

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

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.1002/Ahd/2023
(Assessment Year: 2013-14)

Assistant Commissioner of Income Tax, Circle-2(1)(1), Vadodara	Vs.	Madhya Gujarat Vij Co. Ltd., 4 th Floor, Sardar Patel Vidyut Bhavan, Race Course Circle, Alkapuri, Vadodara-390007
[PAN No.AADCM7439H]		
(Appellant)	..	(Respondent)

Appellant by :	Dr. Darsi Suman Ratnam, CIT DR
Respondent by:	Shri M.K. Patel, Advocate

Date of Hearing	03.04.2024
Date of Pronouncement	17.04.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Revenue against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Center (in short “NFAC”), Delhi vide order dated 09.10.2023 passed for Assessment Year 2013-14.

2. The Revenue has taken the following grounds of appeal:-

“1. That on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs.45,54,28,000/- made for computing book profit u/s 115JB of the Income-tax Act, 1961, being grant and subsidies, without appreciating the fact that the addition of Rs.45,54,28,000/- to net profit for the purpose of computing Book Profit u/s. 115JB of the Income-tax Act, 1961?

2. That on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition to book profits u/s. 115JB towards grants and subsidies by erroneously accepting the assessee’s reliance on CIT(A)’s order in the case of in the case of Paschim Gujarat Vij Co Ltd. for A.Y. 2014-15, wherein the issue stands restored to the file of assessing officer by the Hon’ble ITAT?

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-aside and that of the Assessing Officer be restored.”

3. The brief issue for consideration before us is the deletion of addition of Rs. 45,54,28,000/- by Ld. CIT(A), made by the Assessing Officer for computing book profits under Section 115JB of the Act, towards grant and subsidies. The issue pertains to addition on account of subsidy / grants received by the assessee from Government and consumers. The assessee company has been receiving subsidy and grants towards cost of capital assets, besides consumer contribution towards capital assets. The outstanding balance as on 31.03.2014 was shown at Rs. 145457.39 lakhs by the assessee. The assessee has been transferring 10% of the subsidies / grants / consumer contribution every year to the Profit & Loss Account, as it's income. The Assessing Officer noticed that these subsidies / grants / consumer contribution received by the assessee towards cost of assets should have been deducted from the cost of assets, on which 15% depreciation was claimed. Since the assessee has been transferring 10% of these subsidies / grants / consumer contribution every year to the Profit & Loss Account as his income, the Assessing Officer transferred a further sum of 5% of the subsidies / grants / consumer contribution, to the profit of the assessee company. The Ld. CIT(A) confirmed the aforesaid addition in the hands of the assessee. However, the Ld. CIT(A) deleted the aforesaid addition for the purpose of computing book profits under Section 115JB of the Act. The Ld. CIT(A) relied upon the decision of Ld. CIT(A) in the assessee's own case for A.Y. 2012-13, wherein CIT(A) had held that addition made under normal provision on account of capital grants / subsidies cannot be made for purpose of computing to book profits under Section 115JB of the act. The Ld. CIT(A) was of the view that

the provisions of under Section 115JB of the Act do not provide for making additions on account of Government subsidy / grant. Accordingly, Ld. CIT(A) allowed the appeal of the assessee on this issue with the following observations:-

“5.7. The CIT(A)2, Vadodara in the case of - M/s. PASCHIM GUJARAT VIJ COMPANY LIMITED, for the A.Y.2014-15, held that addition made under normal provisions on account of capital grants/subsidies cannot be made to Book Profit u/s 115JB. Accordingly, the Assessing officer has been directed to delete the same.

The facts of the case of the Appellant - M/s. MADHYA GUJARAT VIJ COMPANY LIMITED, for the A.Y.2013-14, is identical to the facts of the case of M/s. PASCHIM GUJARAT VIJ COMPANY LIMITED, for the A.Y.2014-15.

Further, the same CIT(A)-Dr.Banwarilal, has passed the appeal order in the case of the Appellant - M/s. MADHYA GUJARAT VIJ COMPANY LIMITED, for the A.Y.2013-14 as well as in the case of - M/s. PASCHIM GUJARAT VIJ COMPANY LIMITED, for the A.Y.2014-15.

Respectfully following the appeal order dated 17.11.2017 in the case of – M/s. PASCHIM GUJARAT VUJ COMPANY LIMITED, for the A.Y. 2014-15, the addition of Rs.45,54,28,000/- made to Book Profit u/s 115JB in the assessment order passed u/s 143(3) dated 21.11.2016 passed by the DCIT 2(1) (2) Vadodara, for the A.Y. 2013-14 in the case of the Appellant – M/s. MADHYA GUJARAT VIJ COMPANY LIMITED, is hereby DELETED, for the following reason:

“addition made under normal provisions on account of capital grants/subsidies cannot be made to Book Profit u/s 115JB. Accordingly, the Assessing officer is directed to delete the same.”

4. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(A) deleting the additions on account of capital grant / subsidies for the purpose of computing book profit under Section 115JB of the Act.

5. Before us the Counsel for the assessee submitted that in the assessee’s own case for A.Y. 2013-14 in ITA No. 393/Ahd/2018, the ITAT vide order dated 18.08.2023 has set-aside this issue to the file of Ld. Assessing Officer for fresh adjudication. Accordingly, since the issue has already been decided by ITAT in quantum appeal of the assessee, this issue alternatively raised by the

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assessee vide a rectification application, has become infructuous. The appeal filed by the Department has therefore become infructuous.

6. It would be useful to reproduce the relevant extracts of the ruling on which reliance has been placed by the Counsel for the assessee, for ready reference:-

“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.”

7. In the result, the appeal of the Department is dismissed as infructuous.

This Order pronounced in Open Court on 17/04/2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 17/04/2024

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad