IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA Nos.358 to 360/Rpr/2014
Assessment Years : 2009-10, 2010-2011 & 2011-12

DCIT, 1(2), Aayakar Bhawan, Central Revenue Building, Civil Lines, Raipur	Vs.	Hira Ferro Alloys Ltd., B-567, Urla Industrial Area, Raipur
PAN/GIR No.AAACH 5679		
(Appellant)	..	(**Respondent**)

Assessee by : None
Revenue by : Shri P.K.Mishra, CIT DR

Date of Hearing : 16/01/ 2018
Date of Pronouncement : 18 /01/ 2018

O R D E R

Per Pavan Kumar Gadale, JM

These are appeal filed by the revenue against the separate orders of the CIT(A)-Raipur, all dated 24.9.2014 for the assessment years 2009-2010, 2010-11 and 2011-12, respectively.

2. First, we take up the appeal in ITA No.358/Rpr/2014 for A.Y. 2009-2010.

3. The revenue has raised the following grounds:

> "a. Whether in law and on facts & circumstances of the case, the CIT(A) has erred in holding that the assessee has not over stated the price of power supplied to its Ferro Division and

thereby disagreeing with the assessing officer who has reduced profit of power division by Rs.2,03,92,958/- for the purpose of calculation of deduction u/s.80IA of the I.T.Act, 1961.

b. Whether in laws and on facts & circumstances of the case, the CIT(A) has erred in holding the disallowance of Rs.13,62,028/- on account of proportionate disallowance of common expenditure be not disallowed for the purpose of calculation of deduction u/s.80IA of the I.T.Act, 1961.'

c. Whether in laws and on facts & circumstances of the case, the CIT(A) has erred in deleting the disallowance of Rs.6,33,941/- u/s.14A of the I.T. Act, 1961."

4. Apropos Ground No.1 of appeal, brief facts of the case are that the assessee company is a limited company deriving income from the business of production of Ferro Alloys and Generation of Power. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has transferred electricity to its Ferro Division @ Rs.2.97 per unit, whereas, the power has been transferred to CSEB @ Rs.2.80 per unit. Thus by transferring electricity at higher rate to its other division, the assessee has inflated profit of Power Division, which is, eligible for deduction u/s 801A of the Act. The income of the Ferro Alloys Division has correspondingly gone down which is assessable to tax at normal rate. According to the Assessing Officer, the market rate should be the rate at which the assessee has supplied electricity to CSEB i.e. Rs.2.80 per unit. The Assessing Officer, by invoking his power by virtue of section 801A, restricted

transfer rate to the market value of the power supplied to inter division at Rs.2.80 per unit in place of Rs.2.97 per unit claimed by the assessee. This has resulted into disallowance of claim u/s 801A by Rs.2,03,92,958/-.

5. Before the CIT(A), the assessee submitted as under:

> " The appellant has submitted that similar disallowance was made in the preceding assessment year i.e. 2008-09 and the issue was decided in favour of appellant by the CIT Appeal (Raipur) vide Appeal No. 057/2010-11 dtd.16.09.2011. The appellant further submitted that incase of group company the Godawari Power & Ispat Limited, the Appellate Commissioner. Raipur has also allowed the similar claim (Appeal No,523 to 526/2008-09 for the A.Y .2004-05 to 2006-07) and the order of Appellate Commissioner, Raipur was also up-held by the Hon'ble Bilaspur Bench of Income Tax Appellate Tribunal and the same has also been approved by the Hon'ble High Court of Chhattisgarh at Bilaspur (Tax Case No.32 of 2012). The appellant also relied upon the following judgments in support of his submissions that no disallowance is called for on the above grounds as made by the AO.
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> 1.. Addl. CIT Vs Jindal Steel & Power Lid. 16 SOT 509 (Del.)
> 2. DC1T Vs 1TC Ltd. 1TA "No.l 8 (Kol) of 2006
> 3. DCIT Vs B.S.E.S. Ltd. 113 TTJ (Mum) 227
> 4. Sarda Energy & Minerals Ltd. (Formerly Chhattisgarh Electricity Co. Ltd.) Vs ACTT-U2), Uaipur the Hon'ble IT. A. T. "E" Bench, Mumhai (IT A No.248/Nag/2QOS for the A.Y.2003-04)
> 5. DCTT-Cir-8, Kol Vs M/s ITC Limited in l.T.A.18 (Kol) of 2006
> 6. Thiru Anooran Sugars Limited Vs CIT [227 ITR 432 (SC)]
> 7.CIT Vs Orient Paper Mills Ltd [176 ITR 110 (SC)] Grindwell Norton [2 SOT 52]
> 8. West Coast Paper Mills Ltd Vs JCIT reported in 100 TTJ 833
> 9. CIT vs. Sipla Ltd., (2005) 2 SOT 617 (Mum)
> 10, Assam Carbon Products Ltd. Vs AC1T 100 TO 224 (Kol ITAT)

6. After considering the submissions of the assessee and also the judicial decisions relied on before him, the CIT(A) deleted the disallowance made by the Assessing officer by observing as under:

> "6. I have carefully gone through the assessment order and submissions of the appellant. The issue essentially relates to the mechanism of section 8Q-1A(8) which deals with the transfer of goods held by eligible business are transferred to any other business carried on by the appellant. If such transfer do not correspond to the market value of such goods or services, the A.O. has right to compute the deduction by adopting market value of such goods or services on that date. Provision of section 80-IA(8) is re-produced as under:-
>
> > *Section 80IA(8) : "Where any goods [or services] held for the purposes of the eligible business are transferred to any other business carried on by the assessee. or where any goods [or services} held for the purposes of any other business carried on by the assessee are transferred to the eligible business and, in either case, the consideration, if any, jar such transfer as recorded in the accounts of the eligible business does not correspond to the market value of such goods [or services] as on the date of the transfer, then, for the purposes of the deduction under this section, the profits and gains such eligible business shall be computed as if the transfer, in either case, hand been made at the market value of such goods[or services] as on that date.*
> >
> > *Provided that where, in the opinion of the Assessing Officer, the computation of the profits and gains of the eligible business in the manner hereinbefore specified presents exceptional difficulties, the Assessing Officer may compute such profits and gains on such reasonable basis as he may deem fit.*
> >
> > *[Explanation- For the purposes of this sub-section, "market value", in relation to any goods or services, means the price that such goods or services would ordinarily fetch in the open market* ."

7. Section 80-1A(8) provides that wherein goods or services held for the purpose of eligible business are transferred to any other business carried on by the appellant, the price charged for such transfer should correspond to the market value of such goods or services on the date of transfer. If the price of goods transferred is overstated in comparison to the market value, the A.O has power to re-compute the profit by substituting market value of such goods. In the explanation below section 801A(8), it is provided that, the expression "market value' for the purpose of the sub-section means the price that such goods or services would ordinarily fetch in the open market. Market value is an expression which denotes a price arrived at between the buyer and the seller in the open market wherein the transaction lake place in the normal course of trading. In the present case, the CSEB is purchasing power from power plants at the rate different from its selling price. The private person can setup a power generation unit having restriction on the use of power generated and at the same time the tariff at which a power generating unit can supply power to Electricity Board is also liable to be determined in accordance with the statutory requirements. In this context, it can be safely deduced that the determination of tariff between the appellant and the Electricity Board can be said to be an exercise between a buyer and seller neither in a competitive environment and nor in the ordinal') course of trade or business. Therefore, the price determined in such a scenario cannot be equated with a situation where the price is determined in the normal course of trade and competition, The price at which the steel division is purchasing power from CSEB can be considered to be the market value for the purpose of section 8Q1A(S) for the reason that the other industrial consumers are also buying power from electricity Board at that rate. Thus, the price at which the consumers are able to procure Power from Electricity Board is the market price. This view also gets support from decisions of various Income Tax Appellate Tribunals and jurisdictional High Court of Chhattisgarh.

8. In the present case, the appellant has charged Rs.2.97 for each unit of electricity supplied to its Ferro Division calculated at the rate on the basis of CSEB tariff applicable to such industries. The Ferro Division had purchased power from CSEB and according to the CSEB tariff, the average purchase price of power was Rs.20.77 per unit. On the contrary, CSEB purchased power *(a:* Rs.2.80 per unit. In the given facts and circumstances- what should be the market price, is a matter for adjudication. I am of the considered opinion that the value of

power agreed in PPA is on the basis of certain statutory provisions enacted in the Electricity Act and not based on demand and supply factors prevailing in the market.

9. The identical issue was decided in appellant's favour in its own case as decided in the .Y. 2008-09 (Appeal No.057/2010-11).The case of the appellant certainly derives strength from the decision of the Hon'ble High Court Chhattisgarh in the case of Godawari Power & Ispat Limited (Tax case No.32 of 2012 for the A.Y. 2005-06 to 2007-08) wherein, the Hon'ble High Court has observed as below"

> *"In the explanation below section 80IA(8), it is provided that the expression "market value" for the sub-section-means the price that such goods or services would ordinarily fetch in the open market. Market Value is an expression which denoted a price arrived at between the buyer and the seller in the open market wherein the transaction takes place in the normal course of trading. In the present case, the CSEB is purchasing power from the power plants at the rate different from its selling price. The private person can setup the power generation units having restriction on the use of power generated and at the same time the tariff at which a power generating unit, can supply power to Electricity Board is also liable lo determined in accordance with the statutory requirements. In this context it can be safely deducted that determination of tariff between the assesses and the Electricity Board can be said to be an exercise between a buyer and seller neither in a competitive environment and or in the ordinary course of trade in business. Therefore, the price determine in normal course of trade in business. Therefore, the price determined in such a scenario cannot be equaled with a situation where the price is determined in normal course of traded and competitive. The price at which the steel division is purchasing power from CSEB can be considered 10 be the market value for the purpose of Sec 80-IA (8) for the reason that the other industrial consumers are also buying power from electricity board at that rate. Thus the price at which the consumers are able to procure the power from the Electricity Board is the market price. The view also gets support from the decision of various Income Tax Appellant Tribunals, in case of Add}. C1T Vs Jamdal Steel & Power Ltd. [16 SOT 509 (Dell), DC1T Vs 1TC Ltd. ITA No. [18(Kol) of 2006], DOT Vs B.S.E.S.*

> *Ltd [113 TTJ (Mum) 227], it has been held that price charged by Electricity Board to its consumer is the market price. In the present case the steel division has procured the electricity at higher rate than charged by power division to steel division, it is therefore, the AO is directed to allow relief to the appellant* u/s. *80-IA as claimed. This ground of appeal is hereby allowed".*
> 10. Looking to the facts and circumstances of the case as also decisions cited above, 1 am of the considered opinion that in the present case, the appellant has not over stated the price of power supplied to its Ferro Division and therefore, the disallowance made by the A.O is hereby deleted. "

7. Before us, ld D.R could not controvert the findings of the CIT(A). In the instant case, we find that the CIT(A) has relied on the decision of Hon'ble Jurisdictional High Court in the case of the assessee for the assessment year 2008-09 in I.T.Appeal No.057/2010-2011 to delete the addition made by the Assessing Officer. No contrary decision was placed on record by ld D.R. to take any contrary view. Hence, we see no good reason to interfere with the order of the CIT(A), which is hereby confirmed and ground of appeal of the revenue is dismissed.

8. Adverting to Ground No.2 of appeal, the facts are that the Assessing Officer found that there is certain expenditure like Advertisement, Travelling, Legal and Professional Charges and Director's remuneration, which were debited to the Ferro Alloys Division whereas, they also relate Power Division. The Assessing officer observed that expenditure to the extent of Rs.40.84.011/-, which was common to both the division, was incurred and

assessee was not able to bifurcate the same. Therefore, on the basis of capital employed, the Assessing Officer has considered 33.33% expenses as relatable to Power Division, income from which is claimed as 100% deduction u/s 80IA and disallowed proportionate sum of Rs. 13,62,028/-.

9. Before the CIT(A), the assessee submitted that no such expenses were incurred for Power Division. All the expenses relate to Ferro Division. It was also contended that right from the beginning the Ferro Alloys Division, being the flagship division, all expenses were debited to that division and was regularly accepted by the Department. All expenses relatable to Power Division were separately debited to the said Division. It was also contended that in scrutiny assessments made for the subsequent two assessment years, no such disallowance was made. Copies of assessment orders for the subsequent years were filed. The company has total eligible profit from Power Division at Rs.7.38 crores and they have no intention to increase eligible profits by such small amount. Before the CIT(A), the assessee has relied on the decision in the case of Zandu Pharmaceutical Ltd. Vs C1T dt. 12.09.2011.

10. The CIT(A) after considering the submissions of the assessee observed that the Assessing officer has taken certain common expenses viz.

advertisement, traveling, director's remuneration, printing and stationery etc. for the purpose of disallowance from Ferro Division and consequently, reduced the profit of power division by an amount of Rs. 13.62,028/-. The assessee has substantiated that the expenses proportionately disallowed by the A.O were attributable to Ferro Alloys Division only and not to the Power Division. The assessee further produced the copy of Ledger Account of such expenses which were already examined by the A.O. Therefore, the CIT(A) was in agreement with the assessee has been maintaining the books of accounts separately for both the divisions and thus, there was no question of making any proportionate disallowance. Hence, the CIT(A) deleted the addition of Rs.13,62,028/- made by the Assessing officer.

11. Before us, ld D.R. supported the order of the Assessing Officer.

12. After hearing ld D.R. and perusing the orders of lower authorities, we find that except supporting the order of the Assessing Officer, ld D.R could not point out any specific error in the above quoted order of the ld CIT(A). Hence, we do not find any good reason to interfere with the order of the ld CIT(A), which is hereby confirmed and the ground No.2 of the revenue is rejected.

13. Apropos Ground No.3 of appeal, the facts of the case are that the Assessing Officer has observed that the assessee has invested Rs.15.00,03,357/- in shares and dividend income from these investments is exempt from tax. Therefore, the Assessing Officer by invoking the provisions of section 14A of the Act disallowed a sum of Rs.6.33,941/- and added the same to the income of the assessee.

14. On appeal before the CIT(A), the assessee submitted that the assessee company has not incurred any direct or indirect expenditure in connection with earning of exempt income i.e. dividend. It was pointed out that there must be some direct connection between the earning of exempt income and incurrence of expenditure. Alternately, it was contended that the amount of interest paid towards term loan and working capital being meant for specific purpose should have been excluded from the calculation of disallowance u/s 14A of the Act. It was further contended that it had made investment aggregating to Rs.4.64 Crores in the shares of associate company, whereas the assessee has earned a cash profit of Rs.22.89 Crores during the year. It has own fund of Rs.67.67 Crores as share capital and security premium and it is not paying any interest on share capital and the borrowed funds were fully utilized in the project i.e. fixed assets and working capital. Therefore, the provisions of Section 14A are not applicable in the

case of the assessee. For this proposition, he relied various judicial decisions as under:

a. Navin Chemicals Mfg. & Trading Co. Vs Collector of Customs (1993J 68ELT 3 CSC),
b. Goodyear India Ltd. Vs State of Haryana (1991) 188 ITR 402 (SC),
c. Wimco Seedlings Ltd. & State of Maharashtra Vs DCIT (2007) 107 ITD 267 (Del. ITAT),
d. C1T Vs Hero Cycle Ltd. (2010) 323 ITR518 (P&H HC),
e. ACIT Vs Eicher Ltd. (2006) 103 TTJ 369 (Del TAT).
f. Dhanlakshmi Bank Ltd. Vs ACIT (2007) 12 SOT 625 (Coch –ITAT)
g. Birla Group Holdings Ltd. Vs DCIT (2007)13 SOT 642 (Mum-ITAT)
h. Auchte] Products Ltd. Vs ACIT (2012) 52 SOT 39 (Mum-ITAT)
i. Balarampur Chini Mills Ltd. Vs DCJT (2011)140 TTJ 73 (Kol-ITAT)
j. ACIT VS' Mohan Exports P. Ltd. (2012) 138 ITD 108 (Delhi-ITAT)
k. Bio Science P. Ltd. Vs ACIT (2012)51 SOT 16 (Mum-ITAT)
l. ACIT Vs Sil Investment Lid (20] 0) 54 SOT 54 (Del. ITAT)

m. ACIT *Vs* Jindal Saw Pipes Ltd. 118 TTHJ 228 (Del-ITAT)
n. RIE Agro Ltd. vs DCIT (2013) TS-271-1TAT 2013 (Kol)

It was also submitted that the Assessing officer has not established any nexus between the interest bearing borrowings and non taxable bearing investments. The investments have not been made out of interest bearing borrowings. It is not a case of diversion of interest bearing borrowing to non taxable income bearing investments as presumed by the A.O. It was submitted that under identical facts in the case of Lal Ganga Builders (P) Ltd., Raipur vs. Addl. CIT, Range-1, Raipur in 1TA No.1 17/BLPR/2009, the jurisdictional ITAT, Bilaspur Bench has deleted the disallowance of proportionate interest expense made by the AO holding that when interest

free funds and interest bearing funds are available, a presumption would arise that interest free advances have been given out of interest free funds.

15. The CIT(A) after considering the submissions of the assessee held that Section 14A deals with the expenditure incurred in relation to income not includible in total income. It is seen that the disallowance has been made without establishing any nexus between the interest bearing funds and exempted income yielding investment / non-interest bearing advances. It is seen that the assessee had sufficient non-interest bearing funds for making the investment in shares as it had sufficient net worth of its own. The Assessing Officer has not disputed the submission of the assessee that no expenditure was incurred for making the investment. The CIT(A) has relied on the following judicial pronouncements:

i) In S. A. Builders **Ltd.** vs. **Commissioner of Income Tax** (Appeals) & ANR. 288 ITR 1 (SC), it was held that interest on borrowed funds cannot be disallowed if the assessee has advanced interest-free loan to a sister-concern as a measure of commercial expediency.

ii) The Hon'ble Allahabad High Court in **CIT** vs. **Raj Kumar** Singh *& Co.* (2007) 210 **CTR (All)** 483 has held that interest paid by assessee on money borrowed for repayment of an interest-free advance was allowable as deduction.

The CIT(A) held that in the instant case, the assessee has explained the commercial expediency behind investment in shares of sister concerns and

the same has not been rebutted by the Assessing officer. Hence, the CIT(A) was in agreement with the view of the assessee and relying on the following judicial decisions deleted the addition made by the Assessing officer.

i) ITAT Kolkata Bench in DC1T vs. Ashish JhunjbumvaJa ITA No.]8()9/Kol/2012 dated 14.05.2013.

2) Mumbai Tribunal in the case of J.K.Investors (Bombay) Ltd. vs. AC1T in ITA No.7858/Mum/2011.

3) ITAT Hyderabad in the case of SSPDL Ltd vs. DCIT, 33 TAXMANN.COM 447.

4) CIT vs. Suzlon Energy Ltd., 33 taxmann. Com 151 (Guj)

5. DIT vs BNP Paribas SA, 32 taxmann.com 276.

6. Maxopp Ingvestment Ltd vs CIT, 247 CTR (Del) 162.

7. JCIT vs. Beekay Engg. Corporation, 325 ITR 384 (CG)

16. Being aggrieved, the revenue is in appeal before us.

17. Ld D.R. supported the order of the Assessing Officer.

18. After hearing ld D.R. and perusing the materials available on record, we find that the Assessing Officer has made addition by applying section 14A of the Act in respect of investment in shares. He was of the view that the investment was not for making any profit for future benefit of the assessee company. The Assessing Officer noticed that the assessee has incurred certain expenditure towards interest and also these investments were made out of borrowed funds. Whereas, the CIT(A) found that the investment in

shares is not out of its ainterest bearing funds, which is not disputed by ld D.R. and also the investments have been made with profit motive. In these circumstances, the CIT(A) found that the disallowance is not in order. We find that the CIT(A) while deleting the disallowance has relied various judicial pronouncements, which support the assessee's case. Considering the facts of the case, we are inclined to uphold the order of the CIT(A) and reject the ground of appeal of the revenue.

19. In the result, appeal filed by the revenue is dismissed.

ITA No.359/Rpr/2014 for A.Y. 2010-2011.

20. Ground No.1 of appeal is directed against deletion of Rs.66,38,434/- u/s. 14A of the i.T.Act, 1961.

21. We find that the addition made for the assessment year under consideration is similar to the ones made by the Assessing Officer for the assessment year 2009-2010, which has been deleted by the CIT (A) and the findings of the CIT(A) is confirmed by us in preceding para. The revenue has not brought anything new to persuade the Bench to differ from the view taken in the assessee's own case for that year. The principles of consistency requires that unless facts or law has undergone a change, the view taken

earlier year under similar circumstances needs must be followed. Hence, following our decision for the earlier years, we uphold the findings of the CIT(A) and dismiss this ground of appeal of the revenue.

22. In Ground No.2 of the appeal, the revenue is aggrieved by the deletion of proportionate disallowance of Rs.86,06,261/- out of interest expenses on account of interest free advance given to sister concern.

23. The Assessing Officer made disallowance on the ground that the assessee did not charge interest on the advances made to sister concern, though substantial interest amounts were paid to bank and others against loans obtained from them.

24. On appeal, the CIT(A) observed that the Assessing officer has not proved the nexus of transfer of borrowed funds without charging any interest and deleted the addition made by the Assessing officer.

25. After hearing ld D.R. we find that the finding recorded by the CIT(A) that " the assessee had substantial interest free funds and cash profits and also the assessee has substantiated that the loan so advanced was out of commercial expediency/exigency" " has not specifically challenged by the Revenue. Therefore, considering the facts and circumstances in its entirety,

we are inclined to confirm the order of the CIT(A) and dismiss the ground of appeal of the revenue.

26. Ground No.3 of appeal relates to restriction of disallowance u/s.40A(3) of the I.T.Act, 1961 to Rs.11,88,332/- thereby giving relief of Rs.4,61,041/-.

27. The Assessing Officer noticed that the assessee has made cash payment exceeding Rs.20,000/- and Rs.35,000/- to the transporters. The Assessing officer required the assessee to explain as to why these expenses should not be disallowed as per provisions of section 40A(3) of the Act. The assessee submitted that the payment made to individual truck owner for transportation of raw material on the basis of bill and there is no payment exceeding Rs.20,000/- in a single day. The above explanation of the assessee was not acceptable to the Assessing officer and, therefore, he disallowed Rs.11,88,332/- and added the same to the income of the assessee.

28. On appeal before the CIT(A), it was submitted by the assessee that the assessee has incurred crores of rupees as transport expenses and only Rs.11,08,,332/- was paid in cash that too due to urgent requirement of

transporter and the payments were genuine. The assessed produced relevant documents before the CIT(A).

29. The CIT(A) found from the verification of list furnished by the assessee that several amounts paid were below the prescribed limit and aggregate of such payments works out to Rs.4,61,041/-. No plausible explanation was furnished by the assessee for rest of the amount. Therefore, the CIT(A) restricted the disallowance to Rs.4,61,041/-.

30. On careful consideration of the findings of the CIT(A), we find no good reason to interfere. Hence, we uphold the same. This ground of appeal of the revenue is dismissed.

31. Ground No.4 of appeal relates to restriction of disallowance to Rs.19,81,216/- u/s.37(1) of the Act.

32. The Assessing officer disallowed Rs.19,81,216/- in respect of expenses on account of fines & penalty, pooja and festivals, charity and donation, etc, on the ground that these are not allowable expenses as per the I.T.Act.

33. On appeal, before the CIT(A), it was submitted by the assessee that amounts of Rs.117/-, Rs.16,63,482/-, Rs.27,160/- and Rs.1,03,037/- related

to debit/credit of earlier year, fines and penalties, income tax of earlier years, pooja and festival expenses.

34. The CIT(A) found that the expenditure of Rs.16,63,482/- is not substantiated as relatable to infringement of any legal provisions but to lifting of additional coal and, therefore, it cannot be treated as penalty for breach of any law. In view of above, he deleted Rs.16,63,482/- and confirmed all other disallowances.

35. Before us, ld D.R. could not controvert the above findings of ld CIT(A). Hence, we see no good reason to interfere with the order of the CIT(A), which is hereby confirmed and ground of appeal of the revenue is dismissed.

36. In the result, appeal filed by the revenue is dismissed.

ITA No.360/RPR/2014 A.Y. 2011-12.

37. Ground No.1 of appeal reads as under:

> "a. Whether in law and on facts & circumstances of the case, the CIT(A) has erred in holding not to allow set off of losses of one eligible unit from profit of another unit for the purpose of calculation of deduction u/s. 80IA of the I.T.Act thereby disagreeing with the AO's disallowance of Rs.14,34,95,083/- out of claim of deduction u/s.80IA of the I.T.Act, 1961."

38. Facts in brief of the case are that the Assessing officer observed that the assessee has earned income from its 20MW Power Generating Unit of Rs.21,99,45,770/- and whereas a loss of Rs.2,83,64,580/- was incurred from Wind Mill unit at Karnataka. The Assessing officer held that while calculating the deduction u/s. 80IA of the Act, the loss of an eligible industrial unit is required to be set off against profit of other eligible industrial unit. Hence, the Assessing officer disallowed Rs.14,34,95,083/- u/s. 80IA of the Act.

39. Before the ld CIT(A), the assessee submitted that the claim of the assessee was accepted by the Hon'ble Jurisdictional High Court in the case of group company i.e. M/s. Godwawari Power & Ispat Ltd., for the assessment years 2004-05 to 2006-07. It was also submitted that the CIT(A) has also accepted in assessee's own case for the assessment year 2008-09. The ld CIT(A) discussed the issue at length in the impugned order and referring to various case laws on this issue and of the Hon'ble Jurisdictional High Court in the case of Godawari Power & Ispast Limited in (Tax case No.32 of 2012), opined that the price at which the Steel Division is purchasing power from CSEB can be considered to be the market value for the purpose of section 80IA(8) for the reason that the other industrial consumers are also buying power from electricity Board at that rate. He held that in the present case

the Steel Division has procured the electricity at the same rate as it pays to CSPDL to achieve its business plans. He, therefore, directed the AO to re-compute the eligible profits by applying the market value of power at Rs.4.127 per unit, which is rate of sale to Ferro Division by the State Electricity Company and partly allowed the appeal of the assessee.

40. Being aggrieved by the action of the ld CIT(A), the revenue is in appeal before the Tribunal.

41. Before us, ld D.R. ` on behalf of revenue appeared and supported the action of the Assessing Officer.

42. We have considered the rival submissions, perused the material on record and have gone through the orders of authorities below as well as the judgment of Hon'ble Jurisdictional High Court in the case of Godawari Power & Ispat Ltd (supra). Ld. D.R. could not point out any material difference in the facts in the present year as compared to the facts in the case of Godawari Power & Ispat Ltd (supra). The facts for the year under consideration being no different from those before the Hon'ble High Court in the case of Godawari Power & Ispat Ltd (supra), we find no reason to differ therefrom. We find that Hon'ble High Court in its judgment, inter alia, held that the CIT(A) and Tribunal had rightly computed the market value of the power after considering it with the rate of power available in the open

market namely the price charged by the Board. There is no illegality in their orders. No contrary view has been taken by any superior authority on this issue. Accordingly, the findings of the learned Commissioner of Income-tax (Appeals) stand confirmed. Ground raised by the revenue is dismissed.

43. Ground No.b of appeal reads as under:

> 'Whether in law and on facts & circumstances of the case, the CIT(A) has erred in deleting the disallowance of Rs.2,68,796/- on account of CSR expenses which has not been laid out wholly and exclusively for the purpose of business."

44. The Assessing officer observed that the assessee has incurred CSR expenses of Rs.2,68,796/- for undertaking CSR activities viz cleaning and beautification of pond at village "Fundher" etc. He disallowed the expenses for not being incurred for purposes of assessee's business.

45. On appeal, the CIT(A) observed that there is no dispute to the genuineness of claim of expenditure i.e. incurrence of expenditure and payment thereof. The CIT(A) following the decision in the case of CIT vs. Modi Industries Ltd., 327 ITR 570, the decision of Karnataka High Court in the case of CIT vs. Infosys Technologies Ltd., 360 ITR 714 (kar) and also the

amendment in Section 37 in the Finance No.(2) Act, 2014 w.e.f. 1.4.2015, deleted the disallowance of Rs.2,68,796/-.

46. Being aggrieved, the revenue is in appeal before us.

47. We have heard ld D.R. and perused the record of the case. We find that the CIT(A) has relied on the decision in the case of Modi Industries (supra) and Hon'ble Karnataka High Court in the case of CIT vs. Infosys Technologies Ltd (supra), wherein, it has been held that the expenditure incurred on social responsibility was laid out or expended wholly and exclusively for purposes of business. The CIT(A) has referred to the amendment made in Finance Act (No.2) 2014 w.e.f. 1.4.2015 in Section 37, wherein, it is declared that for the purposes of sub-section(1) any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession. The CIT(A) has held that there was no such embargo for the preceding years. In view of above, the CIT(A) held that the disallowance cannot be sustained. In the instant case, it is submitted that CSR expenses are incurred for the welfare of local community and thereby improve corporate image of the companies incurring such expenditure. We are of the considered opinion that the CIT(A) has rightly

considered the decision and deleted the addition made by the Assessing Officer and Ground No.1 of appeal of the revenue is dismissed.

48. Ground No.(c) relates to restriction of addition to Rs.1,01,277/- out of disallowance made by the AO on account of Pooja and festival expenses and charity & donation expenses thereby giving relief of Rs.71,779/-.

49. The Assessing Officer observed that the assessee has claimed an amount of Rs.96,041/- and Rs.80,015/- towards charity and donation and Pooja and festival expenses, which are not allowable in company's case. Therefore, he disallowed the same.

50. On appeal, the CIT(A), the assessee submitted that out of Rs.80,015/- , an amount of Rs.71,779/- was expended for purchase of distribution of sweets to all the employees/workers on the auspicious occasion of Viswakarma poooja day, independence day and republic day. The assessee relied on the CBDTG Circular No.17(F.No.27(2)-IT/43) dated 6.5.1983 & circular No.13A/20/68-IT-II dated 3.10.1968, wherein, it was emphasized that expenses incurred on the occasion of Diwali and Muhurat are in the nature of business expenditure. Based on these circulars, the CIT(A) allowed Rs.71,779/- and disallowed balance of Rs.1,01,277/-. Hence, the revenue is in appeal before us.

51. Having heard ld D.R., we see no good reason to interfere with the order of the CIT(A) as the CIT(A) has allowed relief considering the CBDT Circulars referred above (supra). Hence, we dismiss this ground of revenue.

52. In Ground No.(d), the grievance of the revenue is that the CIT(A) erred in deleting addition of Rs.1,05,790/- ESI made by the AO on account of delayed payment of employees contribution to PF/ESI.

53. Briefly stated the facts of the case are that the Assessing Officer, *inter alia*, did not allow deduction for employees' contribution towards EPF and ESI which was deposited beyond the period prescribed in the relevant statute but before the due date of filing the return u/s.139(1).

54. The CIT(A) deleted the disallowance made by the Assessing officer.

55. After hearing ld D.R. and perusing the orders of lower authorities, we find that the CIT(A) relying on the decision of the Delhi High Court in *CIT Vs. AIMIL Limited [2010] 188 TAXMAN 265 (DELHI),* wherein, it has been that the employees' contribution towards EPF and ESI etc. deposited after the due date but before the time allowed for filing the return u/s.139(1) will not call for any disallowance u/s.36(1)(va), has deleted the disallowance. We find that the assessee has deposited the amount before the due date u/s 139(1). Therefore, we confirm the order of the CIT(A) and dismiss the ground of appeal of the revenue.

56. In Ground No.(e), the revenue is aggrieved by the deletion of Rs.14,37,568/- u/s.14A of the I.T.Act, 1961.

57. In Ground No.(f), the grievance of the revenue is that the CIT(A) erred in deleting the proportionate disallowance of Rs.40,56,337/- out of interest expenses on account of interest free advances given to sister concern. Since both these grounds are inter-connected, same are disposed of as under:

58. The Assessing Officer disallowed Rs.14,37,568/- u/s.14A r.w. 8D of the I.T.Rules holding that this expenditure is not allowable being relatable to income not included in the total income and Rs.40,56,337/- out of interest expenses on the ground that the interest free advances were made to sister concern. The Assessing officer also held that the assessee has advanced to sister concern but charged any interest. It has paid substantial interest on bank loans and loans taken from sister concerns. Therefore, he disallowed proportionate interest expenditure @ 12% per annum in respect of amount advanced without charging interest.

59. On appeal, the CIT(A) relying on various decisions including the decision of Hon'ble Jurisdictional High Court in the case of JCIT vs. Beckay

Engineering Corporation, 325 ITR 384 (CG) and held that the Assessing officer failed to prove nexus of transfer of borrowed funds without charging interest, except saying that same is given from the cash credit account maintained by the assessee. The assessee has substantial interest free funds and cash profits and also the assessee has substantiated that the loan so advanced was out of commercial expediency/exigency and deleted the addition made by the Assessing Officer.

60. Before us, ld D.R. could not controvert the above findings of the CIT(A). he could not point out any specific defects in the order of the CIT(A). We also find that the assessee has substantial interest free funds and cash profits to advance interest free loans. Therefore, we do not find any good reason to interfere with the order of the CIT(A), which is hereby confirmed and grounds of appeal of revenue No.e & f are dismissed.

61. In the result, appeal filed for assessment year 2010-11 is dismissed.

Order pronounced on 18 /01/2018.

Sd/-	sd/-
(N.S Saini)	(**Pavan Kumar Gadale)**
ACCOUNTANT MEMBER	**JUDICIALMEMBER**

Raipur; Dated 18 /01/2018

B.K.Parida, SPS

Copy of the Order forwarded to :

1.	The appellant: DCIT, 1(2), Aayakar Bhawan, Central Revenue Building, Civil Lines, Raipur
2.	The Respondent. Hira Ferro Alloys Ltd., B-567, Urla Industrial Area, Raipur
3.	The CIT(A)- Raipur
4.	Pr.CIT- Raipur
5.	DR, ITAT, Raipur
6.	Guard file. //True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Raipur