

AFR
Reserved on 30.9.2019
Delivered on 17.10.2019

Case:- INCOME TAX APPEAL No. - 251 of 2013

Appellant :- Commissioner Of Income Tax

Respondent :- M/S Poorvanchal Vdyut Vitran Nigam Ltd.

Counsel for Appellant :- S.S.C. I.T., Manish Goyal

Counsel for Respondent :- Ashish Bansal

Connected with-

Case :- INCOME TAX APPEAL No. - 268 of 2013

Appellant :- Commissioner Of Income Tax

Respondent :- M/S Poorvanchal Vdyut Vitran Nigam Ltd.

Counsel for Appellant :- Manish Goel

Counsel for Respondent :- Ashish Bansal

With

Case :- INCOME TAX APPEAL No. - 269 of 2013

Appellant :- Commissioner Of Income Tax

Respondent :- M/S Poorvanchal Vdyut Vitran Nigam Ltd.

Counsel for Appellant :- Manish Goel

Counsel for Respondent :- Ashish Bansal

With

Case :- INCOME TAX APPEAL No. - 221 of 2016

Appellant :- Pr. Commissioner Of Income Tax Varanasi

Respondent :- M/S Purvanchal Vidyut Vitran Nigam Ltd. Varanasi

Counsel for Appellant :- Gaurav Mahajan

Counsel for Respondent :- Ashish Bansal, Gaurav Mahajan

With

Case :- INCOME TAX APPEAL No. - 242 of 2016

Appellant :- Pr. Commissioner Of Income Tax Varanasi

Respondent :- M/S Purvanchal Vidyut Vitran Nigam Ltd. Varanasi
Counsel for Appellant :- Manish Goel
Counsel for Respondent :- Ashish Bansal

With

Case :- INCOME TAX APPEAL No. - 243 of 2016

Appellant :- Pr. Commissioner Of Income Tax Varanasi
Respondent :- M/S Purvanchal Vidyut Vitran Nigam Ltd. Varanasi
Counsel for Appellant :- Manish Goel
Counsel for Respondent :- Ashish Bansa

Hon'ble Bharati Sapru,J.
Hon'ble Rohit Ranjan Agarwal, J.

(By Rohit Ranjan Agarwal,J.)

1. All these appeals filed under Section 260-A of the Income Tax Act arise out of orders dated 1.5.2013, passed by the Income Tax Appellate Tribunal (hereinafter called as "ITAT"), Allahabad Bench, Allahabad in Income Tax Appeal Nos.228/Alld/2011, 229/Alld/2011, 272/Alld/2012, for the assessment years 2007-08, 2008-09, 2009-10 and orders dated 21.3.2016 passed by the Income Tax Appellate Tribunal, Allahabad (Circuit Bench at Varanasi) in Income Tax Appeal Nos.356/Alld/2014, 498/Alld/2015 and 499/Alld/2015 for the assessment years 2010-11, 2011-12 and 2012-13.
2. Issue in all these appeals under challenge are same, hence are being decided by a common order, treating appeal no.251 of 2013, for the assessment year 2007-08, as the leading appeal.
3. All the appeals are filed on the same question of law, which read as under:

“Whether the Income Tax Appellate Tribunal is justified in law and facts in holding that the assessee was entitled to claim depreciation on the fixed assets acquired on transfer scheme 2003 which was not yet finalized/ascertained on the fact that the actual assets are not identifiable and not being used as well as their full title have not been transferred to the assessee ?”

4. Brief facts of the case are, that U.P. Electricity Regulatory Commission (in short “UPERC”) was formed under the provisions of U.P. Electricity Reforms Act, 1999 by Government of U.P., as a first step for reforming and restructuring the power sector in the State.

5. The erstwhile U.P. State Electricity Board (in short “UPSEB”) was unbundled into three distinct legal and separate entities through the First Reforms Transfer Scheme, dated 14.1.2000, which are as under:

- (i) U.P. Power Corporation Ltd. (in short “UPPCL”), vested with the function of transmission and distribution of power within the State.
- (ii) U.P.Rajya Vidyut Utpadan Nigam Ltd. (in short “UPRVUNL”), vested with the function of Thermal generation within the State.
- (iii) U.P.Jal Vidyut Nigam Ltd. (in short “UPJVNL”), vested with the function of Hydro generation within the State.

6. By another Transfer Scheme dated 15.1.2000, the assets liabilities and personnel of Kanpur Electricity Supply Authority (in short “KESA”) under UPSEB were transferred to Kanpur Electricity Supply Company Ltd. (in short “KESCO”), a Company registered under the Companies Act, 1956.

7. After the enactment of Electricity Act, 2003, UPPCL, which was responsible for transmission and distribution of electricity was further divided and four new distribution Companies (hereinafter collectively

referred to as “distribution licensees”) were created under the U.P. Transfer of Distribution Undertaking Scheme, 2003 (in short called as “Transfer Scheme, 2003”), vide notification no.2740-PA-1-2003-24-14P-2003, dated 12.8.2003, issued by the State Government to undertake distribution and supply of electricity in the areas under their respective Zones specified in the Scheme:

- (i) Dakshinanchal Vidyut Vitran Nigam Ltd. (Agra Discom or DVVNL)
- (ii) Madhanchal Vidyut Vitran Nigam Ltd. (Lucknow Discom or MVVNL)
- (iii) Paschimanchal Vidyut Vitran Nigam Ltd. (Meerut Discom or PVVNL)
- (iv) Purvanchal Vidyut Vitran Nigam Ltd. (Varanasi Discom or PUVNL)

8. The said notification was issued in pursuance of Section 131(4) of Electricity Act, 2003 and Section 23(4) of the U.P. Electricity Reforms Act, 1999.

9. Pursuant to the formation of the said four Companies, all the assets and liability as per the Scheme was transferred, which included the fixed assets. After transfer of assets and liabilities, these Companies started utilizing the same in power generation and revenue generated was disclosed in the return filed by it in regular course. However, as break up of assets value and itemwise was not provided in the Scheme, as such for PUVNL, one Ms Batliboy & Co. was entrusted with task for physical verification of assets and determination of the same.

10. As the report was awaited and the returned had fallen due, assessee had charged depreciation at a common rate of 7.84% on the method

prescribed by the Government under Electricity Supply Act, 1948 on the gross fixed assets transferred to the Company as per the Transfer Scheme, 2003.

11. While making the assessment for the assessment year 2004-05 the assessing officer disallowed the depreciation claimed by the respondent-assessee on the assets transferred to it under the U.P. Transfer of Distribution Undertaking Scheme, 2003.

12. CIT(A), however, considering the fact allowed the appeal of the respondent-assessee, which was affirmed by the Tribunal. The order of the Tribunal was challenged by the Department before this Court.

13. Present dispute relates to the assessment years 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13. In all these years the assessing authority had disallowed the depreciation claimed by the assessee on the assets transferred to it pursuant to the Scheme of 2003.

14. Sri Gaurav Mahajan, learned counsel appearing for the Department submitted that Section 32 of the Income Tax Act provides for depreciation in respect of building, machinery, plant or furniture, being tangible assets. He relied upon sub-section 1(ii) of Section 32 of the Act, which provides that depreciation shall be granted only when the assessee owned, wholly or partly and used for the purpose of business or profession that the deduction shall be allowed. According to the appellant the respondent-assessee came into effect from 12.8.2003 and claimed depreciation to the tune of Rs.87,01,38,609/- out of which Rs.17,45,76,911/- has been claimed for assets acquired after the Transfer Scheme, 2003 as mentioned in the depreciation schedule.

15. While remaining depreciation of Rs.69,55,61,698/- has been

claimed on the balance assets acquired on the Transfer Scheme, 2003. He further submitted that A.O. had rightly allowed the claim of depreciation on the assets acquired after the Transfer Scheme, 2003 came into force while it disallowed the claim of the respondent-assessee on the assets transferred under the Scheme as the same was not yet finalized and identifiable and, therefore, not being used as well. He also submitted that the assessing officer had also disallowed the claim of depreciation claimed by the assessee for the previous assessment years also.

16. Lastly, it was contended that the assets acquired under the Transfer Scheme, 2003 came to be identifiable in the assessment year 2016-17, as such, the matter needs to be remitted back to the assessing authority to look into the claim of depreciation in respect of assets so acquired.

17. Per contra, Sri Ashsih Bansal, learned counsel appearing for the respondent-assessee submitted that the A.O. had wrongly disallowed the claim of depreciation, as the C.I.T. (Appeal) and Tribunal had granted the claim of depreciation to the assessee for the relevant years in question as well as for the previous assessment years, as such the arguments of the Department has no legs to stand. However, he candidly admitted the fact, that the task for determination of itemwise opening balance of assets and liabilities had been completed and the reports had been submitted by auditor/agency to the assessee, the same have been brought by the counsel for the assessee before the Court in his written submission, which is dated 4.12.2015. The relevant extract of the letter dated 4.12.2015 are extracted here as under :

“ उत्तर प्रदेश पावर कारपोरेशन लिमिटेड
(उ० प्र० सरकार का उपक्रम)

U.P. Power Corporation Limited
(U.P. Government Undertaking)

कारपोरेट लेखा अनुभाग CORPORATE ACCOUNTS

शक्ति भवन विस्तार 14-अशोक मार्ग, लखनऊ-226001 Shakti Bhawan Ext., 14-Ashok Marg Lucknow -226001

पत्रांक 354/पी0सी0एल0/सी0ए0-बी0एस0 /लेखा समीक्षा बैठक दिनांक 04-12-2015
निदेशक (वित्त),

पूर्वान्चल वि0वि0 नि0लि0,

वाराणसी।

बिषय:- डिस्कामस् अन्तरण स्कीम के अन्तिमीकरण के फलस्वरूप सम्बन्धित खण्डवार अवशेष व उन पर प्रतिवेदन प्रदान किये जाने के सम्बन्ध में।

कृपया इस कार्यालय के पत्र संख्या 338/पी0सी0एल0 /सी0ए0-ए0एस0 / 35/ओ0बी0आर0 दिनांक 16-11-2015 का संदर्भ ग्रहण करें। उक्त सम्बन्ध में डिस्काम अन्तरण स्कीम के अन्तिमीकरण के परिणामस्वरूप मेसर्स प्रूडेन्शियल प्रोजेक्ट सिंडीकेट द्वारा प्रदत्त “Opening Balances of Acoounting Units vested in Purvanchal Vidyut Vitran Nigam Limited, Varanasi as on 12.08.2003” की मूल प्रति (पृष्ठ सं0 1 से 256 तक) एवं “ Explanatory note on the computation on unit wise balances finally proposed to be tranaferrred by the U.P. Power Corporeation Limited to Discoms as on 11.08.2003” की मूल प्रति (पृष्ठ सं0 1 से 192 तक) सूचनार्थ एवं आवश्यक कार्यवाही हेतु संलग्न प्रेषित है।

संलग्नक:-यथोपरि।

(ए0के0 गुप्ता)

मुख्य महाप्रबन्धक (लेखा)”

18. Sri Bansal lastly submitted that in case the court is of different view, then the matter be remanded to A.O. for limited purpose, only for verification of the said record for allowing depreciation to the assessee as per law.

19. Having heard learned counsel for the parties and from perusal of the records, it is not in dispute that the UPPCL was divided into four new distribution Companies under the Transfer Scheme, 2003 by Government notification dated 12.8.2003. The respondent-assessee is one of the four distribution Companies. It is further not in dispute that the Transfer Scheme, 2003 provided for the assets, which included the fixed assets, but no break up of assets values and itemwise was provided in the Transfer Scheme, 2003, as such the respondent-assessee had appointed

an auditor to make itemwise opening balance of the assets and liabilities, which according to the respondent-assessee themselves was submitted by the auditors to them on 4.12.2015.

20. The contention of the counsel for the Department regarding the depreciation, which has been disallowed by the assessing officer on the balance assets acquired on the date of Transfer Scheme, 2003, as the assets was was not identifiable at the relevant point of time, needs consideration.

21. In the light of the fact that the auditors themselves had submitted report to the respondent-assessee on 4.12.2015 and the assets so acquired under the Transfer Scheme, 2003 came to be identifiable only in the assessment year 2016-17. The said fact has also not been denied by the counsel for the respondent-assessee.

22. In view of the above, we are of the considered opinion that the matter needs to be examined afresh for the claim of depreciation by the assessing officer, in the light of the auditor's report providing itemwise accounting of assets and liabilities on 4.12.2015. Thus, the matter is remitted back to the assessing authority to reconsider and verify the records and pass fresh order, as far as claim of depreciation on the assets claimed by the respondent-assessee, pursuant to the Scheme of 2003.

23. We hope and trust that the aforesaid exercise will be carried out by the assessing officer within three months from the date of production of a certified copy of this order, with the aforesaid directions all the appeal stands disposed off.

Dated:- 17.10.2019
AKJ