

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES,"B" JAIPUR

डा० एस. सीतालक्ष्मी,न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 88/JP/2024  
निर्धारणवर्ष/AssessmentYear : 2016-117

JaipurVidyutVitran Nigam Ltd. Vidyut Bhawant 'Janpath' Jaipur – 302 001	बनाम Vs.	The DCIT Circle-5 Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AABCJ 6373 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकरअपील सं./ITA No. 174/JP/2024  
निर्धारणवर्ष/AssessmentYear : 2016-17

The DCIT Circle-5 Jaipur	बनाम Vs.	JaipurVidyutVitran Nigam Ltd. Vidyut Bhawant 'Janpath' Jaipur – 302 001
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AABCJ 6373 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri P.C. Parwal, CA  
राजस्व की ओरसे / Revenue by: Shri Arvind Kumar, CIT-DR  
Shri A.S. Mehra, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 08/05/2024  
उदघोषणा की तारीख / Date of Pronouncement: 30/05/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These cross appeals arise from order of the Ld. CIT(A) dated 31-12-2023, National Faceless Appeal Centre, Delhi [ hereinafter referred to as

(NFAC) ] for the assessment year 2016-17. Each rival parties contested the finding of that order on the following grounds of appeals;

ITA NO. 88/JP/2024 -2016-17 (Assessee)

'1. The Ld. CIT(A), NFAC has erred on facts & in law in upholding the validity of order passed by AO u/s 147 of IT Act.

2. The Ld. CIT(A), NFAC has erred on facts and in law in confirming the disallowance of unpaid interest of Rs.2,56,43,688/- u/s 43B of IT Act on loan taken from World Bank by incorrectly presuming that loan was advanced by State Government and interest was paid to State Government even when neither the World Bank nor the State Government falls under any of clause (d), (da) or (e) of section 43B.

&

2.1The Ld. CIT(A), NFAC has erred on facts and in law in confirming the above disallowance by not correctly appreciating the fact that against the unpaid interest it has already accounted for interest subvention on World Bank loan by incorrectly holding that interest paid on loan and interest subsidy received are two separate transaction

ITA NO. 174/JP/2024 -2016-17 (Revenue)

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.1,49,53,15,488/- made by the AO on account of electricity duty u/s 43B of the Income Tax Act, 1961 ignoring the fact that the electricity duty collected by the assessee from consumer forms an integral part of a commercial transaction of supplying and distributing the electricity, thus, the duty collected by the assessee constitutes trading receipts received during the ordinary course of its business and consequently when the payment is made to the government, the deduction under the Income Tax Act is allowed as business expenditure. Thus, if any sum is not actually paid, it is to be disallowed u/s 43B of the Income Tax Act.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO on account of the electricity duty u/s 43B of the Income Tax Act,1961 ignoring the fact that the electricity duty collected by the assessee from consumers has not been actually paid to the State Government and is was only a set off against electricity subsidy.

2. Bench noted from the grounds of appeal so raised by the parties, it would be appropriate to adjudicate upon both the appeals first on merits of the grounds of each parties and then will deal with the legal ground raised by the assessee.

3. The only issue that the assessee has challenged on merits the action of the Id. CIT(A) confirming the disallowance of unpaid interest of Rs.2,56,43,688/- u/s 43B of IT Act on loan taken by the assessee from the World Bank by incorrectly presuming that loan was advanced by State Government and interest was paid to State Government even when neither the World Bank nor the State Government falls under any of clause (d), (da) or (e) of section 43B.

3.1 Apropos this issue, brief facts of the case are that The AO at page 8 of his order the order observed that payment of interest to World Bank is on installments basis through e-challan to Govt. Treasury of Rajasthan. Section 43B is enacted so as to enable certain transactions to take place expeditiously; hence payment made to World Bank is also payment to public financial institution for the purpose of section 43B of the Act.

Accordingly, he (Id. AO) disallowed the outstanding interest amount of Rs.2,56,43,688/-.

3.2 In first appeal, the Ld. CIT (A) at Para 9.3 to 9.6 observed that loan was advanced by the state government and interest was also paid to the state government. In fact even the state government did not receive funds directly from World Bank but funds were received through the Central Government. Hence payment of interest was made to the state government treasury which is covered u/s 43B of the Act. Therefore the status of World Bank being a public financial institution or otherwise is irrelevant. Further the contention of the appellant that it has accounted for more interest subsidy than the amount of interest unpaid is not tenable is as much as appellant has to first pay up interest to the state government and subsequently state government, in a separate transaction, would release the interest subsidy in respect of 30% of the loan amount. The relevant observation from para 9.3 to 9.5 as verbatim is reproduced as under:-

"9.3 The submissions of the appellant are carefully considered. It is noted from the contents of the letter dated 06.05.2016 from State Government of Rajasthan that in respect of all loans received from the World Bank till the year 2006, loans used to be received by the State Government through the Government of India in the form of 70% loans and 30% grants. These in turn used to be advanced to the appellant as 100% loans leading to the appellant paying interest to the State Government on the entire amount. Subsequently, the State Government would return to the appellant the interest received on the grant component as interest subsidy. This method of payment of interest on the entire amount of loan to the State Government and subsequent return of interest on grant component as

interest subsidy was in practice during the impugned financial year, 2015-16 as well.

9.4 As can be seen from the above, the loan was advanced by the State Government and the appellant paid interest also to the State Government. In fact, leave alone the appellant, even the State Government did not receive funds directly from World Bank; the funds were always received through the Central Government. As such, the payments of interest in question were always to the State Government, and it is for this reason, all payments of interest were to the State Government treasury via e-challans only. Under such circumstances, the payment of interest shall be covered u/s 43B of the Act.

9.5 The contention that the appellant has accounted for more interest subsidy than the amount of interest unpaid is not tenable. The interest payment and subsequent release of subsidy were not mere book entries: had it been so, no actual payment of interest subsidy would have taken place. As per the mechanism prescribed, the appellant had to first pay up interest to the State Government on 100% of the loan. Subsequently, the State Government, in a separate transaction, would release the interest subsidy in respect of 30% of the loan amount. As such, with no book adjustment taking place, the attempt of the appellant to club its liability towards payment of interest with subsequent release of interest subsidy on a part of the interest payment is without any basis, and cannot be accepted.

9.6 Also, with no payments being made directly to World Bank, the status of World Bank being a Public Financial Institution or otherwise is irrelevant. In view of the above, it is held that as the appellant had received loans from the State Government, and paid interest to the State Government only, the transaction of payment of interest is covered u/s 43B of the Act. The addition of Rs. 2,56,43,688/- u/s 43B is accordingly confirmed, Ground of appeal no. 4 is dismissed.”

3.3 During the course of hearing, the Id. AR of the assessee relying on the written submission argued that the disallowance made is not sustainable and has vehemently repeated similar arguments what has been recorded in the written submission filed before the Bench and the same reads as under :

"1. It is submitted that Ld. CIT(A) has observed that loan was advanced by the state government, interest is also paid to the state government and even the state government did not receive funds from the World Bank, rather the funds were received through the central government. Even if it is accepted that also the interest payable to the state government on loan advanced by it is not covered u/s 43B of the Act. This is for the reason that in clause (d), (da) or (e) of section 43B do not cover the interest payable on any loan or borrowing from the government. In these clauses interest payable to specific financial institutions / NBFC / Schedule Banks / Co-operative Banks are only covered. The interest payable to State Government is not covered under any of these clauses. Explanation no. 4 to section 43B of the Act specifies the institutions which are covered under this section. For ready reference explanation no. 4 to section 43B of the Act is reproduced below:

*(a) "**Public financial institutions**" shall have the meaning assigned to it in section 4A of the Companies Act, 1956 (1) of 1956.*

Section 4A of the Companies Act reads as under:-

**Public financial institutions:**

*(1) Each of the financial institutions specified in this subsection shall be regarded, for the purposes of this Act, as a public financial institution, namely:-*

*(i) the Industrial Credit and Investment Corporation of India Limited, a company formed and registered under the Indian Companies Act, 1913 (7 of 1913);*

*(ii) the Industrial Finance Corporation of India, established under section 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948);*

*(iii) the Industrial Development Bank of India, established under section 3 of the Industrial Development Bank of India Act, 1964 (18 of 1964);*

*(iv) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);*

*(v) the Unit Trust of India, established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963).*

*(2) Subject to the provisions of sub-section (1), the Central Government may, by notification in the Official Gazette, specify such other institution as it may think fit to be a public financial institution: Provided that no institution shall be so specified unless-*

*(i) it has been established or constituted by or under any Central Act, or*

*(ii) not less than fifty one per cent. of the paid-up share capital of such institution is held or controlled by the Central Government.]*

**(aa)"Scheduled bank"** shall have the meaning assigned to it in the Explanation to clause (iii) of sub-section (5) of section 11.

**Scheduled Bank:**

*In this clause, "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);*

**(b)"State financial corporation"** means a financial corporation established under section 3 or section 3A or an institution notified under section 46 of the State Financial Corporations Act, 1951 (63 of 1951). Section 46 of State Financial Corporation Act reads as under:

*Power to apply Act to certain financial institutions in existence at commencement of Act.—*

*(1) The Central Government may by notification in the Official Gazette, direct that all or any of the provisions of this Act shall, subject to such exceptions and restrictions as may be specified, apply to [any institution established by a State Government] which has for its object the financing of industrial concerns, and on the issue of such notification, the institution shall be deemed to be a Financial Corporation established by the State Government for the State within the meaning of this Act, and the provisions of this Act shall become applicable thereto according to the tenor of the notification: [Provided that no notification shall be issued under this sub-section in respect of any institution unless a request is made in that behalf by the State Government concerned.]*

**(c)"State industrial investment corporation"** means a Government company within the meaning of section 617 of the Companies Act, 1956 (1 of 1956), engaged in the business of providing long-term finance for industrial projects and eligible for deduction under clause (viii) of sub-section (1) of [section 36](#).

**(d)"co-operative bank", "primary agricultural credit society" and "primary co-operative agricultural and rural development bank"** shall have the meanings respectively assigned to them in the Explanation to sub-section (4) of section 80P. For ready reference, explanation to subsection (4) of Section 80P reads as under:

JAIPUR VIDYUT VITRAN NIGAM LTD. VS DCIT, CIRCLE-6, JAIPUR

*i)"co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);*

*ii)"primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.*

**(e)"deposit taking non-banking financial company" means a non-banking financial company which is accepting or holding public deposits and is registered with the Reserve Bank of India under the provisions of the Reserve Bank of India Act, 1934 (2 of 1934).**

Thus, from the plain reading of the above definitions it is crystal clear that neither the State Government nor the World Bank falls under the definition of Public Financial Institution, State Financial Corporation, State Industrial Investment Corporation, Deposit taking NBFC, Scheduled Bank and Co-operative Bank. Therefore interest payable on loan taken from State Government / World Bank is not covered by section 43B of the Act. Hence disallowance of Rs.2,56,43,688/- confirmed by Ld. CIT(A) u/s 43B of the Act is not as per law and therefore the same be deleted.

2. It is further submitted that till the year 2006 out of the total loan granted by the World Bank, 70% of the loan was given by the World Bank through State Government and 30% of the loan was received as a Grant through the Govt. **(PB 26)**. Accordingly interest on 30% of the grant amount which was paid to the Govt. was returned back by it to the assessee by way of interest subsidy **(PB 27)**. The Govt. vide its order dt.06.05.2016 **(PB 26)** decided that from F.Y 2016-17, the assessee would pay interest on the loan taken from World bank from which it is clear that assessee is not to pay the interest on the grant amount and accordingly the Govt. would not pay interest subsidy from FY 2016-17. In this background during FY 2015-16 relevant to AY 2016-17 out of the total interest outstanding as on 31.03.2016 of Rs.5,82,81,068/-, the same was paid between 15.06.2016 to 15.01.2017 and accordingly AO disallowed the amount of Rs.2,56,43,688/- which was paid after 30.09.2016. However in doing so it is ignored that assessee has already accounted for interest subsidy of Rs.3,91,07,039/- as per Note no.25 of the Financial Accounts **(PB 28)**. Thus otherwise also the outstanding interest cannot be added to income, as an amount more than this amount is already offered for tax. This contention of the assessee has not been accepted by the Ld. CIT (A) by stating that the payment of interest and interest subsidy received are two separate transactions ignoring that the same relate to the loan received from World Bank through the state government. Hence, for this reason also disallowance made u/s 43B is not justified.

In view of the above, disallowance made by the AO and confirmed by the Ld. CIT (A) is uncalled for and be deleted.”

3.4 On the other hand, the Id. DR supported the order of the Id. CIT(A) and vehemently argued that it is not under dispute that the assessee received the loan from state government and the assessee paid interest to state government. It is also not in dispute that ultimate source of money received was from the World Bank and thus the payment of interest to World Bank covers the provision of section 43B of the Act. As per the terms of the loan first the assessee has to pay the interest and then the same is received on grant will not change the nature of expenditure incurred and the liability of the assessee on interest to financial institutions. Based on this argument the Id. DR supported the orders of the lower authority.

3.5 We have heard both the parties and perused the materials available on record. In this ground, the moot issue is whether the payment of interest to World Bank or the Central/ State Govt. is covered u/s 43B or not. The provision of section 43B reads as under;

**Certain deductions to be only on actual payment.**

**43B.** Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of—

## JAIPUR VIDYUT VITRAN NIGAM LTD. VS DCIT, CIRCLE-6, JAIPUR

- (a) any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, or
- (b) any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, or
- (c) any sum referred to in clause (ii) of sub-section (1) of [section 36](#), or
- (d) any sum payable by the assessee as interest on any loan or borrowing from any public financial institution or a State financial corporation or a State industrial investment corporation, in accordance with the terms and conditions of the agreement governing such loan or borrowing, or
- (da) any sum payable by the assessee as interest on any loan or borrowing from <sup>53</sup>[*a deposit taking non-banking financial company or systemically important non-deposit taking non-banking financial company*], in accordance with the terms and conditions of the agreement governing such loan or borrowing, or
- (e) any sum payable by the assessee as interest on any loan or advances from a scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank in accordance with the terms and conditions of the agreement governing such loan or advances, or
- (f) any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee, or
- (g) any sum payable by the assessee to the Indian Railways for the use of railway assets, <sup>54</sup>[*or*]

**Following clause (h) shall be inserted after clause (g) of section 43B by the Finance Act, 2023, w.e.f. 1-4-2024:**

- (h) *any sum payable by the assessee to a micro or small enterprise beyond the time limit specified in section 15 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006),*

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in [section 28](#) of that previous year in which such sum is actually paid by him :

**Provided** that nothing contained in this section <sup>55</sup>[*except the provisions of clause(h)*] shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of [section 139](#) in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return<sup>56</sup>.

*Explanation 1*—For the removal of doubts, it is hereby declared that where a deduction in respect of any sum referred to in clause (a) or clause (b) of this section is allowed in computing the income referred to in [section 28](#) of the

previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 1983, or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.

*Explanation 2.*—For the purposes of clause (a), as in force at all material times, "any sum payable" means a sum for which the assessee incurred liability in the previous year even though such sum might not have been payable within that year under the relevant law.

*Explanation 3.*—For the removal of doubts it is hereby declared that where a deduction in respect of any sum referred to in clause (c) or clause (d) of this section is allowed in computing the income referred to in section 28 of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.

*Explanation 3A.*—For the removal of doubts, it is hereby declared that where a deduction in respect of any sum referred to in clause (e) of this section is allowed in computing the income referred to in [section 28](#) of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 1996, or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.

*Explanation 3AA.*—For the removal of doubts, it is hereby declared that where a deduction in respect of any sum referred to in clause (da) is allowed in computing the income referred to in [section 28](#), of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 2019, or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.

*Explanation 3B.*—For the removal of doubts, it is hereby declared that where a deduction in respect of any sum referred to in clause (f) of this section is allowed in computing the income, referred to in [section 28](#), of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 2001, or any earlier assessment year) in which the liability to pay such sum was incurred by the assessee, the assessee shall not be entitled to any deduction under this section in respect of such sum in computing the income of the previous year in which the sum is actually paid by him.

*Explanation 3C.*—For the removal of doubts, it is hereby declared that a deduction of any sum, being interest payable under clause (d) of this section, shall be allowed if such interest has been actually paid and any interest referred to in that clause which has been converted into a loan or borrowing <sup>57</sup>[or debenture or any other instrument by which the liability to pay is deferred to a future date] shall not be deemed to have been actually paid.

*Explanation 3CA.*—For the removal of doubts, it is hereby declared that a deduction of any sum, being interest payable under clause (da), shall be allowed if such interest has been actually paid and any interest referred to in that clause which has been converted into a loan or borrowing <sup>57</sup>[or debenture or any other instrument by which the liability to pay is deferred to a future date] shall not be deemed to have been actually paid.

*Explanation 3D.*—For the removal of doubts, it is hereby declared that a deduction of any sum, being interest payable under clause (e) of this section, shall be allowed if such interest has been actually paid and any interest referred to in that clause which has been converted into a loan or advance <sup>57</sup>[or debenture or any other instrument by which the liability to pay is deferred to a future date] shall not be deemed to have been actually paid.

*Explanation 4.*—For the purposes of this section,—

- (a) "public financial institutions" shall have the meaning assigned to it in section 4A<sup>58</sup> of the Companies Act, 1956 (1 of 1956);
- (aa) "scheduled bank" shall have the meaning assigned to it in the *Explanation* to clause (iii) of sub-section (5) of [section 11](#);
- (b) "State financial corporation" means a financial corporation established under section 3 or section 3A or an institution notified under section 46 of the State Financial Corporations Act, 1951 (63 of 1951);
- (c) "State industrial investment corporation" means a Government company within the meaning of section 617<sup>59</sup> of the Companies Act, 1956 (1 of 1956), engaged in the business of providing long-term finance for industrial projects and eligible for deduction under clause (viii) of sub-section (1) of [section 36](#);
- (d) "co-operative bank", "primary agricultural credit society" and "primary co-operative agricultural and rural development bank" shall have the meanings respectively assigned to them in the *Explanation* to sub-section (4) of [section 80P](#);
- (e) "deposit taking non-banking financial company" means a non-banking financial company which is accepting or holding public deposits and is registered with the Reserve Bank of India under the provisions of the Reserve Bank of India Act, 1934 (2 of 1934);

**Following clause (e) shall be substituted for the existing clause (e) of *Explanation 4* to section 43B by the Finance Act, 2023, w.e.f. 1-4-2024:**

- (e) "micro enterprise" shall have the meaning assigned to it in clause (h) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006);
- (f) "non-banking financial company" shall have the meaning assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);
- (g) "systemically important non-deposit taking non-banking financial company" means a non-banking financial company which is not accepting or holding public deposits and having total assets of not less than five hundred crore rupees as per the last audited balance sheet and is registered with the Reserve Bank of India under the provisions of the Reserve Bank of India Act, 1934 (2 of 1934).

**Following clause (g) shall be substituted for the existing clause (g) of Explanation 4 to section 43B by the Finance Act, 2023, w.e.f. 1-4-2024:**

- (g) "small enterprise" shall have the meaning assigned to it in clause (m) of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006).

<sup>60</sup>[Explanation 5.—For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply and shall be deemed never to have been applied to a sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of [section 2](#) applies.]

We note that clause (d), (da) or (e) of Section 43B do not cover interest payable on any loan or borrowing taken from World Bank /Government. It is noted that in these clauses interest payable to specific financial institutions / NBFC / Schedule Banks / Co-operative Banks are only covered. The interest payable to State Government/ World Bank is not covered under any of these clauses. Explanation no. 4 to section 43B of the Act specifies the institutions which are covered under this section as has been elaborately discussed in the written submission filed by the Id. AR of the assessee. Therefore, from the plain reading of the definitions, it is clear that neither the State Government nor the World Bank falls under the definition

of Public Financial Institution, State Financial Corporation, State Industrial Investment Corporation, Deposit taking NBFC, Scheduled Bank and Co-operative Bank. Therefore we are of the considered view that interest payable on loan taken from State Government / World Bank is not covered with in the provision of section 43B of the Act. Hence disallowance of Rs.2,56,43,688/- confirmed by Id. CIT(A) u/s 43B of the Act is not as per the provision of law and therefore the same is directed to be deleted. Based on these observations' grounds of appeal no. 2 and 2.1 raised by the assessee stand allowed.

4. The revenue preferred an appeal in ITA no. 174/JP/2024 challenging the finding of the Id. CIT(A) only on the issue that , the Ld. CIT(A) has erred in deleting the addition of Rs.1,49,53,15,488/- made by the AO on account of electricity duty u/s 43B of the Income Tax Act, 1961 ignoring the fact that the electricity duty collected by the assessee from consumer forms an integral part of a commercial transaction of supplying and distributing the electricity. Thus, the duty collected by the assessee constitutes trading receipts received during the ordinary course of its business and consequently when the payment is made to the government, the deduction

under the Income Tax Act is allowed as business expenditure. Thus, if any sum is not actually paid, it is to be disallowed u/s 43B of the Income Tax Act.

4.1 The facts of this ground is that the electricity duty is collected from the consumers as per section 3 of the Rajasthan Electricity Duty Act, 1962 and paid to the State Government on its collection from the consumers. It is noted that assessee works as a conduit between the consumers and the State Govt. In the tax audit report the auditor in clause 26(B)(b) has stated that electricity duty of Rs.1,49,53,15,488 is not payable being not recovered from the customers (**APB 29A-29B**). In course of assessment proceedings it is explained by the assessee that electricity duty is not a tax, duty, cess or fees in its hand. It was further submitted that whatever duty is collected from the consumer and payable to the State Government it is adjusted against the subsidy payable by the State Government to the assessee. The AO however held that Government of Rajasthan has merely released the payment of the subsidy and there was nothing specifically mentioned for set off of this amount with the electricity duty. By referring to letter dt.09.04.2015 (**APB 30**) issued by Govt. of Rajasthan it is observed that in the absence of any express provision of set-off, the non-payment of

electricity duty operates as a violation of the obligation imposed by section 43B of the Act. Accordingly Rs.149,53,15,488/- was disallowed u/s 43B of the Act.

4.2 The Ld. CIT(A) at Para 10.5 to 10.8 at Page 19 to 21 of its order held that section 43B (a) covers sum payable by assessee by way of taxes / duty. The electricity duty is not a charge on the assessee which is in the business of distribution of electricity to consumers. Electricity duty is paid by the consumers of the electricity and the role of the assessee is only limited to collection and subsequent transfer thereof to the State Govt. and therefore the provision of section 43B (a) is not applicable in the case of the assessee. Further, as per correct letter dt.09.04.2015 (**APB 31**), government has sanctioned electricity subsidy of 545.6426 crore against the electricity duty and therefore also the electricity duty gets adjusted against the subsidy, hence no disallowance u/s 43B(a) can be made. The relevant observation from recorded at para 10.5 to 10.8 as verbatim is reproduced as under:-

"10.5 I find both the arguments of the appellant quite persuasive. What is covered u/s 43B(a) is any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force. The character of this tax, duty, cess or fee is that of a charge by State on the

assessee. In the present case, the electricity duty is not a charge on the appellant which is in the business of distribution of electricity to consumers. The electricity duty is in fact paid by the consumers of the electricity in the form of an indirect tax/duty, and the role of the appellant is limited to only collection, and subsequent transfer thereof to the State. The appellant is a mere pass-through entity in so far as the collection of electricity duty is concerned, and as such, the provisions of section 43B(a) cannot be made applicable to subsequent payment thereof to the State Government.

10.6 The alternate argument advanced by the appellant is equally forceful. I have perused the letter dated 09.04.2015 (PB-30) issued by the State Government, referred to by the AO in his order. It is noted that the same is related to the release of State Equity, and not to the release of electricity subsidy. The correct letter related to the electricity subsidy was a different one, also dated 09.04.2015 (PB-31), as per which electricity subsidy of Rs. 545.6426 crore was sanctioned against the electricity duty:-

.....

10.7 In the light of the above, even if the electricity duty was covered under the provision of section 43B(a) of the Act, by virtue of the State Government Order dated 09.04.2015, referred to above, as there was no actual payment thereof and only a book adjustment was being done, no disallowance could be made.

10.8 Considering the reasons given in para 10.5 and 10.7 above, it is held that the expenditure of Rs. 1,49,53,15,488/- on account of electricity duty does not fall under the provisions of section 43B(a) of the Act, and disallowance of the same is directed to be deleted.”

4.3 The Id. DR supporting the finding recorded in the order of the assessment argued that electricity duty is a tax and is a forming part of trading receipt and forms an integral part of a commercial transaction of supplying and distributing the electricity, therefore, if such tax is not paid on or before the due date of filing of return, the same is to be added to the income of the assessee u/s 43B of the Act. The Id. CIT(A) has not

appreciated this factual and legal position and therefore, the addition deleted by him is in account of incorrect appreciation of the facts already on record and therefore, the addition deleted should be restored.

4.4 On the other hand, the Id. AR of the assessee made the following submissions in support of the finding recorded in the order of the Id. CIT(A):

**"Submission:**

We may point out that section 43B allows deduction to the assessee in respect of tax, duty, cess or fees in the year in which it is actually paid by the assessee. However, electricity duty collected on behalf of the State Government is not in the nature of tax, duty, cess or fees as specified in Section 43B. The electricity duty is collected from the consumer as per section 3 of the Rajasthan Electricity Duty Act, 1962 on behalf of the State Govt. Relevant para of section 3 of Rajasthan Electricity Duty Act, 1962 is reproduced below for your ready reference:

*"There shall be levied for, and paid to, the State Government on the energy consumed by a consumer or by a person other than a supplier generating energy for his own use or consumption a duty (hereinafter referred to as the "electricity duty") computed at such rate as may be fixed by the State Government from time to time by notification in the Official Gazette."*

Further as per section 5 of Rajasthan Electricity Duty Act, 1962 the supplier of electricity would collect electricity duty from consumer to be paid to the State Govt. Thus from section 3 and 5 of Rajasthan Electricity Duty Act, 1962 it is clear that electricity duty is levy on consumer and not on assessee company. Assessee only collects the same on behalf of State government for onward remittance. Thus it is not a tax or duty or cess collected by the assessee. Hence section 43B is not applicable and therefore the Ld. CIT(A) has rightly deleted the addition made by the AO.

2. It is further submitted that on the one hand assessee collects electricity duty on behalf of the Govt. and on the other hand State government grants subsidy to the assessee. Therefore the Govt. through administrative order each year allows adjustment of electricity duty payable by the assessee to it against the subsidy payable by it to the assessee. The State Govt. on 09.04.2015 has given administrative approval for release of subsidy of 54,564.26 lacs **(PB 31)**

against the electricity duty but AO has wrongly referred to another such administrative approval dt.09.04.2015 where amount of 5,73,933.00 lacs (**PB 30**) was released by the State Govt. on account of State Equity. Similarly for FY 16-17 Govt. vide administrative approval dt.11.04.2016 has released subsidy of 61,730 lacs (**PB 32**) to the assessee against electricity duty. Thus the electricity duty is otherwise paid to the State Govt. by way of adjustment of State subsidy. The Ld. CIT (A) has therefore rightly deleted the addition by also accepting this contention of the assessee.

In view of the above, disallowance made by the AO is rightly deleted by the Ld. CIT (A) and therefore the ground of the department be dismissed.”

4.5 The Id. AR further submitted that assessee collects the electricity duty from the consumers on behalf of the Government of Rajasthan. This is not a tax or duty or cess levied on the assessee. Hence, provision of section 43B is not applicable in the case of the assessee. Assessee simply remits the electricity duty only to the extent it is collected. The uncollected electricity duty is not payable / recoverable from the assessee. Further the State Govt. grants subsidy to the assessee which it allows to adjust against the electricity duty payable by the assessee. Thus section 43B is not applicable as the State Government do not impose electricity duty on the assessee and therefore it is not a deduction which is otherwise allowable to the assessee. To support the contention so raised the Id. AR relied on the decision of Hon'ble Kerala High Court in case of Kerala State Electricity Board Vs. DCIT , 329 ITR 91 where in Para 27 of the order it held as under:

*“27. On a plain reading of s. 43B we are of the opinion that the only clause if at all is relevant in the context of the facts of the appellant's case is cl. (a) which deals with "any sum payable by the assessee by way of tax, duty, ..... under any law for the time being in force". In our opinion, the words, 'by way of tax' are relevant as they are indicative of the nature of liability. The liability to pay and the corresponding authority of the State to collect the tax (flowing from a statute) is essentially in the realm of the rights of the sovereign. Whereas the obligation of the agent to account for and pay the amounts collected by him on behalf of the principal is purely fiduciary. The nature of the obligation, in our opinion, continues to be fiduciary even in a case wherein the relationship of the principal and agent is created by a statute. We are of the opinion that, when s. 43B(a) speaks of the sum payable by way of tax etc., the said provision is dealing with the amounts payable to the sovereign qua sovereign, but not the amounts payable to the sovereign qua principal. We are therefore of the opinion that s. 43B cannot be invoked in making the assessment of the liability of the appellant under the IT Act with regard to the amounts collected by the appellant pursuant to the obligation cast on the appellant under s. 5 of the Electricity Duty Act, 1963.”*

The Id. AR of the assessee also submitted that this decision has been approved by the Hon'ble Supreme Court reported at 447 ITR 196 and therefore, the order of CIT(A) be upheld by dismissing the grounds of the department as there is not contrary decision supplied by the revenue in support of the ground so raised.

4.6 We have heard both the parties and perused the materials available on record. The bench noted that the issue under challenge is squarely decided and is covered by the decision of Hon'ble Kerala High Court (supra) and the appeal filed by the Department against this order has been

dismissed by the Hon'ble Supreme Court by giving following observations;

*"The judgement under appeal was rendered by the Division Bench of the Kerala High Court in ITA No. 1710 of 2009 dated 12-11-2010.*

*We have gone through the circumstances on record and considered the rival submissions. In our view, no interference is called for. We, therefore, dismiss this appeal.*

Contrary to the decision so cited by the Id. AR of the assessee revenue could not support their arguments with any other decision having same strength or change in the law and therefore, we find no infirmity in the order of the Id. CIT(A). Hence, the Ground no 1 & 2 raised by the revenue has no merits and same stands dismissed.

5. Since we have allowed the appeal of the assessee on merits and dismissed the ground of the Department on merit, therefore, we are of the view that legal issue raised by the assessee challenging the validity of order passed by the AO u/s 147 of the Act remains academic in nature which does not require any adjudication.

6. In the result, the appeal of the assessee is allowed and that of the Revenue is dismissed.

Order pronounced in the open court on 30 /05/2024.

Sd/-

(डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

Sd/-

(राठोडकमलेशजयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखासदस्य / Accountant Member

दिनांक / Dated:- 30 /05/2024

\*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Jaipur Vidyut Vitran Nigam Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Circle-6, Jaipur
3. प्रत्यर्थी / The Respondent- The DCIT, Circle-1, Jaipur
4. आयकरआयुक्त / The Id CIT
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 88/JP/2024)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar