**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद।**

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

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER**
**AND**
**SMT. MADHUMITA ROY, JUDICIAL MEMBER, JUDICIAL MEMBER**

**ITA No.1014/Ahd/2015**
**Assessment Year : 2010-11**

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| Gujarat Urja Vikas Nigam Ltd.<br>Sardar Patel Vidyut Bhavan<br>Race Course Circle<br>Baroda. | Vs. | CIT-I<br>Baroda. |

**TA No.620/Ahd/2018**
**Assessment Year : 2010-11**

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| ACIT, Cir.1(1)(1)<br>Baroda. | Vs. | Gujarat Urja Vikas Nigam Ltd.<br>Sardar Patel Vidyut Bhavan<br>Race Course Circle<br>Baroda. |

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| **अपीलार्थी/** (Appellant) | | **प्रत्यर्थी/**(Respondent) |

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| Assesseeby : | Shri M.J. Shah, AR &<br>Shri Jimi Patel, AR |
| Revenue by : | Shri Vijay Kumar Jaiswal, CIT-DR |

सुनवाई की तारीख/**Date of Hearing : 21/06/2023**
घोषणा की तारीख /**Date of Pronouncement: 29/08/2023**

**आदेश/O R D E R**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

These are two appeals, one filed by the assessee against the order passed by the ld.Pr.CIT-1, Vadodara dated 23.3.2015 in exercise of revisionary jurisdiction under section 263 of the Income Tax Act, 1961 (hereinafter referred to as the "Act"), and another by the Revenue against order of the ld.CIT(A)-1, Vadodara dated 28.12.2017 passed under section 250(6) in appeal against the consequential order passed by the AO u/s 143(3)r.w.s 263 of the Act for the assessment year 2010-11.

2. We shall first be dealing with the assesses appeal against order passed by the Ld.PCIT u/s 263 of the Act in ITA No. 1014/Ahd/2015 .

**ITA No.1014/Ahd/2015 (Assessee's appeal):**

3. The grounds raised by the assessee are as under:

*1.0 The learned Commissioner of Income Tax-1, Baroda has erred in law and on facts in holding that the assessment order dated 24-12-2012 passed under section 143(3) of the Income Tax Act, 1961 is erroneous and prejudicial to the interest of revenue and thereby erred in invoking the provisions of section 263 of the I T Act.*

*2.0 The learned Commissioner of Income Tax-1, Baroda has erred in holding that the Government Grant of ?250.00 crores received in terms of Financial Restructuring Plan should have been reduced from the cost of capital assets instead of it being taken to the Reserves & Surplus for the year under consideration, the assessment of which has already been finalized under section 143(3) of the I T Act.*

*2.1 The learned Commissioner of Income Tax-1, Baroda erred in law and on facts has held that the appellant has claimed excess depreciation and that has thereby understated the book profits under section 115JB of the I T Act. The learned Commissioner of Income Tax, therefore, has directed the Assessing Officer to make addition to the extent of 15% of the year end balance of Grants.*

*3.0 The learned Commissioner of Income Tax-1, Baroda erred in law and on facts has held that the appellant has violated the provisions of section 36(l)(v) of the I T Act. The learned Commissioner of Income Tax has erred in holding that the appellant has wrongly accounted the Gratuity liability of all of its subsidiary companies in its own books of account for the year under consideration, the assessment of which has already been finalized under section 143(3) of the I T Act.*

*3.1 The learned Commissioner of Income Tax-1, Baroda has erred in holding that each of the subsidiary companies having separate PAN should obtain separate approval for the Gratuity Fund Trust and has thereby directed the Assessing Officer to disallow the contribution to Gratuity Fund attributable to the subsidiary companies accounted in the books of the appellant.*

*4.0 The learned Commissioner of Income Tax-1, Baroda erred in law and on facts has held that the appellant has wrongly claimed set off of brought forward business losses and unabsorbed depreciation of earlier years and has thereby directed the Assessing Officer to verify the same and recompute the claim of set off of unabsorbed business losses and depreciation.*

*5.0 The learned Commissioner of Income Tax-1, Baroda erred in law and on facts has set aside the assessment order passed on 24-12-2012 under section 143(3) of the I T Act.*

4. As transpires from order of the ld.Pr.CIT, the case of the assessee was reopened exercising revisionary jurisdiction finding the assessment order to be erroneous causing prejudice to the Revenue on account of the following:

i) The Book Profits of the assessee, for the purposes of paying taxes thereon u/s 115JB of the Act, having not been enhanced by the depreciation,to the tune of Rs.29.28 crores, incorrectly allowed to be set off against the same by the AO.The case of the Ld.PCIT being that Government grant of Rs.250 crores received by the assessee was taken to reserves & surplus, when as per the applicable Accounting Standards, it should have gone to reduce value of the asset and as a consequence reduce the assessee's claim of depreciation to the tune of Rs.29.28 crores and that resultant book profits of the assessee for the purpose of paying taxes as per section 115JB of the Act to be enhanced to the extent of Rs.29.63 crores on account of incorrect claim of depreciation allowed to the assessee.

ii) The contribution to the gratuity fund claimed by the assessee was liable to be disallowed on account of the Trust to which the contributions were made not being approved for the purpose as required by the provisions of the Income Tax Act.

iii) The AO having incorrectly allowed the claim of set off of unabsorbed business loss to the tune of Rs.266,60,01,274/-.

5. With regard to the first issue of book profits of the assessee being understated by the amount of depreciation allowed to the assessee, the case made out by the Ld.PCIT is that the government grant of Rs.250 Crs received by the assessee during the year ought to have been accounted for by reducing the value of Fixed assets , as per normal accounting principles/standards, which would have resulted in wiping off the entire fixed assets entitling the assessee to no claim of depreciation. That the assessee having thus incorrectly treated the government grant as being in the nature of Reserves and Surplus it has resulted in the assessee being allowed depreciation to the tune of Rs. 29.28 Crs being set off against its Book Profits, thus resulting in the Book Profits being reduced to the said extent, for the purposes of levying tax thereon u/s 115JB of the Act. The Ld.PCIT noted that the AO while assessing income of the assessee under the normal provisions of the Act had made an addition/ disallowance of 15% of the grants. Para 4 of the order of the PCIT brings out the above facts as under:

> *"4. On perusal of records it was observed that assessee received government grant of 250 crore on 19th March, 2009 (A.Y.2009-10). Instead of reducing the cost of capital assets, the grant was directly taken as 'Reserves & surplus', violating normal accounting principles/Accounting Standards. Consequently, assessee took undue advantage of deprecation on assets, the value of which would have been 'NIL' during the 2010-11. (The book value of the assets as on 1.04.2010 was Rs.95.44 crore) Since the capital grant received was 250 crore, the entire cost of Assets could have been reduced from the amount of the capital grant. Assessee claimed and was allowed deprecation of 29.28 crore in A.Y.2010-11. Thus, by violating the Accounting principles/Accounting Standards, the assessee understated the book Profit by 29.63 crore in A.Y.2010-11 resulting in short levy of MAT of 50.356 lakhs."*

6. The Contention of the Ld.Counsel for the assessee before us was that it was explained to the Ld.PCIT that this grant had been received from the State Government in terms of Financial Restructuring Plant (FRP) of the Electricity Transmission Bodies and was to be passed to these entities; that the assessee had no fixed assets, and that the assessee had rightly accounted for the grants as Reserves & Surplus which was in accordance with prescribed Accounting Standards AS-12; that the book profits of the assessee therefore required no adjustment to be made on account of depreciation allowed to the assessee. It was also pointed out that the AO had made addition on account of the said grants while computing income liable to tax as per normal provisions of the Act as per section 143(1) of the Act, which was of no consequence for the purposes of computing the Book Profits for the purposes of section 115JB of the Act. Our attention was drawn to the submissions of the assessee to this effect before the Ld.PCIT reproduced at para 4.1 of his order as under:

*"While issuing the notice under section 263 of the IT Act, it has been indicated that the assessee it has been indicated that the assessee has received capital grant of Rs.250.00 crores and that the assessee has transferred the same to the Reserve & Surplus. The said amount is alleged to have escaped assessment as not being taken to the Profit & Loss Account as income and that excess depreciation in the books of account has been claimed by the assessee.*

*At the outset, it is submitted that the company being the holding company of its subsidiaries engaged in generation, transmission and distribution of electricity is receiving various grants and subsidies from State Government for the benefit of consumers. Such grants and/or subsidies are received by GUVNL and is subsequently passed on the generation, transmission and distribution companies. Thus no grant is retained by GUVNL. During tthe year relvant to the Asst. Year 2009-10 GUVNL received Rs.250.00 crores which was passed on to the subsidiary companies in the form of equity capital.*

*Further during the year relevant to the Asst. Year 2010-11, GUVNL has not received any new grant. The Grant in question was received in terms of the Financial Restructuring Plan (FRP) from the Government.*

*It may also be noted that the Company does not have any Plant & Machinery or the similar asset from which the said grant can be reduced.*

*This apart, it is submitted that there is no provision whatsoever in the Companies Act or the Accounting Standards (AS) to reduce such a kind of Govt. Grant from the cost of the Fixed Assets. It has been prescribed in the AS that only the specific grants/subsides received for the specific assets are to be reduced fro the cost of such assets. the grant in question is a Capital Grant received under FRP for capital support as promoters' contribution and has to be treated as apart of "Shareholders' Funds".*

*The provision of reducing the cost of capital asset is contained in Explanation 10 of Section 43(1) of the Income Tax Act and the resultant effect has already been given while completing the assessment under section 143(3) of the I T Act for the year under consideration by making addition to the extent of 15% of the year end balance of the Grants. Needless to repeat that the said addition of 15% is also wrong as the company does not retain any grant whatsoever which should be transferred to Profit & loss Account as income.*

*Hence there is no under assessment of Book Profits on this issue.*

7. Ld.Counsel for the assessee contended that in identical set of facts in the case of a subsidiary of the assessee i.e. Dakshin Gujarat Vij Co. Ltd. the ITAT had held that there was no error on facts or in law in treatment of government grants and set aside the order of the Ld.PCIT, in its order passed in ITA No.950/Ahd/2015 dated 13-12-2016. Copy of the order was placed before us. Our attention was drawn to the relevant portion of the order dealing with the identical issue at para 12-16 as under:

> *"12. The third issue relates to the treatment of Government Grant of Rs. 250 crores u/s. 115JB of the Act.*
>
> *13.The assessee company has received capital grant of Rs. 250 crores which was transferred to the Reserve & Surplus account. The ld. Principal CIT was of the view that the same should have been reduced from the cost of assets and since the same has not been done, the company has claimed excess depreciation thereby offering lesser Book Profits.*
>
> *14.We find that the ld. Principal CIT has ignored the fact that the grant in question was received in terms of the Financial Restructuring Plan from the Government and the company has accounted Government Grants in terms of the mandatory Accounting Standard (AS)-12 on "Accounting for Government Grants" prescribed by the ICAI. The relevant part of AS-12 reads as under:-*
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> *10. Presentation of Grants of the nature of Promoters, contribution*
> *10.1 Where the government grants are of the nature of promoters' contribution, i.e., they are given with reference to the total investment in an undertaking or by way of contribution towards its total capital outlay (for example, central investment subsidy scheme) and no repayment is ordinarily expected in respect thereof, the grants are treated as capital reserve which can be neither distributed as dividend nor considered as deferred income.*
>
> *15. The relevant Office Note needs special mention here:-*
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> *Sub: Allocation of FRP Grant as Share Capital contribution to subsidiaries.*
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> *At the Board Meeting held on 29.06,2009, Board approved to allocate the FRP grant of Rs.250 crores being given by Govt. of Gujarat to GUVNL for system strengthening as Share Capital contribution from GUVNL to subsidiaries. Board further authorized MD, GUVNL to decide the quantum of such equity contribution to each of the subsidiaries. As far as DISCOMs are concerned, their equity requirement is being met through consumers' contribution and as such there is hardly any equity requirement which is required to be contributed by GUVNL. Moreover, the capital grant being released by GoG to GUVNL for various DISCOM related projects, the Board*

*at the meeting held on 04.01.2010 has approved to allocate the same to DISCOMs in the form of Share Capital from GUVNL. Since the DISCOM related grants alongwith consumers' contribution meet with the equity requirement of DISCOMs it is proposed not to allocate the FRP grant to DISCOMs for the FY 2009-10.*

*As regards to GETCO, they have incurred capital expenditure of Rs.650 crores upto January'10. Against the said capital expenditure, they have received consumers' contribution to the tune of Rs.87 crores. Further, the Govt. grant towards creation of transmission lines and sub-stations of Rs.151 crore (RE) is specifically meant for GETCO. In addition for creation of new Sub-Stations in coastal areas under Sagarkhedu Yojana, Govt. of Gujarat has given Share Capital Contribution of Rs.37.20 crores to GUVNL. The said grant and share capital contribution will be given to GETCO as share capital contribution from GUVNL. In addition, in the revised estimate, Govt. has made a provision of Rs.50 crores as Equity Share Capital contribution to GETCO directly (without routing through GUVNL). Thus, GETCO is already having Equity Share Capital contribution to the tune of Rs. 238.20 crores in addition to consumer's contribution of Rs. 87 crores whereas in case of GSECL whose equity requirement is substantially higher than that of GETCO, they have been given only Rs. 60.77 crores as Equity Share Capital contribution from GUVNL. Considering the above position, it is proposed to allocate entire FRP grant of Rs. 250 crores to GSECL as Equity Share Capital contribution from GUVNL for their projects.*

*16. Considering the accounting treatment in the light of the Accounting Standard-12, we do not find any error on facts or in law. Therefore, to this extent the findings of the ld. Principal CIT are reversed."*

He therefore contended that the issue was squarely covered in favor of the assessee by the aforestated order of the ITAT.

8. Ld.DR, though, was unable to distinguish the decision of the ITAT relied upon by the Ld.Counsel for the assessee, he however supported the order of the Ld.PCIT.

9. We have heard both the parties. We have also carefully gone through the order of the ITAT in the case of Gujarat State Electricity Corporation (supra). We find that in the said case also the Ld.PCIT had held the assessment order erroneous for identical reason as in the present case of the Book Profits not being enhanced with the depreciation claimed which allegedly was not allowable to the assessee on account of Government grant being liable to reduce the

value of fixed assets as opposed to the assessee accounting it for as Reserves and Surplus. The ITAT we find took note of the fact that the grants were received in lieu of FRP of the subsidiary and therefore held that the Book Profits of the assessee had been correctly computed in terms of applicable accounting standards and the finding of error by the Ld.PCIT was therefore incorrect.

Since the issue involved in the present case is identical, with the grant have been received for FRP the decision of the ITAT in the case of Gujarat State Electricity Corporation(supra) will squarely apply to the present case , following which we hold that there is no error in the assessment order for not enhancing the Book Profits of the assessee by the depreciation element of the government grants received.

10. The next issue relates to the finding of error by the Ld.PCIT in the assessment order of the claim of gratuity provided by the assessee being allowed in violation of the provisions of law. The facts relating to the same is that the ld.Pr.CIT noted from the annual report of the assessee-company, forming parts of the accounts for the impugned year that the assessee-company was formed by way of restructuring of Gujarat Electricity Board (GEB) resulting in formation of seven companies, including the assessee-company and the assessee company being the holding company and other six its subsidiaries. As a result of this restructuring, the Notes revealed, the Master Trust being managed by the Life Insurance Corporation of India on behalf of GEB for the gratuity liability to its employees, was inherited by the assessee, and the assessee-company was providing for the gratuity liabilities of all the companies formed by restructuring. The ld.Pr.CIT held that though inheritance of the Master Trust by the assessee from the GEB was lawful, but as

regards the provision of the Income Tax Act, the trust needed to be approved for each subsidiary separately for allowance of gratuity provided for by the assessee. And in the absence of the same, the assessee's claim of liability for gratuity provided for during the year to the tune of Rs.279.93 crores, had been wrongly allowed to it. Para-5 of the ld.Pr.CIT's order brings out the above facts.

11. The assessee contended that once the approval was granted to the Master Trust, it continues tobe applicable to all the companies subsequently formed by restructuring, and there was no requirement for taking separate exemption for the purpose of claiming contribution to the gratuity fund. It was also pointed out that this Master Trust was being assessed by the Income Tax Department in the past many years,and therefore there was no violation of any provision of the Act. The ld.Pr.CIT, however, was not convinced with the reply of the assessee and held that in view of separate approval not being taken by the different companies formed on the restructuring of the GEB, thecontribution on account of gratuity to the Master Trust was not allowable in terms of provision of the Income Tax Act, and therefore, the assessment order allowing the assessee's claim to the same was in error causing prejudice to the Revenue. His finding in this regard at para 5.1.1 of the order are as under:

5.1.1 Assessee's submissions are considered,however, not tenable in view of following:

*There is no adverse observation on the restructuring of Gujarat Electricity Board. The point is that, when each of the seven subsidiary companies are treated as separate entities having different PAN and assessed in different Circle/ Ward, the requirement of the section 36(1)(v) viz. "an approved gratuity fund created by the assessee for the exclusive benefit of its employees under an irrevocable trust" is not fulfilled. Further, when no separate trust is created, all the subsidiary companies ought to have obtained approval from the jurisdictional Commissioner of Income Tax for the above arrangement. In absence of such approval, the contributions to Gratuity Fund were liable to be disallowed.*

6. As per provisions of section 32(1) and 32(2) r.w.s. 72(1) and 72(2) of the Act following priorities in the carry forward and set off of losses and allowances will have to be observed:

(1) Current Depreciation [Section 32(1)]
(2) Brought Forward Business losses [Section 72(1)]
(3) Unabsorbed depreciation [Section 32(2)]

Further, as per sub-section 2(iii)(b) of section 32 as amended by the Finance (No.2) Act, 1996, w.e.f. 01st April, 1997, if the unabsorbed depreciation allowance cannot be wholly so set off, the amount of unabsorbed depreciation allowance not so set off shall be carried forward to the following assessment year not being more

than eight assessment years immediately succeeding the assessment year for which the aforesaid allowance was first computed.

In this background, it was noticed that assessee gave set off of business losses/unabsorbed depreciation during A.Y. 2006-07 to A.Y. 2010-11 (Upto A.Y. 2005-06 the Company was in loss), without observing the above provisions regarding priorities to be observed in set-off. It was seen from records that the total business loss upto A.Y. 2005-06 was 479,87,35,595/- and aggregate assessed business income from A.Y. 2006-07 to A.Y. 2008-09 was 953,69,99,806/- which means, all the previous business losses should have been completely set off during A.Y. 2006-07 to 2008-09 as per the priority order prescribed. Besides, an amount of 473,82,64,211/- (953,69,99,806 – 479,87,35,595) also could have been set off from earlier years B/F losses, unabsorbed depreciation in addition to the unabsorbed depreciation of 133,52,48,000/- already set off from "Other Income" during the year. There were discrepancies in set off of brought forward losses/unabsorbed depreciation in A.Y. 2009-10 also. In view of above, no business loss was available to the assessee to be carried forward to A.Y. 2010-11, but an amount of unabsorbed depreciation of 59,94,28,978/- was eligible to be carried forward and set off. However, consequent upon the Assessment Order passed on 22.01.2013 u/s 143(3) read with section 147 for A.Y. 2008-09, there was no further business loss which remained to be adjusted in A.Y. 2009-10 onwards.

As discussed above,no business loss was available for set off in A.Y. 2010-11. The set off business loss of 266,60,01,274/- was, therefore, not in order.

Without prejudice to the above, the AO had made an addition of 207,3270,825/ in the assessment order for A.Y. 2010-11 and due to this Brought forward business losses/unabsorbed depreciation was reduced to that extent and, therefore, the amount to be carried forward/to be set off in subsequent year was to be restricted by same amount. However, this was not notified by AO as required u/s 157 of the Act resulting in excess carry forward of business loss/unabsorbed depreciation.

*6.1* ***Assessee's submission:***

*Regarding the wrong claim of set off of unabsorbed business losses and unabsorbed depreciation, it is submitted that the company is contesting the additions made while completing assessments under section 143(3) of the IT Act for the Asst. Years 2007-08 and onwards and the appeals are presently subjudice before ITAT, Ahmedabad.*

*Hence the company has claimed set off of unabsorbed business loss and unabsorbed depreciation as per the Returns of Income filed by the company.*

*It may not be out of place to mention here that the appeal for the Asst. Year 2007-08 has been decided by the ITAT. Ahmedabad vide order dated 20-06-2014 and the major issue of disallowance under section 14A of the I T Act of Rs. 197.00 crores has been allowed with a direction to verify the submission of the assessee. The major isue in al the subsequent years is also disallowance under section 14A of the I T Act.*

*....."*

6.1.1 On consideration of the submission of the assessee it transpires that the main thrust of the assessee is that the company has claimed set off of unabsorbed business loss and unabsorbed depreciation as per the Returns of Income filed by the company owing to the fact that the issue of major disallowance u/s 14A of the Act in A.Y. 2007-08 has been allowed by the Hon'ble ITAT with a direction to verify the submission of the assessee and therefore, the same shall have bearing on working of allowance of set off of unabsorbed business loss and unabsorbed depreciation. The issue needs verification at the end of the AO while passing order giving effect to the order of the Hon'ble ITAT.

12. Before us, the contention of the ld.counsel for the assessee was that the findings of the ld.Pr.CIT were not in consonance with the settled principle with regard to the proposition of law inthis regard, as settled by various decisions of Hon'ble Courts including the Hon'ble apex court. He drew our attention to the following decisions:

i) CIT Vs. Textcool, (2013) 263 CTR 259 (SC)
ii) PCIT Vs. Shah Virchand Govanji Jewellers P.Ltd.,418 ITR 472 (Guj);
iii) CIT Vs. Siddheswari, 388 ITR 588 (Kar);
iv) Narasu's Spinning Mills Vs. ACIT, 157 ITD 512

13. The ld.counsel for the assessee pointed out that the Hon'ble Apex Court in the case of Textcool company (supra) has already laid down the proposition that where the contributions are made to a fund over which the assessee has no control and all the contributions made to the said fund ultimately are going back to the

assessee's employees' gratuity, which is approved by the Commissioner, then the conditions stipulated insection 35(1)(v) stands satisfied. He further contended that similar claim of the assessee stood allowed from the Asst.Year 2007-08 to 2017-18 and in Asst.Year 2011-12, the same was allowed in scrutiny assessment under section143(3) which was subsequently taken under revision by invoking the provisions of section 263 of the Act, where in also, the issue of gratuity was not taken for revision. He contended that when the claim had all along been allowed to the assessee in the past, and even in the succeeding years, the assessment order could not be held to be erroneous and for this purpose, he placed reliance on the following decisions:

i) CIT Vs. Escorts Ltd., (2011) 338 ItR 435 (Del)
ii) Cit Vs. Dalamia Promoters, Tax Appeal No.74 of 2007 (SC).

14. We have heard both the parties, and we are agreement with the ld.counsel for the assessee that there is no error in the order of the AO vis-à-vis allowance of claim of contribution to gratuity fund.That the Master Trust to which the contribution is being made is approved by the Commissioner, is not disputed. The contention of the ld.Pr.CIT is only that on the restructuring of the GEB, which the Trust originally belonged to, the subsequently formed entities i.e. seven in all, ought to have been taken approval again in their names so as to enable the assessee to be eligible for claiming deduction for contribution made to the said funds on behalf of all the entities. We find this requirement of the ld.Commissioner as a mere technicality. The Master Trust having been granted approval by the Commissioner, the initial restructuring of the GEB brings out no change in the character or functioning of the Trust. Therefore, the

requirement of entities, which were created on account of restructuring of GEB ,seeking approval afresh of the Master Trust, is nothing but a mere technicality, and the assessee's claim of contribution to this Trust cannot be denied on account of not fulfilling this technical requirement. The assessee is entitled to claim contribution to this approved trust as per the proposition laid down by the Hon'ble Apex court in the case of Textool(supra). Therefore, we hold, there is no error in the assessment order, as per the law, allowing the assessee's claim of contribution of gratuity. The ld.Pr.CIT's order on this count is set aside.

15. The last issue on which the assessment was passed to be erroneous was vis-à-vis a set off of unabsorbed business loss claimed by the assessee, which as per the ld.Pr.CIT were not allowable.

16. The ld.Pr.CIT noted that the assessee had claimed set off of business loss which was not in accordance with provision of the Act. The assessee filed due reply on this issue, and considering which the ld.Pr.CIT noted that the main thrust of the assessee's contention is that it has claimed set off of unabsorbed business loss and depreciation as per the returns of income filed, but owing to the fact that major disallowances were made in the Asst.Year 2007-08, which had travelled upto the ITAT who had allowed the assessee's appeal with direction to verify the submission of the assessee. Therefore, he noted that the same would have bearing on the working of the allowance of set off of unabsorbed depreciation and business loss. He therefore held that the issue needs verification at the end of the AO. His finding in this regard at para 6.1.1 of his order is as under:

6.1.1 On consideration of the submission of the assessee it transpires that the main thrust of the assessee is that the company has claimed set off of unabsorbed business loss and unabsorbed depreciation as per the Returns of Income filed by the company owing to the fact that the issue of major disallowance u/s 14A of the Act in A.Y. 2007-08 has been allowed by the Hon'ble ITAT with a direction to verify the submission of the assessee and therefore, the same shall have bearing on working of allowance of set off of unabsorbed business loss and unabsorbed depreciation. The issue needs verification at the end of the AO while passing order giving effect to the order of the Hon'ble ITAT.

7. It is therefore, held that the order passed by the Assessing Officer is both erroneous and prejudicial to the interest of revenue and, therefore, the order is **set aside** to be framed afresh in the light of above facts. The Assessing Officer will pass an order after due verification, bringing facts on record and after giving the assessee an opportunity of being heard.

17. We do not find any infirmity in the order of the ld.Pr.CIT. The assessee in any case is allowed to carry forward and set off of business loss and unabsorbed depreciation, which are ultimately assessed by the Revenue. The assessee having claimed set off of the same, as per its return of income filed, there is clearly an error in the order of the AO allowing the set off of business loss and depreciation as returned. The order of the ld.Pr.CIT on this count is, therefore, confirmed.

18. In view of the above the order of the Ld.PCIT finding the assessment order erroneous for not enhancing the Book Profits of the assessee by the depreciation allegedly not allowable on account of government grant reducing the value of fixed assets, and on account of gratuity claim incorrectly allowed is set aside while that on account of set off of brought forward losses and depreciation incorrectly allowed is upheld.

In effect appeal of the assessee is partly allowed.

19. We shall now take up the Revenues appeal against the order passed by the Ld.CIT(A) in appellate proceedings against the order passed by the AO in consequence to the Revisionary order of the Ld.PCIT.

**ITA No.602/Ahd/2018 (Revenue's Appeal)**

20. The grounds raised by the Revenue are as under.

> *1. "On the facts and circumstances of the case and in law, Ld.CIT (Appeals) erred in deleting the disallowance of contribution of assessee company to the Gratuity Fund without appreciating that the assessee company has actually paid the contribution to the Master Trust established by the erstwhile Gujarat Electricity Board and that the assessee company being a subsidiary company is treated as separate entity, thereby ignoring the fact that assessee failed to fulfil the requirement of the provision of the section 36(l)(v) Income tax Act viz. "an approved gratuity fund created by him for the exclusive benefit of the employees under an irrevocable trust".*
>
> *2. "On the facts and circumstances of the case and in law, the Id. CIT(A) erred in deleting the disallowance made out of depreciation of ? 29.28 crore, without appreciating the fact that by violating the Accounting principles/Accounting Standards, assessee understated the Book Profit by 29.63 crore in A.Y. 2010-11 resulting in short levy of MAT of 503.56 lakh".*

21. The Revenue challenge to the order of the ld.CIT(A) is against deletion of disallowance/addition made by the AO in the consequential order passed on two counts -

- addition made to Book Profits on account of disallowable depreciation pertaining to government grants which ought to have gone to reduce the value of fixed assets
- Claim of gratuity in violation of provisions of law on account of the contribution made to a trust which was not separately approved by each entity formed on restructuring of GEB.

Since we have set aside/negated the finding of error by the Ld.PCIT on both the above counts in our order above in assesses appeal against order passed u/s 263 of the Act, consequently the additions made by the AO were not sustainable. The present appeal of the Revenue is therefore dismissed as *infructuous*.

22. In the combined result, appeal of the assessee is partly allowed and that of the Revenue is dismissed.

**Order pronounced in the Court on 29th August, 2023 at Ahmedabad.**

*Sd/-*
**(MADHUMITA ROY)**
**JUDICIAL MEMBER**

*Sd/-*
**(ANNAPURNA GUPTA)**
**ACCOUNTANT MEMBER**

Ahmedabad,dated 29/08/2023