

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'D', KOLKATA**

[Before Shri P.M. Jagtap, AM & Shri S.S. Viswanethra Ravi, JM]

**I.T.A. No. 2172/Kol/2016
Assessment Year 2010-11**

M/s. India Power Corporation Ltd.....Appellant
(Formerly known as DPSC Ltd.)
Plot No. X-1, 2 & 3, Block EP,
Sector – V, Salt Lake,
Kolkata – 700 091
[PAN: AABCD 0340 G]

A.C.I.T. CIR 2(1).....Respondent
Aayakar Bhawan,
Kolkata – 700 069

**I.T.A. No. 2069/Kol/2016
Assessment Year 2009-10**

A.C.I.T. CIR 2(1).....Appellant
Aayakar Bhawan,
Kolkata – 700 069

M/s. India Power Corporation Ltd.....Respondent
(Formerly known as DPSC Ltd.)
Plot No. X-1, 2 & 3, Block EP,
Sector – V, Salt Lake,
Kolkata – 700 091
[PAN: AABCD 0340 G]

Appearances by:

Shri Amit Agarwal, ACA appearing on behalf of the Assessee.

Shri Arindam Bhattacharjee, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : February 14, 2018

Date of pronouncing the order : March 09, 2018

ORDER

SHRI P.M. JAGTAP, AM

These two appeals, one filed by the assessee being ITA No. 2172/K/2016 and the other filed by the revenue being ITA No. 2069/K/2016, are cross appeals which are directed against the order of Ld. CIT (A) – 16, Kolkata dated 30.08.2016.

2. The assessee in the present case is a company which is engaged in the business of generation and distribution of power. The return of income for the year under consideration was filed by it on 12.10.2010 which was subsequently revised on 30.03.2012 declaring a total income of Rs. 7,00,08,681/-. In the assessment completed u/s 143(3) vide an order dated 25.03.2013, the total income of the assessee under the normal provisions of the Act was determined by the A.O. at Rs. 7,55,30,537/- after making addition inter alia on account of disallowance of provision for leave encashment amounting to Rs. 53,05,000/-. The A.O. also computed the book profit of the assessee company u/s 115JB of the Act at Rs. 16,03,65,241/- after making certain additions to the net profit shown by the assessee company in its profit and loss account and since the tax payable on such book profit was more than the tax payable on the income computed under the normal provisions of the Act, he completed the assessment under section 143(3) vide an order dated 25.03.2013 with reference to the book profit as per section 115JB of the Act.

3. Against the order passed by the A.O. under section 143(3), an appeal was preferred by the assessee before the Ld. CIT(A) who confirmed the addition of Rs. 53,05,000/- made by the A.O. on account of disallowance of provision for leave encashment while computing the total income of the assessee as per the normal provisions of the Act. He, however, allowed the grounds raised by the assessee company on the issue of computation of book profit by the A.O. u/s 115JB of the Act and held by following the decision of the Tribunal in assessee's own case for A.Y. 2007-08, 2008-09 and 2009-

10 that the provisions of section 115JB were not applicable in the case of the assessee company.

4. Aggrieved by the order of the Ld. CIT(A), the assessee and revenue both are in appeal before the Tribunal on the following grounds:

Grounds raised in the appeal of the assessee:

1. That on the facts and circumstances of the case, the Ld. CIT(Appeals) was not justified & grossly erred in confirming the disallowance of provision for leave encashment of Rs. 53,05,000/- in computing total income under normal provisions of the Act.

2. That on the facts and in the circumstances of the case, the Ld. CIT(A) failed to adjudicate the ground against erroneous adjustment of dividend distribution tax amounting to Rs. 16,354/- against amount refundable to appellant.

Grounds raised in the appeal of the revenue:

1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in holding that the provisions of Section 115JB of the Income Tax Act, 1961 are not applicable to the assessee being an electricity company governed by the Electricity Act, 2003.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in not appreciating that Section 115JB of the Income Tax Act, 1961 would apply to every assessee, being a company defined in section 2(17) & 2(26) of the Income Tax Act, 1961.

3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in holding that the assessee is not liable to pay interest u/s 234B of the Income Tax Act, 1961.

5. We have heard the arguments of both the sides and also perused the relevant material available on record. At the time of hearing before us, the learned counsel for the assessee has not

pressed ground no 2 raised by the assessee company in its appeal. The same is accordingly dismissed as not pressed.

6. As regards the issue involved in ground no 1 of the assessee's appeal relating to the disallowance made by the A.O. and confirmed by the Ld. CIT(A) on account of provision for leave encashment, it is observed that a similar issue involved in assessee's own case for A.Y. 2009-10 was restored back by the Tribunal to the file of the A.O. with the direction to decide the same on the basis of the outcome of the decision in the case of Exide Industries Ltd. which is pending before the Hon'ble Supreme Court. Following the same, we restore this issue to the file of the A.O. for deciding the same as per the same direction as given by the Tribunal in assessee's own case for A.Y. 2009-10. Ground No. 1 of the assessee's appeal is accordingly treated as allowed for statistical purpose.

7. As regards the revenue's appeal, it is observed that the issues raised in ground no 1 and 2 relating to applicability of the provisions of section 115JB in the case of the assessee company are squarely covered in favour of the assessee by the decision of this Tribunal in assessee's own case for A.Y. 2007-08, 2008-09 and 2009-10 (ITA No. 890, 1656 & 891/Kol/2013) wherein it was held that the assessee company being an Electricity Generation Company has to prepare its accounts as per the West Bengal Electricity Regulatory Commission (Terms & Conditions of tariff) Regulations 2007 and since its accounts are not prepared as per Part II and Part III of Schedule VI of the Companies Act, which is primary condition for computing Book Profit, provision of u/s 115JB cannot be applied in the case of

electricity generating company. Respectfully following the said decision of this Tribunal in assessee's own case for the earlier years, we uphold the impugned order of the Ld. CIT(A) giving relief to the assessee on this issue and dismiss ground no 1 and 2 of the revenue's appeal.

8. As regards the issue raised in ground no 3 of revenue's appeal relating to charging of interest u/s 234B, it is observed the same is consequential in nature and there is no infirmity in the impugned order of the Ld. CIT(A) in all owing consequential relief to the assessee on this issue.

9. In the result, the appeal of the revenue is dismissed while the appeal of the assessee is treated as partly allowed for statistical purposes.

Order Pronounced in the Open Court on 9th March, 2018.

Sd/-
(S.S. Viswanethra Ravi)
(JUDICIAL MEMBER)

Sd/-
(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 09/03/2018

Biswajit, Sr. P.S.

Copy of order forwarded to:

1. M/s. India Power Corporation Ltd., (Formerly known as DPSC Ltd.), Plot No. X-1, 2 & 3, Block EP, Sector-V, Salt Lake, Kolkata – 700 091.
2. ACIT, CIR – 2(1), Aay akar Bhawan, Kolkata – 700 069.
3. The CIT(A)

4. The CIT

5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata