

## AO gets flak from ITAT for reducing grant from cost of fixed assets without considering provisions of sec. 43(1)

**Summary – The Guwahati ITAT in a recent case of Central Assam Electricity Distribution Co. Ltd., (the Assessee) held that where Assessing Officer reduced capital grant received by assessee-company from State Government from cost of fixed assets without considering provisions of section 43(1) and without deciding whether Government contributed amount as promoter's quota, matter was remanded for fresh consideration**

### Facts

- Assessee-company was formed under a transfer scheme, in conformity with the Electricity Act, 2003. As a result of scheme, entire assets, liabilities and affairs of the erstwhile Assam State Electricity Board (ASEB) were taken over by the State Government. Thereafter, the State Government re-vested some of assets, liabilities, functions and affairs of the erstwhile ASEB in assessee-company.
- The assessee received certain grant from the State Government towards cost of capital assets.
- The Assessing Officer reduced amount of such grant from cost of fixed assets.
- On appeal, the FAA held that any grant received by assessee from the State Government towards cost of capital assets had to be considered in the manner provided in section 43(1); and that the Assessing Officer was justified in reducing the grant in question from cost of capital assets.
- On second appeal:

### Held

- The Assessing Officer had not invoked the provisions of section 43(1) *Explanation* (10) while completing the assessment, although he had held that Government grants on capital assets would affect depreciation allowable to the assessee and that the revenue grants and subsidies were taxable. Thus, it is clear that the issue of actual cost as per the provisions of section 43(1) was not deliberated upon or decided by the Assessing Officer. It was the FAA who held that the Assessing Officer should have invoked the provisions of section 43(1) *Explanation* (10). The Assessing Officer had no chance to examine the letter dated 3-3-2009 of the Assam Government and take a decision about the issue especially the contribution by the Government as promoter's quota. The matter need further verification and investigation. Therefore, the issue is remitted to the file of the Assessing Officer for fresh adjudication considering the judgment of *Bharat Sanchar Nigam Ltd. v. Dy. CIT* [[2013](#)] [355 ITR 188/216 Taxman 220/34 taxmann.com 273](#) of Delhi High Court.