

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA Nos: 372 to 374/Ahd/2022
Assessment Years: 2014-15, 2015-16 & 2018-19**

Madhya Gujarat Vij Company Ltd. Sardar Patel, Vidyut Bhavan, GEB Race Course, Vadodara-390007 PAN: AADCM7439H (Appellant)	Vs	The DCIT, Circle-2(1)(1), Vadodara (Respondent)
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**ITA Nos: 367 to 369/Ahd/2022
Assessment Years: 2014-15, 2015-16 & 2018-19**

The DCIT, Circle-2(1)(1), Vadodara (Appellant)	Vs	Madhya Gujarat Vij Company Ltd. Sardar Patel, Vidyut Bhavan, GEB Race Course, Vadodara-390007 PAN: AADCM7439H (Respondent)
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**Assessee Represented: Shri M.K. Patel, Advocate
Revenue Represented: Dr. Darsi Suman Ratnam, CIT-DR**

Date of hearing : 29-01-2024
Date of pronouncement : 07-02-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

These cross appeals are filed by the Assessee and Revenue as against three separate appellate orders all dated 25.07.2022 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 2014-15, 2015-16 & 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. 372/Ahd/2022 (Assessee's appeal) relating to the Assessment Year 2014-15 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 22.10.2014 declaring Nil income after setting off brought forward business losses and unabsorbed depreciation, but a book profit of Rs.25,65,52,381/- and paid taxes along with interest amounting to Rs.5,37,74,661. The case was selected for scrutiny and assessment order u/s. 143(3) was passed on 26.12.2016 by making additions and disallowances as follows:

1	<i>Addition on account of Govt. Grant</i>	<i>Rs. 24,22,26,000/-</i>
2	<i>Interest from Staff loan treated as income from other sources instead of business income</i>	<i>Rs. 2,95,94,000/-</i>
3	<i>Disallowance of additional depreciation</i>	<i>Rs.53,53,48,484/-</i>

2.1. Thus the Assessing Officer determined the total income under normal computation at Rs.17,55,73,300/- and book profits u/s. 115JB at Rs.49,87,78,381/-.

3. Aggrieved against the assessment order, the assessee filed an appeal before Ld. CIT(A), who 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. 372/Ahd/2022 are as follows:

1.0 The learned Commissioner of Income Tax (Appeals) erred in law and on facts has confirmed the additions of Rs.24,22.26,000/- 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) has erred in law and facts in confirming the additions with respect to the interest income from staff loans & advances amounting to Rs.2,95,94,000/- as Income from Other Sources as against the Business Income.

3.0 The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in confirming the disallowance of claim of additional depreciation of Rs.53,53,48,484/- merely giving one-line finding that that company is not eligible to claim additional depreciation as per section 32(1)(iia) of the IT Act as it is engaged only in distribution of electricity. The learned Commissioner (Appeals) has not considered the legislative intent behind the provisions in right spirit.

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 271(1)(c) 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 2348, 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 grounds of appeal either before or at the time of hearing of this appeal.

3.2. At the outset, the Ld. Counsel Sri. Mehul K. Patel appearing for the assessee submitted that the issues in these appeals are mostly covered by the Co-ordinate Bench decisions on identical issues in assessee's own case in ITA No. 2080/Ahd/2012 and Ors. dated 18.08.2023 relating to the Assessment Years 2009-10 to 2013-14. Ld CIT DR Dr. Darsi Suman Ratnam 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. 24,22,26,000/- on account of Capital Grants and Subsidies and 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.2080/Ahd/2012 and Ors. dated 18.08.2023 which has followed earlier years order in ITA No.2583/Ahd/ 2010 dated 09.11.2016 relating to the Assessment Year 2006-07 wherein this issue was set aside to the Ld. A.O. as follows:

"...7. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that the issue in the dispute regarding the recognition of income on account of government grants and customer contribution in the case of present assessee was also there in the AY 2006-07 which has been adjudicated by the ITAT in ITA No. 2583/Ahd/2010 vide order

dated 09.11.2016 wherein it was held that receipt of grants was in connection with capital assets. Therefore, the same is required to be reduced from the cost of the capital as prescribed under section 43(1) read with explanation 10 to section 43(1) of the Act. However, the issue has been restored back to the A.O. to adjudicate afresh after verifying the amount of grants to be apportioned relating to different assets and calculate the amount of depreciation allowance accordingly. The relevant finding of the coordinate bench reads as under:

17. We have heard the rival contentions and perused the material on record. Through this ground assessee has challenged the order of Id. CIT(A) sustaining the disallowance of depreciation at Rs.10,84,81,976/- by observing that capital subsidy and grant received are to be reduced from fixed asset and depreciation to be allowed on the remaining balance. We observe that the Government gives grant/subsidy to the holding company and then it is allocated to the assessee which is one of the subsidiary company and further such subsidy are not granted to actually to meet the cost but are granted as an inclusive of rural economically backward unviable areas. Assessee received subsidies on different schemes viz. Rural Electrification and Tribal area Electrification and the assets cannot be bifurcated into Rural/Tribal area etc.

17.1 There is no dispute to the fact that the grants received from the Government are capital in nature but they have not been given specifically for acquiring a particular asset. In such situation provision of section 43(1) Explanation 10 of the Act squarely applies for the treatment of such capital grant. Relevant provisions of section 43(1) of the Act read as under :-

43. In sections 28 to 41 and in this section, unless the context otherwise requires (1) "actual cost" means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met⁹⁶ directly or indirectly by any other person or authority:

[Provided that where the actual cost of an asset, being a motor car which is acquired by the assessee after the 31st day of March, 1967, [but before the 1st day of March, 1975,] and is used otherwise than in a business of running it on hire for tourists, exceeds twenty-five thousand rupees, the excess of the actual cost over such amount shall be ignored, and the actual cost thereof shall be taken to be twenty-five thousand rupees.]

[Explanation 10.--Where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee :

Provided that where such subsidy or grant or reimbursement is of such nature that it cannot be directly relatable to the asset acquired, so much of the amount which bears to the total subsidy or reimbursement or grant the same proportion as such asset bears to all the assets in respect of or with reference to which the subsidy or grant or reimbursement is so received, shall not be included in the actual cost of the asset to the assessee.]

17.2 Proviso to Explanation -10 to section 43(1) contemplates that subsidy or grant or reimbursement which cannot be relatable to the assets acquired then grant amount to be apportioned in the assets at the same proportion as such assets bears all the assets. We further observe that ld. Assessing Officer has given following finding for application of explanation -10 to section 43(1) by observing as follows:-

4.2 The contention of the assessee that Consumer's Contribution and Capital Grant are capital in nature is found tenable, but its treatment, of 10% thereof transferred to P & L account every year is not in accordance with the provisions of the Act. As envisaged in explanation 10 to section 43(1), where a portion of the cost an asset acquired by the assessee has been met directly or indirectly by the Central Government or State Govt. or any Authority established under any law, or by any other person, in the form of subsidy or grant or reimbursement then in a case where the subsidy is directly relatable to the asset, such subsidy shall not be included in the actual cost of the assets. In a case, where such subsidy or Grant or reimbursement, is of such nature that, it cannot be directly relatable to any particular assets, so much of the amount which bears to the total subsidy or reimbursement or Grant the same proportion as such asset bears to all the assets in respect of which or with reference to which such grant or subsidy or reimbursement is received shall no be included in the actual cost of that assets to the assessee.

4.3 In view of the clear provisions of the Act as stated supra and the assessee himself have admitted that the subsidy and grant received are towards Capital assets, the assessee should have reduced the same from the Capital asset to arrive at the actual cost. However the assessee has failed to do so and also not furnished the details of fixed assets in respect of which the subsidy and grants have been received. Hence and inference is drawn that the Govt. grants/subsidy and consumers' contribution are relatable to fixed assets of plant & machinery. The assessee has claimed depreciation on Plant & Machinery as under:

17.3 We further observe that similar type of issue came up before the Tribunal in the case of GETCL(supra) which was adjudicated by the Co-ordinate Bench by observing as follows :-

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.

17.4 In the light of the decision of the Co-ordinate Bench discussed above and in the light of proviso to Explanation -10 to section 43(1) of the Act we find it justified to restore the issue back to the file of Assessing Officer to adjudicate afresh after verifying the apportioned amount of grant relating to different assets and calculate the depreciation at the rates applicable to such assets. Needless to mention that all necessary details will be provided by the assessee to the Assessing Officer in order to calculate the correct amount of depreciation, Ld. Assessing Officer to provide proper opportunity of being heard should be given to the assessee. Accordingly, this ground of assessee is allowed for statistical purposes.

7.1 The above finding of the of the coordinate bench has been followed in the subsequent year i.e. A.Y. 2008-09 in ITA No. 1709/Ahd/2018 vide order dated 28-2-2022. Therefore, following the concurrent view taken by the ITAT, we hereby restore the issue to file of the AO for fresh adjudication in accordance with the direction of the ITAT in assessment year 2006-07 and as per the provision of law. Hence the ground of the assessee is hereby 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. **Ground No. 2:** Interest from staff loan of Rs.2,95,94,000/- treated as “income from other sources” instead of “business income”.

5.1. The learned AR with respect to the interest income from the staff loans submitted that such loans were given to the staff for better performance and therefore the interest income has direct nexus with the business activity of the assessee. Similarly, the salary given to the staff was treated as business expenses on the reasoning that staff was working for the company and thus the interest income from the same staff should also be treated as income from the business and profession. The learned AR left the issue at the discretion of the bench regarding the gain on the sale of assets.

5.2 On the other hand, the learned DR vehemently supported the order of the authorities below.

6. As regards the interest income shown by the assessee on the loans & advances given to the employees, we note that there was identical issue before this Tribunal in the case of sister concern of the assessee namely Gujarat Energy Transmission Corporation Ltd (GETCO) in ITA No. 753/AHD/2018, wherein the coordinate bench vide order 24-08-2022 set aside the issue to the file of the AO for fresh adjudication by observing as under:

“...9. We have heard the rival submissions made by the respective parties, and we have also perused the relevant materials available on record and also gone through the order passed by the Hon’ble Orissa High Court in the case of Odisha Power Generation Corporation Ltd. (supra). It appears that the Hon’ble Orissa High Court while dealing with the issue the Court was pleased to observe 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.*

9.1. In that view of the matter we find it fit and proper to direct the Ld. AO to consider the issue afresh upon examining the same in regard to the head of income upon considering the relevant evidence in the light of the observation made by the Hon'ble High Court as mentioned hereinabove. We, thus, pass order accordingly. This ground is allowed for statistical purposes."

6.1 Respectfully following the finding of the Coordinate Bench in the above mentioned case, we hereby set aside the issue of "interest income on loans & advances" given to staff to file of the AO for fresh adjudication as per the direction given in the above case and as per the provisions of law.

7. Ground No. 3: Confirming disallowance of claim of Additional Depreciation u/s.32(1)(iia) of Rs.53,53,48,484/-.

7.1. In the assessment order, the Assessing Officer disallowed Rs.53,53,48,484/- towards additional depreciation by giving the detailed reason that assessee company is not eligible to claim additional depreciation as it is engaged only in distribution of electricity. Further as per section 32(1)(iia), additional depreciation is allowable to the entities who are in the business of generation or generation and distribution of power.

7.2. On further appeal against this issue, the Ld. CIT(A) confirmed the order passed by the Assessing Officer. Ld. Counsel submitted that the amendment in Section 32(1)(iia) passed w.e.f. 01.04.2017 whereby companies engaged only in distribution of power are also eligible for additional depreciation is held to be prospective by the Co-ordinate Bench of the Tribunal in the case of Dakshin Gujarat Vij Co. in ITA No. 1527/Ahd/2019 vide order dated 30.03.2022. Thus the assessee is not eligible for additional depreciation for the present Assessment Year 2014-15. However the Ld. Counsel requested to give a direction to allow normal depreciation in the succeeding Assessment Year 2015-16 on the WDV of the current year.

8. We have considered the submissions of the assessee which has legal force, even otherwise the assessee will be eligible for normal depreciation in the subsequent assessment year with the opening WDV. As we have already set aside on the other issues to the file of Assessing Officer, this claim of additional depreciation is also set aside to the file of the Jurisdictional Assessing Officer and allow the claim in accordance with the provisions of amended law.

9. In the result, Ground No. 3 raised by the Assessee is allowed for statistical purpose.

10. **Ground No. 4** is Initiation of penalty u/s. 271(1)(c) 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.

11. **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.

12. In the result, the appeal filed by the assessee is allowed for statistical purpose.

13. **In ITA Nos. 373/Ahd/2022 (for A.Y. 2015-16)** filed by the assessee, wherein identical issues are involved, therefore the decision rendered in ITA No. 372/Ahd/2022 will be squarely applicable to the present appeal. Therefore the appeal filed by the assessee is allowed for statistical purposes.

ITA No. 374/Ahd/2022 (Assessee Appeal for A.Y. 2018-19)

14. **Ground no. 1:** Confirming the addition of 15% Capital Grants as against 10% offered by the assessee of Rs.1,33,26,79,000/-. This issue is set aside to the file of Ld. Assessing Officer for re-adjudication vide Paragraph No. 4.1 and 4.2 of this common order. Following the same, this Ground No. 1 preferred by the assessee is allowed for statistical purpose.

15. **Ground no. 1.1:** Addition of Capital Grants and Subsidies while computing book profit u/s. 115JB of the Act. Ld. Counsel submitted this ground was not adjudicated by Ld. CIT(A) in his appellate order. This issue is also considered by this Tribunal in Paragraph Nos. 21 to 21.2 of this common order setting aside the issue to the file of Ld. Assessing Officer and pass order in

accordance with law by giving proper opportunity to the assessee. Thus this Ground No. 1.1 raised by the Assessee is allowed for statistical purpose.

16. **Ground No. 2:** Interest from staff loan of Rs.3,55,45,000/- treated as “income from other sources” instead of “business income”. This issue is considered by us in Paragraph No. 6 of this common order. Following the same, this issue is set aside to the file of Ld. Assessing Officer for fresh adjudication as per the directions given in the above case and as per the provisions of law. Thus this ground no. 2 is allowed for statistical purpose.

17. **Ground No. 3:** Ld. CIT(A) erred in dismissing the claim of carry forward of unabsorbed business loss and unabsorbed depreciation of earlier years. The Ld. Counsel fairly submitted that this issue may be set aside to the file of Ld. Assessing Officer for recomputation. The Ld. D.R. has no serious objection.

17.1. Therefore this issue is also set aside to the file of Ld. Assessing Officer for verification and allowing the claim in accordance with law. Thus this Ground No. 3 is allowed for statistical purpose.

18. **Ground Nos. 4, 5 & 6** are covered by Paragraph Nos. 11 & 13 of this common order. Following the same, no separate adjudication are required.

19. In the result, the appeal filed by the Assessee is allowed for statistical purpose.

ITA No. 367/Ahd/2022 for A.Y. 2014-15 (Revenue's Appeal)

20. The Grounds of Appeal raised by the Revenue in ITA No. 367/Ahd/2022 for A.Y. 2014-15 are as follows:

1.1 That on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs.24,22,26,000/- to book profits u/s. 115JB of the LT. Act towards govt. grants, subsidies and consumers contribution towards capital assets.

1.2 That on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition to book profits u/s. 115JB of the IT. Act without appreciating that the assessee had not prepared its statement of profit and loss in accordance with section 115JB of the LT. Act, and had failed to comply with the provisions of the Companies Act and Accounting Standards. The Ld.CIT(A) failed to consider that the assessee has claimed depreciation on related assets @15%, but the corresponding deferred income credited to the P&L account is not computed on the same basis, but at lower rate, and this mismatch and inconsistency in accounting treatment was not in accordance with the requirements of section 115JB(2) of the I.T.Act and accounting principles.

1.3 That on the facts and circumstances of the case and in law, the id.CIT(A) erred in deleting the addition to book profits u/s. 115JB of the IT. Act towards grants, subsidies and consumers contribution, without appreciating that the assessee had not prepared its statement of profit and loss in accordance with section 115JB(2), and failed to comply with the provisions of the Companies Act and Accounting Standards, and failed to furnish complete information regarding the assets relating to grants, subsidies and consumers' contribution and the AO was therefore, justified in computing the book profits in accordance with section 115JB(2) of the I.T. Act and making the addition to deferred income credited to the P& L account, on the same basis as followed by the assessee in debiting depreciation on related assets to its P& L account.

1.4 That on the facts and circumstances of the case and in law, the Id.CIT(A) erred in deleting the addition of Rs.24,22,26,000/- to book profits u/s. 115JB of the I.T. Act towards subsidy/grants received in advance, without appreciating that the assessee had not prepared its statement of profit and loss in accordance with section 115JB(2), and failed to comply with the provisions of the Companies Act and Accounting Standards, and failed to furnish information and necessary supporting evidences and also did not furnish any justification and the AO was, therefore, justified in computing the book profits in accordance with section 115JB(2) of the Act and making the addition.

1.5 That on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the additions to book profit u/s.115JB of the 1.T. Act by merely relying on the decision of CIT(A) in another sister concern and without examining the facts of the case, and without considering the facts that the assessee had not prepared its statement of profit and loss in accordance with section 115JB(2) of the Act, and the additions were justified when the book profits was computed by the AO in accordance with provisions of section 115.JB(2) of the 1.T.Act.

1.6 That on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the additions to book profits u/s.115JB of the 1.T.Act without appreciating that the assessee had not prepared its statement of profit and loss account in accordance with provisions of section 115JB(2) of the Act, and the AO was justified in making the additions after computing, book profits in accordance with section 115JB(2) of the Act.

2.1 That on the facts and circumstances of the case and in law the Ld.CIT(A), erred in treating the income from others (sale of scrap) of Rs.1,70,000/- & miscellaneous receipts of Rs.14,40,92,300/- as "business income" instead of "income from other sources" without appreciating that these miscellaneous receipts were not generated from day to day business activity, and the assessee had failed to controvert the findings of the AO and failed to substantiate its claim with necessary documentary evidence.

2.2 That on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in treating income from others (sale of scrap) of Rs.1,70,000/- & miscellaneous receipts of Rs.14,40,92,300/- as business income following the order of CIT(A) for earlier year of sister concern of the assessee without examining the facts this year, and without considering that the department had filed appeal in the Hon'ble ITAT against the decisions of the Ld.CIT(A) on this issue, in earlier years.

3. 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 issues be set side and that of the Assessing Officer be restored.

21. **Ground No. 1:** Deleting the addition of Govt. Grants and subsidies made to book profit u/s. 115JB. The Assessing Officer has included addition on account of Govt. grants and subsidies 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. 3680/Ahd/2014 & Ors. for the

Asst. Years 2010-11 to 2013-14 vide common order dated 18.08.2023 observing as follows:

"...69.1 Besides the above, the assessee also filed an appeal against the addition made by the AO in the book profit computed under section 115JB of the Act by the amount of addition made on account of grants or subsidies. Since, the issue arises from the treatment of grants or subsidies which we have set aside to the file of the AO for de novo adjudication, we hereby set aside the issue of addition of book profit to the file of the AO for fresh adjudication accordingly. Hence the ground of appeal raised by the assessee is allowed for statistical purposes."

21.1. 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.

21.2. Thus this ground no.1 raised by the Revenue is allowed for statistical purposes.

22. **Ground No. 2:** Treating sale of scrap of Rs.1,70,000/- & miscellaneous receipts of Rs.14,40,92,300/- as "business income" instead of "income from other sources".

22.1. Treating miscellaneous receipts of Rs.14,40,92,000/- as "business income" instead of "income from other sources". 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 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 the Assessing Officer denied the above claim and held that the miscellaneous receipts have no nexus with the business carried out by the assessee.

22.2. Ld. Counsel further submitted that this issue is also set aside by the Co-ordinate Bench of this Tribunal in ITA No. 2080/Ahd/2012 vide order dated 18.08.2023 by observing as follows:

“...42. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that the issue on hand is interconnected with issue raised by the assessee in respect of treatment of interest income on loans to staff in ITA No. 561/AHD/2014 which we have set aside to the file of the AO for fresh adjudication vide paragraph number 36 of this order. Therefore, we hereby set aside the issue of treatment of miscellaneous income whether it is business income or income from other sources to the file of the AO fresh adjudication in accordance with the direction provided while adjudicating the issue of interest income in assessee’s appeal and as per the provision of law. Hence, the ground of appeal of the revenue is hereby allowed for statistical purposes.

43. In the result appeal filed by the revenue is hereby allowed for statistical purposes.”

23. Ld. CIT-DR submitted that the Assessing Officer has clearly held that there is no nexus on the above miscellaneous receipts

with that of the business carried out by the assessee. Therefore the Assessing Officer is correct in treating the above receipts as “income from other sources” which finding does not require any interference.

24. 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.”

24.1. 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”.

24.2. 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.

25. In the result, the appeal filed by the Revenue is allowed for statistical purpose.

26. Revenue in its ground claimed sale of scrap of Rs.1,70,000/- as “business income” instead of “income from other sources”. It is seen from the assessment records, Rs.1,70,000/- is not of sale of scrap but “interest from others”. Thus Revenue wrongly mentioned as “scrap”, be that as it may be for the elaborate discussion made Paragraph No. 24 above. This issue is also set aside to the file of Ld. Assessing Officer for verification of the facts with proper materials and allow the claim in accordance with law. Thus the ground raised by the Revenue is allowed for statistical purpose.

ITA No. 368/Ahd/2022 (Revenue Appeal for A.Y. 2015-16)

27. **Ground No. 1** deleting the addition of Govt. grants, subsidies of Rs.54,00,77,000/- while computing book profit u/s. 115JB of the Act, which is similar to the findings given in Paragraph No. 21 of this common order. Following the same, this issue is set aside to the file of Assessing Officer.

28. **Ground No. 2** treating the sale of scrap of Rs.3,26,00,000/- and miscellaneous receipts of Rs.14,40,92,300/- as “business income” instead of “income from other sources”. This issue is considered by us in Paragraph No. 24 & 26 of this common order.

Respectfully following the same, this issue is remanded back to the file of Ld. Assessing Officer for verification of the facts with proper materials and allow the claim in accordance with law.

29. In the result, the appeal filed by the Revenue is allowed for statistical purpose.

ITA No. 369/Ahd/2022 (Revenue Appeal for A.Y. 2018-19)

30. The only ground raised by the Revenue is treating miscellaneous receipts of Rs.18,50,78,503/- as “business income” instead of “Income from other sources”. This issue is considered by us in Paragraph No. 24 of this order by remanding this issue to the file of Ld. Assessing Officer for verification of the claim in accordance with law.

31. In the result, the appeal filed by the Revenue is allowed for statistical purpose.

32. In the combined result, the appeals filed by the Assessee in ITA Nos. 372 to 374/Ahd/2022 are **partly allowed for statistical purposes** and the appeals filed by the Revenue in ITA Nos. 367 to 369/Ahd/2022 are **partly allowed for statistical purpose**.

Order pronounced in the open court on 07-02-2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 07/02/2024

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