

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH, AHMEDABAD**

**BEFORE SHRI P.M. JAGTAP, VICE PRESIDENT AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.2089/Ahd/2013
Assessment Year: 2010-11**

Uttar Gujarat Vij Company Ltd., vs. Asstt. Commissioner of Income Tax
Visnagar Road, Circle – 4, Baroda.
Mehsana – 384 001.
[PAN – AAACU 6551 F]

ITA No.1751/Ahd/2016
Assessment Year: 2012-13

Uttar Gujarat Vij Company Ltd., vs. Income Tax Officer,
Visnagar Road, Ward – 2(1)(4),Baroda.
Mehsana – 384 001.
[PAN – AAACU 6551 F]

ITA No.1968/Ahd/2016
Assessment Year: 2012-13

Dy. Commissioner of Income Tax vs. Uttar Gujarat Vij Company Ltd.,
Circle-2(1)(1), Baroda. Visnagar Road,
Mehsana – 384 001.
[PAN – AAACU 6551 F]

ITA No.445/Ahd/2018
Assessment Year: 2013-14

Uttar Gujarat Vij Company Ltd., vs. Income Tax Officer,
Visnagar Road, Ward – 2(1)(4),Baroda.
Mehsana – 384 001.
[PAN – AAACU 6551 F]

**ITA No.446/Ahd/2018
Assessment Year: 2014-15**

Uttar Gujarat Vij Company Ltd., vs. Dy. Commissioner of Income Tax,
Visnagar Road, Circle – 2(1)(1),Baroda.
Mehsana – 384 001.
[PAN – AAACU 6551 F]

**ITA No.616/Ahd/2018
Assessment Year: 2013-14**

Dy. Commissioner of Income Tax vs. Uttar Gujarat Vij Company Ltd.,
Circle-2(1)(1), Baroda. Visnagar Road,
Mehsana – 384 001.
[PAN – AAACU 6551 F]

ITA No.617/Ahd/2018
Assessment Year: 2014-15

Dy. Commissioner of Income Tax vs. Uttar Gujarat Vij Company Ltd.,
Circle-2(1)(1), Baroda. Visnagar Road,
(Appellants) Mehsana – 384 001.
[PAN – AAACU 6551 F] (Respondents)

Assessee by : Shri M.J Shah, A.R.
Revenue by : Shri Vijay Kumar Jaiswal, CIT DR

Date of hearing : 30.06.2022
Date of pronouncement : 24.08.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

These seven appeals, four by the assessee and three by the Revenue pertain to the same assessee, involve some common issues, are filed against different orders passed by the CIT(A)-III/II, Vadodara for different assessment years and were heard together. As a matter of convenience, therefore, all these seven appeals are being disposed of by way of this consolidated order.

2. The grounds of appeals raised are as under :

ITA No.2089/Ahd/2013 - Assessment Year: 2010-11(by assessee)

“1.0 The learned Commissioner of Income Tax (Appeals) erred in law and on facts has confirmed the additions of Rs.24,65,05,100/- on account of Capital Grants & Subsidies and Consumers’ Contribution on the ground

that the appellant should transfer 15% of the total Grants/subsidies/ consumer contribution received during the year as against 10% offered by the appellant.

- 2.0 *The learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the additions with respect to the interest income from staff loans and advances amounting to Rs.73,46,000/- as income from Other Sources as against the Business Income..*
- 3.0 *The learned Commissioner of Income Tax (Appeals) erred in law and on facts has set aside the additions with respect to the income from Gain on Sale of Fixed Assets amounting to Rs.69,20,000/- with the direction to re-verify the claim in terms of the provisions of Section 50 of the IT Act.*
- 4.0 *The learned Commissioner of Income Tax (Appeals) erred in law and on facts in not adjudicating the ground relating to treating of the Miscellaneous Receipts amounting to Rs.6,97,65,000/- as Income from Other Source inasmuch as there is no findings whatsoever in the appellate order on the same.*
- 5.0 *The learned Commissioner of Income Tax (Appeals) erred in law and on facts has dismissed the ground relating to charging of interest under section 234B and 234C of the Income Tax Act, 1961.”*

3. The assessee company is in the business of purchase and distribution of electricity. The assessee filed e-return of income on 28.09.2010 declaring total income at Rs. Nil after claiming set off of brought forward loss and unabsorbed depreciation. The assessee paid total tax and interest of Rs. 1,27,86,930/- under Section 115JB of the Income Tax Act, 1961 showing book profit u/s 115JB at Rs. 6,93,55,609/-. The case was selected for scrutiny and notice u/s 143(2) dated 26.09.2011 was issued. Thereafter, notice u/s 142 (1) dated 18.01.2012 was issued calling for details such as audited profit and loss account, balance sheet, tax audit report etc. The assessee furnished the details. The Assessing Officer made following additions:

- i) Addition on account of subsidy grant : Rs. 24,65,05,100
- ii) Addition on difference of calculation for grants : Rs. 1,91,81,000
subsidies and consumer contribution
- iii) Addition for income treated as Income from other : Rs. 8,89,19,000
sources:
 - a) Interest on Staff loans and advances
 - b) Interest on other loans and advances

- c) Gain on sale of fixed assets
- d) Miscellaneous Income

4. Being aggrieved by the Assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

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.

8. As regards to Ground No. 2 relating to treating interest income from staff loans and advances and other miscellaneous receipt from Income from other sources and not as income from business and profession, the Ld. AR submitted that in respect of interest income from staff loans and advances, the Hon'ble Orissa High Court in case of Odisha Power Generation Corporation Ltd. vs. ACTI (ITA Nos. 1, 2, 3 of 2015 and ITA Nos. 24 & 25 of 2009 order dated 11.03.2022) held that the interest income earned by the company from advance given to its employees are considered to be part of business income. The Ld. AR also relied upon the decision of Ahmedabad Tribunal in case of Gujarat Energy Transmission Corporation Ltd. vs. DCIT (ITA No. 3441/Ahd/2015 order dated 30.09.2020) wherein the interest on staff loan advances were part of the business income and the Tribunal directed the Assessing Officer to verify the same in light of decision of Hon'ble Gujarat High Court in case of Gujarat Urja Vikas Nigam Ltd. vs. CIT vide Tax Appeal No. 63/2020 order dated 16.03.2020. The Ld. AR also relied upon the decision of the Tribunal in case of DCM Estates & Infrastructure Ltd. vs. DCIT (2007) 110 TTJ 604 (Del. Tri.).

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

10. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Hon'ble Gujarat High Court in case of Gujarat Urja Vikas Nigam Ltd. (Supra) has categorically held that the interest earned on loan and advances from deposits with Mega Power Project towards SITS sharing and power are directly related to business of the assessee. But the said component does not include interest on staff loan and advances. The decision in case of Odisha Power Generation Corporation Ltd. (supra) has also not specifically mentioned the nomenclature of interest on staff loan and advances to the staff. Though the contentions of the assessee therein were quoted by the Hon'ble Orissa High Court but whether the same was accepted or not is not mentioned in the order. Thus, both these decisions will not support the case of the assessee. The decision of the Tribunal in case

of DCM Estates & Infrastructure Ltd. (supra) held that the interest earned on staff loan and advances is incidental to the assessee's business is factually incorrect as the loan and advances given to employees are not the mandatory incentive given to the staff and cannot be termed as incidental to the business. Thus, earning interest on the same cannot be stated as incidental to the business of the assessee. Thus, the decision is not applicable in the present case. Loans to staff members cannot be treated as business expenses and therefore interest earned on these loans and advances given to the staff members cannot be treated as business income. Thus, the disallowance to that extent is just and proper on part of the Assessing Officer and CIT(A). Thus, Ground No. 2 is dismissed.

11. As regards to Ground No. 3 relating to addition of Rs. 69,20,000 for verification of a claim in respect of income from gain on sale of fixed assets, the Ld. AR submitted that the issue may be restored back to the file of the Assessing Officer for verification of the claim in respect of income from gain on sale of fixed assets and the same should be treated as business income u/s 50 of the Act.

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

13. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the sale of fixed assets is relating to the gain on the same comes under the purview of Section 50 of the Income Tax Act, 1961 as per the contentions of the observation of the CIT(A). The CIT(A) has rightly directed the Assessing Officer to verify the depreciation chart and if finds any amount taxable as per Section 50 then the same should be verified under short term capital gain and balance addition may be deleted. There is no need to interfere with the findings of the CIT(A) to the extent that the said claim may be verified as a whole and thereafter the Assessing Officer should adjudicate the same as per law. Needless to say the assessee be given

opportunity of hearing by following principles of natural justice. Ground No. 3 is partly allowed for statistical purpose.

14. As regards to Ground No. 4 relating to Misc. receipts relating to penalty and other charges are received from the customers and suppliers in respect of the penalty and other charges and it comes under the purview of business income only.

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

16. As regards to miscellaneous receipts received by the assessee from the customers/ suppliers relating to penalty and other charges were received during the regular course of business of the assessee and thus, the same is taxable as business income only and not as income from other sources. The evidences produced by the assessee during the assessment proceedings were totally ignored by the Assessing Officer as well as by the CIT(A). thus, the same are allowable under business income and not as income from other sources. Ground No. 4 is allowed.

17. As regard to Ground No.5 the same is relating to charging of interest under Section 234B and 234C and same is consequential hence not adjudicated at this juncture.

18. In result, ITA No. 2089/Ahd/2013 A.Y. 2010-11 appeal filed by the assessee is partly allowed for statistical purpose.

19. Now we are taking up

ITA No.1751/Ahd/2016 - Assessment Year: 2012-13 (by assessee)

“1.0 The learned Commissioner of Income Tax (Appeals) erred in law and on facts has confirmed the additions of Rs.32,89,02,600/- on account of Capital Grants & Subsidies and Consumers' Contribution on the ground that the appellant should transfer 15% of the total Grants/subsidies/

consumer contribution received during the year as against 10% offered by the appellant.

2.0 *The learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the additions with respect to the interest income from staff loans amounting to Rs.86,34,000/- as income from Other Sources as against the Business Income..*

3.0 *The learned Commissioner of Income Tax (Appeals) erred in law and on facts has dismissed the ground relating to charging interest under section 234AB and 234AC of the Income Tax Act, 1961.”*

20. As regards to Ground No. 1 relating to addition of capital grants to the extent of 15% of total grants / subsidies / consumer contribution received during the year amounting to Rs. 32,89,02,600/-, the said issue is identical to Ground No. 1 of A.Y. 2010-11 filed by the assessee, therefore, as per the direction given by us hereinabove, we are remanding back this issue to the file of the Assessing Officer with the similar observations. Hence Ground No. 1 in A.Y. 2012-13 of assessee's appeal is partly allowed for statistical purpose.

21. As regards to Ground No. 2 relating to addition of interest income from staff loans amounting to Rs. 86,34,000/- as income from other sources as against the business income, the said issue is identical to Ground No. 2 of A.Y. 2010-11, therefore, Ground No. 2 for A.Y. 2012-13 filed by the assessee is dismissed.

22. As regards to Ground No. 3 relating to charging interest under Section 234AB and 234AC of the Income Tax Act, 1961, the same are consequential, hence not adjudicated at this juncture.

23. Thus, ITA No. 1751/Ahd/2016 for A.Y. 2012-13 filed by the assessee is partly allowed for statistical purpose.

24. Now we are taking up

ITA No.1968/Ahd/2016 - Assessment Year: 2012-13 (by Revenue)

“1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in treating income from Miscellaneous receipts of*

Rs.10,77,13,000/- as business income instead of income from other sources as treating by the AO by merely accepting the submission of the assessee without appreciating the fact that the assessee had failed to substantiate its claim with cogent and acceptable reasons and documentary evidence to prove that miscellaneous income represented the income received from customers/suppliers as penalty and other charges in the course of regular business.”

25. As regards to Ground No. 1 is relating to income from Miscellaneous receipts of Rs. 10,77,13,000/- as business income instead of income from other sources, the Ld. DR submitted that the assessee failed to substantiate its claim with cogent acceptable reasons and has not given any documentary evidence to substantiate the miscellaneous income received from customer / supplier as penalty and other charges in the course of regular business. The Ld. DR relied upon the Assessment order.

26. The Ld. AR relied upon the findings of the CIT(A).

27. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Assessing Officer has not taken into consideration that amount received from customers /suppliers as penalty and other charges during the course of regular business and thus, comes under the purview of business income. The submission of the Ld. DR that the CIT(A) has only accepted the submissions of the assessee without any documentary evidence, is not correct. As per the records and the details relating to the amount received from customers / suppliers as penalty and other charges, the same were there before the Assessing Officer during the assessment proceedings, but the same was not taken into account by the Assessing Officer. Hence, the CIT(A) has rightly deleted this addition. There is no need to interfere with the findings of the CIT(A). Hence Ground No. 1 of the Revenue's appeal is dismissed.

28. Thus, ITA No. 1968/Ahd/2010 filed by the revenue for A.Y. 2012-13 is dismissed.

29. Now we are taking up

ITA No.445/Ahd/2018 - Assessment Year: 2013-14 (by assessee)

“1.0 *The learned Commissioner of Income Tax (Appeals) erred in law and on facts has confirmed the additions of Rs.39,84,10,100/- on account of Capital Grants & Subsidies and Consumers' Contribution on the ground that the appellant should transfer 15% of the total Grants/subsidies/ consumer contribution received during the year as against 10% offered by the appellant.*

2.0 *The learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the additions with respect to the interest income from staff loans & advances, fixed deposits and advances to others amounting to Rs.2,91,78,000/- as income from Other Sources as against the Business Income.*

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

30. As regards to Ground No. 1 relating to addition of Rs. 39,84,10,100/- on account of capital grants and subsidies and consumer contribution, the issue is identical to that of Ground No. 1 of Assessment Year 2010-11 filed by the assessee, therefore, as per the direction given by us hereinabove, we are remanding back this issue to the file of the Assessing Officer with the similar observations. Hence Ground No. 1 in A.Y. 2013-14 of assessee's appeal is partly allowed for statistical purpose.

31. As regards to Ground No. 2 relating to interest on staff loans and advances amounting to Rs. 1,07,35,000/- as well as the interest on other loans and advances amounting to Rs. 1,84,43,000/-, issue relating to interest on staff loans and advances is identical to Ground No. 2 for A.Y. 2010-11 filed by the assessee and hence Ground No. 2 is dismissed to the extent of Rs. 1,07,35,000/-. 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. 1,84,43,000/- is not correct and hence allowed to that extent. Ground No. 2 of assessee's appeal is partly allowed.

32. As regards to Ground No. 3 relating to charging interest under Section 234AB and 234AC of the Income Tax Act, 1961, the same are consequential, hence not adjudicated at this juncture.

33. In result, ITA No. 445/Ahd/2018 filed by the assessee for A.Y. 2013-14 is partly allowed for statistical purpose.

34. Now we are taking up

ITA No.616/Ahd/2018 - Assessment Year: 2013-14 (by Revenue)

“1.1 *That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition to book profits u/s 115JB towards grants, subsidies and consumers' contribution.*

1.2 *That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition to book profits u/s.115JB 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. CIT(A) failed to consider 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.*

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

1.4 *That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition to book profits u/s.115JB by merely relying on the decision of the Hon'ble ITAT 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 AO in accordance with section 115JB(2).*

- 1.5 *That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition to book profits u/s.115JB without appreciating that the assessee had not prepared its statement of profit and loss prepared in accordance with section 115JB(2), and the AO was justified in making the addition after computing book profits in accordance with section 115JB(2), and this was supported by the decisions of the Hon'ble High Court/ITAT in Veeekaylal Investment Co. Pvt. Ltd. (2001) 249 ITR 597 (Mum.), Sumer Builders (P) Ltd. (2012) 19 taxmann.com 43 (Mum.), and Bilakhia Holdings (P) Ltd. (2014) 49 taxmann.com 91 (Ahm).*
- 2.1 *That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in treating miscellaneous receipts as business income, instead of income from other sources, without appreciating that these miscellaneous receipts were not generated from day to day business activity, and the assessee had filed to controvert the findings of the A.O., and failed to substantiate its claim with necessary documentary evidence.*
- 2.2 *That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in treating miscellaneous receipts as business income following his orders for earlier years, without examining the facts this year, and without considering that the Department had filed appeal in the Hon'ble ITAT against the decision of the Id. CIT(A) on this issue, in earlier years.”*

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.

38. As regards to Ground No. 2.1 and 2.2 of revenue's appeal relating to treating miscellaneous receipts as business income, the Ld. DR submitted that the CIT(A)

erred in treating miscellaneous receipts as business income instead of income from other sources, as these miscellaneous receipts were not generated from day to day business activity, and the assessee had failed to controvert the findings of the Assessing Officer, and failed to substantiate its claim with necessary documentary evidence.

39. The Ld. AR submitted that the said receipts are rent receipts from staff/contractors, water charges, sale of tender forms rebate on prompt payment etc. and also from customers/suppliers as penalty and other charges during the course of regular business, hence, the CIT(A) rightly held that it is business income and deleted the addition.

40. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that these receipts are related to rent receipts from staff/contractors, water charges, sale of tender forms rebate on prompt payment etc. and thus, it is part of the business activity. As regards to the receipt from customers/suppliers as penalty and other charges during the course of regular business, the Assessing Officer has not taken into consideration that amount received from customers /suppliers as penalty and other charges during the course of regular business and thus, comes under the purview of business income. The submission of the Ld. DR that the CIT(A) has only accepted the submissions of the assessee without any documentary evidence, is not correct. As per the records and the details relating to the amount received from customers / suppliers as penalty and other charges, the same were there before the Assessing Officer during the assessment proceedings, but the same was not taken into account by the Assessing Officer. Hence, the CIT(A) has rightly deleted this addition. There is no need to interfere with the findings of the CIT(A). Hence Ground No. 2.1 and 2.2 of revenue's appeal are dismissed.

41. Therefore, ITA No. 616/Ahd/2018 filed by the Revenue for A.Y. 2013-14 is dismissed.

ITA No.446/Ahd/2018 - Assessment Year: 2014-15 (by assessee)

“1.0 The learned Commissioner of Income Tax (Appeals) erred in law and on facts has confirmed the additions of Rs.17,59,71,000/- on account of Capital Grants & Subsidies and Consumers’ Contribution on the ground that the appellant should transfer 15% of the total Grants/subsidies/ consumer contribution received during the year as against 10% offered by the appellant.

The learned Commissioner of Income Tax (Appeals) erred in law and on facts in dismissing the appellant’s contention that the appellant on its own has given effect of the additions made in earlier years and after giving such cumulative effect of 5% additions in each year, the company has offered income of Rs.29,26,16,000/- in the computation of total income on account of capital grants. Hence, no further additions were required on this account.

2.0 The learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming the additions with respect to the interest income from staff loans and advances, fixed deposits and advances to others amounting to Rs.3,05,83,000/- as income from other sources as against the business income. .

3.0 The learned Commissioner of Income Tax (Appeals) 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 IT Act and has thereby confirmed the addition of Rs.1,29,83,978/- being the additional depreciation. The learned Commissioner (Appeals) has not considered the legislative intent behind the provisions of right spirit.

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

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 IT Act.”

42. As regards to Ground No. 1 relating to additions of Rs.17,59,71,000/- on account of Capital Grants & Subsidies and Consumers’ Contribution on the ground that the appellant should transfer 15% of the total Grants/subsidies/ consumer contribution received during the year as against 10% offered by the assessee, the issue is identical to that of Ground No. 1 of Assessment Year 2010-11 filed by the assessee, therefore, as per the direction given by us hereinabove, we are remanding back this issue to the file of the Assessing Officer with the similar observations. Hence

Ground No. 1 in A.Y. 2014-15 of assessee's appeal is partly allowed for statistical purpose.

43. As regards to Ground No. 2 relating to interest on staff loans and advances amounting to Rs. 1,57,80,000/- as well as the interest on other loans and advances amounting to Rs. 1,48,03,000/-, issue relating to interest on staff loans and advances is identical to Ground No. 2 for A.Y. 2010-11 filed by the assessee and hence Ground No. 2 is dismissed to the extent of Rs. 1,57,80,000/. 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.

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. 74,64,12,228/- 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)(iia) 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.

49. Now we are taking up

ITA No.617/Ahd/2018 - Assessment Year: 2014-15 (by Revenue)

- “1.1 *That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition to book profits u/s 115JB towards grants, subsidies and consumers' contribution.*
- 1.2 *That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition to book profits u/s.115JB 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. CIT(A) failed to consider 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.*
- 1.3 *That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition to book profits u/s.115JB towards grants, subsidies and consumers' contribution, without appreciating that the assessee had not prepared its statement of profit and loss in accordance with section 115JB(2), and had failed to comply with the provisions of the Companies Act and Accounting Standards, and failed to furnish complete information regarding the assets relating to grants, subsidies and consumers' contribution, and the AO was therefore, justified in computing the book profits in accordance with section 115JB(2) and making the addition to deferred income credited to the*

P&L account, on the same basis as followed by the assessee in debiting depreciation on related assets to its P&L account.

- 1.4 *That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition to book profits u/s.115JB by merely relying on the decision of the Hon'ble ITAT 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 AO in accordance with section 115JB(2).*
- 1.5 *That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition to book profits u/s.115JB without appreciating that the assessee had not prepared its statement of profit and loss prepared in accordance with section 115JB(2), and the AO was justified in making the addition after computing book profits in accordance with section 115JB(2), and this was supported by the decisions of the Hon'ble High Court/ITAT in Veeekayal Investment Co. Pvt. Ltd. (2001) 249 ITR 597 (Mum.), Sumer Builders (P) Ltd. (2012) 19 taxmann.com 43 (Mum.), and Bilakhia Holdings (P) Ltd. (2014) 49 taxmann.com 91 (Ahm)*
- 2.1 *That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in treating miscellaneous receipts as business income, instead of income from other sources, without appreciating that these miscellaneous receipts were not generated from day to day business activity, and the assessee had failed to controvert the findings of the A.O., and failed to substantiate its claim with necessary documentary evidence.*
- 2.2 *That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in treating miscellaneous receipts as business income following his orders for earlier years, without examining the facts this year, and without considering that the Department had filed appeal in the Hon'ble ITAT against the decision of the Id. CIT(A) on this issue, in earlier years."*

50. As regards to Ground No. 1.1 to 1.5 of Revenue's appeal, its identical to Ground No. 1.1 to 1.5 of Revenue's appeal for A.Y. 2013-14, hence, the same finding given by us therein will be applicable herein as well. Hence Ground No. 1.1 to 1.5 are dismissed.

51. As regards to Ground No. 2.1 and 2.2 of Revenue's appeal, its identical to Ground No. 2.1 and 2.2 of Revenue's appeal for A.Y. 2013-14, hence, the same finding given by us therein will be applicable herein as well. Hence Ground No. 2.1 and 2.2 for A.Y. 2014-15 are dismissed.

52. Therefore, ITA No. 617/Ahd/2018 for A.Y. 2014-15 filed by the Revenue is dismissed.

53. In result, ITA No. 2089/Ahd/2013 A.Y. 2010-11, ITA No. 1751/Ahd/2016 for A.Y. 2012-13, ITA No. 445/Ahd/2018 filed by the assessee for A.Y. 2013-14 and ITA No. 446/Ahd/2018 for A.Y. 2014-15, these four appeals filed by the assesee are partly allowed for statistical purpose. The Revenue's appeals being ITA No. 1968/Ahd/2016 for A.Y. 2012-13, ITA No. 616/Ahd/2018 for A.Y. 2013-14 and ITA No. 617/Ahd/2018 for A.Y. 2014-15 are dismissed.

Order pronounced in the open Court on this 24th day of August, 2022.

Sd/-
(P.M. JAGTAP)
Vice President

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 24th day of August, 2022

PBN/*

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

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*