Gujarat State Energy Generation Ltd — R/Tax Appeal Nos. 1973 and 1972/2009

NEUTRAL CITATION C/TAXAP/1973/2009 CAV JUDGMENT DATED: 09/04/2026 Reserved On : 30/03/2026 Pronounced On : 09/04/2026 IN THE HIGH COURT OF GUJARAT AT AHMEDABAD R/TAX APPEAL NO. 1973 of 2009 With R/TAX APPEAL NO. 1972 of 2009 FOR APPROVAL AND SIGNATURE: HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/- and HONOURABLE MR. JUSTICE PRANAV TRIVEDI Sd/- == Approved for Reporting Yes No ■ == COMMISSIONER OF INCOME TAX GANDHINAGAR Versus GUJARAT STATE ENERGY GENERATION LTD == Appearance: > MS MAITHILI D MEHTA, WITH MR. KARAN SANGHANI, SENIOR STANDING COUNSEL for the Appellant(s) No. 1 MR. B.S.SOPARKAR, ADVOCATE WITH MRS SWATI SOPARKAR(870) for the Opponent(s) No. 1 == CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA and HONOURABLE MR. JUSTICE PRANAV TRIVEDI COMMON CAV JUDGMENT (PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA) > "[B] Whether the Appellate Tribunal was justified in directing the Assessing Officer to allow claim made by the GEB as the same was found to be incurred by the assessee during the course of business?" 1.2 In Tax Appeal No. 1972 of 2009, by the order of the even date, the tax appeal was admitted for the following substantial question of law: > "Whether the Appellate Tribunal is right in law and on facts in holding that the revised return was a valid return.?" 1.3 Thus, the substantial question of law [A] in Tax Appeal No. 1973 of 2009 will encompass the sole substantial question of law in Tax Appeal No. 1972 of 2009. BRIEF FACTS

2. The respondent is a Company promoted by Central and State PSUs and is engaged in the business of generation and distribution of power. The Company commenced its business operations during the previous year relevant to the Assessment Year 2002-03 by starting first phase of its project on 01.12.2001. The Company filed its Return of Income on 31.10.2002 declaring total income of Rs.3,29,21,310/-. The Income Tax Appellate Tribunal (for short "the Tribunal") dismissed the revenue's appeal confirming the order of accepting revised return of income, whereas the Tribunal partly allowed the assesse's appeal by accepting change in method of depreciation, accepted reduction in income of Rs.2.99 crores, and claim of expenditure of Rs.14 lakhs and remanded the issue on of the Act to the assessee and had also held that interest under of the Act is not chargeable for the Assessment Year 2002-03.

3. Being aggrieved by the judgement and order passed by the Tribunal, the revenue has filed the captioned appeals being Tax Appeal Nos.1972 and 1973 of 2009. Page 4 of 30 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Thu Apr 09 2026 Downloaded on : Thu Apr 09 23:28:04 IST 2026 NEUTRAL CITATION C/TAXAP/1973/2009 CAV JUDGMENT DATED: 09/04/2026 undefined SUBMISSIONS ON BEHALF OF REVENUE

4. Learned Senior Standing Counsels Ms.Maithili Mehta and Mr.Karan Sanghani for the appellant - revenue, have submitted that the Appellate Tribunal fell in error in accepting the revised return. It is submitted that the Assessing Officer has precisely held that the assessee did not fulfill all the conditions as mentioned in of the Act and hence rejected the revised return which was premised on the change of methodology as per WDV method for claiming the depreciation which is impermissible in view of Rule 5 read with Appendix-IA of the Income-Tax Rules.

5. Opposing the aforesaid submissions, learned advocate Mr.Soparkar for the respondent, at the outset, has submitted that the Coordinate Bench of this Court, vide order dated 20.06.2011, has upheld the decision of the Tribunal for accepting the revised return and hence once the revised return becomes valid, it partakes the colour of the original return filed under of the Act and hence it is always permissible for the assessee to again adopt for a fresh methodology. Page 7 of 30 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Thu Apr 09 2026 Downloaded on : Thu Apr 09 23:28:04 IST 2026 NEUTRAL CITATION C/TAXAP/1973/2009 CAV JUDGMENT DATED: 09/04/2026 undefined 5.1 It is submitted that in the present case, the revised return dated 31.03.2003 was not filed only for the change of methodology of claiming depreciation on WDV method, but has been premised on three factors. It is submitted that the Tribunal has precisely accepted the revised return filed by the assessee by holding that it was an omission by the assessee as the assessee had subsequently noted that the GEB to whom the assessee had sold the power and, had not confirmed the part of sales made through Bill No.4. It is submitted that there was a dispute with regard to number of units supplied by the GEB and the GEB did not confirm the sale of power by the assessee which was noted after furnishing of original return which would amount to discovery of an omission or wrong statement in the original return. It is submitted that in case before the Supreme Court, the assessee did not file any declaration under of the Act while filing the original return under of the Act and Page 10 of 30 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Thu Apr 09 2026 Downloaded on : Thu Apr 09 23:28:04 IST 2026 NEUTRAL CITATION C/TAXAP/1973/2009 CAV JUDGMENT DATED: 09/04/2026 undefined he did not file the return under of the Act. In these facts, it is submitted that the Supreme Court has held that while filing revised return, the assessee cannot take a contrary stand or claim an exemption which was specifically not claimed earlier while filing the original return of income. 5.8 It is submitted that in the present case, the assessee while filing the original return had claimed depreciation within the due date and hence the valid revised return under of the Act permits the assessee to adopt a different methodology as it will support the original return under of the Act. Thus, it is urged that the tax appeals may be dismissed. ANALYSIS AND CONCLUSION:

6. We have heard the learned advocates appearing for the respective parties at length. The case of the respective parties i.e. the revenue and the assessee hinges on the following aspects: > i) The interpretation of the judgement of the Supreme Court in the case of (supra); > ii) The effect of filing the revised return under of the Act and; > iii) The change of methodology i.e. from SLM (Rule 5(1A)- In the subsequent year also, accounts were reconciled by showing the amount as the prior period expenditure. There is nothing to suggest that the assessee disputed the stand of the GEB with respect to this claim or had, at any stage, desired to thresh it out legally. That being the position, in view of the decision of the Apex Court in the case of [Supra] and the decision cited therein, it cannot be said that the income ever accrued to the assessee. Merely because at one point of time the assessee erroneously claimed it to be accrued income would not permit the Department to levy tax on the same. We are of the opinion that this Question is not required to be considered." Page 12 of 30 Uploaded by BIMAL B CHAKRAVARTY(HC01089) on Thu Apr 09 2026 Downloaded on : Thu Apr 09 23:28:04 IST 2026 > (1) to (4) *** *** *** (5) If any person,

having furnished a return under sub-section (1), or in pursuance of a notice issued under sub-section (1) of , discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier: > 6.8 The provision of of the Act allows the assessee to furnish a return upon discovery of any omission or any wrong statement which he had filed in the original return. The revised return filed under of the Act is a return which stems out of the provision of of the Act. It is no more res integra that a revised return filed under of the Act if is accepted, the same supplants the return under of the Act. The original return filed under of the Act can further open an avenue of filing a revised return under of the Act if an assessee discovers any omission or any wrong statement. Thus, any fact which was omitted or a wrong statement which was made in the original returns, subsequently comes to the knowledge of the assessee, can enable him to file a revised return under of the Act. > (iii) a co-operative society resident in India which has exercised option under sub-section (5) of section 115BAD; or > (iv) a co-operative society resident in India which has exercised option under sub-section (5) of section 115BAE:] Provided further that, for the purposes of , if the following conditions are satisfied, namely:- > (i) option under sub-section (5) thereof is exercised for a previous year relevant to the assessment year beginning on the 1st day of April, 2020; > (ii) there is a depreciation allowance, in respect of a block of asset, from any earlier assessment year or allowance of unabsorbed depreciation deemed so under , which is attributable to the provisions in clause (iia) of sub- section (1) of ; and Provided that the aggregate depreciation allowed in respect of any asset for different assessment years shall not exceed the actual cost of the said asset: > Provided further that the undertaking specified in clause (I) of sub-section (1) of of the Act may, instead of the depreciation specified in Appendix IA, at its option, be allowed depreciation under sub-rule (1) read with Appendix-I, if such option is exercised before the due date for furnishing the return of income under sub-section (1) of of the Act, > (a) for the assessment year 1998-99, in the case of an undertaking which began to generate power prior to 1 st day of April, 1997; and > (b) for the assessment year relevant to the previous year in which it begins to generate power, in case of any other undertaking: > Provided also that any such option once exercised shall be final and shall apply to all the subsequent assessment years." > 7.2 Rule 5(1) of the Rules mentions calculation of depreciation at the percentage specified in second column of the Table in Appendix-I of the Rules on the WDV method of block assets. Rule 5(1A) of the Rules refers to calculation of percentage specified in the second column of Table of Appendix 1A of the Rules. The second proviso further provides of exercising an option between Appendix 1A and Appendix I of the Rules. DETERMINATION OF DUE DATE

8. Having held as above, we are called upon to answer the status or the fate of new date which finds place in the provision of Rule 5(1A) of the Rules. Rule 5(1A) of the Rules specifically refers to the due date as prescribed under of the Act, and not under of the Act.

9. The due date for option as per was 31.10.2002. In our considered opinion, if the validity of the revised return filed on 31.03.2003 is upheld, then it replaces the original return under of the Act, however, the "due date" of option as envisaged under of the Act though cannot be extended further for the purpose of claiming the depreciation by WDV method on the filing of the revised return, however, the computation on WDV method in claiming the depreciation is always permissible, only in the circumstance, if the original option of filing the depreciation by adopting SLM is within the due date of the original return, since, the proviso to Rule 5(1A) permitting option for altering the computation to WDV method can be said to be directory in nature. The second proviso to Rule 5(1A) cannot operate in rigidity by restricting to SLM only as per the return of income filed under of the Act, albeit the revised return under of the Act is treated as valid return, and it supersedes the original return.

10. The further proviso to Rule 5(1A) of the Rules also takes care of the situation. The last proviso to Rule 5(1A) of the Rules categorically mandates that if any option once exercised, shall be final and shall apply to all the subsequent assessment years. Thus, an option which is exercised by an assessee for a particular assessment year, cannot be altered subsequently in another assessment years, and travel to extended dates on filing of raised return. Hence, once the revised return falls within the assessment year of the original return, the due date cannot be extended to another assessment year as it is impermissible to opt for other option to that which was already exercised while filing the original return under of the Act. The assessee can file a revised return in a case where there is an omission or a wrong statement. But a revised return of income, under cannot be filed, to withdraw the claim and subsequently claiming the carried forward or set-off of any loss. Filing a revised return under of the IT Act and taking a contrary stand and/or claiming the exemption, which was specifically not claimed earlier while filing the original return of income is not permissible. By filing the revised return of income, the assessee cannot be permitted to substitute the original return of income filed under of the IT Act. Therefore, claiming benefit under and furnishing the declaration as required under in the revised return of income which was much after the due date of filing the original return of income under of the IT Act, cannot mean that the assessee has complied with the condition of furnishing the declaration before the due date of filing the original return of income under of the Act. As observed hereinabove, for claiming the benefit under , both the conditions of furnishing the declaration and to file the same before the due date of filing the original return of income are mandatory in nature. Sd/- . (PRANAV TRIVEDI,J) BIMAL/1