

\$~6 and 12 to 24 (connected matters)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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+ ITA 666/2016 with C.M.Nos.31882-31883/2016

PR. COMMISSIONER OF INCOME TAX -DELHI -2 Appellant

versus

BSES RAJDHANI POWER LTD Respondent

12

+ ITA 254/2016

PR. COMMISSIONER OF INCOME TAX -DELHI -2 Appellant

versus

BSES RAJDHANI POWER LTD Respondent

13

+ ITA 255/2016

PR. COMMISSIONER OF INCOME TAX -DELHI-2 Appellant

versus

BSES YAMUNA POWER LTD Respondent

14

+ ITA 256/2016

PR. COMMISSIONER OF INCOME TAX-DELHI-2 Appellant

versus

BSES YAMUNA POWER LTD Respondent

15

+ ITA 257/2016

PR. COMMISSIONER OF I TAX DELHI -2 Appellant

versus

BSES YAMUNA POWER LTD Respondent

16

+ ITA 258/2016

PR. COMMISSIONER OF INCOME TAX -DELHI-2 Appellant
versus
BSES YAMUNA POWER LTD Respondent

17

+ ITA 259/2016

PR. COMMISSIONER OF INCOME TAX-DELHI -2 Appellant
versus
BSES RAJDHANI POWER LTD Respondent

18

+ ITA 260/2016

PR. COMMISSIONER OF INCOME TAX- DELHI -2 Appellant
versus
BSES RAJDHANI POWER LTD Respondent

19

+ ITA 261/2016

PR. COMMISSIONER OF INCOME TAX-DELHI-2 Appellant
versus
BSES RAJDHANI POWER LTD Respondent

20

+ ITA 282/2016

PR. COMMISSIONER OF INCOME TAX -DELHI -2 Appellant
versus
BSES YAMUNA POWER LTD. Respondent

21

+ ITA 485/2016

PR. COMMISSIONER OF INCOME TAX DELHI -2 Appellant

versus

BSES RAJDHANI POWER LTD Respondent

22

+ ITA 492/2016

PR. COMMISSIONER OF INCOME TAX-DELHI-2 Appellant

versus

BSES RAJDHANI POWER LTD Respondent

23

+ ITA 493/2016

PR. COMMISSIONER OF INCOME TAX - DELHI-2 Appellant

versus

BSES YAMUNA POWER LTD Respondent

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+ ITA 494/2016

PR. COMMISSIONER OF INCOME TAX-DELHI-2 Appellant

versus

BSES RAJDHANI POWER LTD Respondent

Present: Mr.P.Roy Chaudhuri, Senior standing counsel for the
revenue/appellant in all the matters.
Ms.Kavita Jha, Ms.Roopali Gupta and Mr.Bhuwan
Dhoopar, Advocates for the respondents in all the
matters.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER
14.09.2016

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1. These matters have been taken up today as 13.09.2016 was declared holiday on account of Id-ul-Zuha.

2. Admit.

3. The following question of law arises for consideration:

“Did the Tribunal fall into error in holding that the provision of Section 115 JB of the Income Tax Act did not apply to the assessee in this case?”

4. Other questions of law sought to be urged are firstly with respect to the appropriate rate of depreciation of electronic/energy meters; whether the amounts received by the assessee towards service line security deposits are in the nature of capital or revenue; applicability of appropriate rule of valuation of closing stock.

5. In ITA 256/2016, the additional ground pertains to the application of Section 2 (22), the question pertaining to deemed dividend.

6. As far as the first question with respect to rules of depreciation is concerned, we notice that the ITAT went by a plain reading of the rule of concerned provision i.e. Part A, under Appendix 1, Clause III (8) (ix) (B) (e) of the Income-tax Rules, 1962. The revenue had urged that the appropriate rate of depreciation would be 25% as against which the assessee had claimed 80% depreciation in view of the rule.

7. This court is of the opinion that having regard to the fact that ITAT went by the text of the rule itself, in the absence of any other indication within the statute with respect to its inapplicability, the

impugned ruling cannot be faulted. No question of law arises on this aspect.

8. With respect to the ITAT's ruling that the treatment of the service line deposit over the years being capital or revenue is concerned, we notice that the AO refused to recognise the amounts as capital receipts. The assessee offered 1/3rd of the amount to the profit and loss account and later explained that these were capital receipts and are not revenue in nature. This volte face of the assessee seems to have triggered the AO's decision that the receipts were not capital but revenue and therefore entirely liable to be taxed. The issue is covered against the revenue in *Hoshiarpur Electric Supply Co. vs. CIT* {1961} 41 ITR 608 (SC).

9. As far as the change in the method of valuation is concerned, the ITAT permitted the assessee to adopt the moving average methodology. The ITAT noted that the previous method adopted by the assessee was First In First Out (FIFO) in terms of AS2. However, they changed that method from 2005-2006 onwards. The ITAT concurred with the CIT (A)'s decision that the assessee had the autonomy to decide appropriate method as long as the authority did not find anything fundamentally wrong in it. In our opinion no question of law arises on this score as well.

10. With respect to the additional question in ITA 256/2016, being the treatment of `59,27,00,000/- as deemed dividend, the CIT (A) was of the opinion that since the assessee was not a shareholder in Rajdhani Power Limited the provisions of Section 2 (22) (e) was not

attracted. This finding is affirmed by the ITAT. The court is of the opinion that there is no infirmity with the finding as one of the essential pre-requisite for application of Section 2 (22) is that the assessee should be related to the other concern which advances the money or from which amount flows back to it as a shareholder. This position has now been affirmed by this court in ***CIT vs. Ankitech (P) Ltd. (2012) 340 ITR 14***. The question of law framed does not arise in ITA Nos. 666/2016, 257/2016, 258/2016, 261/2016, 485/2016 & 492/2016. The answer to the other questions of law framed has been repelled by the above order.

11. Consequently, ITA No. 666/2016 along with C.M.Nos.31882-31883/2016 and ITA Nos. 257/2016, 258/2016, 261/2016, 485/2016 & 492/2016 are dismissed.

12. List the pending appeals for hearing on the question of law framed on 22.11.2016.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

SEPTEMBER 14, 2016

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