**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

(1) D.B. Income Tax Appeal No. 20/2018

Principal Commissioner Of Income Tax, Ajmer.

----Appellant

Versus

M/s. Ajmer Vidyut Vitran Nigam Limited, Vidyut Bhawan, Panchsheel Nagar, Makarwali Road, Ajmer

----Respondent

(2) D.B. Income Tax Appeal No. 21/2018

Principal Commissioner Of Income Tax, Ajmer

----Appellant

Versus

M/s. Ajmer Vidyut Vitran Nigam Ltd., Vidyut Bhawan, Panchsheel Nagar, Makarwali Road, Ajmer

----Respondent

(3) D.B. Income Tax Appeal No. 22/2018

Principal Commissioner Of Income Tax, Ajmer

----Appellant

Versus

M/s. Ajmer Vidyut Vitran Nigam Ltd., Vidyut Bhawan, Panchsheel Nagar, Makarwali Road, Ajmer

----Respondent

(4) D.B. Income Tax Appeal No. 23/2018

Principal Commissioner Of Income Tax, Ajmer.

----Appellant

Versus

M/s. Ajmer Vidyut Vitran Nigam Limited, Vidyut Bhawan, Panchsheel Nagar, Makarwali Road, Ajmer

----Respondent

(5) D.B. Income Tax Appeal No. 24/2018

Principal Commissioner Of Income Tax, Ajmer.

----Appellant

Versus

M/s. Ajmer Vidyut Vitran Nigam Limited, Vidyut Bhawan, Panchsheel Nagar, Makarwali Road, Ajmer

----Respondent

(6) D.B. Income Tax Appeal No. 25/2018

Principal Commissioner Of Income Tax, Ajmer

----Appellant

Versus

M/s. Ajmer Vidyut Vitran Nigam Ltd., Vidyut Bhawan, Panchsheel Nagar, Makarwali Road, Ajmer

----Respondent

(7) D.B. Income Tax Appeal No. 27/2018

Principal Commissioner Of Income Tax, Ajmer

----Appellant

Versus

M/s. Ajmer Vidyut Vitran Nigam Ltd., Vidyut Bhawan, Panchsheel Nagar, Makarwali Road, Ajmer

----Respondent

(8) D.B. Income Tax Appeal No. 28/2018

Principal Commissioner Of Income Tax, Ajmer.

----Appellant

Versus

M/s. Ajmer Vidyut Vitran Nigam Limited, Vidyut Bhawan, Panchsheel Nagar, Makarwali Road, Ajmer

----Respondent

(9) D.B. Income Tax Appeal No. 29/2018

Principal Commissioner Of Income Tax, Ajmer

----Appellant

Versus

M/s. Ajmer Vidyut Vitran Nigam Ltd., Vidyut Bhawan, Panchsheel Nagar, Makarwali Road, Ajmer

----Respondent

(10) D.B. Income Tax Appeal No. 30/2018

Principal Commissioner Of Income Tax, Ajmer

----Appellant

Versus

M/s. Ajmer Vidyut Vitran Nigam Ltd., Vidyut Bhawan, Panchsheel

Nagar, Makarwali Road, Ajmer

----Respondent

For Appellant(s)	:	Mr. K.D. Mathur with Mr. Prateek Kedawat for Mr. R.B. Mathur
For Respondent(s)	:	Mr. Gunjan Pathak with Ms. Ishita Rawat

HON'BLE MR. JUSTICE K.S.JHAVERI
HON'BLE MR. JUSTICE VIJAY KUMAR VYAS

Judgment

03/04/2018

1. In all these appeals common question of law and facts are involved hence they are decided by this common judgment.

2. By way of these appeals, the appellant has assailed the judgment and order of the tribunal whereby tribunal has allowed the appeal of the assessee and modified the order of CIT(A).

3. Counsel for the appellant has framed the following substantial question of law in all these appeals:-

Appeal No.20/2018

1. Whether in the facts and circumstances of the case the ITAT is justified in holding that the provisions of Section 115JB are not applicable to the assessee company because as per the provisions of Section 115JB(2) of the I.T. Act, the assessee company has to follow accounting policies and prepare its P & L account for the relevant previous year in accordance with the provisions of part II & III of schedule IV of the Company Act, 1956 which the assessee company has not followed?

Appeal No.21/2018

1. Whether in the facts and circumstances of the case the ITAT is justified in reversing the

decision of CIT(A) on the disallowance of depreciation of Rs.25186073/- on non existing assets as no depreciation u/s 32 can be allowed on existing assets or the assets which are not put to use for business purposes?

Appeal No.22/2018

(a) Whether in the facts and circumstances of the law, the ITAT is justified in reversing the decision of CIT(A) that the assessee has not be able to prove through documentary evidence that liability in respect of prior period expenses of Rs.26,64,72,749/- has crystallized in the year under consideration?

(b) Whether on the facts and circumstances of the law, the ITAT is justified in reversing the decision of CIT(A) on the disallowance of depreciation of Rs.2,14,00,000/- on non existing assets as no depreciation u/s 32 can be allowed on non existing assets or the assets which are not put to use for business purposes?

Appeal No.23/2018

1. Whether in the facts and circumstances of the case the ITAT is justified in reversing the decision of CIT(A) on the disallowance of depreciation of Rs.29630674/- on non existing assets as on depreciation u/s 32 can be allowed on non existing assets or the assets which are not put to use for business purposes?

2. Whether in the facts and circumstances of the case the ITAT is justified in holding that provisions of Section 115JB are not applicable to the assessee company because as per the provision of section 115JB(2) of the IT Act, the assessee company has to follow accounting policies and prepare its P & L account for the relevant previous year in accordance with the provisions of part II & III of schedule IV of the Company Act, 1956 which the assessee company has not followed?

Appeal No.24/2018

1. Whether in the facts and circumstances of the case the ITAT is justified in reversing the decision of CIT(A) that the assessee has not

been able to prove through documentary evidence that liability in respect of prior period expenses of Rs.335819301/- has crystallized in the year under consideration?

2. Whether in the facts and circumstances of the case the ITAT is justified in reversing the decision of CIT(A) on the disallowance of depreciation of Rs.34859617/- on non existing assets as no depreciation u/s 32 can be allowed on non existing assets or the assets which are not put to use for business purposes?

3. Whether in the facts and circumstances of the case the ITAT is justified in holding that provisions of Section 115JB are not applicable to the assessee company because as per the provision of Section 115JB(2) of the IT Act, the assessee compnay has to follow accounting policies and prepare its P & L account for the relevant previous year in accordance with the provisions of part II & III of schedule IV of the Company Act, 1956 which the assessee company has not followed?

Appeal No.25/2018

1. Whether in the facts and circumstances of the case the ITAT is justified in reversing the decision of CIT(A) that the assessee has not been able to prove through documentary evidence that liability in respect of prior period expenses of Rs.47642126/- has crystallized in the year under consideration?

2. Whether in the facts and circumstances of the case the ITAT is justified in reversing the decision of CIT(A) on the disallowance of depreciation of Rs.91136253/- on non existing assets as no depreciation u/s 32 can be allowed on non existing assets or the assets which are not put to use for business purposes?

3. Whether in the facts and circumstances of the case the ITAT is justified in holding that provisions of Section 115JB are not applicable to the assessee company because as per the provision of Section 115JB(2) of the IT Act, the assessee company has to follow accounting policies and prepare its P & L account for the relevant previous year in accordance with the provisions of part II & III of schedule IV of the Company Act, 1956

which the assessee company has not followed?

Appeal No.27/2018

1. Whether in the facts and circumstances of the case the ITAT is justified in reversing the decision of ld. CIT(A) that the assessee has not been able to prove through documentary evidence that liability in respect of prior period expenses of Rs.1,53,84,36,001/- has crystallized in the year under consideration?

Appeal No.28/2018

1. Whether in the facts and circumstances of the case the ITAT is justified in holding that provisions of Section 115JB are not applicable to the assessee company because as per the provision of Section 115JB(2) of the IT Act, the assessee company has to follow accounting policies and prepare its P & L account for the relevant previous year in accordance with the provisions of part II & III of schedule IV of the Company Act, 1956 which the assessee company has not followed?

Appeal No.29/2018

1. Whether in the facts and circumstances of the case the ITAT is justified in reversing the decision of ld. CIT(A) that the assessee has not been able to prove through documentary evidence that liability in respect of prior period expenses of Rs.4,64,27,170/- has crystallized in the year under consideration?

2. Whether in the facts and circumstances of the case the ITAT is justified in reversing the decision of ld. CIT(A) on the disallowance of depreciation of Rs.12,15,15,004/- (Rs.23,04,20,000/- originally determined u/s 143 (3)) on non existing assets as no depreciation u/s 32 can be allowed on non existing assets or the assets which are not put to use for business purposes?

3. Whether in the facts and circumstances of the case the ITAT is justified in holding that provisions of Section 115JB are not applicable to the assessee company because as per the provision of Section 115JB(2) of the IT Act,

the assessee company has to follow accounting policies and prepare its P & L account for the relevant previous year in accordance with the provisions of part II & III of schedule IV of the Company Act, 1956 which the assessee company has not followed?

Appeal No.30/2018

1. Whether in the facts and circumstances of the case the ITAT is justified in holding that provisions of Section 115JB are not applicable to the assessee company because as per the provision of Section 115JB(2) of the IT Act, the assessee company has to follow accounting policies and prepare its P & L account for the relevant previous year in accordance with the provisions of part II & III of schedule IV of the Company Act, 1956 which the assessee company has not followed?

4. The facts of the case are that the assessee company has claimed prior period expenses amounting to Rs. 4,64,27,170/-. During the course of assessment proceedings, the assessee company submitted that it is a public sector undertaking carrying on the business of Transmission, Distribution and Supply of electricity. The Company was formed after restructuring of Rajasthan State Electricity Board (RSEB) on 19.06.2000 and at that time, certain assets, liabilities, common expenditure were also transferred from RSEB which were subject to reconciliation. The Assessment year under consideration is fourth year of its operation and certain expenses and income being in the nature of prior period items were claimed as per normal accounting norms and on the belief that these expenses though pertaining to the previous years are admissible only in the year in which it crystallized and accounted for on the basis of system of

accounting regularly followed by the assessee. Further details of such income and expenses were submitted during the assessment proceeding. The Assessing Officer did not agree to the submission of the assessee and held that the net prior period expenses of Rs. 4,64,27,170/- debited during the year has distorted the profits of the year as the assessee is following mercantile system of accounting and expenditure not related to the previous year cannot be allowed to be deducted from income of the subject previous year. It was further stated by the AO that this expenditure also does not fall under the provisions of section 35D of the Act. Regarding assessee company's contention that the issue has been decided in its favour by the ld. CIT(A) for A.Y. 2002-03, the Assessing Officer stated that since the Revenue is an appeal before the Tribunal against the said order, he is not in a position to follow the order of the ld. CIT(A). Finally, the Assessing Officer, following the past history of the assessee, disallowed the prior period expenditure amounting to Rs. 4,64,27,170/-.

5. Now with regard to issue of prior period expenses, the same is concluded in favour of the assessee in view of the decision rendered in ITA No.333/2009, review application No.66/2018 against the said decision has been rejected today.

6. However, with regard to questions of disallowance of deprecation on non existing assets and provisions of Section 115JB being not applicable to assessee company, this court in ITA No.35/2017 and other connected matters decided on 21.12.2017 has remitted back the matter to the tribunal. In view thereof, these matters are also remitted back to the tribunal to decide the

same together in accordance with law keeping in mind the subsequent circular which governs the shareholders of the company.

7. All these appeals stand disposed of.

(VIJAY KUMAR VYAS),J (K.S.JHAVERI),J

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