

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.86,61,62,63/Ind/2023
(Assessment Years: 2007-08, 2011-12,2012-13,2013-14)

DCIT 1(1) Indore	vs.	M/s. M.P. Paschim Kshetra Vidyut Vitran Company Ltd. G.P.H Compound, Pologround Indore
(Appellant / Revenue)		(Respondent/ Assessee)
PAN: AADCM7397N		

ITA No.108/Ind/2023
(Assessment Year: 2007-08)

M/s. M.P. Paschim Kshetra Vidyut Vitran Company Ltd. G.P.H Compound, Pologround Indore	vs.	DCIT 1(1) Indore
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AADCM7397N		
Assessee by	Shri Apurva Mehta & Shri Rajesh Mehta ARs	
Revenue by	Ms. Ila Parmar, CIT-DR	
Date of Hearing	02.04.2024	
Date of Pronouncement	10.04.2024	

ORDER

Per Bench :

These are four appeals by the revenue for Assessment Years 2011-12 to 2013-14 & 2007-08 and one cross appeal by the assessee for Assessment Year 2007-08 directed against the four separate orders for Commissioner of Income Tax (Appeal), National Faceless Appeal Centre(NFAC) Delhi dated 26.12.2022, 26.12.2022, 26.12.2022 & 28.01.2023 respectively. The Revenue has raised common grounds in all these appeals and the grounds raised for A.Y.2011-12 are reproduced as under:

“1. Whether on facts and circumstances of the case, the Ld. CIT (A) is justified in holding the receipts i.e. Supply affording charges and Electrification charges as 'Capital receipts' instead of 'Revenue receipts'.

2. Whether on facts and circumstances of the case, the Ld. CIT (A) is justified in holding the receipts i 'Capital receipts' even though the assessee itself states that such receipts are collected by way of charges "from customers for having been facilitated a particular service"

2. The solitary common issue has been raised in all four appeals of the revenue is whether in the facts and circumstances of the case the CIT(A) has erred in deleting the addition made by the AO on account of supply affording charges and electrification charges by treating the same as revenue receipt as against the capital receipt claimed by the assessee. The assessee is an electricity distribution company (DISCOM) engaged

in the business of distribution and retail supply of Electricity. For A.Y.2011-12 the assessee filed its return of income on 27.09.2011 declaring total loss of Rs.399.44 crore. Originally the assessing officer passed assessment order u/s 143(3) on 27.03.2014 at total loss of Rs.3,77.31 crores and thereafter, the Pr. CIT passed revision order section 263 dated 11.03.2016 and set aside the assessment order dated 27.03.2014 by holding that the order passed by the AO is erroneous so far as the prejudicial to the interest of the revenue. It was observed by Pr. CIT that the AO did not take cognizance of points regarding the claim of the assessee treating the supply affording charges of Rs.21,88,21,993/- and electrification charges of Rs.3,91,92,022/- as capital receipt. Thus, the Pr. CIT held that there is a failure on the part of the AO to make an inquiry which renders the assessment order as erroneous and prejudicial to the interest of the revenue. The AO was directed to reframe assessment order after examining the issue of nature of receipt on account of supply affording charges and electrification charges being revenue receipt or capital receipt. The said order passed by the Pr. CIT u/s 263 was challenged by the assessee before this Tribunal however, the Tribunal vide order dated 11.07.2016 in ITANo.521/Ind/2016 upheld the order passed by the Pr. CIT u/s 263 by recording the reasons that the issue which were subject matter of order passed u/s 263 were not examined by the AO and therefore, there was a lack of conducting an inquiry on the part of the AO on these issues. In the order passed in pursuant to u/s 263 order the AO has made the addition of Rs.25,80,14,015/- comprising of supply affording

charges and electrification charges treating the same as revenue receipts as against the capital receipt claimed by the assessee. The income of the assessee was assessed at loss of Rs.351.50 crores. The assessee challenged the action of the AO before the CIT(A) and contended that these charges are one-time collection from the consumers at the time of providing new electricity connection to recover infrastructure cost increased by the assessee. These charges are collected by the assessee as per regulations framed and notified by the Madhya Pradesh Electricity Regulatory Commission (MPERC). The accounts of the assessee company are maintained as per MP Electricity Act 2003 and under the Rules and Regulation framed and notified by the MPERC. These receipts collected from the consumers are required to be treated as capital receipt and to be reduced from the fixed assets for the purpose of claiming depreciation. The CIT(A) has allowed the claim of the assessee and deleted the addition made by the AO while passing the impugned orders.

3. Before the Tribunal Ld. DR has submitted that the AO has given a finding about nature of the receipts in question and specifically held that the receipts were collected by way of charges from the customers for providing electricity services including some items of stock- in- trade which is circulating assets therefore, these receipt derived from such basic services provided to the customers are revenue receipts. Ld. DR has strongly relied upon the orders of the AO.

4. On the other hand, ld. AR has submitted that these charges are collected only as one-time charges at the time of providing new connection or at the enhancement of existing connection. These charges are not recurring charges as received only at the time of providing new electricity connection. He has further submitted that the assessee company is required to lay down electric lines and distribution system comprising of wires, poles, towers, distribution mains, distribution transformers and power transformers and associated facilities. The assessee collects supply affording charges for augmenting the existing distribution/EHT system or creating new distribution which includes setting up/ laying new electric lines, service lines and the cost of new system is capitalized in the books of accounts. These charges are recovered against setting up new distribution and its upgradation which is also capitalized in the books of accounts and reduced from the cost of assets. He has referred to the MPERC notification no.1165 of 2022 dated 31st May 2022 wherein the supply affording charges has been defined as charges payable by the consumer/applicants to distribution licensee towards the cost of development and strengthening of the distribution system and transmission system, wherever applicable, for meeting the requirement of electricity to a new consumer in accordance with the provisions of these Regulations. Thus, Ld. AR has submitted that these charges are collected from the consumers towards the cost of infrastructure setting up by assessee for distribution of the electricity. The cost incurred for setting up service lines is borne by the customers and the same is not

recorded in the books of the assessee company however, the infrastructure set up by the assessee for distribution of the electricity up to the points from where the service lines is laid down is borne by the assessee company and capitalized as on account of plant and machinery which are fixed assets having long lasting value. These are depreciable assets and the charges paid by the consumers towards the cost of distribution infrastructure is also capitalized and reduced from the fixed assets and thereafter the assessee is claiming depreciation. He has also referred to the regulations in para 6.1.1 and submitted that the charges collected from the customers are required to be kept in a separate account and are used only for augmenting existing distribution/ EHT system or creating new distribution system. Therefore, these charges cannot be utilized other than the purpose providing in the regulations. He has supported the impugned order of the CIT(A) and also relied upon following decisions:

1. *Hoshiarpur Electric Supply Co. vs. CIT 41 ITR 608 (SC)*
2. *Monghyr Electric Supply Co. Ltd. vs. CIT 26 ITR 15 (Patna)*
3. *DCIT vs. Sabarmati Gas Co. Ltd. (ITANo.2956/Ahd/2010) date of order 02.03.2016*
4. *DCIT vs. BSES Yamuna Power Ltd. (ITANo.3800/Del/2015 date of order 08.02.2019)*

5. We have considered rival submission as well as relevant material on record. In the revision order passed u/s 263 the Pr. CIT has simply set aside the original order of the AO dated 27.03.2014

by holding the same erroneous and prejudicial to the interest of revenue for lack of inquiry on the part of the AO in respect of the issue of supply affording charges and electrification charges claimed as capital receipts by the assessee. Therefore, the Pr. CIT has not given any finding on the merits of the issues which was to be verified and examined by the AO while passing a fresh order. The AO in the order passed u/s 143(3) r.w. section 263 has dealt with this issue in para 4 to 4.3 as under:

“4.Taxation of Revenue Receipt of Rs. 25,80,14,015/- shown as Capital Receipt by the assessee :-

Adhering to the directions as mentioned above, notices u/s 143(2) & 142(1) dated 11/3 / 2016 were issued and properly served upon. In response to the said notice Shri T.N. Unni, CA appeared time to time and filed written submissions which were placed on record. The Books of account alongwith relevant bills and vouchers were produced and test checked.

During the course of scrutiny proceedings on perusal of Balance Sheet, P & L account & Tax Audit report together with computation of income of the assessee, it was found that during the F.Y.2010-11 relevant to the A.Y.2011-12 the assessee company had capitalized the "Supply Affording Charges" amounting to Rs. 21,88,21,993/, and Electrification Charges amounting to Rs. 3,91,92,022/-. (As shown in the Annexure 1 of the Tax Audit report). Since, both the receipts were collected by way of "Charges from customers for having been facilitated a particular service, including some items of stock in trade / circulating assets to them, so receipts derived from such basis services to the customers may be characterized only as revenue receipts. Hence, the assessee was categorically asked to explain as to why shall not the amount of Rs. 21,88,21,993/- & Rs. 3,91,92,022/- received under the head 'Supply Affording Charges' and 'Electrification charges account' respectively shown as capital receipt be treated as revenue receipt.

Extract of Annexure-1 of Tax Audit Report is as under:-

<i>S.No.</i>	<i>Particulars</i>	<i>Amount</i>	<i>Nature</i>
<i>1.</i>	<i>Supply Charges Affording</i>	<i>Rs.21,88,21,993/-</i>	<i>Capital receipts</i>
<i>2.</i>	<i>Electrification Charges Account</i>	<i>Rs.3,91,92,022/-</i>	<i>Capital Receipts</i>
	<i>Total</i>	<i>Rs.25,80,14,015/-</i>	

4.1 The AR of the assessee vehemently contested the proposed addition & furnished its reply for the sake of clarity the relevant part is reproduced as under:-

"On assessee's behalf, it is also submitted that in order to hold that the impugned receipts are "revenue receipts", undue emphasis has been laid by the then A.O. while passing the assessment orders which has been taken as the sole basis for the present proceedings u/s. 263, that the impugned receipts are under the nomenclature of "charges" and that such "charges" are for facilitating specific services rendered" by the to the customers/consumers. The assessee strongly denies such observations, which are false & baseless and unsupported. The definition of "charges" in the said Notification are "recovery of the costs and expenses towards the laying of electric lines and acquisition fabrication of the plant and machinery required for effecting the supply of electricity of electricity to the applicants/consumers and have to be paid by the applicant at the time of applying for the supply, in advance, and is a one-time charge, which means that it is not for the consumption of electricity or for the supply of any stock in trade, which also, further, means that it is not for any "particular service having been facilitated", (as wrongly interpreted by your predecessor in his assessment order for AY 2012-13 - which is being treated by the Hon.'bel CIT as the basis for his view. It is submitted

that this view was/is patently wrong and contrary to the provisions of the Electricity Act and the MPERC's notified regulations.. It is also re-iterated that such receipts, being elementary and essentially capital receipts, are reduced from the cost of the concerned capital assets under the provisions of Sec. 43(1) of the I.T. Act.

*7.4. We also submit that as per the mandate of the Regulatory Authority, all the electric supply undertakings prepare their accounts uniformly as per the guidelines contained in the said Notification. Schedule No. 34 to the Balance Sheet (copy already on record) is the details of "Contributions, Grants, Subsidies towards Capital Assets". As per the Accounting Manual, all accounts are codified according to their nature of receipt/expenditure, and all receipts of capital nature bear codes commencing with "55" and, accordingly, the "Supply Affording Charges" bear Code No. 55,150 and "Electrification Charges" bear Code No. 55160. As the Hon'ble CIT has required your honour to verify the facts stated by the assessee with reference to vouchers and terms & conditions of agreements, etc., we submit herewith, as specimen (sample) of the vouchers relating to the "Supply Affording Charges" and "Electrification Charges" of Regional Accounting Units relating to Indore, Ujjain, Khandwa, Khargone, Ratlam, Mandsoore, Dhar and Dewas (8 regions) along-with individual receipts issued to the Consumers of the said Units contained in *Annexure 4A to 4H (spiral bound). Your honour may please verify them with reference to the " facts stated by the assessee". As for "terms & conditions of Agreements", there is none; and the terms & conditions are contained in the Regulations notified & published by the MPERC in its above referred to Notification, copy of which has been submitted with letter dated 05-04-2016."*

4.2 The reply of the assessee was carefully gone through but was found devoid of merits because whether a receipt is capital receipt or revenue receipt depends on various things. But the basic principle is whether receipt is being derived from using Circulating asset or fixed assets. In other words, if a receipt is referred to as Fixed Asset, it is a capital receipt and if it is

preferable to circulating asset it is revenue receipt. Fixed assets is that with the help of which owner earns profit by keeping it in its possession, e.g. Plant & Machinery, Building or factory etc. Circulating Asset is that with help of which owner earns profits by parting with it and letting other to become its owner e.g. Stock in trade. On verification of details produced by AR it is found that, since receipt were collected by way of 'Charge' from customers for having been facilitated a particular service, including some items of Stock-in- Trade/circulating assets to them, so receipts derived from such basic services to the customers should be characterized only as revenue receipts. The apex courts decisions relied on by the assessee are distinguishable facts having no relevance with the facts and circumstances of case under consideration. Hence, argument put forth by the assessee is not acceptable and amount of Rs. 25,80,14,015/- credited as capital receipt is treated as revenue receipt. Moreover, during the assessment proceedings for A.Y. 2014- 15 it is found that the assessee itself has revised the return of income vide e. acknowledgement number.. dated 30/03/2016 for A.Y. 2014-15 and supply affording and electrification charges as receipts for the year and loss claimed is accordingly reduced. Therefore, amount of Rs. 25,80,14,015/- credited as capital receipt is treated as revenue receipt on account of supply affording and electrification charges and accordingly added back to the total income of the assessee.

4.3 As a result, the amount of Rs. 25,80,14,015/- received on account of basic operations of the company i.e. "Supply affording Charges" and "Electrification Charges" was required to be credited in P & L Account. But this was not done by the assessee company. Hence, the revenue receipts of Rs. 25,80,14,015/- is added in the total income of the assessee. I am satisfied that the assessee has concealed its to the extent of Rs. 25,80,14,015/- be treating the same as capital expenditure rather than revenue by doing so has attracted penalty proceedings u / s 271(1)(c) of the I.T. Act, 1961, penalty proceedings u / s 271(1)(c) are initiated on this issue separately."

6. Thus, the Ld. AO has treated this receipt on account of supply affording charges and electrification charges as revenue receipts and made an addition of Rs.25.80 crores and to that extent the loss of the assessee was reduced by assessing the total income at loss of Rs.351.50 crores as against the original assessment at loss of Rs.377.31 crores. The CIT(A) has deleted the addition made on this account by considering relevant regulations framed and notified by MP Electricity regulations Commission under the MP Electricity Act 2003 as well as various decisions on this point in para 7 to 7.10 as under:

“7. Decision

I have carefully considered the facts of the case, assessment order of the AO and grounds of appeal, Statement of facts and the written submissions alongwith the Paperbook filed by the appellant.

7.2 The crux of the matter is whether the Supply Affording Charges (hereinafter referred to as the 'SAC') and Electrification charges (herein after referred to as the EC) charged by the Appellant, being a DISCOM, from the customers, should be considered as a Capital Receipt or a Revenue receipt.

7.3 For this purpose, it is imperative to first determine what exactly is the nature of SAC and the EC. The Appellant through its Paper Book has submitted a copy of the Notification dated 7/9/2009 issued by the Madhya Pradesh Electricity Regulatory Commission which forms the basis of these charges. It also gives the rates applicable to different kinds of consumers. The relevant parts of the said Notification are as follows:-Notification Dated: 7th September,2009 Bhopal Dated: 2 ^ (ad) September, 2009

ANNEXURED

No. 1902/MPERC/2009. In exercise of powers conferred by Section 181 read with Section 45(3)(b) and 46 of the Electricity Act, 2003 and all powers enabling it in that behalf, the Madhya Pradesh Electricity Regulatory Commission hereby revises the Madhya Pradesh Electricity Regulatory Commission. (Recovery of Expenses and other Charges for providing Electric Line or Plant used for the purpose of giving Supply) Regulations, 2006 notified on 24.11.2006.

*MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
(RECOVERY OF EXPENSES AND OTHER CHARGES FOR
PROVIDING ELECTRIC LINE OR PLANT USED FOR THE
PURPOSE OF GIVING SUPPLY) REGULATIONS (REVISION-1),
2009*

7.3.2 It is noted that the said Regulations in its very title contains the phrase 'Recovery of Expenses and other charges for providing Electric Line or Plant used for the purpose of giving Supply. Thus, as per these Regulations, the SAC and EC are charged as recovery of expenses for providing capital assets for the purpose of giving Supply. Irrespective of the nomenclature, they are more in the nature of consumer contribution towards Fixed assets and gives an indication that they could be more in the nature of a Capital Receipt for the Appellant company.

7.4 Chapter 2 of the said Regulations define the following terminologies :-

(f) "Distribution System" means the system of wires and associated facilities between the delivery points on the transmission lines or the Generating Station connection and the point of connection to the installation of the consumers;

(g) "Electric Line" means any line which is used for carrying electricity for any purpose and includes:

(i) any support for any such line, that is to say, any structure, tower, pole or other thing in, on, by or from which any such line is, or may be, supported, carried, or suspended; and

(ii) any apparatus connected to any such line for the purpose of carrying electricity;

(h) "Electrical Plant" means any plant, equipment, apparatus or appliance or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity but does not include:

(i) an electrical line; or

(ii) a meter used for ascertaining the quantity of electricity supplied to any premises; or

(iii) an electrical equipment, apparatus or appliance under the control of a consumer.

(r) "Service Line" means any Electric Supply Line through which electricity is, or is intended to be, supplied: -

(0) to a single consumer either from a Distributing Main or from the Distribution Licensee's premises; or

(ii) from a Distributing Main to a group of consumers on the same premises or on contiguous premises supplied from the same point of the Distributing Main;

7.5 The relevant portion of the Chapter 3 of the Regulations are as follows :-

GENERAL

(1) The charges under these Regulations shall be recoverable from Applicant/ consumer to the extent applicable.

(2) The Distribution Licensee shall recover in advance the charges approved by the Commission through these Regulations only from the Applicant/ Consumer Concorsounds of going supply of electricity to new consumer or for enhancement of load of the existing connection. Connection will be given only on receipt of these charges in full.

(3) *In case of enhancement of load, the Supply Affording Charges will be equal to charges applicable for total load less charges applicable to existing load prior to enhancement under respective slabs as provided for in these Regulations.*

7.5.2 *From the above extract, it is noted that the DISCOM is allowed to recover the approved charges 'in Advance', from the Applicant/Consumer for the purpose of giving supply of electricity 'to new consumer' or 'for enhancement of load of the existing connection. Connection will be given only on receipt of these charges in full. INCOME TAX DEPARTMENT*

7.6 *Chapter IV of the regulations lay down what exactly are the charges applicable for the various type of consumers. For example, for the LT Consumer, the charges are mentioned in Sec. 4.1 as follows :-.....*

7.7.4 *Thus it is seen from the above regulations, that the charges so collected are to be kept in a separate account and used for the purposes of acquiring or creating Fixed Assets. The accounting treatment is same as that of the 'Works carried out with the consumer contributions'. This consumer contribution is being reduced by the company from the cost of asset for the calculation of depreciation as per Section 43(1) of the Act. To that extent, the Appellant has also claimed less depreciation. If the contention of the AO is accepted, then at least, the Appellant is rightfully entitled to this additional depreciation.*

7.7.5 *From the above, it is clear that the SAC and the EC are one time charges from the customer, more in the nature of consumer contribution and are charged at the time of a new connection or upgradation of an existing connection, specifically meant for the funding of capital expenses. Admittedly, it shows the character of a capital receipt rather than that of a revenue receipt.*

7.8 *The above view is further strengthened by the ratio laid down by the Hon'ble Supreme Court in [1961] 41 ITR 608 (SC) in Hoshiarpur Electric Supply Co. v. Commissioner of*

Income-tax. In the same judgment, the Hon'ble Supreme Court has also referred to the Hon'ble Bombay High Court judgment in Commissioner of Income-tax v. Poona Electric Supply Co. Ltd. [1946] 14 ITR 622 and to the Monghyr Electric Supply Co. Ltd. v. Commissioner of Income-tax [1946] 26 ITR 15. The relevant extract of the judgment is as follows (emphasis supplied) :-

But an electric service line requires constant inspection and occasional repairs and replacement and expenses in this behalf have to be undertaken by the assessee. The amount contributed by the consumer for obtaining a new connection would of necessity cover all those services. The amount contributed by the consumer is in direct recoupment of the expenditure for bringing into existence an asset of a lasting character enabling the assessee to conduct its business of supplying electrical energy. By the installation of the service lines, a capital asset is brought into existence. The contribution made by the consumers is substantially as consideration for a joint adventure; the service line when installed becomes an appendage of the mains of the assessee, and by the provisions of the Electricity Act, the assessee is obliged to maintain it in proper repairs for ensuring efficient supply of energy. The assumption made by the Department that the excess remaining in the hands of the assessee, after defraying the immediate cost of installation of a service line must be regarded as a trading profit of the company is not correct. The assessee is undoubtedly carrying on the business of distributing electrical energy to the consumers. Installation of service lines is not an isolated or casual act; it is an incident of the business of the assessee. But if the amount contributed by the consumers for installation of what is essentially reimbursement of capital expenditure, the excess remaining after expending the cost of installation out of the amount contributed is not converted into a trading receipt. This excess which is called by the Tribunal "profit element" was not received in the form of profit of the business; it was part of a capital receipt in the hands of the assessee and it was not converted into a trading profit

because the assessee was engaged in the business of distribution of electrical energy, with which the receipt was connected.

In Commissioner of Income-tax v. Poona Electric Supply Co. Ltd. [1946] 14 ITR 622 it was held by a Division Bench of the Bombay High Court that the amount received from the Government of Bombay by the Poona Electric Company in reimbursement of expenses incurred for constructing new supply lines for supplying energy to new areas not previously served was a capital receipt and not a trade receipt. The question of the taxability of the "profit element" in the contribution received from the Government was not expressly determined; but the court in that case held that the entire amount received by the Poona Electric Company from the Government as contribution was a capital receipt.

In Monghyr Electric Supply Co. Ltd. v. Commissioner of Income-tax [1946] 26 ITR 15 it was held that the amount paid by the consumers of electricity for meeting the cost of service connections was a capital- receipt in the hands of the electricity undertaking and not a revenue receipt and the difference between the amount received on account of service connection charges and the amount immediately not expended was not taxable as revenue.

The receipts though related to the business of the assessee as distributors of electricity were not incidental to nor in the course of the carrying on of the assessee's business; they were receipts for M bringing into existence capital of lasting value. Contributions were not made merely for services rendered and to be rendered, but for installation of capital equipment under an agreement for a joint venture. The total receipts being capital receipts, the fact that in the installation of capital, only a certain amount was immediately expended, the balance remaining in hand, could not be regarded as profit in the nature of a trading receipt. On that view of the case, in our judgment, the High Court was in error in holding that the excess of the receipts over the amount expended for

installation of service lines by the assessee was a trading receipt."

7.9 The Assessing Officer has based his decision on the reasoning that the nature of a receipt is dependent on whether a 'circulating asset' is used or a 'fixed asset' is used to derive this receipt. This is correct in principle, but in the impugned order, no clear evidence has been put forward for coming to this conclusion. The Appellant, on the other hand, has clearly shown that the company has been authorised to levy such charges from customers only one time, at the time of new connection and is used for reimbursement of expenses incurred for installing capital assets such as Electric lines etc.

7.9.2 Likewise, while the AO has stated that "On verification of details filed by the AR, it is found that since receipts were collected by way of 'Charges' from customers for having been facilitated service, including some items of Stock-in-trade/Circulating assets to them, so receipts derived from such basic services to the customers should be characterized only as revenue receipts", there is no substantiation of such reasoning in the impugned order. No example has been adduced to reach this conclusion.

7.9.3 The AO has also stated blandly that "The Apex Courts decision relied upon by the assessee are distinguishable facts having no relevance to the facts and circumstances of case under consideration." without mentioning the distinguishing facts, if any. The basic facts of the case decided by the Hon'ble Supreme Court in the aforesaid judgment appear to be exactly similar to that in the impugned order.

7.10 Hence, in view of the detailed discussion above and respectfully following the directly relevant decisions of the Hon'ble Supreme Court and Bombay High Court, I am constrained to hold that the additions made by the AO cannot be sustained. The grounds 1 to 3 of the Appellant's appeal are therefore Allowed."

7. We further note that the Delhi Benches of the Tribunal in case of DCIT vs. BSES Yamuna Power Ltd. (supra) has also considered an identical issue in para 8 to 8.4 as under:

“8. Ground No. (i)

It is observed that assessee during year under consideration received a sum of Rs. 19,65,18,794/- as service line deposits from customers for setting up service line which include cost of GI pipes, bricks sand etc. The said charges have been received by assessee as per provisions of Electricity Act, 2003, and regulations framed thereunder, by DERC from time to time. It is observed that said issue has been considered by this Tribunal, in assessee's own case DCIT vs. BSES Yamuna Power Ltd. in consolidated order dated 05/10/15 for Assessment Years 2005- 06 to 2008-09 as under:

17.2.4 We find that while dealing with the issue the Learned CIT(Appeals) has discussed the related provisions of the Electricity Act, 1910 defining "service line" as per which it is an electric supply line intended to supply energy to a single consumer or a group of consumer from the same point of the distributing main. So the service line is to be drawn from the distributing main. The lines drawn with the help of electric posts are electric supply lines and connection taken from the post to the building are service line. He has noted further that service line charges are levied to recover the cost of service line which includes the cost of GI pipes, bricks, sand, overheads or under ground cables etc. There is no dispute that the service line charges are charged from the consumer only at the time of providing new connections, to recover the expenditure incurred on such equipments and it is a one time charge levied on the consumers at the time of taking new connections and thereafter it is the responsibility of the BRPL for repair/replacement of the service line. It has been noted that the assessee was charging service line deposits as well as development charges from the consumers as per the rules and notification of Delhi Electricity Regulatory Commission (BERC). The capital expenditure

incurred in respect of service line deposits on account of service line cables, cost of G.I. pipes, bricks etc. were capitalized under the head 'meter accessories' (on which depreciation was claimed at the rate of 80% but was reduced by the Assessing Officer to 25%). However, the capital expenditure incurred on development charges were duly included under the head "plant and machinery", which was subject to the normal depreciation @ 25%. It was accordingly submitted that the development charges are required to be D-capitalized from the plant and machinery @25% and service line deposits from plant and machinery (meter) @ 80% in accordance with the provisions of sec. 43(1) of the Act. Against the observation of the Assessing Officer that it is not a deposit but a receipt as it is non-refundable, the contention of the assessee remained that service line charges are being recovered from the customers as per the Electricity Act, 2003 and the regulation framed under the Act by the DERC from time to time. The charges are levied to recover the cost of service line which includes cost of G.I. pipes, bricks, sand, overhead or underground service line cable, meter accessories etc. These charges are taken from the customers only at the time of providing the new connection to recover the expenditure incurred on the equipments and these expenditures are capitalized under the head "plant and machinery" (meter) and depreciation is claimed thereon.

17.3 With regard to the observations of the Assessing Officer, only 1/3 of the total amount on revenue account and not whole of it is treated as capital receipts, the contention of the assessee remained that DERC is a regulatory body, which regulates the charges of service line charges. Thus, service line deposits are received by the company as per the provisions of DERC and Electricity Act for the purpose of incurring the expenditure for laying the service line and other related expenses for providing new connection to the customers. It was explained that in the absence of a one to one linking of the service line deposit scheme with the capital expenditure incurred on the service line connection, the justification for treating 1/3rd of the total amount of receipts in a particular year as Revenue is that by doing so the assessee is offering for Revenue all service line

receipts over three years. It was submitted that at the same time the assessee is claiming 99% of the cost incurred on capitalization service line connections under plant and machinery (meter) as depreciation over three years based upon the facts that energy meters are eligible for deprecation at the higher rate of 80%. This is in line with the matching concept as enunciated under AS-I requiring Revenue to be matched with cost. Based upon the matching concept and Revenue friendly concept, the offering of service line deposits (which are in the nature of capital receipts) over a period of three years is not prejudicial to the interest of Revenue, however, the service line receipts are of capital nature and is required to be reduced from the relevant cost of plant and machinery in accordance with sec. 43(1) of the Income-tax Act, 1961, explained the assessee.

17.4 With regard to the observation of the Assessing Officer that the assessee is engaged in selling electricity to the consumers from whom it charges fees in the name of energy charges and these energy charges are in the nature of Revenue receipts, the submission of the assessee remained that the nature of service line receipts are entirely different from the nature of the energy charges and the service line receipts deserve to be reduced from the cost of the relevant plant and machinery in accordance with sec. 43(1) of the Income-tax Act, 1961. On the other hand, energy charges are recovered from consumers for the amount of electricity consumed by them at the prevailing tariff, which is of the Revenue nature. Accordingly, both these receipts, namely, energy charges and service line receipts have different characteristic and therefore, could not be measured with the same yard-stick. We find substance in the submission of the assessee as there is no dispute on the facts of the case. Discussing these submissions of the assessee and meeting out the observations of the Assessing Officer, we are of the view that the Learned CIT(Appeals) following the ratios laid down in the cited decisions has rightly come to the conclusion that the amounts received for installation of service lines are to be treated as capital receipts in the hands of the assessee. In result, the Learned CIT(Appeals) was justified in deleting the addition of Rs.73,75,590 made on account of service line

deposits from customers. The same is upheld. The ground No.1 of the appeal preferred by the Revenue is accordingly rejected.

8.1. Further, it is observed that Hon'ble Delhi High Court approved order passed by this Tribunal vide order dated 14/09/16. Hon'ble Delhi High Court upheld findings of this Tribunal by observing as under:

"8. With respect to the ITAT's ruling that the treatment of the service line deposit over the years being capital or revenue is concerned, we notice that the AO refused to recognise the amounts as capital receipts. The assessee offered 1/3rd of the amount to the profit and loss account and later explained that these were capital receipts and are not revenue in nature. This volte face of the assessee seems to have triggered the AO's decision that the receipts were not capital but revenue and therefore entirely liable to be taxed. The issue is covered against the revenue in Hoshiarpur Electric Supply Co. vs. CIT {1961} 41 ITR 608 (SC).

9. As far as the change in the method of valuation is concerned, the ITAT permitted the assessee to adopt the moving average methodology. The ITAT noted that the previous method adopted by the assessee was First In First Out (FIFO) in terms of AS2. However, they changed that method from 2005-2006 onwards. The ITAT concurred with the CIT (A)'s decision that the assessee had the autonomy to decide appropriate method as long as the authority did not find anything fundamentally wrong in it. In our opinion no question of law arises on this score as well."

8.2. Admittedly facts and circumstances of this issue are identical in year under consideration, with that of preceding assessment years and no distinguishing features has been brought out by the Ld.Sr DR in order to deviate from view upheld by Hon'ble High Court.

8.3. Respectfully following same, we are upholding view taken by Ld.CIT(A).

8.4. Accordingly this ground raised by revenue stands dismissed.

8. Accordingly in the facts and circumstances of the case where these charges are collected from the consumers on account of capital expenditure incurred by the assessee in setting up of distribution system/infrastructure then the same cannot be treated as revenue receipt and assessee has rightly capitalized the same and reduced from the cost of fixed assets for the purpose of claiming the depreciation. Hence, we do not find any error or illegality in the impugned orders of the CIT(A) qua this issue.

9. Since the issue is common in all the appeals of the revenue therefore, all the appeals of the revenue stands disposed of being dismissed.

10. In the cross appeal for A.Y.2007-08 the assessee has raised following grounds of appeal:

“1. The Ld. AO has erred and CIT(A) NFAC erred in confirming action of AO in making disallowance of depreciation of Rs. 2,28,67,403/- without considering the facts of the case and against the law. Hence, the disallowance is liable to be deleted:

On the facts and in the circumstances of the case and in law, the Ld. Assessing Officer has erred and also CIT(A) erred in confirming action of AO in making disallowance of Rs. 2,28,67,403/- by disallowing the claim of depreciation without appreciating that the assessee company has claimed correct amount of depreciation and thus, the disallowance of Rs. 4,39,07,969/- is wrong and contrary to the facts of the case and

is against the provisions of the Act. Hence, the disallowance of Rs. 2,28,67,403/- is liable to be deleted.”

11. At the time of hearing Ld. AR of the assessee has stated at bar that the assessee does not press grounds of appeal and the same may be dismissed as not passed. An endorsement on this account has been duly made by the Ld. AR of the assessee at the bottom of the grounds of appeal. Ld. DR has raised no objection if the appeal of the assessee is dismissed as not press. Accordingly the appeal of the assessee is dismissed being not pressed.

12. In the result, All the four appeals of the revenue and one cross appeal of the assessee are dismissed.

Order pronounced in the open court on 10 .04.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, _ 10 .04.2024

Patel/Sr. PS

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

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*