

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

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

I.T.A. Nos.292 to 294/Ahd/2023
(A.Y.s: 2016-17 to 2018-19)

Uttar Gujarat Vij Company Ltd. Visnagar Road, Mehsana-384001	Vs.	Deputy Commissioner of Income Tax, Circle-2(1)(1), Vadodara
[PAN No.AAACU6551F]		
(Appellant)	..	(Respondent)

I.T.A. Nos.269 to 271/Ahd/2023
(A.Y.s: 2016-17 to 2018-19)

Assistant Commissioner of Income Tax, Circle-2(1)(1), Vadodara	Vs.	Uttar Gujarat Vij Company Ltd., Visnagar Road, Mehsana-384001
[PAN No.AAACU6551k]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Mehul K. Patel, A.R.
Respondent by:	Shri R.N. Dsouza, CIT DR

Date of Hearing	19.09.2024
Date of Pronouncement	25.09.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

These are Cross appeals filed by the Assessee and Department against the order of Commissioner of Income Tax (Appeals) (in short “CIT(A)”, National Faceless Appeal Centre (in short “NFAC”), Delhi vide separate orders dated 02.03.2023 and 28.02.2023 passed for A.Ys. 2016-17 to 2018-19. Since common facts and issues for consideration are involved for all the years under consideration before us, all the appeals filed by the assessee and Department for the aforesaid A.Y.s are being taken up together.

We shall first start the assessee's appeal for A.Y. 2016-17 in ITA No. 292/Ahd/2023:

2. The assessee has raised the following grounds of appeal:

“1.0 The learned Commissioner of Income Tax (Appeals) erred in law and on facts has directed the Assessing Officer to allow depreciation on assets after reducing the amount of Capital Grants & Subsidies and Consumers' Contribution from the cost of relevant Fixed Asset following the ITAT judgement of appellant's case in earlier years.

The learned Commissioner of Income Tax (Appeals) ought to have appreciated that the facts of the year under consideration are totally different inasmuch as mandatory Ind AS have been adopted and the Accounting Policies in respect of Government Grants have been changed.

2.0 The learned Commissioner of Income Tax (Appeals) erred in law and on facts has confirmed the additions of the interest income amounting to Rs.1,47,55,000/- and Miscellaneous Receipts amounting to Rs.6,42,67,000/- treating the same as income from other sources as against Business Income.

3.0 The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in confirming that the appellant, being engaged only in distribution of electricity, is not eligible for additional depreciation as per section 32(1)(ia) of the IT Act and has thereby confirmed the addition of Rs.77,85,98,388/- being the additional depreciation. 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) has erred in law and on facts in dismissing the ground relating to the claim of carry forward of unabsorbed business losses and unabsorbed depreciation of earlier years.

5.0 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 I T Act.

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

7.0 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.”

Ground No.1: Setting-aside the addition of 15% of capital grants as against 10% offered by the assessee:

3. Before us, at the outset, the Counsel for the assessee submitted that similar ground has been set aside by the ITAT in assessee's own case in ITA No. 2089/Ahd/2013 for A.Y. 2010-11 vide order dated 24.08.2022. The Counsel for the assessee submitted that since this issue has been decided by the ITAT in assessee's own case for 2010-11, wherein the issue has been set-aside to the Assessing Officer, on similar lines, this issue may also be decided for the impugned A.Y. In response, DR also agreed to the submissions made by the Counsel for the assessee that the issue is squarely covered by the assessee's own case for A.Y. 2010-11 vide order dated 24.08.2022.

4. It would be useful to reproduce the relevant extracts of the ruling for A.Y. 2010-11, for sake of ready reference:

"5. As regards to Ground No. 1 of the assessee's appeal, the Ld. AR submitted that similar issue arose in the case of group concern i.e. Gujarat Energy Transmission Corporation Limited in ITA No. 704/Ahd/2012 for A.Y. 2008-09 wherein the Tribunal remanded the matter back to the file of the Assessing Officer directing therein to workout the disallowance by taking the rate of depreciation applicable on various assets financed through impugned capital grants.

6. *The Ld. DR relied upon the assessment order and the order of the CIT(A).*

7. *We have heard both the parties and perused all the relevant material available on record. The facts of the present assessee's case is identical to that of assessee's group concern i.e. Gujarat Energy Transmission Corporation Ltd. (supra) decided by the Tribunal. The Ld. AR submitted that the uniform rate of 15% was adopted by the CIT(A) is not proper in respect of addition of Capital Grants towards total grants/subsidies /consumer contribution received during the year. Section 43(1) of the Act indicates that the capital grant should be reduced from total grants /subsidies /consumer contribution of the particular asset and the same should be calculated accordingly. The Ld. DR could not point out any contrary facts to the same. Therefore it will be appropriate to remand back the issue to the file of the Assessing Officer for adjudication after verifying the proportionate amount and*

grant relating to different asset and applying the actual rate of depreciation which relate to these assets. Ground No. 1 of the Assessee's appeal is partly allowed for statistical purpose.”

5. Respectfully following the above decision, rendered in the assessee's own case for A.Y. 2010-11, the matter is being restored to the file of the assessing officer for adjudication after verifying the proportionate amount and grounds relating to different assets and thereafter applying the actual rate of depreciation, which relate to these assets.

6. In the result, Ground No. 1 of the assessee's appeal is partly allowed for statistical purposes.

Ground No. 2(a) Treating interest income on advance to staff as “other sources” instead of “business income”:

7. The issue for consideration with regards to this ground of appeal is relating to treating interest income from staff loans and advances and other miscellaneous receipts as “income from other sources” and not as “business income”. Before us, the Counsel for the assessee submitted that similar ground has been decided by the Tribunal in assessee's own case against the assessee in ITA No. 2089/Ahd/2015 for A.Y. 2010-11 vide order dated 24.08.2022 (the relevant order has been produced before us for our perusal as part of the paper book). Subsequently, the assessee filed miscellaneous application against the aforesaid order on this issue, however, the miscellaneous application was rejected by the Tribunal. However, the Hon'ble High Court of Gujarat, vide order dated 01.04.2024 in R/SCA No. 20400 of 2023 has remanded the Miscellaneous Application back to the Tribunal for fresh adjudication (order passed by Hon'ble Gujarat High Court has been placed on record before us at

page 23 of compilation of orders). The Counsel for the assessee submitted that in group cases, identical ground taken by the assessee has been set-aside to the file of Assessing Officer for fresh adjudication in the case of Dakshin Gujarat Vij Company Ltd. in ITA No. 553/Ahd/2020 vide order dated 17.02.2023. The Counsel for the assessee requested that in light of the above orders, the matter may kindly be restored to the file of assessing officer for de novo consideration.

8. It would be useful to reproduce the relevant extracts of the aforesaid order dated 17.02.2023, for ready reference:

“6. Ground no. 2(a): Treating interest income of Rs. 69,15,000/- on advances paid to staff as "income from other sources" instead of "business income".

6.1. *The Ld. Counsel fairly submitted that identical issue has been decided against the assessee by the Co-ordinate Bench in the case of Gujarat Transmission Corporation in ITA No. 652/Ahd/2013 for the Assessment Year 2009-10. However the Hon'ble Odisha High Court in the case of Odisha Power Generation Corporation Ltd. vs. ACIT, Circle-2(2) in ITA No. 1 of 2015 and Ors., wherein the Hon'ble High Court held in favour of the assessee as follows:*

" 12. The Assessee offered an explanation regarding interest income earned by it, from advances given to its employees as well as provision of electricity and water charges collected from water through its employees and contractors for facilities in the township, receipt from transit hostel, sale of scrap, insurance claim etc. The facilities were given to its employees for better conditions of employment. This was to improve the overall efficiency of the undertaking which is devoted to the single purpose of generation of power. The Court, therefore, has no difficulty in accepting the submission of the Assesses 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."

6.2. *The Ld. Counsel further submitted that similar ground was set aside to the A.O. by the Co-ordinate Bench of this Tribunal in ITA No. 2858/Ahd/2015 for the Assessment Year 2010-11.*

6.3. *The Ld. D.R. has no serious objection in setting aside the matter back to the A.O. for fresh verification.*

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

7.1 *Thus this ground raised by the assessee is allowed for statistical purposes.”*

9. Looking into the above facts placed on record before us for our consideration and in light of our observations reproduced above, the matter is being restored to the file of assessing officer to consider the issue afresh upon examining the heads of income, after considering the facts of the assessee's case.

10. In the result, Ground No. 2(a) is allowed for statistical purposes.

Ground No. 2 (b) treating interest income on the debit/credit balances of suppliers/customers:

11. Before us, at the outset, the Counsel for the assessee submitted that similar ground has been decided in favour of the assessee by the ITAT in assessee's own case in ITA No. 446/Ahd/2018 for A.Y. 2014-15 vide order dated 24.08.2022. The Counsel for the assessee submitted that since this issue has been decided in favour of the assessee by the ITAT in assessee's own case for A.Y. 2014-15, the matter may accordingly be decided in light of the and on the lines of the above ruling.

12. It would be useful to reproduce the relevant extracts of the ruling for A.Y. 2014-15, for sake of ready reference:

“...And in respect of interest on other loans and advances which are related to small advances on the debit / credit balances of suppliers and contractors, the same is incidental to the business of the assessee and cannot be treated as income from other sources but is business income. Thus, this component of addition amounting to Rs. 1,48,03,000/- is not correct and hence allowed to that extent. Ground No. 2 of assessee’s appeal in A.Y. 2014-15 is partly allowed.”

13. Accordingly, Ground No. 2 (b) of the assessee’s appeal is allowed.

Ground No. 2 (c) treating a part of the miscellaneous receipts as “income from other sources” instead of “business income”:

14. The brief facts in relation to this ground of appeal are that the assessee declared certain (receipts as “business income” relevant details are reproduced at pages 32-43 of Ld. CIT(Appeals) order). However, Ld. CIT(Appeals) partly allowed the appeal of the assessee on the ground that certain incomes viz. income from staff quarters, income from contractors, post office, banks, guesthouse charges and other miscellaneous receipts do not qualify as “business income” and is nothing but “income from other sources”. Accordingly, Ld. CIT(Appeals) held that with respect to these heads of income as enumerated above, the same qualify as “income from other sources” and not as “business income”. Accordingly, Ld. CIT(Appeals) partly allowed the appeal of the assessee. The assessee is in appeal before us against the aforesaid heads of income, which were held to be “income from other sources” by Ld. CIT(Appeals) in the appellate order. Before us, the Counsel for the assessee submitted that the staff quarter charges, guesthouse charges, income from contractors, post office and other miscellaneous receipts are related/incidental

to the business of the assessee of distribution of electricity by maintaining various sub-stations at all remote places of Gujarat and for staff/customers/suppliers. The Counsel for the assessee relied on the decision of High Court of Odisha Power Generation Corporation Ltd in ITA No. 1, 2, 3 of 2015 dated 11.03.2022. The Counsel for the assessee submitted that in a group case, similar/identical ground has been set-aside to the Assessing Officer for fresh adjudication, in the case of Dakshin Gujarat Vij Company Ltd. in ITA No. 553/Ahd/2020 vide order dated 17.02.2023. Accordingly, the Counsel for the assessee submitted that in view of the aforesaid decision of the Ahmedabad Tribunal vide order dated 17.02.2023, the matter may be restored to the file of Assessing Officer for fresh adjudication, taking into consideration the assessee's facts.

15. It would be useful to reproduce the relevant extracts of the ruling for ready reference:

“8. Ground no. 2(b): Treating miscellaneous receipts of Rs. 13,12,40,000/- as “income from other sources” instead of “business income”.

8.1. The assessee claimed the following miscellaneous receipts:

<i>Income from Post Offices, Bank, contractors, etc.</i>	<i>35,000</i>
<i>Guest House Charges</i>	<i>21,000</i>
<i>Refund from consumer Authorities</i>	<i>7,000</i>
<i>Income from Water Charges recovered from Employees/Contractors (This income is from dwelling accommodation provided to employees as well as fabrication or civil contractors as the case may be)</i>	<i>2,28,000</i>
<i>Recovery for Transportation and Vehicle Expenses from Other than Staff (This income is received from contractors or outsiders where freight or transport charges is to be boned by contractors)</i>	<i>6,34,000</i>
<i>Cash Discount (This income is for payment made within stipulated time as per accepted tender terms or order terms)</i>	<i>3,79,000</i>
<i>Sale of Tender Forms</i>	<i>61,83,000</i>

<i>Income from Supervision Charges on Sale of Stores</i>	1,000
<i>Income from Supervision Charges on Execution of job/Deposit works</i>	26,67,000
<i>Registration Fees from Suppliers, Contractors</i>	7,96,000
<i>Penalties Recovered from Suppliers/ contractors</i>	7,87,48,000
<i>Penalties Recovered from Employees</i>	19,000
<i>Insurance Premium recovered for House building Advance Loan</i>	1,10,000
<i>Receipt under Right to information (RT) Act, 2005</i>	8,000
<i>Other Miscellaneous Receipts</i> <i>(This income is from other than above all account heads, major amount consists amount in respect of unclaimed security deposit, Earnest Money Deposit and Miscellaneous Deposits from Suppliers or Contractors which is un-disputed and lying pending for more than three years, and which, as per policy of management, not payable, is considered as income. This policy is disclosed at Note No. 1 (4)(v)(d) on page no. 25 to 10th Annual Report, 2012-13.</i>	4,12,73,000
<i>Total</i>	13,12,40,000

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

8.3. The Ld. Counsel thus submitted that in the light of the judgment rendered in the case of Odisha Power Generation Corporation Ltd., this issue be remanded back to the file of the Assessing Officer for fresh consideration.

8.4. The Ld. D.R. appearing for the Revenue supported the orders of the Lower Authorities and pleaded the lower authorities are correct in holding the miscellaneous receipts as “income from other sources” which does not require any interference.

9. 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 total income, was correct."

9.1. 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 not "income from other sources".

9.2. 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.

9.3. In the result, this ground raised by the Assessee is partly allowed."

16. In view of the above, Ground No. 2(c) of the assessee's appeal is restored to the file of Assessing Officer for de-novo consideration and the Ground No. 2(c) is allowed for statistical purposes.

Ground No. 3: confirming the disallowance of additional depreciation under Section 32 (1) (iia):

17. Before us, the Counsel for the assessee submitted that similar ground has been decided against the assessee by Tribunal in assessee's own case in ITA No. 446/Ahd/2018 for A.Y. 2014-15 vide order dated 24.08.2022. Accordingly, the issue may be decided against the assessee in light of the observations made by the Tribunal in the aforesaid order, in the assessee's own case. It would be useful to reproduce the relevant extract of ruling for ready reference:

"44. As regards to Ground No. 3 relating to additional depreciation amounting to Rs. 1,29,83,978/- as per Section 32(1)(iia) of the Act, the assessee submitted that during the

year the assessee commissioned new plant and machinery of Rs. 504,90,24,076/- and hence additional depreciation of Rs. 74,64,12,2287- on new additions of plant and machinery was claimed under the block of plant and machinery of 15%. The assessee submitted that the company has not purchased any old/second hand/used fixed asset during the year. Earlier the claim was allowable only to the manufacturing concerns. The generation of power was also treated as manufacturing activity and hence the claim was extended to the generation companies by the Courts.

45. *The Ld. DR relied upon the assessment order and the order of the CIT(A).*

46. *We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee company is a distributing company and the same is admitted position. The assessee company is not generating power and distributing the same. As per Section 32(1)(ia) of the Act, the companies which are either only generating or generating and distributing can claim depreciation. But in present assessee's case it is only the distribution activity and not included the generation of power. Hence, the CIT(A) has rightly confirmed the addition. There is no need to interfere with the finding of the CIT (A). Ground No. 3 of assessee's appeal is dismissed.*

47. *As regards to Ground Nos. 4 and 5 relating to charging interest under Section 234AB and 234AC of the Income Tax Act, 1961 as well as initiation of penalty proceedings under Section 271(1)(c) of the Act, the same are consequential, hence not adjudicated at this juncture.*

48. *Therefore, ITA No. 446/Ahd/2018 for A.Y. 2014-15 filed by the assessee is partly allowed for statistical purpose.”*

18. In the result, Ground No. 3 of the assessee's appeal is dismissed.

Ground No. 4: claim of set off of brought forward business losses and depreciation:

19. Before us, the Counsel for the assessee submitted that the assessing officer may be directed to allow the carry forward of business loss and unabsorbed depreciation as per appeal effect giving orders of earlier years. Accordingly, the assessing officer is directed to verify the appellate effect orders for earlier years and thereafter, decide the same, in accordance with law.

20. In the result, Ground No. 4 of the assessee's appeal is allowed for statistical purposes.

21. Before us, the Counsel for the assessee submitted that the balance grounds of appeal are not pressed/consequential in nature, and accordingly the same may not be adjudicated upon.

22. In the combined result, the appeal of the assessee is partly allowed for statistical purposes.

Now we shall come to the Department's appeal for A.Y. 2016-17 in ITA No. 269/Ahd/2023:

Ground No. 1: deleting adjustment to the book profit under section 115 JB of addition of capital grants:

23. Before us, the Counsel for the assessee and the learned DR agreed that similar ground has been decided in favour of the assessee by Tribunal in assessee's own case in ITA No. 616/Ahd/2018 for A.Y. 2013-14, wherein the Revenue's appeal on this issue has been dismissed by the Tribunal vide order dated 24.08.2022. It would be useful to reproduce the relevant extracts of the ruling for ready reference:

"35. As regards to Ground No. 1.1 to 1.5 of Revenue's appeal relating to addition to book profits u/s 115JB towards grants, subsidies and consumers' contribution, the Ld. DR submitted that without appreciating that the assessee had not prepared its statement of profit and loss in accordance with section 115JB(2), and had failed to comply with the provisions of the Companies Act and Accounting Standards. The Ld. DR further submitted that the assessee has claimed depreciation on related assets following the straight line method, but the corresponding deferred income credited to the P&L account is not computed on the same basis, but at a lower rate, and this mismatch and inconsistency in accounting treatment was not in accordance with the requirements of section 115JB(2) and accounting principles. The Ld. DR submitted that the assessee 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. Therefore, the Assessing Officer was justified in computing the book profits in accordance with

section 115JB(2) 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. The Ld. CIT(A) erred in deleting the addition to book profits U/S.115JB by merely relying on the decision of the Tribunal in Gujarat State Energy Generation Ltd. (ITA No.1777/Ahd/2009), without examining the facts of the case, and without appreciating the ratio decidendi, and without considering that the facts in this case were different as the assessee had not prepared its statement of profit and loss in accordance with section 115JB(2) and the addition was justified when the book profits were computed by the Assessing Officer in accordance with section 115JB(2). The Ld. DR relied upon the decision of the Ahmedabad Tribunal in case of Addl. CIT vs. Bilakhia Holdings Pvt. Ltd. (2014) 49 taxmann.com 91 (Ahd.Tri.)

36. *The Ld. AR submitted that the issue of adjustment in book profit for capital grant is covered in favour of the assessee by the order of the Tribunal in group concern case of the assessee for A.Y. 2010-11 in ITA No. 950/Ahd/2015 Gujarat State Electricity Corporation Ltd. vs. CIT.*

37. *We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that only those items which are specifically mentioned in the Explanation to Section 115JB need to be excluded or included, as the case be, and nothing more can be brought in. In respect of capital grants, the resolution sanctioned by the Government nowhere state that the grant was meant to offset the cost of the capital assets purchased by the company. Thus, the Assessing Officer was not correct in making adjustment in book profit for capital grant. Besides this, the issue is decided by the Tribunal in assessee's group concern in case of Gujarat State Energy Generation Ltd. (supra) wherein the Tribunal held that the issue of capital grant is not mentioned in the explanation and therefore deleted the same. No distinguishing facts were brought on record by the Ld. DR. In fact the decision relied upon by the Ld. DR is distinguishable. Hence, Ground No. 1.1 to 1.5 of revenue's appeal are dismissed."*

24. In view of the observations of Tribunal in assessee's own case with respect to identical issue, as reproduced above, the Revenue's appeal is hereby dismissed.

25. In the result, the appeal of the Revenue was dismissed.

Now we shall come to assessee's appeal for A.Y. 2017-18 in ITA No. 293/Ahd/2023

26. The assessee has raised the following grounds of appeal:

“1.0 The learned Commissioner of Income Tax (Appeals) erred in law and on facts has directed the Assessing Officer to allow depreciation on assets after reducing the amount of Capital Grants & Subsidies and Consumers' Contribution from the cost of relevant Fixed Asset following the ITAT judgement of appellant's case in earlier years.

The learned Commissioner of Income Tax (Appeals) ought to have appreciated that the facts of the year under consideration are totally different inasmuch as mandatory Ind AS have been adopted and the Accounting Policies in respect of Government Grants have been changed.

2.0 The learned Commissioner of Income Tax (Appeals) erred in law and on facts has confirmed the additions of the interest income amounting to Rs.1,34,91,614/- treating the same as income from other sources as against Business Income.

3.0 The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in confirming that the appellant, being engaged only in distribution of electricity, is not eligible for additional depreciation as per section 32(1)(iia) of the I T Act and has thereby confirmed the addition of Rs.68,44,83,100/- being the additional depreciation.

The learned Commissioner (Appeals) failed to appreciate that the provisions of section 32(1)(iia) of the I T Act have been amended by the Finance Act 2016 applicable from Asst. Year 2017-18 providing for allowance of additional depreciation to all the electricity companies engaged in generation, transmission and distribution of power.

4.0 The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in setting aside the additions to the total income under normal provisions as well as to the Book Profits under section 115JB of the I T Act on account of interest on Income Tax amounting to Rs.90,90,000/- despite the fact that ITR was submitted showing that such interest was added back.

5.0 The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in dismissing the ground relating to the claim of carry forward of unabsorbed business losses and unabsorbed depreciation of earlier years.

6.0 The learned Commissioner of Income Tax (Appeals) erred in law and on facts has dismissed the ground relating to the initiation of penalty proceedings under section 270A of the I T Act.

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

8.0 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.”

27. We observe that the assessee has raised identical grounds for A.Y. 2017-18, which correspond to assessee’s ground of appeal for A.Y. 2016-17.

28. Ground No. 1 of assessee’s appeal for A.Y. 2016-17 and 2017-18 are identical and accordingly, in light of our observations for Ground No. 1 relating to A.Y. 2016-17, the matter is set aside to the file of assessing officer for de novo consideration. In the result, Ground No. 1 of assessee’s appeal for 2017-18 is allowed for statistical purposes.

29. Similarly, we observe that Ground No. 2(a) and Ground No. 2(b) of the assessee’s appeal for A.Y. 2017-18 corresponds to/are identical to assessee’s appeal for A.Y. 2016-17 vis-à-vis Ground No. 2(a) and Ground No. 2(b). Accordingly, Ground No. 2(a) and Ground No. 2(b) of the assessee’s appeal for A.Y. 2017-18 are being disposed of in light of our observations for similar grounds of appeal for A.Y. 2016-17 in case of assessee’s appeal. In the result, Ground No. 2(a) of the assessee’s appeal is allowed for statistical purposes and Ground No. 2 (b) of the assessee’s appeal is allowed.

30. For the impugned assessment year with respect to ground of appeal No. 3, the Counsel for the assessee submitted that there is an amendment in Section 32(1)(ia) by Finance Act, 2016, w.e.f. 01.04.2017, whereby additional depreciation is allowable to assessee engaged in Distribution of Power. Hence, additional depreciation may be allowed as per the amended section applicable to the current A.Y. 2017-18.

31. In view of the submissions of the Counsel for the assessee, the matter is being restored to the file of Assessing Officer to verify the applicability of the amended Section 32(1)(ia) to the assessee's set of facts and thereafter, allow the claim of the assessee in accordance with law.

32. In the result, Ground No. 3 of the assessee's appeal is allowed for statistical purposes.

33. In the combined result, the appeal of the assessee is partly allowed for statistical purposes for A.Y. 2017-18.

Now we shall come to the Department's appeal for A.Y. 2017-18 in ITA No. 270/Ahd/2023:

Ground No. 1: deleting adjustment to the book profit under section 115 JB of addition of capital grants:

34. We observe that Ground No. 1 of Department's appeal for A.Y. 2017-18 is identical to Ground No. 1 of Department's appeal for A.Y. 2016-17. Accordingly, Ground No. 1 of the Department's appeal for A.Y. 2017-18 is hereby dismissed, in light of our observations for similar ground of appeal raised by the Department for A.Y. 2016-17.

35. In the result, appeal of the Department is dismissed for A.Y. 2017-18.

Now we shall come to assessee's appeal for A.Y. 2018-19 in ITA No. 294/Ahd/2023:

36. We observe that the assessee has raised identical grounds for A.Y. 2018-19, which correspond to similar assessee's ground of appeal for A.Y. 2016-17.

37. Ground No. 1 of assessee's appeal for A.Y. 2016-17 and 2018-19 are identical and accordingly, in light of our observations for Ground No. 1 relating to A.Y. 2016-17, the matter is set aside to the file of assessing officer for de novo consideration. In the result, Ground No. 1 of assessee's appeal for 2018-19 is allowed for statistical purposes.

38. Similarly, we observe that Ground No. 2(a), Ground No. 2(b) and Ground No. 2(c) of the assessee's appeal for A.Y. 2017-18 corresponds to/are identical to assessee's appeal for A.Y. 2016-17 vis-à-vis Ground No. 2(a), Ground No. 2(b) and Ground No. 2(c). Accordingly, Ground No. 2(a), 2(b) and 2(c) of the assessee's appeal for A.Y. 2018-19 are being disposed of in light of our observations for similar grounds of appeal for A.Y. 2016-17 in case of assessee's appeal. In the result, Ground No. 2(a) of the assessee's appeal is allowed for statistical purposes, Ground No. 2(b) of the assessee's appeal is allowed and Ground No. 2(c) of the assessee's appeal is allowed for statistical purposes.

39. We observe that Ground No. 3 of the assessee's appeal for A.Y. 2018-19 corresponds to/is identical to assessee's appeal for A.Y. 2017-18 vis-à-vis Ground No. 3. Accordingly, Ground No. 3 of the assessee's appeal for A.Y. 2018-19 is being disposed of in light of our observations for similar ground of appeal for A.Y. 2017-18 in case of assessee's appeal. In the result, Ground No. 3 of the assessee's appeal is allowed for statistical purposes for A.Y. 2018-19.

40. In the combined result, the appeal of the assessee is partly allowed for statistical purposes for A.Y. 2018-19.

Now we shall come to the Department's appeal for A.Y. 2018-19 in ITA No. 271/Ahd/2023:

Ground No. 1: deleting adjustment to the book profit under section 115 JB of addition of capital grants:

41. We observe that Ground No. 1 of Department's appeal for A.Y. 2018-19 is identical to Ground No. 1 of Department's appeal for A.Y. 2016-17. Accordingly, Ground No. 1 of the Department's appeal for A.Y. 2017-18 is hereby dismissed, in light of our observations for similar ground of appeal raised by the Department for A.Y. 2016-17.

42. In the result, appeal of the Department is dismissed for A.Y. 2018-19.

43. In the combined result, the assessee's appeals are partly allowed for statistical purposes for A.Ys. 2016-17, 2017-18 and 2018-19 and the Department's appeal is dismissed for A.Ys. 2016-17, 2017-18 and 2018-19.

This Order pronounced in Open Court on	25/09/2024
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad; Dated 25/09/2024
TANMAY, Sr. PS

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

TRUE COPY

*ITA Nos.292 to 294/Ahd/2023 & 269 to 271/Ahd/2023
Uttar Gujarat Vij Company Ltd. vs. DCIT &
ACIT vs. Uttar Gujarat Vij Company Ltd.
Asst.Years –2016-17 to 2018-19*

- 19-

आदेश की प्रतिलिपि अग्रेषित/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