718/-, i.e. Rs.26,49,30,708/- minus Rs.17,20,37,655/-, which amounts to Rs.9,28,93,053/-, and 15% of Rs.6427.94 lakhs amounting to Rs.964.191 lakh. The submissions of the assessee before us is that the uniform rate of 15% adopted by the CIT(A) is not justified. As per provisions of section 43(1) of the Act, the capital grant should be reduced from the cost/WDV of the relevant asset, and thereafter the depreciation is to be calculated. Thus, the 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. The DR could not point out any mistake in the above submission of the assessee, which we find is in accordance with law. We, therefore, set aside the orders of the lower authorities on this issue, and restore the matter back to the file of the AO for adjudication afresh after verifying the proportionate amount of grant relating to different asset, and applying the actual rate of depreciation which relate to these assets. Thus, this ground of appeal of the assessee is allowed for statistical purpose.

Hence, in the absence of any changed circumstances as it appears from the records, we find no other alternative but to remit the issue to the file of the Learned AO for re-adjudication of the same and to pass order upon verification of the proportionate amount of grant relating to different assets and upon applying the actual date of depreciation relates to those assets. Hence, this ground of appeal preferred by the assessee is allowed for statistical purposes.”

4.2. Respectfully following the decision taken by the Coordinate Benches of this Tribunal, we find it fit and proper to remand the issue to the file of the Ld. AO for re-adjudication of the same and to pass orders upon verification of the proportionate amount of grant relating to different assets and to pass orders accordingly. This ground of appeal preferred by the assessee is allowed for statistical purposes.

5.1. **Ground no. 1.1** : The Assessing Officer has included addition on account of capital grants and Consumer Contribution while

calculating book profit u/s. 115JB of the Act. The Ld. A.R. submitted that this ground was set aside by the Co-ordinate Bench in assessee's own case in ITA No. 618/Ahd/2018 for the Asst Year 2011-12 vide common order dated 22.07.2022 as follows:

“..... 57. Having heard to the facts and circumstances of the case we find it fit and proper to remit the issue to the file of the Ld. AO to adjudicating the issue taking into consideration the Capital Grant and subsidies and consumers contribution made by the assessee and pass orders in accordance with law upon granting a reasonable opportunity of being heard to the assessee. This ground of appeal preferred by the Revenue is allowed for statistical purposes.”

5.2. The Ld. CIT DR appearing for the Revenue has no objection in setting aside the matter back to the file of the Assessing Officer for fresh adjudication. Thus we set aside this issue to the file of the Ld. Assessing Officer and pass orders in accordance with law by giving proper opportunity to the assessee.

5.3. Thus this ground no.1 raised by the assessee is allowed for statistical purposes.

6. **Ground no. 2:** The assessing officer disallowed the claim of additional depreciation ₹.49,52,66,000/= on the ground that the assessee failed to submit the details and establish the genuineness of the expenditure. On further appeal before Ld. CIT(A), he held that that the assessee has given sample copies of bills before the AO, however, it is seen that the assessee is in the business of distribution of power, which is covered under section 32(1)(iia) of the Act. There are certain other conditions, which are required to be satisfied for claiming additional depreciation. Additional depreciation is not allowable on the items which are used for

repairs and replacement, used machinery within or outside India. The assessee failed to file the required details as per section 32(1)(iia) of the Act, therefore the assessee is not entitled for the claim of additional depreciation.

6.1. Ld. counsel for the assessee submitted before us complete details were filed by the assessee before the Ld AO, which are available at page number 2,3, 17 of the paper book which reads as follows:

“... .. With respect to the additional depreciation, it is submitted that there is Commissioning of new plant and machinery of Rs.68,44,53,100/- during the financial year 2016-17. Hence, additional depreciation of Rs.495, 26, 60,000. (₹. 496,26,60,000 x 0.10) on new additions of plant and machinery of 15%. Also, it is submitted that the company has not purchased any Old/secondhand/used fixed asset during the year.

In this context, it may be noted that the earlier claim was allowable only to the manufacturing concerns. The generation of power was also treated as manufacturing activity and hence the claim was also extended to generation companies by the courts. Accordingly to settle down the controversies and in order to further encourage Investment in the power sector Amendment was made to the relevant section 30 212A of the IT act by including the words“ generation or generation and distribution” of power.

It may, thus be noted that the legislative, intent behind introducing/amending the provision was broadly to extend the benefit to the power sector. This apart the addition of word distribution itself, clarify that the claim it intended to be extended to the distribution companies also.

It may not be out of place to mention that the eligibility of claim cannot be decided merely on the basis of the words used in the Statute. The wording of the Act are drafted with particularly underlying intention and motive of the government and the same are to be interpreted in liberal and unambiguous manner in the power sector, the process of reforms and restructuring began in early 1990's and with the enactment of the Electricity Act 2003. All the states enacted state level legislations for restructuring of integrated state electricity boards (SEBs).

As a result of restructuring, almost all the states formed different combination of entities for generation, transmission and distribution.

... ..

With the above facts, if we interpret the provisions of section 32(1)(iia), of the IT act relating to additional depreciation, merely on the basis of wordings used there in, it will lead to the conclusion that only the states of Tamil Nadu, Punjab and Himachal Pradesh only will be eligible for the additional depreciation, as only these three states have generation and distribution companies. This obviously must not be the intention of Legislature to provide benefit only to those States and deprive the other States from the benefits.

In view of the above, we are entitled to claim additional depreciation."

6.2. Thus, the Ld Counsel pleaded that the assessee is entitled for additional depreciation on post amendment to section 32(1)(iia) of the Act.

6.3. Per contra Ld CIT DR appearing for the Revenue submitted as the earlier ground was set aside to the file of AO for verification.

This ground may also be set aside to the file of Jurisdictional Assessing Officer for verifying the claim of additional depreciation.

7. We have given our thoughtful consideration and perused the materials available and record. Though Ld CIT(A) held that the assessee has not produced the details of additional depreciation before the AO, it is seen from the submissions made by the assessee vide its letters dated 04-12-2019 and 10-12-2019 [which are placed at Page No.2 & 17 of the Paper Book], detailed submissions on additional depreciation with Annexures were submitted by the assessee. But the lower authorities failed to consider the amended provisions of law and denied the claim of additional depreciation to the assessee. Therefore, in the interest of Principle of Natural Justice, we hereby set aside this issue to the file of Jurisdictional Assessing Officer to verify the claim of additional depreciation and allow the same in accordance with the provisions of amended law. In the result Ground No. 2 raised by the assessee is allowed for statistical purpose.

8. **Ground no. 3:** The assessing officer treated interest income Rs.83,43,000/= received on the loans and advances to staff loans as “income from other sources” instead of “business income”.

8.1. The Ld. Counsel fairly submitted that identical issue has been decided against the assessee by the Co-ordinate Bench in the case of Gujarat Transmission Corporation in ITA No. 652/Ahd/2013 for the Assessment Year 2009-10. However the Hon’ble Odisha High Court in the case of Odisha Power Generation Corporation Ltd. vs.

ACIT, Circle-2(2) in ITA No. 1 of 2015 and Ors., wherein the Hon'ble High Court held in favour of the assessee as follows:

“ 12. The Assessee offered an explanation regarding interest income earned by it, from advances given to its employees as well as provision of electricity and water charges collected from water through its employees and contractors for facilities in the township, receipt from transit hostel, sale of scrap, insurance claim etc. The facilities were given to its employees for better conditions of employment. This was to improve the overall efficiency of the undertaking which is devoted to the single purpose of generation of power. The Court, therefore, has no difficulty in accepting the submission of the Assessee that the interest received on advances and loans given to its employees are receipts in normal course of carrying its business and should be considered as income derived from its essential business activities. Likewise, the late payment by GRIDCO for the electricity supplied, is sought to be made up by GRIDCO by issuing bonds on which the Assessee earns interest. This also therefore, has a direct nexus with the essential business activity of the Assessee.”

8.2. The Ld. Counsel further submitted that similar ground was set aside to the A.O. by the Co-ordinate Bench of this Tribunal in ITA No. 2858/Ahd/2015 for the Assessment Year 2010-11 and ITA No. 553/Ahd/2020 for the A.Yrs. 2013-14 and 2015-16. The Ld. D.R. has no serious objection in setting aside the matter back to the A.O. for fresh verification.

9. We have heard the rival submissions and perused the relevant material and the judgment of the Odisha High Court in the case of Odisha Power Generation Corporation Ltd. (cited supra). In view of the same, we find it proper to direct the A.O. to consider the issue afresh upon examining the same in regard to the heads of income after considering the facts of the case.

10. Treating miscellaneous receipts of Rs.19,75,52,000/- as “income from other sources” instead of “business income”. The assessee claimed that the above income has been arisen in the ordinary course of business and is exclusively attributable to the activities of the business. Therefore the above incidental income received from such activities should be considered as “business income” only. It is for this reason in the computation of total income under the head “Income from other sources”, the assessee claimed Nil income. The assessee further drawn our attention to the balance sheet more particularly Schedule-19, Interest on staff loan and advances, Miscellaneous receipts, etc were shown. The above receipts of staff quarter charges, guest house charges, water charges from employees, sale of Tender forms, supervision charges received, forfeiture of earnest money/security deposit, unclaimed deposits of customers, etc. are all related to the business income of the assessee. Therefore the same has to be treated as incidental to the business activity of the assessee and therefore treated as “business income” only. However both the Assessing Officer and the Ld. CIT(A) denied the above claim and held that the miscellaneous receipts have no nexus with the business carried out by the assessee.

10.1. The Ld. Counsel thus submitted that in the light of the judgment rendered in the case of Odisha Power Generation Corporation Ltd., this issue be remanded back to the file of the Assessing Officer for fresh consideration as done by the Co-ordinate Bench of this Tribunal in ITA No. 553/Ahd/2020 for the A.Yrs.

2013-14 and 2015-16. The Ld. D.R. has no serious objection in setting aside the matter back to the A.O. for fresh verification.

11. We have given our thoughtful consideration and perused the materials available on record. The Hon'ble Madras High Court in the case of CIT vs. New India Maritime Agencies (P.) Ltd., 124 Taxmann.com 801 wherein it was held that the "company had given the houses owned by it, to its Directors for their residences, it is doing so only in the course of his business. The principle is that if the owner of a property carries on business with a property owned by him, the income from that property must be assessed as only "income from business". Since the Tribunal found that the house property had been used by the assessee as a part of the business and treated as business, the finding of the Tribunal that the income from the property could not be assessed separately as income from house property and included in the assessee's business income, was correct."

11.1. Further the Hon'ble Delhi High Court in the case of Triveni Engg. & Industries Ltd., 343 ITR 245 wherein the "loss on account of non-recovery of loan given to employees was treated as loss incidental to business activity, then the interest on such loan falls within the purview of business activity only and not "income from other sources".

11.2. In the light of the above, we find it fit to remand this issue to the file of the Assessing Officer for verification of the facts with proper materials and allow the claim in accordance with law.

12. Treating receipt of Rs.8,08,000/- sale of Scrapes as “income from other sources” instead of “business income”. The assessee submitted that the company having fixed assets of Rs.4579.13 crores as of 31-03-2016 which covered more than 1,36,000 Transformer centers, more than 50,000 KMs High Tension Lines and 49,849 KMs Low Tension Line network. For smooth functioning of business, the assessee company is continuously doing repair and maintenance of such assets. During the maintenance of such assets, scrap materials are credited to Stores and subsequently which are being sold through a Public Sector Undertaking, namely M/s. Metal Scrap Trade Corporation Ltd [MSTC], which are shown as income from sale of Scrap and the same is “business income” and not to be treated as “income from other sources”. For the earlier assessment years the Ld AO has not made such disallowance, which is on the same set of facts, therefore requested to treat the sale of scrapes as ‘business income’ only. Per contra Ld CIT DR supported the orders passed by the lower authorities and requested to sustain the same.

12.1. We have given our thoughtful consideration and perused the materials available on record. Considering the asset value of the assessee company and the nature of transmission business the claim of Scrap sales is very negligible only. However the lower authorities has not given specific reasons to assess the sale of scrapes as ‘income from other sources’. In the light of the above, we find it fit to remand this issue to the file of the Assessing Officer for verification of the facts with proper materials and allow the claim in accordance with law.

13. In the result, this ground no. 3 raised by the Assessee is partly allowed.

14. **Ground No. 4** is Initiation of penalty u/s. 270A and **Ground no. 6** is general ground, which are not pressed by the assessee. Hence both the grounds no. 4 & 6 raised by the assessee are dismissed as not pressed.

15. **Ground no. 5** is charging of interest u/s. 234B, 234C and 234D of the Act which were consequential in nature the same is also not pressed by the assessee and therefore no separate adjudication is required on this ground.

16. In the result, the assessee appeal is allowed for statistical purpose.

ITA No.331/Ahd/2023 (Assessee's appeal for A.Y. 2018-19)

17. Ground no. 1 is confirming the addition of 15% Capital Grants as against 10% offered by the assessee. The Ld. Assessing Officer made addition of Rs.65,11,29,000/- on account of Capital Grants and Subsidies and Consumers' Contribution of Rs.94,60,58,000/= on the ground that the assessee should transfer 15% of the total Grants/subsidies/consumer contribution received during the year as against 10% offered by the assessee. This identical ground has already been considered by us in ITA No.330/Ahd/2023 for Assessment Year 2017-18 in Paragraph 4.2 of this order. As similar issue is being involved herein, this issue is set aside to the Ld. Assessing Officer for fresh consideration.

18. Ground No.1.1. is the AO included addition on account of capital grants and Consumer Contribution while calculating book profit u/s. 115JB of the Act. This identical ground has already been considered by us in ITA No.330/Ahd/2023 for Assessment Year 2017-18 in Paragraph 5.2 of this order. As similar issue is being involved herein, this issue is set aside to the Ld. Assessing Officer for fresh consideration.

19. Ground No. 2 is claim of Additional Depreciation of Rs.102,26,64,000/-. This identical ground has already been considered by us in ITA No.330/Ahd/2023 for Assessment Year 2017-18 in Paragraph 7 of this order. As similar disallowance is involved herein, this issue is set aside to the Ld. AO for fresh consideration.

20. Ground No. 3[a] the assessing officer treated interest income Rs.73,51,000/- received on the loans and advances to staff loans as “income from other sources” instead of “business income”. This identical ground has already been considered by us in ITA No.330/Ahd/2023 for Assessment Year 2017-18 in Paragraph 9 of this order. As similar issue is being involved herein, this issue is set aside to the Ld. Assessing Officer for fresh consideration.

(b) Treating miscellaneous receipts of Rs.9,70,56,282/- as “income from other sources” instead of “business income”. The assessee claimed that the above income has been arisen in the ordinary course of business and is exclusively attributable to the activities of the business. This identical ground has already been considered by us in ITA No.330/Ahd/2023 for Assessment Year 2017-18 in

Paragraph 11.2 of this order. As similar issue is being involved herein, this issue is set aside to the Ld. Assessing Officer for fresh consideration.

[c] Treating receipt of Rs.66,51,000/- sale of Scrapes as “income from other sources” instead of “business income”. This identical ground has already been considered by us in ITA No.330/Ahd/2023 for Assessment Year 2017-18 in Paragraph 12.1 of this order. As similar issue is being involved herein, this issue is set aside to the Ld. Assessing Officer for fresh consideration.

21. Ground no. 4 & 6 are identical ground has already been considered by us in ITA No.330/Ahd/2023 for Assessment Year 2017-18 in Paragraph 14 of this order. The same are dismissed as not pressed.

22. Ground no. 5 is identical ground has already been considered by us in ITA No.330/Ahd/2023 for Assessment Year 2017-18 in Paragraph 15 of this order. Charging of interest u/s. 234B, 234C and 234D are consequential in nature, therefore no separate adjudication is required on this ground.

23. In the result, the assessee appeal is allowed for statistical purpose.

ITA No.404/Ahd/2023 (Revenue’s appeal for A.Y. 2017-18)

24. Solitary ground raised by the Revenue in its Grounds of Appeal is as follows:

“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 16,37,41,000/-made on account of disallowance of interest expenditure which was attributable to capital work in progress and was liable to be capitalized?”

The appellant craves leaves to add, modify, amend or alter any grounds of appeal at the time of, or before, the hearing of appeal. It is prayed that the order of the CIT(A) on the above issue be set-side and that of the Assessing Officer be restored.

25. The assessee company has been accounting the interest to revenue after allocating the same to the capital works at the specified interest rates. As per AS 16 "Borrowing Cost", the Borrowing costs that are attributable to the acquisition, construction or production of qualifying assets are to be capitalized as part of such assets. Following the said AS 16, the Company has already capitalized the interest attributable to its capital works. Considering the nature of capital works, the assessee company was issuing Circular every year to Field Offices to proportionately load borrowing costs at specified interest rate on the value of opening CWIP and net additions during the year. Such interest rates are decided on the basis of the weighted average interest cost of the company for the respective year as well as on the basis of the position of the debt and equity of the company for the respective year. It was explained that the total expenses capitalized during the year amounted to ₹6899.28 lakhs as under:-

Particulars	Amt Rs. Lakhs	Remarks
Employee Benefits	5374.51	Note No. 30
Finance Cost	572.50	Note No. 31
Other Expenses	952.87	Note No. 32
Total	6899.88	

25.1. Thus the assessee submitted that the amount of Rs.6899.88 lakhs capitalized is in accordance with capitalization of directly attributable costs to bring the Property, Plant and Equipment into location and condition necessary for it to be capable of operating in manner intended by the management, as indicated in Notes to Accounts at Note No.1(c)16(b) at Page No. 34 & 35 of Annual Accounts. Accordingly, the assessee company is charging 15% towards Supervision Charges on capital assets and allocating between Employee and General Administration overheads and also capitalizing interest cost as and when applicable. In view of the above facts, the assessee claimed that no further disallowances out of the interest expenditure shown in the Profit & Loss Account are warranted.

25.2. However the Ld. AO capitalized interest expenditure to the tune of Rs.2226.58 lacs i.e. @12.00% of Rs.18554.86 lacs. Further, considering that the assessee, itself has capitalized an amount of Rs.589.17 lacs out of total amount of total capitalization of interest of Rs.6899.88 lacs, net capitalization of interest and disallowance of revenue expenditure towards interest is worked out at Rs.1637.41 lacs. The AO also held that depreciation on the amount of Rs.1637.41 lacs will be allowed to the assessee once the CWIP is capitalized.

26. Aggrieved against the addition, the assessee filed an appeal before Ld. CIT(A), who directed the AO to delete the addition and allowed the assessee appeal by observing as follows:

“5.4.1. It is seen that the A.O. has computed and capitalized the interest expenditure on notional basis without bringing any evidence on record to show that entire Work-in-progress was financed by borrowings alone.

5.4.2 In my opinion, making notional addition without bringing any evidence on record is not justified. This is more so when the appellant has given detailed working of capital work- in-progress and break-up of amount capitalized during the year.

5.4.3 In view of the above, the AO is directed to delete the addition of Rs. 16.37 crores. This ground of appeal is thus, allowed.”

27. Ld. CIT DR supported the order passed by the Assessing Officer and requested to sustain the same. Per contra Ld. AR appearing for the assessee supported the order passed by the Ld. CIT[A] and also submitted that the assessee company is following the same accounting policy relating to interest on borrowings consistently year after year and in none of the earlier years, the accounting has been questioned further in all the earlier years the accounting of interest as revenue and capital has been accepted by the IT Department, therefore the addition made by the Ld. AO correctly deleted by the Ld. CIT[A] which does not require any interference and the Revenue appeal is liable to be deleted.

28. We do not find any infirmity in the order passed by the Ld. CIT[A], it is further seen that the addition made by the Ld. AO was only on notional basis of 12% without bringing any evidence on record to show whether the entire Capital Work In Progress was financed by borrowings alone. Whereas the assessee has given the detailed workings of CWIP [reproduced in paragraph 25 above] and also breakup of the amount capitalized during the year. Further in the earlier assessment years the workings given by the assessee

were accepted and no additions made by the Ld. AO. The Ld. CIT DR could not place on record any justifiable reason to sustain the addition, thus the ground raised by the Revenue is devoid of merits and liable to be dismissed.

29. In the result, the appeal filed by the Revenue is dismissed.

ITA No.405/Ahd/2023 (Revenue's appeal for A.Y. 2018-19)

30. Solitary issue is whether CIT[A] was justified in deleting the addition of Rs.25,73,24,880/- made on account of disallowance of interest expenditure which was attributable to CWIP and was liable to be capitalized. This identical ground has already been considered by us in ITA No.404/Ahd/2023 for Assessment Year 2017-18 in Paragraph 28 of this order. As similar issue is involved herein, this ground raised by the Revenue is devoid of merits and liable to be dismissed.

31. In the result, the appeal filed by the Revenue is dismissed.

32. In the combined result, the appeals filed by the Assessee in **ITA Nos. 330 & 331/Ahd/2023 are partly allowed for statistical purpose** and **the appeals filed by the Revenue in ITA Nos.404 & 405/Ahd/ 2023 are hereby dismissed.**

Order pronounced in the open court on 31-01-2024
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Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 31/01/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद