आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 311/JP/2014
निर्धारण वर्ष/Assessment Year : 2009-10

M/s Rajasthan State Industrial Development & Investment Corp. Ltd. Udhyog Bhawan, Tilak Marg, C-Scheme, Jaipur.	बनाम Vs.	The DCIT, Circle-6, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCR4695J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 420/JP/2014
निर्धारण वर्ष/Assessment Year : 2009-10

The ACIT, Circle-6, Jaipur.	बनाम Vs.	M/s Rajasthan State Industrial Development & Investment Corp. Ltd. Udhyog Bhawan, Tilak Marg, C-Scheme, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCR4695J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 323/JP/2016
निर्धारण वर्ष/Assessment Year : 2009-10

The ACIT, Circle-6, Jaipur.	बनाम Vs.	M/s Rajasthan State Industrial Development & Investment Corp. Ltd. Udhyog Bhawan, Tilak Marg, C-Scheme, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCR4695J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

CO No. 07/JP/2016
(Arising out of ITA No. 323/JP/2016)
निर्धारण वर्ष/Assessment Year : 2009-10

M/s Rajasthan State Industrial Development & Investment Corp. Ltd. Udhyog Bhawan, Tilak Marg, C-Scheme, Jaipur.	बनाम Vs.	The ACIT, Circle-6, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCR4695J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 313/JP/2014
निर्धारण वर्ष/Assessment Year : 2010-11

M/s Rajasthan State Industrial Development & Investment Corp. Ltd. Udhyog Bhawan, Tilak Marg, C-Scheme, Jaipur.	बनाम Vs.	The DCIT, Circle-6, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCR4695J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 421/JP/2014
निर्धारण वर्ष/Assessment Year : 2010-11

The ACIT, Circle-6, Jaipur.	बनाम Vs.	M/s Rajasthan State Industrial Development & Investment Corp. Ltd. Udhyog Bhawan, Tilak Marg, C-Scheme, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCR4695J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 93/JP/2015
निर्धारण वर्ष/Assessment Year : 2011-12

M/s Rajasthan State Industrial Development & Investment Corp. Ltd.	बनाम Vs.	The JCIT, Circle-6,

Udhyog Bhawan, Tilak Marg, C-Scheme, Jaipur.		Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCR4695J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 207/JP/2015
निर्धारण वर्ष/Assessment Year : 2011-12

The DCIT, Circle-6, Jaipur.	बनाम Vs.	M/s Rajasthan State Industrial Development & Investment Corp. Ltd. Udhyog Bhawan, Tilak Marg, C-Scheme, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCR4695J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 94/JP/2015
निर्धारण वर्ष/Assessment Year : 2012-13

M/s Rajasthan State Industrial Development & Investment Corp. Ltd. Udhyog Bhawan, Tilak Marg, C-Scheme, Jaipur.	बनाम Vs.	The ACIT, Circle-6, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCR4695J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No. 208/JP/2015
निर्धारण वर्ष/Assessment Year : 2012-13

The DCIT, Circle-6, Jaipur.	बनाम Vs.	M/s Rajasthan State Industrial Development & Investment Corp. Ltd. Udhyog Bhawan, Tilak Marg, C-Scheme, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCR4695J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri P.C. Parwal (C.A.)
राजस्व की ओर से/ Revenue by : Shri Varinder Mehta (CIT)

सुनवाई की तारीख/ Date of Hearing : 22/01/2018
उदघोषणा की तारीख/Date of Pronouncement: 23/02/2018

आदेश/ ORDER

PER BENCH:

These are five sets of cross appeal/ cross objection are directed against the orders of ld CIT(A) dated 05.03.2014, 25.01.2016 & 30.12.2014 in respect of assessment years 2009-10 to 2012-13. Though for the assessment year 2009-10 there are two sets of appeals are arising from original assessment u/s 143(3) and other from the assessment framed u/s 143(3) r.w.s. 147 of the Act. In the appeal for the assessment year 2009-10 arising from assessment order passed u/s 143(3), the assessee has raised the following grounds:-

"1. The Ld. CIT(A) has erred on facts and in law in confirming addition of Rs. 1,42,76,000/- made by the AO to the value of closing stock by holding that land under litigation or encroachment may have high market value than cost in subsequent years and therefore its value cannot be taken at nil.
1.1 The Ld. CIT(A) has erred on facts and in law in not considering the addition already made in earlier years on this account in confirming the addition made during the year resulting into excessive addition to the extent of Rs. 72.19 lacs.
2. The assessee craves to amend, alter, or modify any of the ground of appeals.

3. Necessary cost be allowed to the assessee."

2. Ground No. 1 is regarding the addition made on account of valuation of closing stock of land which was taken by the assessee at nil. During the assessment proceedings the AO noted that auditor in its report has made observation regarding non inclusion of stock of land measuring 340.34 acres valuing Rs. 12, 58,75,000/- as on 31.03.2009 being under litigation and encroachment though the said land is treated saleable. The AO accordingly asked the assessee to explain as to why the amount of Rs. 12,58,75,000/- should not be added to the total income of the assessee. In response the assessee stated in its reply dated 10.10.2011 that these lands are not under the possession of the assessee since long time. Accordingly, as per the principle of prudence, unless and until all disputes are resolved by the courts such lands have been valued at nil. The AO did not accept the reply of the assessee and made an addition of Rs. 1,42,76,000/- on account of non valuation of this stock of land under litigation/encroachment. The assessee challenged the action of the AO before the ld. CIT(A) however, the ld. CIT(A) held that the assessee has not valued its stock of land as per proper and recognized method, therefore, deviation from cost method

is not permissible. Accordingly, the ld. CIT(A) confirmed the addition made by the AO on account of difference in opening and closing stock of disputed land.

3. Before us, the ld. AR of the assessee has submitted that the assessee is having large chunk of land at various industrial area spread over throughout the Rajasthan. Some of the land situated at various industrial area is under litigation and/or under encroachment and these lands are not under the possession of company since long time. Unless and until land is evacuated and all disputes are resolved/ settled by the courts, corporation is not in position to occupy the said land. The detail of these land measuring 340.34 acres valuing to Rs. 1,258.75 lakhs is at PB 73-75. Copies of the reports of the unit in-charge of the Industrial area indicating the reasons why these lands were considered under litigation/encroachment along with necessary evidence for the same were filed before the AO comprising of 802 pages in two volumes. On some of the encroached land temple/tribal hostel/ cremation ground is constructed, on some area there is dispute with the forest department and some area are under the court litigation. The basic principal of valuation of stock is to value it at cost or realizable value, whichever is lower. Since in these cases the land is not in possession of the

assessee, it has no realizable value and therefore, such encroached/litigated land is rightly valued at Nil as per the consistent accounting policy followed by the assessee. As and when the encroachment is removed from such land or the litigation is decided in favor of the assessee, such land is included in the stock at full value. Hence, the observation of the Ld. CIT(A) that value adopted at Nil is arbitrary and without basis is not correct in as much as when the land under encroachment / litigation is not under the possession of the assessee, by following the principle of prudence such land needs to be valued at Nil. He has relied upon the following decisions:-

- **CIT vs. Nation & Grindlays bank Ltd. 145 ITR 457**
- **Shri Ram Bearing Ltd. vs CIT 199 ITR 579**

The ld. AR has further submitted that for the A.Y. 2007-08 on this very issue the Tribunal vide order dated 24.06.2011 has set aside the issue to AO with the directions that when the litigation and encroachment will affect the valuation of the stock such cannot be valued at cost price. Thus, he has contended that in principle the Tribunal has accepted that the land under encroachment/litigation cannot be valued at cost price. He has referred to the details of the year wise statement of land under encroachment/litigation from assessment year 2006-07 to 2012-13 and

submitted that the total area of land under encroachment/litigation has reduced from 361.66 acres in AY 2008-09 to 340.34 acres in the year under consideration. The ld. AR has further submitted that the AO made addition only on the basis of the remarks in the audit report whereas the issue was also raised by the C&AG in course of supplementary audit of accounts for the A.Y. 2010-11 and after considering the reply dated 27.09.2010 of the assessee the C & AG accepted the valuation of land and did not given any adverse comment on the accounts of the assessee. Alternatively the ld. AR has submitted that without prejudice to the above claim and contention the total cost of land under encroachment/litigation as on 31.03.2009 is Rs. 12,58,75,000/- out of which the AO had already made addition to the extent of Rs. 11,88,18,000/- in the A.Ys. 2006-07 and 2007-08 respectively. Therefore, only remaining amount of Rs. 72.19 lacs can be considered as the value of the encroachment/litigation under land.

4. On the other hand, ld. DR has submitted that the value of the land cannot be nil even if it is under encroachment/litigation. The assessee was earlier valuing the stock of land at cost prior to the assessment year 2006-07, therefore, the AO has rightly taken the value of land at cost. He has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as relevant material on record. At the outset we note that this Tribunal in assessee's own case for the assessment year 2007-08 vide order dated 24.06.2011 in ITA No. 1267 & 1387 of 2010 has considered this issue in para 5.7 as under:-

> *"5.7 During the course of hearing, the ld. AR was asked as to whether land which has been valued at nil as on 31-03-07 to the extent of Rs. 145.33 11 crores was purchased during the year. We were informed that the land was not purchased in this year. We are not having the details of the litigation in respect of land for which valuation has been taken at nil from 31-03-06 to 31-03-07. It is true that encroachment and litigation will have an impact on the on the valuation. The management has taken the decision to consider the value at Nil but we are not informed as to whether the decision is based on certain expert opinion or on the basis of prudence or after considering each and every case on merits. Section 4 is a charging Section and according to which income tax is to be charged in respect of total income of the previous year. The reduction in the value of the stock is to be substantiated by the assessee that it has resulted into previous year relevant to assessment year under consideration . In case the litigation and encroachment were existing at the time when the assessee acquired the land and filed the dispute before 31-03-06 then why such reduction was not considered when the assessee was changing the method of accounting in the assessment year 2006-07. As per charging Section, tax is levied on the actual income of the previous year. It means that facts which existed during previous year are to be considered. When the assessee makes his purchases, he enters his stock at cost price on one side of the accounts. At the close of the year, he*

enters the value of any unsold stock at cost on the other side of the accounts thus canceling out the 12 entries relating to the same unsold stock in the accounts; and then that it is carried forward as the opening balance in the next year's account. This canceling out of the unsold stock from both the sides of the accounts leaves only the transactions on which there have been actual sales and gives a true and actual profit or loss on his year's dealings. The only exception is that unsold stock can be valued at the cost price or market value whichever is less. The notional loss, if any, can be claimed in the year when unsold stock has a lesser value as compared to the stock price. However, notional profit cannot be added in case market value is more than the cost. Hence, valuation of the stock is to be based on the same method for both opening and closing stock. The AO has simply not allowed deduction of Rs. 145.33 lacs on the ground of not accepting the change in method of valuation. However, the AO has not considered the aspects as to whether events in respect of reduction in valuation of stock have occurred during previous year relevant to assessment year under consideration. We are not having full facts in respect of the stock which have been valued at nil to ascertain the nature of litigation or encroachment and the period when such lands were acquired and when the assessee became aware of encroachment or litigation. Hence, the issue of addition of Rs. 145.33 lacs is restored back on the file of the AO. We do feel that litigation and encroachment will affect the valuation of the 13 stock and such stock cannot be valued at cost price. With this observation, the matter is restored back on the file of the AO."

In view of the earlier decision of this Tribunal and to maintain the rule of consistency, we are of the view that the addition made by the AO for

the under year under consideration is dependent on the outcome to the addition made by the AO on this account in the earlier year. Therefore, in the facts and circumstances of the case we set aside this issue to the record of the Assessing Officer for deciding the same afresh in terms of the directions as given by the Tribunal for the A.Y. 2007-08.

6. Ground No. 1.1 is regarding alternative plea. Since the main issue is set aside to the record of the AO accordingly the alternative claim/ plea of the assessee is also required to be considered by the AO while adjudicating the issue of valuation of the stock of land under encroachment/litigation.

7. For the assessment year 2009-10 the Revenue has raised the following grounds:-

> *"1. Whether on the facts and in circumstances of the case and in law the Ld. CIT (Appeals) has erred in allowing maintenance expenses of Rs. 3,21,27,000/- in respect of transfer industrial areas.*
> *2. Whether on the facts and in circumstances of the case and law the Ld. CIT(Appeals) has erred in holding prior period expenses of Rs. 21,87,382/- as allowable expense.*
> *3. Whether on the facts and in circumstances of the case and law the Ld. CIT(Appeals) has erred in holding contribution of Rs. 10,00,000/- to state Renewal Fund as allowable expenditure.*
> *4. The appellant craves its right to add, amend or alter any of the grounds on or before the hearing."*

8. Ground No. 1 is regarding the addition made by the AO on account of maintenance expenses in respect of transferred industrial areas deleted by the ld. CIT(A).

9. We have heard ld. DR as well as ld. AR and considered the relevant material on record. During the course of assessment proceedings the AO noted that the auditor in its report has made comments that the expenditure relating to maintenance of transferred industrial area amounting to Rs. 3,21,27,000/- is treated as expenditure of RIICO without receiving income from such area. Accordingly the AO has disallowed these expenditure and added to the income of the assessee. On appeal the ld. CIT(A) has allowed the clam of the assessee by following the decision of this Tribunal in assessee's own case for the assessment year 2005-06 as well as its predecessor order for the assessment year 2008-09.

10. The assessee was incorporated with the main object of development of infrastructure facility for industries and providing long term finance facilities to industries in the State of Rajasthan. Prior to the incorporation of the assessee, the State Government had developed certain industrial area in the State of Rajasthan and accordingly the maintenance of 37 industrial areas were transferred to the assessee in

October, 1979 for maintenance. These industrial areas were developed by the State Government but transferred to the assessee for maintenance. The AO has disallowed the claim on the ground that when the assessee has not offer any income from these area then the expenditure for maintaining these industries area is not allowable. At the outset we note that the Tribunal in assessee's own case for the assessment year 2005-06 vide order dated 08.1.2010 in ITA No. 138/JP/2009 has considered and decided this issue in para 5 to 9 as under:-

> *"5. The contention of the Id. A/R before us remained that the issue in the present case is to be decided as to whether the claim of the assessee can be disallowed on account of the expenditure being prior period expenses and whether in the circumstances the amount written off during the year can be allowed in - this year or not. He submitted that the assessee has been incurring the maintenance cost on the said industrial area and debiting it to the account of State Govt, under the hope that it would be reimbursed by State Govt. The State Govt, reimbursed a part of such expenditure in earlier year by way of grant in aid. After adjusting the same an amount of Rs. 770.62 lacs was outstanding as "Expenditure Recoverable from Transferred Area" as on 31.03.04. The assessee pursued for reimbursement of said amount with the Govt, but the same was not acceded to, as maintenance of industrial area was the object and activity of the assessee. In these circumstances, the assessee, after approval from the Board of Director, (PB 31, Item No. 7) written off the claim of said expenditure in the books of accounts as a business*

loss. Such business loss is allowable u/s 28 of the Act in the year in which the same is written off. He referred to page 1436 to 1439 of the commentary of Charturvedi and Pitthisaria 5 addition as regard the principles for allowance of a loss as business deduction. He also placed reliance on following cases:
Commissioner of Income-tax vs. Inden Beselers 181 ITR69 (Mad)
Commissioner of Income-tax Vs. Abdul Razak & Co. 136 ITR 825 (Guj.)

Commissioner of Income-tax Vs. Textool Co. Ltd. 135 ITR 200 (Mad.)

Commissioner of Income-tax Vs. Investa Industrial Corporation Ltd. 119 ITR 380 (Bom.):

Bharucha (B.D.) Vs. Commissioner of Income-tax 65 ITR 403 (SC)

6. The Id. A/R submitted further that as per Accounting Standard 5 'Net Profit or Loss for the period, Prior Period Items and Change in accounting Policy' issued by Institute of Chartered Accountants of India, prior period expense are those which arise on account of error and omission in preparation of the financial statements of one or more prior periods. In the present case the claim made during the year is not on account of error or omission committed in earlier years. In earlier years the assessee has debited this amount to the State Govt, and part of it was recovered but the remaining amount was not found recoverable during the year and therefore the write-off made during the year is expenditure for the year and not a prior period expenditure. The Id. A/R also distinguished the cases relied upon by the Assessing Officer and pleaded that the claim of write off made by the assessee is allowable deduction for the year under consideration.
7. The Id. D/R on the other hand tried to justify the orders of the lower authorities on the issue while placing reliance on

them.

8. Considering the above submissions, we find substance in the contention of the ld. A/R that prior period expenses are those expenses which arise on account of error and omission in preparation of the financial statement of income or more prior periods. On our query, the ld. A/R submitted that the various correspondences lone by the assessee with the statement Government in respect of release of Rs. 770.62 Lacs due to it from the Government. He referred to the minutes of the meeting held in the Chamber of Additional Chief Secretary, Finance on 19.08.2003, the extract of which is as under:-

"Minutes of the meeting held in the Chamber of the Additional Chief Secretary, Finance on 19th August, 2003

The issue relating to transferred industrial areas being maintained by RIICO was discussed at length in the meeting held in the chamber of the Additional Chief Secretary, Finance on 19' August, 2003. Following officers were present:

1. *Shri M.D. Kaurani, Additional Chief Secretary, Finance In Chair*
2. *Shri S.P. Gupta, CMD, RIICO*
3. *Shri Ashok Jain, Commissioner. Industries*
4. *Shri R.K. Sharma, ED, RIICO*
5. *Shri Mahaveer Singh, OSD. Finance*
6. *Shri B.L. Garg, DS, Finance*
7. *Shri S.C. Vyas. FA. RIICO*

CMD, RIICO apprised the participants of the following background:

1. A number of 37 industrial areas developed and maintained by the Government were transferred to RIICO in September, 1979 for upkeep and maintenance.

2. An annual maintenance giant was provided by Government to

RIICO for this work.

3. RIICO was also collecting development charges and economic rent from the allottees of plots in these areas.

4. Subsequently, vide order dated 31.1.1991 the Government directed RIICO to deposit the development charges and economic rent with the State Government and Government will provide equivalent amount to RIICO for expenditure.

5. RIICO was given Rs. 10:05 crore as grant upto 1998-99 where RIICO had incurred expenditure of Rs 12.56 crore upto 31M March. 1999.
6. Thereafter, Government did not release any grant for maintenance of these transferred industrial areas and RIICO is bearing this expenditure.
7. As a consequence, RIICO also stopped depositing development charges and economic rent with the State Government.
8. Accountant General, Rajasthan has raised an objection to RIICO for not depositing the receipts for which RIICO has separately moved a case to Government for regularization.

Finally, CMD, RIICO requested for modification in the Government order dated 31.1.1991 and allow. RIICO to retain the receipts so that they are able to maintain these industrial areas in a satisfactory manner. ACS was in agreement with the proportion. However, it was decided that the matter should be moved on file for formal clearance at appropriate level.

(R.K. Shrma)
Executive Director
RIICO

Again vide letter dated 30.3.2005 to the Principal Secretary.

Industries, Govt, of Rajasthan, Jaipur, it was conveyed as under:

"Till end of March, 2004, a sum of Rs. 1776.36 lacs has been spent by the Corporation on maintenance of transferred areas, whereas Corporation has received grant-in-aid, of only Rs. 1005.74 lacs. The excess expenditure of Rs. 770.62 lacs has been taken to the credit of Profit and Loss Account by raising a debit to expenses recoverable from Transferred Areas Account. The Corporation has therefore, requested the Government for release of this amount yide letter no. IPI/F-1 (9)-19/Pt-IV/137 dated I 9.05.2004 and no.IPI/F-1 (9)-19/Pt. IV/172 dated 28.05.2004. An assurance was also given vide letter no.F.4(60)Ind./1780 dated 3.8.2004 that matter is under consideration and decision will be communicated in due course of time.

Keeping in view of above facts, it is requested to convey approval of the State Government for release of Rs. 770.62 Lacs as grant-in –aid to Corporation and to allow for retaining the amount of development charges and economic rent towards maintenance of transferred areas being maintained by RIICO from 1st April, 2004."

9.The ld. A/R referred to the letter of the State Government dated 19.04.2006 wherein it has refused to make payment of the aforesaid amount. It is under these circumstances, the ld. A/R stated that, the Board of Directors of the assessee company have approved the write off of Rs. 770.62 Lacs recoverable from the State Government on account of expenditure incurred by the assessee on maintenance of transferred industrial area while approving the accounts for the year under consideration. Considering these material facts of the issue, we are of the view that the lower authorities were not justified in making and upholding the disallowance of Rs. 770.62 Lacs by treating it as prior period expenditure. We thus while setting aside the orders of the lowers authorities in this regard, direct the AO to accept

the above claim of the assessee. The Ground no. 1 is this allowed."

We further note that right from the beginning the assessee has been incurred expenditure for maintenance of the transferred area and showing the same as receivable from Government. Against which the State Government has permitted adjustment of liability of deposit of development charges and economic are not maintenance expenses. Even otherwise as per terms of transfer of these areas the assessee is under obligation to maintain the industrial area transferred from State Government and the Government is allowing the grant from time to time and also allowing the assessee to adjust these liability against amounts payable to the government on account of lease rentals as well as development charges received from allottees. Accordingly, following the earlier order of this Tribunal for the assessment year 2005-06 as well as assessment year 2008-09 we do not find any error or illegality in the order of the ld. CIT(A) qua this issue.

11. Ground No. 2 is regarding prior period expenses disallowance by the AO but allowed by the ld. CIT(A)

12. We have heard ld. DR as well as AR and considered the relevant material on record. At the outset we note that the identical issue has been considered by this Tribunal in assessee's own case for the assessment year 2005-06 as well as for the assessment year 2007-08 in ITA No. 1267/JP/2010 vide order dated 24.06.2011 as held in para 4.2 as under:-

> *"4.2 The Tribunal while deciding the appeal in the case of the assessee for the assessment year 2004-05 has decided the issue in favour of the assessee. While holding so, the Tribunal has referred to the decision in the case of the assessee for the assessment years 1994-95 and 1995-96 in which the Tribunal has held that such expenditure is allowable. In the assessment year 2003-04, such prior period expenses was allowed by the Tribunal vide its order dated 21.08.2007 in ITA No. 324/JP/2006. Following the decision of the Tribunal for the assessment year 2003-04, the Tribunal allowed the prior period expenses for the assessment year 2004-05 vide its order dated 30th Sept. 2008. Thus, the issue of allowability of prior period expenses stands decided in favour of the assessee. Therefore, the ld. CIT(A) was justified in allowing the prior period expenses."*

The ld. CIT(A) has allowed the claim of the assessee by following the decision of this Tribunal in assessee's own case. Therefore, we do not find any error or illegality in the order of the ld. CIT(A) qua this issue. We further note that the Hon'ble jurisdiction High Court in case of **Pr.**

CIT vs. Rajasthan state Seed Corporation Ltd. 386 ITR 267 has also decided this issue an identical issue in favour of the assessee.

13. Ground No. 3 is regarding disallowance made by the AO in respect of contribution to State Renewal Fund was allowed by the ld. CIT(A).

14. We have heard ld. DR as well as AR and considered the relevant material on record. At the outset we note that an identical issue has been considered by this Tribunal in assessee's own case for the assessment year 2005-06 as well as for the assessment year 2007-08. The Tribunal vide order dated 24.06.11 in ITA No. 1267/JP/2010 for the assessment year 2007-08 has considered and decided this issue in paras 3.1 to 3.2 as under:-

> *"3.1 The second ground of the Revenue is that the ld. CIT(A) has erred in deleting the addition of Rs. 10.00 lacs made by way of disallowance of contribution to state renewal fund despite the fact that it was application of income and not business expenditure.*
> *3.2 This issue has also been decided in favour of the assessee by the Tribunal while deciding the appeal for the assessment year 2005-06. The Tribunal at para 25 vide its order dated 8th Jan. 2010 has decided the issue in favour of the assessee and the same is reproduced as under:-*
> *'25. After considering the objects of the State Renewal Fund (Page 9 of the paper book) submitted by the assessee, we noted that this fund is set up to provide a social safety net for 4 the*

workers likely to be effected by restructuring in the state public enterprises. The objective of tis fund are as under:-

(i) To provide assistance towards cost of retiring and redeployment of employees, following modernization and restructuring of public sector undertaking

(ii) To provide funds towards compensation/ voluntary retirement scheme affecting the employees as a result of restructuring / winding up / dis-engagement / closure o any State Public Enterprises.

(iii) To provide assistance towards gainful selfemployment to the employees consequent to the restructuring/ winding-up/ closure of such undertakings, under scheme to be approved by the State Govt., and

(iv) Any other assistance/ relief program for any category of workers to be decided by the State Govt.

Thus the contribution made to the aforesaid fund is solely for the purpose of the welfare and benefit of the employees. This issue has been decided by us in case of Rajasthan State Seeds Corporation Ltd., supra where we have held as under:-

'We have considered the rival submissions and perused the material available on record. We find that as per the memorandum of State Renewal Fund set up by the State Govt. , it is created with the object of providing a safety net for the workers likely to be affected by restructuring in the State Public Enterprises. We are thus of the view that contribution made to the said fund is solely for the purpose of welfare and benefit of the 5 employees. The Rajasthan High Court in case of CIT Vs. Rajasthan Spinning and Weaving Mills Ltd., 274 ITR 465 has been observed that if is for the assessee to decide whether any expenditure should be incurred in course of business. The expenditure can be incurred voluntarily and without necessity. Any contribution made by the assessee to a public welfare fund which is connected or related with his business is an allowable deduction u/s 37. Again the Court in the case of CIT Vs. Shri

Rajashan Syntex Ltd. , 221 CTR 410 (Raj.) held that where assessee gave contribution to the employee's welfare fund, the same is allowable as business expenditure. The case relied by AO of CIT Vs. Jodhpur Cooperative Marketing Society 275 ITR 372 (Raj.) is distinguishable as in this case the amount was set apart for the shareholders of the society whereas in the present case amount was provided for the benefit of the employees. In view of this the contribution made to State Renewal fund is allowable u/s 37(1)."

In view of above, we while setting aside the orders of the lower authorities in this regard, direct the AO to delete the addition of Rs. 10,00,000/- in question."

3.3 Following the order of the Tribunal, we hold that the ld. CIT(A) was justified in deleting the addition of Rs. 10.00 lacs"

Accordingly, in view of the earlier orders of this Tribunal in assessee's own case we do not find any error or illegality in the impugned order the ld. CIT(A) qua this issue.

ITA No. 323/JP/16 and CO No. 07/JP/2016 arising from reassessment order:

15. The Revenue has raised the following grounds:-

"1. Whether on the facts and in the circumstances of the case and in law, the CIT(A) has erred in allowing deduction of Rs. 8,83,09,666/- on interest income (including penal interest income Rs. 8,83,09,666/- and other income of Rs. 56,05,249/-)

2. The appellant craves its rights to add, amend or alter any of the grounds on or before the hearing."

16. The assessee is in the business of developing, maintaining and operating industrial parks/ SEZ units. The AO was of the view that the deduction u/s 80IA is not allowable in respect of interest, penal interest income and other miscellaneous incomes as the same is not an income derived from eligible business of the assessee u/s 80IA. The AO placed reliance on various decisions including the Hon'ble decision in case **Liberty India Ltd. vs. CIT 317 ITR 218**. On appeal the ld. CIT(A) allowed the claim of the assessee in respect of interest income including penal interest but disallowed the claim are other incomes. The ld. CIT(A) has held that the interest income and penal interest has been derived from the eligible industrial undertaking is therefore, eligible in deduction u/s 80IA of the Act. As regards the miscellaneous income the ld. CIT(A) has not allowed the claim of the assessee. Therefore, both assessee as well as Revenue are aggrieved by the order of the ld. CIT(A) on this issue.

17. Before us, ld. DR has submitted that the interest, penal interest and other incomes received by the assessee cannot be considered as income derived from the industrial undertaking eligible for deduction u/s 80IA of the Act. Since, these incomes are not earned from the main activity of the assessee therefore, the same cannot be considered as

income directly related to the activity of developing, operating the industrial parks/SEEZ units . He has relied upon the decision of Hon'ble Supreme Court in case of Liberty India Ltd. vs. CIT (Supra)

18. On the other hand, ld. AR of the assessee has submitted that the assessee allots industrial land either on down payment basis or installment basis. When the industrialists are allotted on installment basis the price charged is inclusive of interest component therefore, in the books of accounts the installment received amount is recorded in two parts one towards the value of land (development charges) and another towards interest charges. He has referred to the sample copy of lease agreement in case of land allotted on installment basis and submitted that the installment payment of the plot so allotted if not received in time provided under the agreement, penal interest is charged from the debtor for the period of delay. Similarly when the service charges/ rent and other changes are not paid by the debtor timely the interest is charged from them for delayed payment. Therefore, ld. AR has submitted that the interest is received from the debtors and is part and parcel of the payment received by the assessee from the allottees and hence, the same is eligible for deduction u/s 80IA of the Act. In support his contention he has relied upon the

decision of Hon'ble Gujarath high Court in case of **Nirma Indistries Ltd. vs DCIT 283 ITR 402** as well as decision of Hon'ble Gujarat High Court in case of **CIT vs. Suzlon Engery Ltd. 354 ITR 630** and submitted that the Hon'ble Gujarat High Court has held that the interest received from trade debtors towards late payment of sales consideration is required to be included in the profits of the industrial undertaking for the purpose of deduction u/s 80IB of the Act. The ld. AR has submitted that the Hon'ble Gujarat High Court has delivered the discussion after considering the decision in case of liberty India Ltd. vs. CIT (Supra). He has relied upon the decision of Hon'ble Punjab and Haryana High Court in case of **Phatela Cotgin Industries (P) Ltd. vs. CIT 303ITR 411**. The ld. AR has also relied upon the decision of Hon'ble Supreme Court in case of **CIT(A) vs. Meghalaya Steel Ltd. 383 ITR 217** and submitted that the Hon'ble Supreme Court after considering the decision in case of Liberty India Ltd vs. CIT (supra) as well as other decisions on this point has decided this issue in favour of the assesee. As regards the other income the ld. AR has submitted that the assessee received various other charges recoverable from the industrial units for development, upkeep and maintenance of industrial area, charges for site plan, lease agreement form etc which are non

recurring in nature. These charges are the income derived from the main business activity of the assessee of developing, maintaining and operating industrial park/SEZ units therefore, the same cannot be assessed as other income but it is part and parcel of the business income of the assessee. The miscellaneous income comprising site plan charge, lease agreement form, road cutting charges and other charges recovered from contract are also directly linked with the activity of industrial park and therefore, the same are to be included in the income of the assessee for deduction u/s 80IA of the Act. He has relied upon the decision of Mumbai Benches of the Tribunal in case of **ITO vs. Hiranandani Builders 128 DTR 97**. Thus, the ld. AR has pleased that the assessee is eligible for deduction u/s 80IA in respect of all the incomes which are directly linked with the activity of the industrial park.

19. We have considered the rival submissions as well as relevant material on record. As regards the claim of deduction u/s 80IA of the Act in respect of the interest and penal interest income is concerned we note that this income is not derived from the deposit of surplus fund with the bank but the interest and penal interest is received by the assessee on account of late payment by the allottee/debtor. Therefore, when the due amount from the debtor is business receipt then the

interest on the said amount due to late payment would not take a different character from the principle receipt. Hence, the interest and penal interest received on account of late payment by the debtor would be income of the industrial undertaking. The Hon'ble Gujarat High Court in case of CIT vs Suzlon Engery Ltd. (supra) had occasion to examine this issue in para 5 as under:-

> *"**5.** We are in agreement with the view of the Tribunal that the issue is covered by the decision of this Court in case of Nirma Industries Ltd. (supra). In the said decision, the Court has held and observed as under :-*
>
> *"However, the parties having made elaborate submissions the matter may be examined from a slightly different angle. When the assessee enters into a contract for sale of its products it could either stipulate (a) that interest at the specified rate would be charged on the unpaid sale price and added to the outstanding till the point of time of realisation, or (b) that in case of delay the payment for sale of products worth Rs.100/- to carry the sale price of Rs.102/- for first month's delay, Rs.104/- for second month's delay, Rs.106/- for third month's delay and so on. If the contention of revenue is accepted, merely because the assessee has described the additional sale proceeds as interest in case of contract as per illustration (a) above, such payment would not be profits derived from industrial undertaking, but in case of illustration (b) above, if the payment is described as sale price it would be profits derived from the industrial undertaking. This can never be, because in sum and substance these are only two modes of realising sale consideration, the object being to realise sale proceeds at the earliest and without delay. Purchaser pays higher sale price if it delays payment of sale*

proceeds. In other words, this is a converse situation to offering of cash discount.

Thus, in principle, in reality, the transaction remains the same and there is no distinction as to the source. It is incorrect to state that the source for interest is the outstanding sale proceeds. It is not the assessee's business to lend funds and earn interest. The distinction drawn by revenue is artificial in nature and is neither in consonance with law nor commercial practice.

The Tribunal was therefore not justified in holding that while computing deduction under section 80-I of the Act interest received from trade debtors towards late payment of sales consideration is required to be excluded from the profits of the industrial undertaking as the same cannot be stated to have been derived from the business of the industrial undertaking."

We further note that the Hon'ble Supreme Court in case of CIT vs. Mehalaya Steel Ltd. (supra) has decided this issue in paras 17 to 29 are as under:-

*"**17.** An analysis of all the aforesaid decisions cited on behalf of the Revenue becomes necessary at this stage. In the first decision, that is in Cambay Electric Supply Industrial Co. Ltd.'s case (supra) this Court held that since an expression of wider import had been used, namely "attributable to" instead of "derived from", the legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity. In short, a step removed from the business of the industrial undertaking would also be subsumed within the meaning of the expression "attributable to". Since we are directly concerned with the expression "derived from", this judgment is relevant only insofar as it makes a distinction between the expression "derived from", as*

being something directly from, as opposed to "attributable to", which can be said to include something which is indirect as well.

18. *The judgment in Sterling Foods case (supra) lays down a very important test in order to determine whether profits and gains are derived from business or an industrial undertaking. This Court has stated that there should be a direct nexus between such profits and gains and the industrial undertaking or business. Such nexus cannot be only incidental. It therefore found, on the facts before it, that by reason of an export promotion scheme, an assessee was entitled to import entitlements which it could thereafter sell. Obviously, the sale consideration therefrom could not be said to be directly from profits and gains by the industrial undertaking but only attributable to such industrial undertaking inasmuch as such import entitlements did not relate to manufacture or sale of the products of the undertaking, but related only to an event which was post-manufacture namely, export. On an application of the aforesaid test to the facts of the present case, it can be said that as all the four subsidies in the present case are revenue receipts which are reimbursed to the assessee for elements of cost relating to manufacture or sale of their products, there can certainly be said to be a direct nexus between profits and gains of the industrial undertaking or business, and reimbursement of such subsidies. However, Shri Radhakrishnan stressed the fact that the immediate source of the subsidies was the fact that the Government gave them and that, therefore, the immediate source not being from the business of the assessee, the element of directness is missing. We are afraid we cannot agree. What is to be seen for the applicability of Sections 80-IB and 80-IC is whether the profits and gains are derived from the business. So long as profits and gains emanate directly from the business itself, the fact that the immediate source of the subsidies is the Government would make no difference, as it cannot be disputed that the said subsidies are only in order to reimburse, wholly or partially, costs actually incurred by the*

assessee in the manufacturing and selling of its products. The "profits and gains" spoken of by Sections 80-IB and 80-IC have reference to net profit. And net profit can only be calculated by deducting from the sale price of an article all elements of cost which go into manufacturing or selling it. Thus understood, it is clear that profits and gains are derived from the business of the assessee, namely profits arrived at after deducting manufacturing cost and selling costs reimbursed to the assessee by the Government concerned.

19. *Similarly, the judgment in Pandian Chemicals Ltd.'s case (supra) is also distinguishable, as interest on a deposit made for supply of electricity is not an element of cost at all, and this being so, is therefore a step removed from the business of the industrial undertaking. The derivation of profits on such a deposit made with the Electricity Board could not therefore be said to flow directly from the industrial undertaking itself, unlike the facts of the present case, in which, as has been held above, all the subsidies aforementioned went towards reimbursement of actual costs of manufacture and sale of the products of the business of the assessee.*

20. *Liberty India's case (supra) being the fourth judgment in this line also does not help Revenue. What this Court was concerned with was an export incentive, which is very far removed from reimbursement of an element of cost. A DEPB drawback scheme is not related to the business of an industrial undertaking for manufacturing or selling its products. DEPB entitlement arises only when the undertaking goes on to export the said product, that is after it manufactures or produces the same. Pithily put, if there is no export, there is no DEPB entitlement, and therefore its relation to manufacture of a product and/or sale within India is not proximate or direct but is one step removed. Also, the object behind DEPB entitlement, as has been held by this Court, is to neutralize the incidence of customs duty payment on the import content of the*

export product which is provided for by credit to customs duty against the export product. In such a scenario, it cannot be said that such duty exemption scheme is derived from profits and gains made by the industrial undertaking or business itself.

21. *The Calcutta High Court in Merinoply & Chemicals Ltd. v. CIT [1994] 209 ITR 508, held that transport subsidies were inseparably connected with the business carried on by the assessee. In that case, the Division Bench held:—*

"We do not find any perversity in the Tribunal's finding that the scheme of transport subsidies is inseparably connected with the business carried on by the assessee. It is a fact that the assessee was a manufacturer of plywood, it is also a fact that the assessee has its unit in a backward area and is entitled to the benefit of the scheme. Further is the fact that transport expenditure is an incidental expenditure of the assessee's business and it is that expenditure which the subsidy recoups and that the purpose of the recoupment is to make up possible profit deficit for operating in a backward area. Therefore, it is beyond all manner of doubt that the subsidies were inseparably connected with the profitable conduct of the business and in arriving at such a decision on the facts the Tribunal committed no error."

22. *However, in CIT v. Andaman Timber Industries Ltd., [2000] 242 ITR 204/109 Taxman 135 (Cal.), the same High Court arrived at an opposite conclusion in considering whether a deduction was allowable under Section 80HH of the Act in respect of transport subsidy without noticing the aforesaid earlier judgment of a Division Bench of that very court. A Division Bench of the Calcutta High Court in Cement Mfg Co. Ltd.'s case (supra) by a judgment dated 15.1.2015, distinguished the judgment in Andaman Timber Industries Ltd.'s case (supra) and followed the impugned judgment of the Gauhati High Court in the present case. In a pithy discussion of the law on the subject, the Calcutta High Court held:*

'Mr. Bandhyopadhyay, learned Advocate appearing for the appellant, submitted that the impugned judgment is contrary to a judgment of this Court in the case of CIT v. Andaman Timber Industries Ltd. reported in [2000] 242 ITR 204/109 Taxman 135 wherein this Court held that transport subsidy is not an immediate source and does not have direct nexus with the activity of an industrial undertaking. Therefore, the amount representing such subsidy cannot be treated as profit derived from the industrial undertaking. Mr. Bandhypadhyay submitted that it is not a profit derived from the undertaking. The benefit under section 80IC could not therefore have been granted.

He also relied on a judgment of the Supreme Court in the case of Liberty India v. Commissioner of Income Tax, reported in (2009) 317 ITR 218 (SC) wherein it was held that subsidy by way of customs duty draw back could not be treated as a profit derived from the industrial undertaking.

We have not been impressed by the submissions advanced by Mr. Bandhyopadhyay. The judgment of the Apex Court in the case of Liberty India (supra) was in relation to the subsidy arising out of customs draw back and duty Entitlement Pass-book Scheme (DEPB). Both the incentives considered by the Apex Court in the case of Liberty India could be availed after the manufacturing activity was over and exports were made. But, we are concerned in this case with the transport and interest subsidy which has a direct nexus with the manufacturing activity inasmuch as these subsidies go to reduce the cost of production. Therefore, the judgment in the case of Liberty India v. Commissioner of Income Tax has no manner of application. The Supreme Court in the case of Sahney Steel and Press Works Ltd. & Others versus Commissioner of Income Tax, reported in [1997] 228 ITR at page 257 expressed the following views:—

". . . . . Similarly, subsidy on power was confined to 'power consumed for production'. In other words, if power is consumed for any other purpose like setting up the plant and machinery, the incentives will not be given. Refund of sales tax will also be in respect of taxes levied after commencement of production and up to a period of five years from the date of commencement of production. It is difficult to hold these subsidies as anything but operation subsidies. These subsidies were given to encourage setting up of industries in the State of Andhra Pradesh by making the business of production and sale of goods in the State more profitable.'

23. *We are of the view that the judgment in Merinoply & Chemicals Ltd.'s case (supra) and the recent judgment of the Calcutta High Court have correctly appreciated the legal position.*

24. *We do not find it necessary to refer in detail to any of the other judgments that have been placed before us. The judgment in Jai Bhagwan Oil and Flour Mills' case (supra) is helpful on the nature of a transport subsidy scheme, which is described as under:*

"The object of the Transport Subsidy Scheme is not augmentation of revenue, by levy and collection of tax or duty. The object of the Scheme is to improve trade and commerce between the remote parts of the country with other parts, so as to bring about economic development of remote backward regions. This was sought to be achieved by the Scheme, by making it feasible and attractive to industrial entrepreneurs to start and run industries in remote parts, by giving them a level playing field so that they could compete with their counterparts in central (non-remote) areas.

The huge transportation cost for getting the raw materials to the industrial unit and finished goods to the existing market outside the state, was making it unviable for industries in remote parts of the country to compete with industries in central areas. Therefore, industrial units in remote areas were extended the benefit of

subsidized transportation. For industrial units in Assam and other north-eastern States, the benefit was given in the form of a subsidy in respect of a percentage of the cost of transportation between a point in central area (Siliguri in West Bengal) and the actual location of the industrial unit in the remote area, so that the industry could become competitive and economically viable." (Paras 14 and 15)

25. *The decision in Sahney Steel and Press Works Ltd.'s case (supra) dealt with subsidy received from the State Government in the form of refund of sales tax paid on raw materials, machinery, and finished goods; subsidy on power consumed by the industry; and exemption from water rate. It was held that such subsidies were treated as assistance given for the purpose of carrying on the business of the assessee.*

26. *We do not find it necessary to further encumber this judgment with the judgments which Shri Ganesh cited on the netting principle. We find it unnecessary to further substantiate the reasoning in our judgment based on the said principle.*

27. *A Delhi High Court judgment was also cited before us being Dharam Pal Prem Chand Ltd.'s case (supra) from which an SLP preferred in the Supreme Court was dismissed. This judgment also concerned itself with Section 80-IB of the Act, in which it was held that refund of excise duty should not be excluded in arriving at the profit derived from business for the purpose of claiming deduction under Section 80-IB of the Act.*

28. *It only remains to consider one further argument by Shri Radhakrishnan. He has argued that as the subsidies that are received by the respondent, would be income from other sources referable to Section 56 of the Income Tax Act, any deduction that is to be made, can only be made from income from other sources and not from profits and gains of business, which is a separate and distinct head as recognised by Section 14 of the Income Tax Act. Shri Radhakrishnan is not correct in his submission that*

assistance by way of subsidies which are reimbursed on the incurring of costs relatable to a business, are under the head "income from other sources", which is a residuary head of income that can be availed only if income does not fall under any of the other four heads of income. Section 28(iii)(b) specifically states that income from cash assistance, by whatever name called, received or receivable by any person against exports under any scheme of the Government of India, will be income chargeable to income tax under the head "profits and gains of business or profession". If cash assistance received or receivable against exports schemes are included as being income under the head "profits and gains of business or profession", it is obvious that subsidies which go to reimbursement of cost in the production of goods of a particular business would also have to be included under the head "profits and gains of business or profession", and not under the head "income from other sources".*

***29.** For the reasons given by us, we are of the view that the Gauhati, Calcutta and Delhi High Courts have correctly construed Sections 80-IB and 80-IC. The Himachal Pradesh High Court, having wrongly interpreted the judgments in Sterling Foods (supra) and Liberty India's cases (supra) to arrive at the opposite conclusion, is held to be wrongly decided for the reasons given by us hereinabove."*

Thus, in view of the facts and circumstances of the case as well as following the decisions of Hon'ble Gujarat High Court in case of CIT vs. Suzlon Engery Ltd. (supra) and decision of Hon'ble Supreme Court in case of CIT vs. Mehalaya Steel Ltd. (supra) we hold that the interest and penal interest received from debtor due to late payment is part of profit of industrial undertaking eligible for deduction u/s 80IA of the Act.

20. So far as other miscellaneous income is concerned we note that this income comprise of site plan charge, lease agreement form charges, road cutting charges and penal interest received from contractor etc. It is pertinent to note that these receipts on account of above said services or violation of the condition of the contract by the vendors/ allottees cannot be separated from the business activity of developing, maintaining and operating industrial parks/SEZ units. These services and activities are part of the main business activity of the assessee and cannot be held as independent or separate activity as the same cannot be performed without having core business activity. Therefore, when all these services are rendered for and closely connected with the main activity then the income from these services/activities would be included in the profit of undertaking eligible for deduction u/s 80IA of the Act. The Mumbai Benches of the Tribunal in case of ITO vs. Hiranandani Builders (supra) has analyzed this issue and held in para 15 as under:-

> *"15. The next item of receipts relates to the Tender fees received by the assessee on sale of tender forms. The Ld CIT(A) has noticed that the assessee has availed the services of various sub-contractors for the purpose of carrying our various works in the IT parks and SEZ. In order to select the vendors (sub-*

contractors), the assessee has followed tender system and in that process, it has collected money on sale of tender forms. Hence, the Ld CIT(A) has held that the activity of inviting tender is very much part of the development and operation of SEZ and accordingly held that the sale of tender forms shall be eligible for deduction u/s 80IA of the Act. Since the tenders have been invited in connection with the development and operation of IT parks and SEZ, we are of the view that the Ld CIT(A) was justified in holding that the tender fees are eligible for deduction u/s 80IA of the Act.

Accordingly, the income from all these activity associated with main activity of the assessee is eligible for deduction u/s 80IA of the Act. Hence, we decide the issue in favour of the assessee and against the Revenue.

21. In the cross objection the assessee has raised the following grounds:-

"1. The Ld. Commissioner of Income Tax (Appeals) has erred on facts and in law in upholding the validity of order passed u/s 147 of the IT Act, 1961.

2. The Ld. Commissioner of Income Tax (Appeals) has erred on facts and in law in not allowing the deduction u/s 80IA on other miscellaneous income of Rs. 6,26,797/-.`

3. The assessee carves right to add, alter, amend, and modify any of the ground of appeal.

4. Necessary cost be allowed to be assessee."

22. Ground No. 2 is common to the ground raised by the Revenue and accordingly in view of our finding of the Revenue's appeal the ground No. 2 of the cross objection is allowed.

23. As regards ground No. 1 when this issue on merit has been decided in favour of the assessee, therefore, ground no. 1 of the cross objection becomes academic in nature. Accordingly, we do not propose to go into ground no. 1 of the cross objection.

24. For the assessment year 2010-11 the assessee as well as Revenue have raised the following grounds:-

Assessee's Grounds

> *"1. The Ld. CIT(A) has erred in facts and in law in confirming addition of Rs. 71,03,87,000/- made by the AO to the value of closing stock by holding that land under litigation or encroachment may have high market value than cost in subsequent years and therefore its value cannot be taken at nil.*
>
> *2. The assessee craves to amend, add, alter, or modity any of the ground of appeals.*
>
> *3. Necessary cost be allowed to the assessee."*

Revenue's Grounds

1. Whether on the facts and in circumstances of the case and in law the Ld. CIT (Appeals) has erred in holding prior period expenses of Rs. 3,19,357/- as allowable expenses.
2. Whether on the facts and in circumstances of the case and law the Ld. CIT(Appeals) has erred in holding contribution of Rs. 20,00,000/- to state Renewal Fund as allowable expenditure.
3. Whether on the facts and in circumstances of the case and law the Ld. CIT(Appeals) has erred in holding contribution of Rs. 1,00,00,000/- to Centre for Development of Stones as allowable expenditure.
4. The appellant craves its right to add, amend or alter any of the grounds on or before the hearing."

25. Grounds of the assessee's appeal is common to the ground raised by the assessee for the assessment year 2009-10. Accordingly in view of our finding on the adjudication of the issue for the assessment year 2009-10 the same stands set aside to the record of the Assessing Officer on the same terms.

26. Ground No. 1 of the Revenue's appeal is common to the ground raised for the assessment year 2009-10. Accordingly, in view of our decision on this issue for the assessment year 2009-10 the ground No. 1 of the Revenue's appeal stands dismissed.

27. Ground No. 2 is regarding the contribution to State Renewal Fund. This ground of Revenue's appeal is common to the ground raised for the assessment year 2009-10. Accordingly, in view of our decision

on this issue for the assessment year 2009-10 the ground No. 2 of the Revenue's appeal stands dismissed.

28. Ground No. 3 is regarding the contribution to Centre for Development of Stones. During the year under consideration the assessee has claimed deduction of Rs. 1 crore on account of contribution to Centre for Development of Stones (CDOS). The assessee contended that the main object of the assessee is to develop infrastructure facilities and development of industries in the state of Rajasthan. The assessee is doing various activities and running various programs for the development of industries in the State of Rajasthan. For this purpose the assessee along with Government of Rajasthan has promoted a society named Centre for Development of Stones with the object to develop and promote and support the dimensional stone sector and related industries in India. Thus, the assessee claimed the contribution to CDOS as eligible expenditure. The AO held that the contribution to CDOS is a case of application of income and therefore, is not an allowable claim. On appeal, the ld. CIT(A) has held that the assessee is one of the promoters of CDOS along with Government of Rajasthan. The contribution to CDOS was used for promotion of industrial development in the state of Rajasthan and the same cannot

be treated as an application of income. Accordingly, the disallowance made by the AO was deleted by the ld. CIT(A).

29. Before us, ld. DR has submitted that the contribution made to Centre for Development of Stone has not directed nexus with the business of the activity and therefore, the same cannot be allowable business expenditure. He has relied upon the order of the Assessing Officer.

30. On the other hand ld. AR of the assessee has reiterated the contention has raised before the authorities below and submitted that the assessee along with the State of Rajasthan has promoted a society of CDOS which carries various trade promotional events and provide vocational training to entrepreneurs, testing facilities of Indian Stones for standardization of quality, properties and suitability and also brings out through publication, important data and information for the benefit of stone industries of India as a whole and of Rajasthan in particular. All these activities carried by CDOS to develop the stone industries in the State of Rajasthan as a result of which various entrepreneurs are attracted to establish such stone industries and in turn stimulate the industrial growth in the state which is the main object of the assessee. Therefore, the contribution made by the assessee to CDOS is an

expenditure incurred wholly and exclusively for the purpose of the business and accordingly allowable u/s 37(1) of the Act. In support of his contention he has relied upon the decision of Hon'ble jurisdiction High Court in case of **ACIT vs. Rajasthan Spinning & weaving Mills Ltd. 274 ITR 463.**

31. We have considered the rival submissions as well as relevant material on record. The main object of the assessee is provided to developing, maintaining and operating industrial parks/SEZ units. Therefore, the assessee is in the business of providing infrastructure facilities to the industries in the State. The Centre for Development of Stones though is brought into existence for promotion and providing various facilities to a particular industry being Indian stones however, it is undisputed fact that the state of Rajasthan is heaving the majority of stone business in India and any steps taken for promotion of the stone industries will have a direct impact on the development of industries in the State of Rajasthan. The Hon'ble jurisdiction High Court in case of ACIT vs. Rajasthan Spinning & weaving Mills Ltd (supra) had the occasion to deal with a question whether the expenditure incurred on computerization of Mines Department of the Government of Rajasthan of Rs. 50 lacs does not qualify to be an expenditure expended wholly

and exclusively for the purpose of business allowable u/s 37(1) of the Act. The Hon'ble High Court in case of Rajasthan State Mines & minerals ltd. vs. ACIT 274 ITR 463 as held in paras 5.3, 6.8, 6.9, 10, 10.1 & 14 are as under:-

> *"5.3 Regarding question 3, Mr. Jhanwar has taken us to the provisions of section 37 of the Income Tax Act which reads as Under.*
> *"**37.** (1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".*
> *6.8 In Commissioner of Income Tax vs Moonlight Builders and Developers reported in (2008) 307 ITR 197 (Delhi), similer view was taken.*
> *6.9 he has relied on two decisions of Tribunal where no appeal was preferred. Therefore, they cannot discriminate between two different assessee.*
> *10. Counsel for the respondent contended that on first issue regarding Section 37, the expenses which are made are jof capital nature, therefore, it cannot be taken as revenue expenditures. In that view of the matter, the first issue may not be considered. However, regarding second issue, he contended that assessee is not entitled for depreciation since he has not made any capital investment and this is raw material.*
> *10.1 Regarding issue no. 3, he contended that there is concurrent finding of authorities and the issue is required to be answered in favour of the Department.*

14. Regarding issue no. 3, taking into consideration the expenses which are done in view of decision in SA Builder's case (supra) and other judgments relied on the assessee, the issue is answered in favour of the assessee."

Following the decision of Hon'ble jurisdiction High Court in case of Rajasthan State Mines & Minerals Ltd. ACIT and having regard to the facts that the contribution is made for development and promotion of industries in the State of Rajasthan through Centre for Development of Stones which is promoted by the assessee along with the State Government of Rajasthan we are of the view that the said contribution made by the assessee is an allowable expenditure u/s 37(1) of the Act.

32. For the assessment year 2011-12 the assessee has raised the following grounds:-

"1*. The Ld. Commissioner of Income Tax (Appeals) has erred on facts and in law in confirming the disallowance of Rs. 2,00,00,000/- made on account of contribution for construction of the Rajasthan Bhawan In Mumbai.*

2. The Ld. Commissioner of Income Tax (Appeals) has erred on facts and in law in confirming the disallowance of claim of deduction u/s 80IA in respect of other income on the ground that same is not derived from an eligible business.

3. The Ld. Commissioner of Income Tax (Appeals) has erred on facts and in law in confirming the disallowance of Rs.32,33,193/- u/s 14A by application of Rule 8D(2)(iii)of the IT Rules. He has

further erred in applying Rules 8D(2)(iii) by holding that the word 'investment' used in this Rule would include shares/ securities held as stock in trade.

4. The assessee carves right to add, alter, amend, and modify any of the ground of appeal.

5. The appropriate cost be awarded to the assessee."

33. Ground No. 1 is regarding contribution for construction of the Rajasthan Bhawan in Mumbai. The assessee has debited a sum of Rs. 2 Crores under the head contribution for construction of Rajasthan Bhawan, Mumbai. The AO observed that the expenditure is not incurred wholly and exclusively in connection with the assessee's business of Industrial area development and long term financing. It is merely an application of income and thus, not allowable u/s 37(1) of the Act. Accordingly, the AO disallowed the claimed of the assessee. On appeal, the ld. CIT(A) has confirmed the disallowance made by the AO.

34. Before us, ld. AR of the assessee has submitted that the contribution was made by the assessee for construction of Rajasthan Bhawan at Mumbai at the directions of the State Government of Rajasthan. The buildings after construction will not be available for use by the Officers of the assessee for official work which would result in the reduction of cost of lodging and boarding at Mumbai. The ld. AR has

referred to the letter dated 24.10.2017 of Government of Rajasthan whereby it was intimated to all corporations who have made contributions for the construction of this building to allow them rebate on the room tariff. Thus, the ld. AR has submitted that as per the said letter the assessee is allowed rebate of 75% of the room tariff on consideration of the total contribution made by it. Therefore, the expenditure on account of contribution for construction of Rajasthan Bhawan, Mumbai has been incurred wholly and exclusively for the business of the assessee. He has relied upon the decision of this Tribunal in assessee's own case for the assessment year 2003-04 in ITA No. 324/2006 dated 21.07.2007 and submitted that the Tribunal has allowed the expenditure incurred for a guest house in New Delhi in which certain rooms have been ear-marked and can be used by the employees. He has relied upon the decision of Hon'ble Rajasthan High Court in case of CIT vs. Rajasthan Spinning & weaving Mills Ltd 274 ITR 463.

35. On the other hand, ld. DR has relied upon the orders of the authorities below and submitted that the contribution for construction of Rajasthan House in Mumbai is otherwise expenditure in capital field and

therefore, the same is not allowable as Revenue expenditure. Further this expenditure has no direct nexus with the business activity of the assessee and hence, it cannot be held as an expenditure incurred wholly and exclusively for business of the assessee.

36. We have considered the rival submissions as well as relevant material on record. At the outset we note that this Tribunal in assessee's own case for the assessment year 2003-04 while considering an issue of the expenditure incurred towards the contribution made to the construction of guest house in Delhi vide order dated 21.08.2007 in ITA No. 324/JP2006 has held in para 12 as under:-

> *"12. Considering the above submissions, we are of the view that undisputedly assessee was not the owner of the four rooms in the guest house of the State Government at Chanakyapuri in New Delhi and the assessee was only entitled to use those four rooms allotted to it for staying of its officials visiting Delhi. Assessee has no right to sell, alter or amend those allotted room. The guest house was undisputed neither purchased nor constructed by the assessee. The maintenance of these rooms were also in the hands of the State Government who has been charging the same on annual basis from the assessee. Thus in a sense only the facilities to use those allotted four rooms to the assessee were purchased on a lump-sum payment. It is an established position of law that in a case of ownership against immovable property, the unconditional interest in absolute term with freedom to sell, alienate ect. is transferred by the seller to the purchaser, which is*

admittedly not the case over here. Under these circumstances we are of the view that the Ld. CIT(A) has rightly come to the conclusion that no capital assets have been created to the assessee but only a privilege or a reservation of four rooms were made on permanent basis to the assessee. Therefore, the provisions og guest house at Delhi was in the normal course of business and expenditure incidental to it is of revenue nature. The ld. CIT(A) has rightly observed further that the AO has not appreciated the facts properly that total expenditure of Rs. 40,00,000/- was deferred in five equal instalments and only Rs. 8,00,000/- was debited in A.Y. 2003-04. Thus, the entire addition of Rs. 40,00,000/- need to be deleted and the claim of depreciation allowed by the AO at Rs. 2,00,000/- is also to be added back in the computation of income as per the first appellate order. We concur with the view of Ld. CIT(A) which also finds support from the decisions of Hon'ble Delhi High Court in jthe case of NESET Holdings (P) Ltd. v/s CIT(supra) wherein one time payment was allowed as revenue expenditure where such payment is meant for reducing the overall revenue expenditure of the assessee. The guest house in the present case was required only for running the business and working of the assessee for better inter-action with the Government of India and various financial organizations. The first appellate order being comprehensive and reasons one, we are not inclined to interfere therewith. The same is upheld. The ground No. 2 is thus rejected."

We further note that as per letter dated 24.10.2017 the Government of Rajasthan has allowed the assessee a rebate of 75% of tariff of the room for staying of the employees/officers of the assessee. The Coordinate Bench of this Tribunal in case of Rajasthan Renewal Energy

Corporation Ltd. vs. DCIT vide order dated 18.08.2017 in ITA No. 159& 202/JP/2015 and others while considering an identical issue has held in para 55 as under:-

> *"55. We have heard the rival contentions and pursued the material available on record. It is not disputed that the contribution towards construction of Rajasthan Bhawan has been made as directed and authorized by the State Government, being the owner and shareholder of the assessee company. The question is therefore not about the authorization before incurrence of the said expenditure. The question is whether the said expenditure has been incurred by the assessee company for the purposes of its business or not. The onus is on the assessee company to establish the said fact. The ld AR has submitted that the assessee company has written to the Government of Rajasthan to provide accommodation facilities in the Rajasthan Bhawan to its officers on their visit to Mumbai, however, there is nothing on record to support the said contention. We are accordingly setting aside the matter to the file of the AO to examine the said contention and the examine the matter a fresh. In the result, the ground of the assessee is allowed for statistical purposes."*

Thus, the Tribunal by considering the accommodation facility in the guest house as relevant factor set aside the issue to the record of the AO to examine the accommodation facility available to the assessee in Rajsthan Bhawan at Mumbai.

36. Since this letter dated 24.10.2017 was not available before the Coordinate Bench in case of Rajasthan Renewal Energy Corporation Ltd. (Supra) therefore, the AO was asked to examine the fact. However, in view of the said letter dated 24.10.2017 it is clear that the assessee got the rebate of 75% as well as the right to use the accommodation by its officers/employees visiting at Mumbai. Accordingly, in view of the earlier decision of this Tribunal in assessee's own case as well as in view of the fact that the assessee has received the benefit in the shape of accommodation against the said expenditure for construction of Rajasthan house we hold that the claim of the assessee is an allowable expenditure u/s 37(1) of the Act.

37. Ground No. 2 is regarding disallowance of deduction u/s 80IA of the Act. Ground No. 2 of the assessee's appeal is common to the ground raised by the assessee for the assessment year 2009-10. Accordingly in view of our finding on this issue for the assessment year 2009-10 the same stands allowed.

38. Ground No. 3 is regarding disallowance made u/s 14A of the Act. During the course of assessment proceeding the AO noted that the assessee has earned tax free income during the year under consideration of Rs. 1,81,49,621/- which is comprising of dividend

income from the Rajasthan Venture Capital Fund, income contributed by Rajasthan Venture Capital Fund and dividend income from shares. The Assessing Officer has invoked the provisions of Section 14A r.w.r 8D and made disallowance of Rs. 38,75,046/- . The assessee challenged the action of the AO before the ld. CIT(A) and contended that the profit on sale of shares and securities has been assessed under the head income from profit and gain from business and not under the head capital gain. Therefore, the AO cannot shift from one settled and consistent stand of the department where the shares and equity has been accepted at stock in trade of the assessee. Further, the assessee contended that the asssessee's own funds comprising the reserve and surplus is around Rs. 900/- Crores whereas the investment in stock and shares and equity is only Rs. 66.43 Crores. Even the net profit for the year is Rs. 204.84 Crores which is far more exceeds the value of stock of shares & securities held by the assessee. Thus, it was contended that the assessee's own funds comprising share capital, reserve and surplus is 13.49 times of the investment and hence no disallowance on account of interest expenditure u/s 14A is called for. The ld. CIT(A) deleted the disallowance made by the AO on account of interest expenditure u/s 14A of the Act however, the disallowance on account of administrative

expenditure under Rule 8D(2)(iii) of Rs. 32,23,193/- was confirmed by ld. CIT(A).

39. Before us, ld. AR of the assessee has submitted that when the assessee is holding the shares and securities as stock-in-trade then no disallowance is called for u/s 14A of the Act. The assessee did not received any dividend on the shares which are held as stock in trade and not investment. The Department has accepted the profit of sale of shares/ securities as profit and gain from business in all the years including the year under consideration. Therefore, when the profit arising from the sales of shares/ securities assessed to tax as business income of the assessee then, the provisions of section 14A cannot be invoked for disallowance merely because the assessee has incidental dividend income. He has further contended that even otherwise when the assessee has not incurred any expenditure for earning the dividend income then, no disallowance is called for. The ld. AR has referred to the assessee's own interest free funds which is more than 14 times of the investment of the value of stock and investment. Therefore, the ld. CIT(A) has rightly deleted disallowance on account of interest income. He has relied upon the decision of Hon'ble Karnataka High Court in case of CCI Limited vs. DCIT 206 taxman 563, decision of Hon'ble Punjab

and Haryana High Court in case of PCIT vs State bank of Patiala 391 ITR 218 as well as decision of the Kolkata Benches of the Tribunal in case of DCIT vs. Gulsan Company Ltd. 86 DTR 262.

40. On the other hand, ld. DR has relied upon the order of the Assessing Officer.

41. We have considered the rival submissions as well as relevant material on record. The assessee provides long term finance to the industries by way of loan and equity participation. The shares held by the assessee under the equity participation as well as other securities are stock-in-trade. We have gone through the relevant record of financial statement of the assessee and found that the shares and securities are held as stock in trade. Further, there is no dispute that the assessee's own interest free funds are around Rs. 900 crores in comprisen to the investment/ value of shares and securities at Rs. 66 crores. Therefore, the assessee's own funds are many times more tha investment/ value of shares and securities. The shares and securities are held as stock-in-trade and the profit and loss arising on sale of the shares are taken as business profit or loss. The Assessing Officer as accepted that the nature of income arising from the sale of shares and securities as business income. Therefore, in view of the decision of

Hon'ble Karnataka High Court in case of CCI Ltd. vs. JCIT(Supra) no disallowance is called for u/s 14A as held in para 2 to 5 as under:-

"***2.*** *The substantial question of law that arises for consideration in this appeal is:*

Whether the provisions of Section 14A of the Act are applicable to the expenses incurred by the assessee in the course of its business merely because the assessee is also having dividend income when there was no material brought to show that the assessee had incurred expenditure for earning dividend income which is exempted from taxation?

3. *The learned Counsel for the assessee assailing the impugned order of the authorities contended that the assessee has incurred expenditure for purchasing shares. 63% of the shares so purchased are sold and the income derived therefrom is offered to tax as business income. The remaining 37% of the shares remained unsold. Those shares yielded dividend. The assessee has not incurred any expenditure to earn the said dividend income. Therefore, no expenditure could be attributed to the said dividend income and the said expenditure cannot be disallowed and the assessee is entitled to the benefit of deduction of the entire expenditure incurred in respect of purchase of shares. The authorities have not properly appreciated Section 14A of the Income Tax Act and committed a serious error in passing the impugned order.*

4. *Per contra, the learned Counsel for the revenue pointed out that admittedly when shares retained by the assessee has yielded dividend, when the dividend income is exempted from payment of income tax proportionately, the expenditure incurred in acquiring that dividend also should be excluded from expenditure. In that view of the matter, the orders passed by the authorities are legal and valid.*

5. *When no expenditure is incurred by the assessee in earning the dividend income, no notional expenditure could be deducted from the said income. It is not the case of the assessee retaining any shares so as to have the benefit of dividend. 63% of the shares, which were purchased, are sold and the income derived therefrom is offered to tax as business income. The remaining 37% of the shares are retained. It has remained unsold with the assessee. It is those unsold shares have yielded dividend, for which, the assessee has not incurred any expenditure at all. Though the dividend income is exempted from payment of tax, if any expenditure is incurred in earning the said income, the said expenditure also cannot be deducted. But in this case, when the assessee has not retained shares with the intention of earning dividend income and the dividend income is incidental to his business of sale of shares, which remained unsold by the assessee, it cannot be said that the expenditure incurred in acquiring the shares has to be apportioned to the extent of dividend income and that should be disallowed from deductions. In that view of the matter, the approach of the authorities is not in conformity with the statutory provisions contained under the Act. Therefore, the impugned orders are not sustainable and require to be set aside. Accordingly, we pass the following:*

i) Appeal is allowed.

(ii) Impugned orders are hereby set aside.

(iii) The substantial question of law is answered in favour of the assessee and against the revenue."

A similar view has been taken by the Hon'ble Punjab and Haryana High Court in case of PCIT vs State Bank of Patiala (supra) as held in paras 2 to 5 as under:-

*"**2.** The appeal is admitted on the following substantial question of law:—*

"Whether in the facts and circumstances of the case, the Hon'ble ITAT is right in law in deleting the addition made on account of disallowance under section 14A of the Income Tax Act, 1961?"

The question really is whether the provisions of section 14A of the Income Tax Act (for short – 'the Act') apply where the exempt income such as dividend or interest is earned from securities held by the assessee as its stock-in-trade. The assessee had raised other issues as well. The Tribunal having decided the above question in favour of the assessee did not decide the other issues.

***3.** As we have also decided the question in favour of the assessee, it follows that section 14A is inapplicable altogether. The appeal must, therefore, be dismissed. Had we decided the issue against the assessee, we would have remanded the matter to the Tribunal for its decision on the other aspects, such as, whether the investments and securities yielding exempt income were from interest free funds/assessee's own funds or from interest bearing funds as the Tribunal had not decided the same.*

***4.** The respondent filed a return declaring an income of about Rs.670 crores which was selected for scrutiny. The return showed dividend income exempt under section 10(34) and (35) of about Rs.11.07 crores and net interest income exempt under section 10(15)(iv)(h) of about Rs.1.12 crores. The total exempt income claimed in the return was, therefore, Rs.12,19,78,015/-.*

The assessee while claiming the exemption contended that the investment in shares, bonds, etc. constituted its stock-in-trade; that the investment had not been made only for earning tax free income; that the tax free income was only incidental to the assessee's main business of sale and purchase of securities and, therefore, no expenditure had been incurred for earning such exempt income; the expenditure would have remained the same even if no dividend or interest income had been earned by the assessee from the said securities and that no expenditure on proportionate basis could be allocated against exempt income. The assessee also contended that in any event it had acquired

the securities from its own funds and, therefore, section 14A was not applicable.

5. *The Assessing Officer restricted the disallowance to the amount which was claimed as exempt income and added the same to the assessee's income by applying section 14A. The Assessing Officer accordingly applied rule 8D for determining the expenditure to be disallowed as per section 14A. He computed the exempt income as claimed by the assessee, namely, about Rs. 12.20 crores. The Assessing Officer found the total expenses allocated against exempt income to be Rs. 40.72 crores, but held that the same should not exceed the exempted income and, therefore, he restricted the expenses to the extent of exempt income claimed by the assessee i.e. about Rs.12.20 crores and added the same to the assessee's income."*

Therefore, in view of the decisions of Hon'ble High Courts no disallowance u/s 14A is called for in respect of the shares and securities held as stock in trade.

42. However, the investment made by the assessee through Rajasthan Venture Capital funds cannot be taken as stock in trade and therefore, disallowance on account of indirect common administrative expenses under Rule 8D(2)(iii) has to be worked out by considering the average investment in Rajasthan Venture Capital Fund only. Accordingly, we direct the AO to recomputed the disallowance u/s 14A r.w.r 8D(2)(iii) only in respect of investment through Rajasthan Venture Capital Fund. Hence, the ground of the assessee's appeal is partly allowed and Revenue's appeal is dismissed.

43. For the assessment year 2012-13 assessee has raised the following grounds:-

"1. The Ld. Commissioner of Income Tax (Appeals) has erred on facts and in law in confirming the disallowance of Rs. 53,48,000/- incurred by the assessee on providing traning for developing entrepreneurial skills in pursuance of its object of industrial development debited under the head Corporate social responsibility expenses, by holding that it is an application of income and not incurred wholly and exclusively for the purpose of business.

2. The Ld. Commissioner of Income Tax (Appeals) has erred on facts and in law in confirming the disallowance of claim of deduction u/s 80IA in respect of other income on the ground that the same is not derived from an eligible business.

3. The Ld. Commissioner of Income Tax (Appeals) has erred on facts and in law in confirming addition of Rs. 1,85,60,000/- made by the AO to the value of closing stock by following the decision of his predecessor where it was held that land under litigation or encroachment may have high market value than cost in subsequent years and therefore its value cannot be taken at nil.

4. The Ld. Commissioner of Income Tax (Appeals) has erred on facts and in law in confirming the disallowance of Rs. 17,56,304/- u/s 14A by application of Rule 8D(2)(iii) of the IT Rules. He has further erred in applying Rule 8D(2)(iii) by holding that the word 'investment' used in the Rule would include shares/ securities held as stock in tread.

5. The assessee carves right to add, alter, amend, and modify any of the grounds of appeals.

6. The appropriate cost be awarded to the assessee."

44. For the assessment year 2012-13 the Revenue has raised the following grounds:-

> *"1. Whether on the facts and in circumstances of the case the Ld. CIT (A) was justified in deleting the addition of Rs. 20,00,000/- made by disallowing contribution to State Renewal Fund.*
> *2. Whether on the facts and in circumstances of the case the Ld. CIT (A) was justified in deleting the addition of Rs. 33,85,622/- on account of prior period expenses.*
> *3. Whether on the facts and in circumstances of the case the Ld. CIT (A) was justified in deleting the addition of Rs. 3,00,00,000/- on account of contribution to SDOS.*
> *4. Whether on the facts and in circumstances of the case the Ld. CIT (A) was justified in allowing deduction u/s 80IA(4) on interest income including penal interest income and on other income.*
> *5. Whether on the facts and in circumstances of the case the Ld. CIT (A) was justified in allowing relief to the assessee out of addition made u/s 14A of the Income Tax Act."*

45. Ground no. 2 of the assessee's appeal and ground no. 4 of the department appeal is common regarding the deduction u/s 80IA in respect of other miscellaneous income and interest income including penal interest income is common to the issue involved in the assessment year 2009-10. Accordingly, in view of our finding on this issue for the A.Y. 2009-10 ground no. 2 of the assessee's appeal is allowed whereas ground No. 4 of the revenue's appeal is dismissed.

46. Ground No. 4 of the assessee's appeal and ground No. 5 of the Revenue's appeal is regarding disallowance made u/s 14A partly deleted by the ld CIT(A). This issue is common to the issue raised for the assessment year 2011-12 and in view of our finding on this issue for the assessment year 2011-12 the ground of the assessee appeal is partly allowed and ground of the Revenue's appeal is dismissed.

47. Ground No. 3 of the assessee's appeal is regarding the addition made on account of value of closing stock. This issue is common to the issue raised for the assessment year 2009-10 therefore, in view of our finding on this issue for the A.Y. 2009-10 the same is set aside to the record of the Assessing Officer.

48. Ground No. 1 of the assessee's appeal is regarding the claim of 53,48,000/- under the head Corporate Social Responsibility expenses (CSR). The assessee contended that expenditure is incurred on training at ATDC (Apparel Training & Development Centre) Smart Centre for integrated Skill Development Scheme in respect of textile Industries as well as garment sector so as to generate employment, availability of skilled manpower, generation of new investment etc. It was further contended that it would help in industrial growth of the State and

establishment of new industries in the area developed by the assessee. The AO did not accept this claim of the assessee and held that CSR expenses incurred by the assessee is neither covered under the provisions of section 37(1) of the Income Tax Act nor it can be held as diversion of income by overriding title. Thus, the AO was of the view that the expenditure is not incurred with a view to bring any profits or monetary advantage to the assessee. Accordingly, the Assessing Officer has disallowed the claim of Rs. 53,48,000/- on this account. The ld. CIT(A) has confirmed the disallowance made by the AO and held that it is appropriation of profit and not expenditure incurred wholly and exclusively for the purpose of business.

49. Before us, the ld. AR of the assessee has submitted that the assessee is constituted with the main object of development of industries and entrepreneurs in the State of Rajasthan. In pursuance of these objects the assessee also carries various training and other programs for the development of entrepreneurial skills so there is growth of industries in the state of Rajasthan. The assessee has accordingly incurred expenditure of Rs. 53,48,000/- by providing assistance for 2,674 trainees @ Rs. 2,000/- per trainee to Apparel

Training & Development Centre. The expenditure has been incurred by the assessee for the purpose and object for which the assessee has been established and therefore, such expenditure is allowable business expenditure. In support of his contention he has relied upon the decisions of Hon'ble jurisdiction High Court of CIT vs. Rajasthan Cooperative Dairy Federation Ltd. 229 taxman 34 as well as decision in case of ACIT vs. Rajasthan Spinning & weaving Mills ltd. 274 ITR 463.

50. On the other hand, ld. DR has submitted that the expenditure incurred on Corporate Social Responsibility is not allowable expenditure under the provisions of the Act. Even there is not obligation on the assessee to incur this expenditure for the year under consideration as the provisions of section 135 of the companies Act, 2013 was brought only institute by insertion of Explanation 2 to section 37(1)of the I.T. Act e.w.f 01.04.2015 hence, the same is not applicable for the year under consideration. He has relied upon the orders of the authorities below.

51. We have considered the rival submissions as well as relevant material on record. There is no dispute that the expenditure incurred by the assessee for providing training to the persons through Apparel

Training & Development Centre in the form of assistance of Rs. 2,000/- per trainee is in the category of corporate social responsibility (CSR). The assessee has claimed that it will help the generation of employment and making available skill manpower to the industries which in turn would help in industrial growth of State of Rajasthan. However, we find that the corporate social responsibility provision has been brought in the companies Act 2013 and consequential amendment has been brought to the Income Tax Act u/s 37(1) by way of insertion of explanation w.e.f. 01.04.2015. Thus, when specific provision has been brought into statute for allowing such expenditure w.e.f. 01.04.2015 then prior to the said provisions the deduction in respect of the expenditure incurred under Corporate Social Responsibility is not allowable unless and until the expenditure is incurred wholly and exclusively for the purpose of business of the assessee. The training to the employment seeker may be good gesture on the part of the assessee but in the absence of even a proxy link between the expenditure and business activity of the assessee the said expenditure cannot be allowed u/s 37(1) of the Act prior to 01.04.2015. Raipur Bench of the Tribunal in case of ACIT vs. Jindal Power Ltd. 138DTR 313 has held that the expenditure towards Corporate Social Responsibility referred to section 135 of Companies Act

is not allowable in view of the fact that the explanation 2 to section 37 has been inserted w.e.f. 01.04.2015. Though ld. AR of the assessee has relied upon the various decisions including the decision of Hon'ble jurisdiction High Court however, we find that in those cases the expenditure was incurred by the assesse in connection with the business activity, therefore, there was close nexus between the expenditure and business activity of the assessee. In case of CIT vs. Rajasthan Cooperative Dairy Federation Ltd. (supra) the High Court as held observation in paras 9 to 12 as under:-

> *"9. We have considered the submissions of the ld. officer, appearing on behalf of the appellant-revenue and gone through the impugned order as also the order of the lower authorities.*
>
> *10. In our view, the ITAT as well as CIT(A) have arrived at a finding of fact that the genuineness of the expenses is not doubted by the appellant-revenue and thus, when genuineness of the expenses has not been doubted by the appellant-revenue, then it is a finding of fact. We may further add that the respondent-assessee, as referred to herein above, is an apex body responsible for development of dairy activities in cooperative sector in the State of Rajasthan and the fundamental objectives of the respondent-assessee, as per its bye-laws, are as under:*
>
> *"3.1.To carry out activities for promoting production, procurement, processing and marketing of the milk and milk products for economic development of the animal husbandry/farming community.*

3.2. Development and expansion of such other applied activities as may be conducive for the promotion of the Dairy Industry, improvement and protection of such milch animals and economic betterment of those engaged in milk production.

3.2.(7)advise, guide, assist and control the member milk unions in all respects of management, supervision and audit functions;

3.2.(8) purchase or assist in purchasing raw material, processing material etc; or to collaborate with some one if need arises;

3.2(12) promote the organization of primary societies and assist members in organization of the primary societies;

3.2(13) plan development strategies and programme to increase the volume of production, procurement of federation and its member unions and for effective marketing of the same;

3.2(14) render technical, administrative, financial and other necessary assistance to the member unions and enter into collaboration agreement with some one if the need arises."

11. On perusal of the aforesaid objectives, it is clear that the primary duty of the respondent-assessee is to take into consideration the amount incurred towards the primary level societies from which it is engaged in procurement of milk. The respondent-assessee has incurred the said amount for increasing the procurement of milk and protecting the dairy farmers from the threat of the private milk vendors, launched various schemes from time to time for inducing more and more milk producers to join milk development cooperative societies in furtherance of its fundamental objectives, which, in our opinion, is certainly in the

nature of business expenses. It is also a finding of fact that one of the objectives of the respondent-assessee is to carry out such activities as may be conducive for the promotion of the dairy industry and improvement and protection of milch animals and in pursuance of the said objective, it has to run technical, administrative, financial and other necessary support to the societies. The respondent-assessee collects milk from its member unions i.e. primary dairy cooperative society (DCS) and sells the milk and milk products to the consumers under its brand name "SARAS". For increasing the procurement of milk and protecting the dairy farmers, it has to launch various schemes for inducing more and more milk producers to join the primary dairy co-operative society and for this purpose, it has incurred expenditure and thus, in our view, these expenses are directly related to the business of the respondent-assessee and incurred for commercial expediency. It is also a finding of fact that the respondent-assessee has also charged 'Cess' @1% of the sale value from milk unions for which receipts of Rs.9,12,27,490/- have been offered as income by the assessee and when income has been offered by the respondent-assessee, then the said expenditure is certainly allowable as business expenditure. Furthermore, when such income of Rs.9,12,27,490/- is already offered for taxation then question of adjustment against grant from NDDB does not arise.

12. We have also gone through the judgment relied by the officer of Kerala High Court in Season Rubber Ltd. (supra), however, the said judgment is totally distinguishable and not even remotely applicable to the facts of the instant case."

Thus, it is clear that the expenditure incurred in the said case was towards primary level society member which it is engaged in

procurement of milks and therefore, the purpose of incurring the expenditure was for increasing procurement of milks and protecting the dairy farmers. On the other hand in the case of the assessee there is no nexus between the expenditure and the objects and business activity of the assessee. The expenditure has no direct connection/nexus with the business activity of the assessee then, in the absence of any provisions in the Income Tax Act the same cannot be allowed prior to the insertion of explanation 2 to section 37(1) w.e.f. 01.04.2015. Accordingly, we do not find any error or illegality in the order of the authorities below qua this issue.

52. Ground No. 1 of the Revenue's appeal is regarding deletion of addition made on account of contribution to State Renewal Fund. This issue is common as raised for the assessment year 2009-10 to 2011-12. In view of our finding on this issue for the assessment year 2009-10 to 2011-12 we do not find any error or illegality in the order of the CIT(A) qua this issue.

53. Ground No. 2 of the Revenue's appeal is regarding deletion of addition made on account of prior period expenses. This issue is common as raised for the assessment year 2009-10 to 2011-12. In view

of our finding on this issue for the assessment year 2009-10 to 2011-12 we do not find any error or illegality in the order of the CIT(A) qua this issue.

54. Ground No. 3 of the Revenue's appeal is regarding disallowance on account of contribution to CDOS. This issue is common as raised for the assessment year 2010-11 to 2011-12. In view of our finding on this issue for the assessment year 2010-11 to 2011-12 we do not find any error or illegality in the order of the CIT(A) qua this issue.

55. Ground No. 4 of the Revenue's appeal is regarding deduction u/s 80IA as other income. This issue is common as raised for the assessment year 2009-10 to 2011-12. In view of our finding on this issue for the assessment year 2009-10 to 2011-12 we do not find any error or illegality in the order of the CIT(A) qua this issue.

56. Ground No. 5 of the Revenue's appeal is regarding disallowance made u/s 14A partly deleted by the ld. CIT(A). This issue is common to the issue raised for the assessment year 2011-12. In view of our finding on this issue for the assessment year 2011-12 the ground of the Revenue's appeal is dismissed.

In the result, appeals of the assessee are partly allowed and appeals of the Revenues are dismissed.

Order pronounced in the open court on 23/02/2018

Sd/-	Sd/-
(विक्रम सिंह यादव)	(विजय पाल राव)
(Vikram Singh Yadav)	(Vijay Pal Rao)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 23/02/2018.
*Santosh.
आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Rajasthan State Industrial Development & Investment Corp. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- ACIT/DCIT/JCIT, Circle-6, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 311& 420/JP/2014, 323/JP16, CO 07/JP16 313 & 421/JP/14, 93 & 207/JP/15, 94& 208/JP2015}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar