

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 AND SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA Nos. 380 & 381/JP/2017  
निर्धारण वर्ष/Assessment Years : 2013-14 & 2014-15

M/s Rajasthan State Industrial Development & Investment Corp. Ltd., Udyog Bhawan, Tilak Marg, C-scheme, Jaipur.	बनाम Vs.	ACIT Circle-6, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AABCR 4695 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 511 & 512/JP/2017  
निर्धारण वर्ष/Assessment Year : 2013-14 & 2014-15.

Deputy Commissioner of Income-tax, Circle-6, Jaipur.	बनाम Vs.	M/s Rajasthan State Industrial Development & Investment Corp. Udhyog Bhawan, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AABCR 4695 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 21.03.2018.  
घोषणा की तारीख / Date of Pronouncement : 10/04/2018.

आदेश / ORDER

**PER BENCH:**

These are cross appeals filed by the assessee and the Revenue directed against the respective orders of Ld. CIT (Appeals)-2, Jaipur dated 20.03.2017 pertaining to A.Y. 2013-14 & 2014-15. All these appeals involving common issues were heard together and are being disposed off by this consolidated

order. Firstly, we will take up appeals for A.Y. 2013-14 wherein respective grounds of appeal taken by the assessee and the Revenue are as under:

**Ground of assessee's appeal (ITA No. 380/JP/2017):**

1. *The Ld. Commissioner of Income Tax (Appeals) has erred on facts and in law in confirming the disallowance of Rs. 5 crores made by the AO on account of expenditure incurred in construction of Rajasthan House in Mumbai by holding that it was 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 Rs. 641.42 lakhs of claim of CSR expenses made by the AO by holding that CSR expenditure is an appropriation out of profit and is not incurred wholly and exclusively for the purpose of business.*
3. *The Ld. Commissioner of Income Tax (Appeals) has erred on facts and in law in not allowing the claim of deduction u/s 80IA on other income other than on retention charges, unauthorized construction and transfer charges.*
4. *The Ld. Commissioner of Income Tax (Appeals) has erred on facts and in law in confirming the disallowance of Rs. 71,75,575/- made by the AO by applying Rule 8D(2)(iii) of the Income Tax, Act. He has further erred in adding this amount in computing the book profit u/s 115JB.*
5. *The Ld. Commissioner of Income Tax (Appeals) has erred on facts and in law in confirming the addition of Rs. 1,93,00,000/- made by the AO by holding that assessee has not credited the service tax receivable to that extent in the profit and loss account.*
6. *The Ld. Commissioner of Income Tax (Appeals) has erred on facts and in law in not deciding the ground of appeal of the assessee regarding*

*the reduction of excess provision of IT written back of Rs. 8,10,90,469/- in computing book profit u/s 115JB.*

**Ground of revenue's appeal (ITA No. 511/JP/2017):**

1. *Whether on the facts and circumstances of the case and in law, the Id. 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 circumstances of the case and in law, Id. CIT(A) was justified in deleting addition of Rs. 2,00,00,000/- on account of contribution to CDOS.*
3. *Whether on the facts and circumstances of the case and in law, Id. CIT(A) was justified in deleting the addition of Rs. 36,73,140/- on account of prior period expenses.*
4. *Whether on the facts and circumstances of the case and in law, the Id. CIT(A) was justified in allowing relief to the assessee of Rs. 71,75,575/- on account of addition made u/s 14A of the Income-tax Act.*
5. *Whether on the facts and circumstances of the case and in law, the Id. CIT(A) was justified in allowing deduction u/s 80IA on interest income including penal interest income and on other income.*
6. (a) *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in allowing claim of the assessee of deduction on valuation of stock of land amounting to Rs. 372.56 lacs on the basis that addition has been made in earlier years, despite the fact that the assessee has not accepted the addition on this issue.*
6. (b) *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in allowing claim of the assessee despite the fact that the assessee did not make any such claim in ROI as per Apex*

*court's decision in the case of Goetze (India) Ltd. 284 ITR 323 (SC), the assessee should have filed revised ROI and made claim.*

2. Firstly, we take up the assessee's appeal. The Ground no. 1 of assessee's appeal relates to disallowance of Rs. 5 crores made by the AO on account of expenditure incurred in construction of Rajasthan House in Mumbai.

2.1 Briefly, the facts of the case are that the assessee has debited a sum of Rs. 5 crores under the head 'contribution for construction of Rajasthan Bhawan. The AO observed that the expenditure is not incurred wholly and exclusively in connection with the assessee's business of industrial area development & long terms financing. It is merely an application of income and thus, not allowable u/s 37(1) of the Act. Accordingly the AO made addition of Rs. 5 crores. The Ld. CIT(A) has confirmed the disallowance made by the AO relying on the decision of his predecessor on similar issue in assessee's own case for AY 2011-12.

2.2 During the course of hearing, the Id AR submitted that the contribution so made by the assessee for construction of 'Rajasthan Bhawan' at Mumbai is on the directions of the State Government of Rajasthan, being the owner of the assessee. The building after the construction will be available for use by the officers of the assessee for official work which would result in reduction of cost of lodging and boarding at Mumbai. In fact, the Government of Rajasthan vide letter dated 24.10.2017 have intimated to all the Corporations who have made contributions for the construction of this building to allow them rebate on the room tariff. The assessee is allowed a rebate of 75% of the tariff rate considering the total contribution made by it. Therefore, the observation of

the lower authorities that the expenditure so incurred is not wholly and exclusively for assessee's business is incorrect.

2.3 The Id AR further relied upon the decision of this Bench in assessee's own case for the AY 2011-12 in ITA No. 93/JP/2015 dated 23.02.2018 where after considering the decision of the Tribunal in assessee's own case in AY 2003-04 in respect of contribution made for the construction of guest house at Delhi and the decision of the Tribunal in case of Rajasthan Renewable Energy Corporation Limited where the issue was set aside to the AO to examine the accommodation facility available to the assessee in Rajasthan Bhawan at Mumbai, in light of letter dated 24.10.2017 referred above, held that assessee has received the benefit in shape of accommodation against the expenditure by way of contribution given for construction of Rajasthan House at Mumbai and thus, deleted the disallowance made by the lower authorities by allowing the claim of the assessee u/s 37(1) of the Act. In view of above, the disallowance so confirmed by the Ld. CIT(A) be directed to be deleted.

2.4 On the other hand, Ld. D/R has relied upon the orders of the authorities below and at the same time, fairly submitted that the matter is covered in favour of the assessee by the earlier order of the Tribunal.

2.5 We have heard the rival contentions, and perused the material available on record. We find that the issue is covered in favour of the assessee by the recent decision of this Bench in assessee's own case for AY 2011-12 (*in ITA no. 93/JP/2015 dated 23.02.2018*) and the relevant findings therein are reproduced as under:

*"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 of guest house at Delhi was in the normal course of business and expenditure incidental to it is of revenue nature. The Id. 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 Id 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 Rajasthan 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.”*

2.6 Undisputedly, there are no changes in the facts and circumstances of the case. Following our earlier decision referred supra in assessee's own case for AY 2011-12, the ground no.1 of assessee's appeal is allowed.

3. In ground no. 2, the assessee company has challenged the action of Id CIT(A) in confirming the disallowance of Rs. 641.42 lakhs of claim of CSR expenses made by the AO by holding that CSR expenditure is an appropriation out of profit and is not incurred wholly and exclusively for the purpose of business.

3.1 Briefly, the facts of the case are that the assessee has claimed expenditure of Rs.641.42 lakhs under the head Corporate Social Responsibility expenses (CSR). In its letter dated 02.12.2014, it was explained by the assessee that this expenditure is incurred on training at ATDC (Apparel Training & Development Centre) and RSLDC(Rajasthan Skill Livelihood Development Corporation)for development of industries and providing training and other facilities to entrepreneurs. The details of these expenditure is as under:

- Dainik Bhaskar Corporation Limited Rs. 10 lakhs
- Rajasthan Skill Livelihood Development Corporation Rs. 500 lakhs
- Apparel Training Design Centre (Churu) Rs.131.42 lakhs

3.2 The AO however, observed that the incurring of CSR expenses is neither covered under the provisions of section 37(1) of the IT Act being laid out or expended wholly and exclusively for the purpose of business nor it can be held as diversion of income by over-riding title. The expenditure incurred is not with a view to bring any profits or monetary advantage to the assessee company. It is merely an application of income. Accordingly, he made disallowance of Rs.641.42 lakhs. He also relied on certain cases referred in the assessment order. The Ld. CIT(A) relied on the decision of his predecessor in assessee's own case for AY 2012-13 and confirmed the disallowance.

3.3 During the course of hearing, the Id AR submitted that the assessee is constituted with the main object of development of industries and entrepreneurs in the State of Rajasthan. Accordingly the assessee develops industrial area and infrastructure for the development of industries in

Rajasthan. In pursuance to these objects, assessee also carries out various training and other programs for the development of entrepreneurial skills so that there is growth of industries in the state of Rajasthan.

3.4 It was submitted that in pursuance of the above objects, the assessee during the year has incurred expenditure of Rs.131.42 lakhs by providing assistance to Apparel Training & Development Centre (ATDC) for the training provided by it at 6 Smart Centres at Jaipur, Bhilwara, Chittorgarh, Jodhpur&Hanumangarh in the field of textile. It also provided contribution to Rajasthan Skill Livelihood Development Corporation of Rs. 500 lakhs which is engaged in providing vocational training to various persons so that their skills are developed and they are self-employed as per the direction of the Government. This apart, Rs. 10 lakhs was paid to Dainik Bhaskar Corporation Limited towards other welfare activities.

3.5 It was further submitted that by incurring such expenditure, assessee has the ease of doing the business in as much as at each and every stage assessee requires the patronage and cooperation of the State Government for acquiring the land, developing the same and in achieving the industrial growth in the State of Rajasthan which helps in generating profit to it. In case of Hindustan Petroleum Corporation Ltd. Vs. DCIT 96 ITD 186 (Mum.) where the assessee was a company owned by the Government of India and working under the control and direction of the Government of India, incurred expenditure on 20 point programmes in view of specific direction of Government of India, it was held that it cannot but be in the business interest of the assessee company to abide by the directions of the government of India which also owns the assessee company. Monies spent by the assessee as a good corporate citizen and to earn the goodwill of the society help

creating an atmosphere in which the business can succeed in a greater measure with the help of such goodwill. The monies so spent, therefore, are required to be treated as business expenditure eligible for deduction u/s 37(1). Even if an expense is incurred voluntarily, it may still be construed as 'wholly and exclusively'. Just because the expenses are voluntary in nature and are not forced on the assessee by a statutory obligation, these expenses cannot cease to be business expenditure. The Hon'ble Rajasthan High Court in case of CIT vs. Rajasthan Spinning & Weaving Mills Ltd. 147 Taxman 131 has even held that contribution of bus to school where children of company's employees were receiving education is an expenditure allowable u/s 37(1). Thus, the expenditure so incurred is wholly and exclusively for the purpose of business and allowable u/s 37(1) of the Act. It is not a case of application of income but a case of incurring the expenditure for the purpose and object for which the assessee has established and therefore, such expenditure is allowable business expenditure.

3.6 It was further submitted that the Hon'ble High Court of Rajasthan in the recent decision dated 13.12.2017 in DBIT No. 146/2016 in case of RSMM Ltd. vs. ACIT where assessee made contribution of Rs. 50 lakhs for computerization of mines department of the Government of Rajasthan, after considering the decision of the Hon'ble Supreme Court in case of S.A. Builders and the decision of Hon'ble Rajasthan High Court in case of RSWM 272 ITR 487, Hindustan Zinc Limited in 322 ITR 478 and various other High Courts in Para 14 of the order, allowed the claim of the assessee.

3.7 It was further submitted that the cases relied by the AO are distinguishable on facts. In 284 ITR 69, the donation given to a charitable trust for rehabilitation of earthquake victims was held as not incurred for the

purpose of the business. Similarly, expenditure incurred for running training camps for budding cricketers was held as not incurred for the purpose of business in 2011-TION-250-ITAT-Madras. In 242 ITR 458, articles given to the members of the association was held as not allowable as it amounted to distribution of profits amongst members. In 123 ITD 67, grants given by assessee was not allowed as it was found that the same was not incurred wholly & exclusively for the purpose of business. As against this, in the present case the expenditure is incurred wholly & exclusively for the purpose of business as the amount spent for imparting training to the youth & women in the field of textile industry and for developing the vocational skills to generate self-employment is directly related to the object of the assessee for developing the entrepreneurial skills facilitating the growth of industries in the state of Rajasthan.

3.8 It was further submitted that the lower authorities have considered such expenditure towards Corporate Social Responsibility to make the disallowance. The disallowance of CSR expenses as referred in Section 135 of the Companies Act, 2013 was brought into statute by way of insertion of explanation to Section 37(1) w.e.f. 01.04.2015. Hence, the same is not applicable for the year under consideration. Though the expenditure incurred by the assessee is towards its object of industrial development but even if it is held as a CSR expenditure, the same is not disallowable in the year under consideration. In this connection reliance was placed on the following cases:

- ACIT Vs. Jindal Power Ltd. (2016) 138 DTR 313 (Raipur) (Trib.)
- ACIT vs. Sterlite Industries (India) Ltd.(2017) 56 ITR (Trib) 0377 (Chennai)
- DCIT vs.RegenPowertech (P) Ltd.(2016) 161 ITD 0043 (Chennai)
- NMDC LTD. vs. JCIT(2015) 43 CCH 0491 / 68 SOT 0199 (Hyd) (Trib)

- CIT & ANR vs. Infosys Technologies Ltd.(2014) 360 ITR 0714 (Kar)
- CIT Vs. Madras Refineries Ltd., (2004) 266 ITR 170 (Madras)
- CIT &Anr.Vs. Karnataka Financial Corporation (2010) 326 ITR 355 (Kar)

3.9 It was further submitted that the Tribunal in assessee's own case for AY 2012-13 in its order dated 23.02.2018 with reference to expenditure incurred for providing training through apparel training and development centre held that when CSR expenditure is not allowable with effect from 01.04.2015, then prior to the said provision expenditure incurred under CSR is not allowable unless and until the expenditure is incurred wholly and exclusively for the purpose of business. Thereafter, it was held that training to the employment seeker may be a good gesture on part of the assessee but in the absence of even a proxy link between the expenditure and the business activity of the assessee, the said expenditure cannot be allowed u/s 37(1) prior to 01.04.2015. However, in holding so, the decisions of various High Courts including the Rajasthan High Court in case of RSMM Limited was not taken into consideration. In these cases, even the contribution given towards installation of traffic signal; to Rajiv Gandhi Relief and National Welfare Trust with an intention to give relief to the people who are affected by Tsunami; for construction of schools; development of model villages; contribution to mining department towards computerisation; etc. which has no direct link to the business of the assessee has been allowed on the ground that these contribution would help in promoting the business of the assessee. In view of above, it is requested that the issue be decided by considering the above judgments and the disallowance confirmed by the Ld. CIT(A) be deleted.

3.10 On the other hand, Ld. D/R has relied upon the orders of the authorities below and submitted that the issue is covered against the assessee by the earlier order of the Tribunal.

3.11 We have heard the rival contentions, and perused the material available on record. We find that an identical issue has come up before this Bench in assessee's own case for AY 2012-13 (*ITA No. 94/JP/2015 dated 23.02.2018*) wherein we have observed as under:

*"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 Id. 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 assessee 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 Id. 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 NDDDB 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."*

3.12 We have also gone through the judgement of the Hon'ble Rajasthan High Court in case of RSMM Limited (supra) which has been rendered in the peculiar facts of that case and thus distinguishable. Following our aforesaid order for AY 2012-13 where we have already considered the Jurisdictional and other High Court decisions, the expenditure on apparel training and design centre amounting to Rs 131.42 is held not allowable under section 37(1) of the Act in absence of any nexus between the expenditure and the objects and business activity of the assessee. Similarly, in case of expenditure towards payment to Dainik Bhaskar Corporation amounting to Rs 10 lacs, there is nothing which is brought on record to establish nexus between the expenditure and the objects and business activity of the assessee.

3.13 In respect of expenditure of Rs 5 crores paid to Rajasthan Skill Livelihood Development Corporation, the Id AR has drawn our attention to assessee's Board of Directors resolution no. 35 passed at its meeting held on 9.3.2012 and submitted that in the said meeting, it was resolved by the Board of Directors to contribute adequate funds for training of members of the families whose land has been acquired by RIICO. It was contended by the Id AR that the said expenditure has a direct nexus with the objectives and activities of the assessee company as in cases where the land is acquired by RIICO, it is incumbent on the assessee company to compensate these farmers and also provide them avenues/opportunities for alternate employment and for that purposes, training programmes have been developed by the Rajasthan Skill Livelihood Development Corporation to whom the assessee company has contributed Rs 5 crores during the year after due approval from

its Board of Directors. We find force in the arguments of the Id AR that where the land is acquired by RIICO and where training is provided, to the members of the families whose land has been acquired, by way of skill upgradation to help them gain alternate employment, the expenditure incurred has a direct nexus with the business of the assessee company and the same is held allowable under section 37(1) of the Act. In the result, the ground of appeal is partly allowed.

4. In ground No.3, the assessee has challenged the action of Id CIT(A) in not allowing the claim of deduction u/s 80IA on other income other than on retention charges, unauthorised construction and transfer charges. In Revenue's ground No. 5, the Revenue has challenged the action of the Id CIT(A) in allowing deduction u/s 80IA on interest income including penal interest income and on other income.

4.1 Briefly, the facts of the case that the Central Government has notified 72 Industrial Parks/SEZ units which have been developed and operated by the assessee. Out of these 72 Industrial parks/SEZ units, assessee has claimed deduction u/s 80IA of Rs.50,52,83,240/- in respect of 37 units only as per the details given by the AO at Para 8.1 of the order. For the remaining units no deduction u/s 80IA has been claimed as either the business has not commenced or there were losses in the operation. The AO disallowed the deduction in respect of interest/penal interest income and other income totalling to Rs. 15,33,95,189/- on the ground that the same is not derived from eligible business of assessee. For this, he relied on decision of the Hon'ble Supreme Court in case of Liberty India vs. CIT 317 ITR 218. The Id. CIT(A) after relying on the decision of his predecessor in assessee's own case in AY 2012-13, held that the interest income and penal interest (Rs. 15,06,44,458/-) is from the business of eligible industrial undertaking for

which deduction u/s 80IA is allowable. In respect of other income (Rs. 27,50,731/-), he directed the AO to verify these expenses and allow deduction after verification, if due.

4.2 At the outset, it is submitted that the Hon'ble ITAT in assessee's own case for AY 2009-10 at pages 22-38 of the order dated 23.02.2018 with reference to the interest income including penal interest and other interest, and miscellaneous other income after considering the decisions in case of CIT vs. Suzlon Energy Limited (Guj.) and CIT vs. Meghalaya Steel Limited (SC) has held that the interest and penal interest received from the debtor due to late payment is part of profit of the industrial undertaking eligible for deduction u/s 80IA. Further, with respect to other miscellaneous income it is held that the same cannot be separated from the business activity of developing, maintaining and operating industrial parks/SEZ units. They are a part of the main activity and cannot be held as an 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 would be included in the profit of the undertaking eligible for deduction u/s 80IA. Thus, this issue is decided in favour of the assessee in AY 2009-10 to AY 2012-13 by the aforesaid order.

4.3 The nature of interest and penal interest income and other income is explained as under:-

a) Interest and Penal Interest

The assessee allots the Industrial land either on down payment basis or on instalment basis. When the plots are allotted on instalment basis, the price charged is inclusive of the interest component and therefore in books of accounts the instalment amount is recorded in

two parts, one towards the value of land (development charges) and another towards interest charge. A sample copy of the lease agreement where the land is allotted on instalment basis is at PB 56-60. Further, when the instalment payment of the plots so allotted is not received in the time provided, penal interest is charged from the debtors for the period of delay. Similarly, when the service charges/economic rent/other charges is not paid by the debtors timely, interest is charged from them for the delayed payment.

b) Other Income

It comprises of various other charges recovered from the Industrial units for development, upkeep and maintenance of industrial area like charges for site plan, lease agreement form, etc. which are non-recurring in nature.

4.4 It may be noted that deduction u/s 80IA is available on the profit & gains derived by an undertaking from the eligible business. The word 'derived' has been explained by Hon'ble Supreme Court in the case of Liberty India Ltd. Vs CIT 317 ITR 218. In this case it was held that *the connotation of the word 'derived from' is narrower as compared to words 'attributable to'. By using the expression 'derived from', Parliament intended to cover the sources not beyond the first degree.* Accordingly it held that DEPB/duty drawback are incentives which flow from the schemes framed by the Central Government, and incentive profits are not the profits derived from the eligible business u/s 801B. In the present case the interest/penal interest and other income is not an incentive received from a third party but is directly related to the activity of developing and operating the Industrial park/SEZ units and therefore such income has a first degree source to the eligible Industrial unit. In this

backdrop, the example given by the AO in the assessment order is misplaced in as much as such income is not received from the ineligible business activity of the assessee but from the eligible business activity of the assessee only. Therefore interest/penal interest and other income is entitled for deduction u/s 80IA (4)(iii).

4.5 The Hon'ble Supreme Court in case of CIT vs. Meghalaya Steels Ltd. 383 ITR 217 after considering the decision of Liberty India and after approving the decision of Hon'ble Calcutta High Court in Marino Ply and Chemicals Ltd. vs. CIT 209 ITR 508 held that transport subsidies were inseparably connected with the business carried on by the assessee and thus, income derived from the business eligible for deduction u/s 80IB. Thus, in view of the ratio laid down by the Hon'ble Supreme Court in this case, the decision of Liberty India is not applicable.

4.6 It was further submitted that the various High courts have held that interest received from the debtors is nothing but only a part of the sale consideration eligible for deduction u/s 80IA. Some of these decisions are as under:

- Nirma Industries Ltd. vs. DCIT 283 ITR 402 (Guj)
- Phatela Cotgin Industries (P) Ltd. vs. CIT 303 ITR 411 (P&H)
- CIT v. Indo Matsushita Carbon Co. Ltd. 286 ITR 201 (Mad)
- CIT vs. Suzlon Energy Ltd. 354 ITR 630 (Guj.)
- Tata Sponge Iron Ltd. v. Commissioner of Income-tax 292 ITR 175 (Ori)

4.7 The AO has not allowed the claim of deduction u/s 80IA on other income. The other income is mainly in respect of the site plan charges, lease

agreement form, road cutting charges, penalty recovered from contractor etc. It may be noted that assessee vide its letter available at APB 41-51 has given a detailed explanation in respect of the nature of the various incomes credited in respect of the units on which deduction u/s 80IA has been claimed. The AO, after considering the nature of receipt, at Para 8.4 of his order, held that assessee is eligible for deduction u/s 80IA on all other receipt except interest/penal interest and other income. Thus, the AO accepted that income on account of retention charges, transfer charges, regularisation charges and restoration charges are income derived from the development and operation of Industrial park/SEZ unit.

4.8 Further, other miscellaneous income which comprises of site plan charges, lease agreement form, road cutting charges, penalty recovered from contractor etc., are directly linked with the activity of the developing, maintaining and operating of Industrial park and therefore, on these receipts also deduction u/s 80IA is allowable to the assessee. Reliance in this connection is placed in case of ITO Vs. Hiranandani Builders (2015) 128 DTR 97 (Mum.) (Trib.) wherein it was held that interest received from the lessees for the delayed payment of lease rent, tender fees received by the assessee on sale of tender forms, interest received on FDR, interest received on refund of TDS qualifies for deduction u/s 80IA. Therefore, other miscellaneous income comprising of site plan charges, lease agreement form, road cutting charges, penalty recovered from contractor etc. are eligible for deduction u/s 80IA. This has been accepted by Hon'ble ITAT in assessee's own case (supra) and therefore, the Ld. CIT(A) is not correct in not allowing the deduction u/s 80IA in respect of such other income.

4.9 In view of above, the AO be directed to allow the claim of deduction u/s 80IA on that part of other income also which is not allowed by CIT(A) and accordingly, the ground of the assessee be allowed by dismissing the ground of the department.

4.10 On the other hand, Ld. D/R has relied upon the orders of the authorities below. At the same time, he fairly submitted that the matter is covered in favour of the assessee by the earlier decision of the Tribunal.

4.11 We have heard the rival contentions, and perused the material available on record. We find that an identical issue has come up before this Bench in assessee's own case for AY 2009-10 in ITA No. 311/JP/2014 (*ITA No. 311/JP/2014 dated 23.02.2018*) wherein we have observed and held as under:

*"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. Bandhyopadhyay 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 out 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.”*

4.12 Undisputedly, there are no changes in the facts and circumstances of the case. Following our earlier decision referred supra in assessee's own case for AY 2009-10, the ground of assessee's appeal is allowed and ground of revenue's appeal is dismissed.

5. In assessee's ground No. 4, it has challenged the confirmation of disallowance of Rs.71,75,575/- made by the AO by applying Rule 8D(2)(iii) of the Income Tax Act. The assessee has further challenged the addition of this amount in computing the book profit u/s 115JB. In Revenue's ground no. 4, Revenue has challenged the action of the Id CIT(A) in allowing relief to the assessee of Rs. 71,75,575/-on account of addition made u/s 14A of the Income Tax Act.

5.1 Briefly, the facts of the case are that during the course of assessment proceedings, the AO observed that the assessee has received tax-free dividend income of Rs.2,32,25,630/- from shares and from investment in Rajasthan venture capital fund and the assessee has not disallowed any expenditure u/s 14A against the above exempt income. The AO issued a show cause notice as to why disallowance u/s 14A r.w. rule 8D of the IT Rules should not be made. The assessee filed its reply dated 18.11.2015 where it

was submitted that the shares on which dividend income has been earned is stock-in-trade of the assessee and Rule 8D(2)(ii) and (iii) is applicable only in a situation in which shares are held as investment and thus, disallowance cannot be made. The AO, however, observed that the equity & shares shown by assessee as stock, is infact long term investment for which he referred to note no.3. He further held that assessee holds equity shares of only 45 companies and therefore, assessee is an investor in shares & securities and not a dealer. He thereafter by referring to the decision of the Supreme Court in CIT Vs. United General Trust 200 ITR 488, proceeded to compute the disallowance as per Rule 8D(2)(iii) at Rs.71,75,575/- as per the working given at pages 30-31 of the assessment order. On appeal, the Ld. CIT(A), relying on the decision of his predecessor in assessee's own case for AY 2012-13, upheld the disallowance of Rs. 71,75,575/- made under Rule 8D(2)(iii). He further held that such disallowance shall have consequential effect on the computation of book profit as per the provisions of Section 115JB.

5.2 The Id AR submitted that the shares on which assessee has earned dividend is stock in trade of assessee and not investment. This has been accepted by the Department in all earlier years where profit on sale of shares/securities has been assessed by it under the head 'Profits and Gains from Business' and not under the head 'Capital Gain'. Even during the year income from sale of shares/securities of Rs.3.67 lakhs is assessed as business income and not under the head 'Capital Gain'. Therefore, the AO cannot shift his stand to unsettle the consistent stand of the department where shares and securities has been accepted as stock in trade of the assessee. Further, the share capital and reserves and surplus of the assessee as on 31.03.2013 is Rs. 1,325.98 crores against which the stock of shares and securities is Rs.146.03

crores only. Even the net profit for the year is Rs. 169.74 crores which exceeds the value of stock and securities held by the assessee.

5.3 It was further submitted that Section 14A applies where assessee has incurred any expenditure in relation to income which does not form part of total income. Section 14A(2) empowers the AO to determine the expenditure in relation to such exempt income as per rule 8D if he is not satisfied with the correctness of the claim of the assessee that no expenditure has been incurred or expenditure incurred is lower than what is computable as per Rule 8D. Rule 8D(2)(ii) and (iii) is applicable only in a situation in which shares are held as investment. This rule has no application when shares are held as stock in trade. This is for the reason that one of the variable on the basis of which disallowance under rule 8D(2)(ii) & (iii) is to be computed is the value of *"investments, income for which does not or shall not form part of total income"* and, when there are no such investment, the rule cannot have any application. Thus when the computation provision under rule 8D(2)(ii) & (iii) fails, the disallowance under the said provision cannot be made as the said provision is rendered unworkable. For this, reliance is placed on following decisions:

- PCIT Vs. State Bank Of Patiala (2017) 391 ITR 218 (P&H)
- CCI Ltd. Vs DCIT (2012) 206 Taxmann 563 (Kar):
- DCIT Vs. Gulshan Investment Company Ltd. (2013) 86 DTR 262 (Kol-Trib)

In view of above, the disallowance of Rs.71,75,575/- made by AO under Rule 8D(2)(iii) is incorrect and against the provisions of the Act.

5.4 It was further submitted that this issue has been considered by the Hon'ble ITAT in assessee's own case for AY 2011-12 vide order dated

23.02.2018 where after considering the fact that assessee own funds are many times more than the stock of shares and securities and considering the decision of Karnataka High Court in CCI Ltd. vs. JCIT and Punjab & Haryana High Court in case of PCIT vs. State Bank of Patiala, it was held that no disallowance u/s 14A is called for in respect of shares and securities held as stock in trade. However, at Para 42 at page 57, in respect of investment made by the assessee through Rajasthan Venture Capital Funds (RVCF) it is held that same cannot be taken as stock in trade and therefore, it is directed that disallowance under Rule 8D(2)(iii) be worked out by considering the average investment in Rajasthan Venture Capital Fund only. However, it is submitted that during the year, assessee received taxable income of Rs. 15.55 lakhs from RVCF on which tax has been paid and exempt income by way of dividend is of Rs. 1.59 lakhs. The average investment in RVCF Fund is Rs.1,735.61 lakhs  $(2017.13+1454.09/2)$  and  $\frac{1}{2}$  percent of such investment would be 8.67 lakhs which would be more than the dividend income of Rs. 1.59 lakhs received from RCVF Fund. Hence, the AO be directed to only disallow that part of expenditure which is incurred for earning the dividend income from RCVF which in no case can exceed Rs. 1.59 lakhs.

5.5 It was further submitted that the Hon'ble Supreme Court in case of Maxopp Investment Limited vs. CIT vide order dated 12.02.2018 (101 CCH 92) has held that the dominant purpose for which the investment into shares is made may not be relevant and therefore, Section 14A would apply in relation to the dividend income exempt u/s 10(34) whether the shares are held as investment for gaining the controlling interest or as stock in trade. However, considering the decision of Punjab & Haryana High Court in State Bank of Patiala where it is found that no expenditure was incurred in earning the dividend income, the appeal filed by the revenue was dismissed as per the

finding given at Para 40 of the order. In the present case also, the assessee has not incurred any expenditure for earning the dividend income and therefore, in view of decision of Punjab & Haryana High Court in case of State Bank of Patiala, no disallowance u/s 14A can be made.

5.6 Regarding addition of such disallowance in computing the book profit u/s 115JB is concerned, it was further submitted that in computing book profit u/s 115JB, only those amounts which are referred in clauses (a) to (i) of Explanation 1 to the Section can be added. None of these clauses specify that the amount disallowed u/s 14A is to be added back while computing the book profit under MAT. Clause (f) states that adjustment required are only with reference to such income which falls u/s 10 or 11 or 12. This clause does not refer to Section 14A. Therefore, the book profit u/s 115JB cannot be increased by the disallowance made u/s 14A. Reliance is placed on the decision of Special Bench of Hon'ble Delhi Tribunal in case of ACIT Vs. Vireet Investment Pvt. Ltd. (2017) 58 ITR 313 where it was held as under:

*"Computation under clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to the computation as contemplated u/s 14A read with Rule 8D of the Income-tax Rules, 1962. Therefore, disallowance under section 14A read with Rule 8D could not be added while computing book profits as per section 115JB as Explanation to that section did not specifically mentions section 14A of the Income Tax Act, 1961".*

5.7 In view of the above, it was submitted that the AO be directed to delete the adjustment of Rs. 71,75,575/- made u/s 14A while computing the book profit u/s 115JB.

5.8 The Id DR was heard who has relied on the order of the lower authorities and submitted that in view of the recent decision of the Hon'ble Supreme court in case of Maxopp Investments, the contention of the Id AR no more hold good that the shares are held as stock-in-trade and provisions of section 14A are not applicable and in view of the same, even though the said contention was accepted by the Tribunal in the earlier years, given the latest Supreme Court decision, there is no infirmity in disallowance made by the AO and confirmed by the Id CIT(A) for the year under consideration.

5.9 We have heard the rival contentions as well as perused the material available on record. We find that an identical issue has been decided by this Bench in assessee's own case for AY 2011-12 (*in ITA No. 93/JP/2015 dated 23.02.2018*) where we have observed and held as under:-

*"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 recompute 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."*

5.10 We have heard the rival contentions and pursued the material available on record. We find that subsequent to our decision in assessee's own case referred supra for AY 2011-12, the Hon'ble Supreme Court in case of Maxopp Investment limited (supra) has held that section 14A would apply equally in respect of shares held as investment in order to retain controlling interest in a company or the dominant purposes was to hold these shares as stock-in-trade. It was held that where by virtue of section 10(34), dividend income is not to be included in the total income and is exempt from tax, it triggers the applicability of section 14A of the Act which is based on the theory of apportionment of expenditure between taxable and non-taxable income. Respectfully following the decision of the Hon'ble Supreme Court, the arguments of the assessee regarding non-applicability of section 14A for shares held as stock-in-trade therefore cannot be accepted for the year under consideration. Further, our earlier decision continues to hold good and there is no change in applicability of section 14A so far as investment in Rajasthan Venture Capital Fund is concerned. We hereby confirm the disallowance made by the AO u/s 14A r.w.r 8D(2)(iii).

5.11 In respect of disallowance so made under section 14A and whether the same is to be considered for the purposes of computing the book profits u/s 115JB is concerned, following the Special Bench decision in case of Vireet

Investments (supra), the AO is directed to delete the adjustment so computed u/s 14A while computing the book profit u/s 115JB.

5.12 So far as Revenue's ground of appeal is concerned, the same doesn't arise for consideration from the order of the Id CIT(A) and the ground is thus dismissed.

5.13 The ground of assessee's appeal and ground of Revenue are thus dismissed.

6. In assessee's Ground No. 5, it has challenged the confirmation of addition of Rs.1,93,00,000/- made by the AO by holding that assessee has not credited the service tax receivable to that extent in the profit and loss account.

6.1 During the course of assessment proceedings, the AO observed that Para 1(b) of the audit report states that "the Corporation is not following accrual system of accounting in respect of service tax. Amount of service tax net of recovery is being treated as expenses and charged to profit & loss account instead of treating it as recoverable from allottees. During the year Rs.193 lakhs has been charged to profit & loss account which is recoverable from allottees, resulting in understatement of profit by Rs.193 lakhs". The AO thereafter observed that it is admitted that service tax is a statutory liability and allowable subject to the provisions of section 43B of the Act. It was held by the AO that "he is not challenging why the expense has been debited to profit/loss account. The issue involved is that the Corporation has to pay service tax for the services provided and the said tax is recoverable from the user of service. Thus, the Corporation became entitled for collecting service tax from th user. It realised service tax or not is different issue. Since it is

following mercantile system of accounting, it should have credited service tax receivable in profit and loss account which was not done which has been pointed out in audit observation in its annual report. Hence, the reply is not acceptable". He therefore, made the addition of Rs 193 lakhs. The Ld. CIT(A) confirmed the addition made by the AO with the direction to examine that if any amount is offered as income in subsequent years, credit for the same be given.

6.2 It was submitted by the Id AR that from FY 2011-12, service tax is payable by service provider on accrual basis irrespective of its realisation from service recipient. The assessee is accounting for income from service charges on cash basis but service tax on such charges is payable by it on accrual basis. Accordingly, during the year, it paid service tax of Rs.193 lakhs after considering the amount realised by it. Since the actual payment of service tax has been made by the Corporation to service tax department, the same is allowable as deduction u/s 43B/37(1) of the Act as such payment is a statutory liability and the liability to pay such amount arises, the moment the services are provided irrespective of whether it is realised from the service recipient or not.

6.3 The Hon'ble Supreme Court in case of CIT vs. Modipon Ltd. (2018) 400 ITR 1 vide its order dated 24.11.2017 has held that advance deposit of central excise duty notwithstanding fact that adjustments from such deposit were made on subsequent clearances/removal effected from time to time, constituted actual payment of duty within meaning of section 43B of Central Excise Act. Therefore, assessee was entitled to benefit of deduction of said amount. The principle laid down by the Supreme Court equally applies to

Service tax and therefore, service tax of Rs. 193 lakhs paid by the assessee is allowable u/s 43B.

6.4 It was further submitted that in subsequent years as and when the service tax amount is realised, the same is offered for tax in income by way of debt recovered. The Ld. CIT(A) has directed the AO to give credit of the amount offered in the subsequent years after examination but the issue in the present case is that when the statutory liability has crystallised and paid by the assessee, the same has to be allowed in the year of payment u/s 43B irrespective of when it is recovered and offered for tax. In view of above, the addition confirmed by the Ld. CIT(A) be deleted.

6.5 We have heard the rival contentions and perused the material available on record. We find that the AO has not disputed that the service tax is a statutory liability and the same is allowable subject to provisions of section 43B of the Act. The issue which the AO has disputed is that the assessee which is otherwise following accrual basis of accounting is not following the accrual basis of accounting in respect of service tax. As per AO, where the assessee has rendered services during the year which are exigible for service tax, the assessee becomes entitled to collect service tax from the service recipients and it should thus account for such service tax and credit service tax receivable in profit/loss account. The case of the assessee is that it accounts for service charges on cash basis and on same basis, it accounts for payment of service tax (net of recoveries) on accrual basis which is charged and claimed in the profit/loss account. We find that the AO has not challenged the accounting of service charges on cash basis but at the same time, has challenged the payment of service tax on such service charges on accrual basis. And at the same time, we find that the assessee is accounting for

service charges on cash basis but at the same time, is following the payment of service tax on such service charges on accrual basis. Thus, both the Revenue and the assessee are trying to canvas a case of hybrid system of accounting as far as one of the streams of revenues i.e, service charges and consequent levy of service tax is concerned as against accrual system of accounting followed generally in respect of other streams of revenues. And secondly, within such hybrid system of accounting, services charges are accounted for on cash basis and payment of service tax on accrual basis. The real question is whether the same is permissible under the scheme of section 145 of the Act. We don't find any material or contentions raised by either of the parties in context of the said issue. To our mind, the said issue need detailed examination and in absence of any material on record, we deem it fit to set aside the same to the file of the Id CIT(A) to examine the same afresh. Since we have set-aside the matter, we have not examined the applicability of the Hon'ble Supreme Court ruling in case of Modipon (supra) and the assessee shall be at liberty if so advised to raise its applicability as part of its contentions before the Id CIT(A) and the latter shall determine whether the ratio of the said decision can be applied in the instant case or not. In the result, the ground no. 5 of the assessee's appeal is allowed for statistical purposes.

7. In assessee's Ground No. 6, it has challenged the action of the Id CIT(A) in not deciding the ground of appeal regarding the reduction of excess provision of IT written back of Rs.8,10,90,469/- in computing the book profit u/s/115JB.

7.1 The assessee in computing the book profit u/s 115JB has reduced excess provision written back of Rs. 8,10,90,469/-. The AO observed that the

assessee has wrongly debited excess provision written back from the book profit and therefore, the AO added the same while computing the book profits.

7.2 It was submitted by the Id AR that the excess provision written back represents Rs. 7,389/- on account of excess provision of wealth tax written back and Rs. 8,10,83,080/- on account of excess provision of income tax written back. The provision made for wealth tax / income tax is added while computing the book profit and therefore, excess provision written back is also required to be reduced while computing the book profit. Therefore, the AO be directed to delete the addition of Rs. 8,10,90,469/- made to the book profit u/s 115JB. Given that the nature of provision is not emerging from the assessment order and the appellate order, we are setting aside the matter to the file of the Id CIT(A) to examine the same afresh after bringing on record the nature of provision and treatment thereof in the books of accounts and computation thereof while determining the book profits u/s 115JB of the Act. The ground no. 6 of the assessee's appeal is allowed for statistical purposes.

8. Now, coming to Revenue's Ground No.1 where it has challenged the action of the Id CIT(A) in deleting the addition of Rs.20,00,000/- made by the AO by disallowing contribution to State Renewal Fund.

8.1 The AO observed that the assessee debited an amount of Rs. 20,00,000/- in the P&L A/c under the head office and administration expenses on account of contribution made to the State Renewal Fund. The Ld. CIT(A) deleted the disallowance made by the AO by relying on the decision of his predecessor in assessee's own case for AY 2009-10 & 2010-11 and that of the Hon'ble ITAT in case of M/s Rajasthan State Seeds

Corporation Ltd. for AY 2006-07 wherein both the authorities have decided the matter in favour of the assessee.

8.2 It was submitted by the Id AR that this issue is covered by the decision of the Tribunal in assessee's own case for AY 2009-10 vide order dated 23.02.2018 where it was held that this issue is covered by the decision of ITAT in assessee's own case for AY 2005-06 and AY 2007-08 and upheld the order of the Ld. CIT(A).

8.3 It was further submitted that this issue is covered by the decision of the Hon'ble Rajasthan High Court in case of PCIT vs. Rajasthan State Seed Corporation Ltd. (2016) 386 ITR 267 where it is held as under:

*"Insofar as the expenditure incurred on State Renewal Fund is concerned, said expenditure also goes to show that the renewal fund was set up by the State Government and was created with the object of providing a safety net for the workers likely to be effected by restricting in the State Public Enterprise and that a finding of fact has been recorded that the contribution made to the State Renewal fund is solely for the purposes of the welfare and benefit of the employees. In our view any normal expenditure for the welfare and benefit of employees is allowable expenditure under Section 37(1), the Tribunal has come to a finding of fact that it was a legal obligation of the respondent-assessee towards contribution of the said amount to the State Renewal Fund and there being a legal obligation as well in our view the Tribunal has come to a correct conclusion.*

*In our view the deletion of disallowance is based on material evidence on record and is a finding of fact, no question of law much less substantial*

*question of law can be said to emerge. We find no perversity or illegality in the order impugned so as to call for interference of this Court.”*

In view of the above, the order of the Ld. CIT(A) be upheld by dismissing the ground of the Department.

8.4 Undisputedly, there are no changes in the facts and circumstances of the case. Following our earlier decision referred supra in assessee's own case and the decision of the Hon'ble Rajasthan High Court in case of Rajasthan State Seed Corporation, the ground of revenue's appeal is dismissed.

9. In Revenue's Ground No. 2, it has challenged the deletion of addition of Rs.2 Crores on account of contribution to Centre for Development of the Stones.

9.1 During the year under consideration, the assessee has debited Rs.2 Crores to the profit & loss account on account of contribution to Centre for Development of the Stones (CDOS). The assessee vide letter dated 16.01.2015 explained the allowability of the expenses. The AO held that contribution to CDOS is a case of application of income but not a diversion of income and thereby, disallowed the same. The Ld. CIT(A) by relying on the decision of his predecessor in AY 2012-13, deleted the disallowance made by the AO.

9.2 It was submitted by the Id AR that the assessee was incorporated with the main object of infrastructure facilities for the industries 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 assessee along with Govt. of Rajasthan has promoted a society named Centre for Development of Stones (CDOS). The main function of CDOS is to develop, promote and support the dimensional stone sector and related industries in India. For this purpose it carries out trade promotional events, provide vocational training to entrepreneurs, provides 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 develops 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 the entire contribution is allowable u/s 37(1).

9.3 It was further submitted that this issue has been decided by the Hon'ble ITAT in assessee's own case for AY 2010-11 vide its order dated 23.02.2018 where after considering the decision of the jurisdictional High Court in case of ACIT vs. RSWM Ltd. 274 ITR 463 and in case of RSMM vs. ACIT, contribution to CDOS was allowed by holding that contribution is made for development and promotion of industries in the State of Rajasthan along with the State Government and therefore said contribution is allowable u/s 37(1). In view of the above, the order of the Ld. CIT(A) be upheld by dismissing the ground of the Department.

9.4 In ITA No. 313/JP/2014 for AY 2010-11 dated 23.02.2018, we have decided this issue in para 31 by observing as under:-

"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), similar 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 of 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.”

9.5 Undisputedly, there are no changes in the facts and circumstances of the case. Following our earlier decision referred supra in assessee’s own case, the ground of revenue’s appeal is dismissed.

10. In Revenue’s Ground No. 3, it has challenged the deletion of the addition of Rs. 36,73,140/- on account of prior period expenses by the Id CIT(A).

10.1 Briefly, the facts of the case are that the assessee has debited prior-period expenses of Rs.36,73,140/- as under:-

Head Office	Rs.10,59,691/-
Industrial Activity	<u>Rs.26,13,449/-</u>
Total	<u>Rs.36,73,140/-</u>

These expenses are in respect of medical expenses, bank charges, telephone expenses, travelling expenses, conveyance expenses, etc., the bills for which have been received and approved for payment in the year under consideration. This was also explained vide letter dated 17.11.2015. The AO held that assessee cannot follow hybrid system of accounting or take advantage of its ignorance and accordingly, disallowed the claim of Rs.36,73,140/-. The Ld. CIT(A) by relying on the decisions of his predecessor in AY 2012-13, deleted the addition made by the AO.

10.2 It was submitted by the Id AR that assessee has a regular system of accounting whereby all the expenses are accounted for after getting approval from concerned higher authorities. Each item of expenses is properly

supported with evidence and after sanction & approval at appropriate authority level expenses is accounted. All these prior period expenses has been accounted after obtaining all the supporting documents, voucher and obtaining approval of concerned higher authority, and therefore same has been crystallized during the year and allowable as current year expenses. Further the rate of tax being the same, it does not matter whether it is allowed as deduction in the year in which the expenditure is booked or in earlier year.

10.3 It was submitted that this issue is covered by the decision of the Hon'ble ITAT in assessee's own case for AY 2009-10 vide order dated 23.02.2018 wherein it was held that this issue has been decided in assessee's own case by the Tribunal in AY 2005-06 and AY 2007-08 in ITA No. 1267/JP/2011 vide order dated 24.06.2011. It further noted that the jurisdictional High Court has already decided this issue in case of PCIT vs. Rajasthan State Seed Corporation Ltd. (2016) 386 ITR 267.

10.4 Without prejudice to the above, in case these prior period expenditures are not allowed in the year under consideration, then the same be directed to be allowed in the AY 2012-13 and the amount debited as prior period expenditure in AY 2014-15 be allowed in the year under consideration.

10.5 The Hon'ble High Court of Rajasthan on similar matter in case of PCIT vs. Rajasthan State Seed Corporation Ltd. (2016) 386 ITR 267 has held that:

*"Insofar as the prior period expenses is concerned a finding of fact has been recorded by the Appellate Authorities that approval for payment of the said*

*expenditure was given during the year under appeal therefore the liability crystallized during the year and similar method was being regularly followed by the assessee consistently and when there is a finding recorded by the Appellate Authorities that the expenditure crystallized during the year, was written in the books this year and on year to year basis was claimed in the same manner and fashion was rightly claimed and allowed during the year, is a finding of fact.*

*In our view the deletion of disallowance is based on material evidence on record and is a finding of fact, no question of law much less substantial question of law can be said to emerge. We find no perversity or illegality in the order impugned so as to call for interference of this Court.”*

10.6 The Hon'ble Supreme Court in case of CIT Vs. Excel Industries Ltd. 358ITR 295 has held that when the rate of tax remained the same in present assessment year as well as in the subsequent AY, the dispute raised by the revenue is entirely academic or at best may have a minor tax effect, there is no need for the revenue to continue with the litigation where it was quite clear that not only was it fruitless (on merits) but also that it may not have added anything much to the public office. This principle laid down by the Supreme Court equally applies to the prior period expenditure.

In view of the above, the order of the Ld. CIT(A) be upheld by dismissing the ground of the department.

10.7 After hearing both the parties, we find that the identical issue has been considered by this Bench in assessee's own case for the assessment year

2009-10 in ITA No. 420/JP/2017 dated 23.02.2018 wherein we have held as under:-

"12. We have heard Id. 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 30<sup>th</sup> Sept. 2008. Thus, the issue of allowability of prior period expenses stands decided in favour of the assessee. Therefore, the Id. CIT(A) was justified in allowing the prior period expenses."*

The Id. 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 Id. 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."

10.8 Undisputedly, there are no changes in the facts and circumstances of the case. There is no dispute that these expenses have been incurred for the purposes of the business. As in the earlier years, consistent with its accounting policy, the assessee has debited certain expenses which have been approved and cleared for payment during the year under consideration. Following our earlier decision referred supra in assessee's own case, the ground of revenue's appeal is dismissed.

11. In Revenue's Ground No. 6, it has challenged the action of the Id CIT(A) in allowing the claim of the assessee of deduction on valuation of stock of land amounting to Rs.372.56 lakhs on the basis that addition has been made in earlier years, despite the fact that the assessee has not accepted the addition on this issue and further allowing the claim despite the fact that the assessee did not make any such claim in ROI and as per Apex Court's decision in the case of Goetze (India) Ltd. 284 ITR 323 (SC), the assessee should have filed revised ROI and made claim.

11.1 It was submitted that the assessee is a State Industrial Development and Investment Corporation. The main object of the assessee is to develop the Industrial areas and provide long term finance to industries. For development of industrial areas, it acquires land from time to time. The unsold stock of land is valued as per following accounting policy as stated in Note No. 8 of Para A to Schedule 13:-

*"Closing stock of land is valued at cost or market price whichever is lower. The cost of the area in stock is actual direct development expenditure incurred on the area. However, land stock under*

*litigation/encroachment is valued at NIL price. Land allotted to Kishangarh Marble Udyog Vikas Samiti for development of marble slurry dumping yard is shown in stock at token value of Rs.1/-."*

11.2 It was submitted that the above policy of valuing land under litigation/encroachment was adopted for the first time in AY 2006-07. The AO, however, in the various assessment years, did not accept the contentions of assessee of valuing such land in stock at NIL and made the additions. The summarised position of value of land under litigation/encroachment as per assessee, addition made by, the AO and addition after CIT(A) is tabulated as under:-

(Rs. In lakhs)

AY	Value of land under litigation/encroachment as on 31 <sup>st</sup> March as per		Addition made by AO	Addition confirmed by CIT(A)
	Assessee	AO		
2006-07	Rs.1,042.85	Nil	Rs.1,042.85	Rs.1,042.85
2007-08	Rs.1,188.17	Nil	Rs.145.32 (incremental amount)	Rs.145.32
2008-09	Rs.1,115.99	Nil	Nil	-
2009-10	Rs.1,258.75	Nil	Rs.142.76 (incremental amount)	142.76
2010-11	Rs.8,362.62	Nil	Rs.7,103.87 (incremental amount)	7,103.87
2011-12	Rs.5,395.06	Nil	Nil	Relief allowed of Rs. 2,967.55
2012-13	Rs. 5,580.66	Nil	Nil	Rs. 185.60
2013-14	Rs. 5,208.11	Nil	Nil	Present Appeal (Rs.372.55)

11.3 In the year under consideration, the value of land under litigation/encroachment as on 31st March is reduced to Rs.5208.11 lakhs as

against Rs.5580.66 lakhs in the last year as certain lands were removed from encroachment/litigation. This resulted in the increase in the value of stock by the differential amount of Rs.372.56 lakhs. Accordingly, the income of the assessee to this extent has increased on which tax is paid by him.

11.4 In assessment proceeding, the assessee vide letter dated 18.11.2015 submitted the details of value of encroached / litigated land as on 31.03.2013. The Ld. CIT(A) by relying on the decision of his predecessor in assessee's own case in AY 2011-12, allowed the claim of Rs. 372.56 lakhs.

11.5 It was submitted by the Id AR that there is no dispute as to the fact that during the year under consideration, the valuation of the land in stock in the books of accounts has increased by Rs.372.56 lakhs as compared to the last year in as much as the value of land under litigation/encroachment which was of Rs.5580.66 lakhs as on 31<sup>st</sup> March, 2012 has reduced to Rs.5208.11 lakhs as on 31<sup>st</sup> March, 2013. The assessee from AY 2006-07 has been valuing such land at NIL but the same is disallowed by the AO and the incremental amount is added to the income. Therefore, when there is a decrease in the value of land under litigation/encroachment as compared to the last year, the AO ought to have reduced the same in computing the total income. Whether assessee has filed an appeal or not against the addition made by AO in earlier years is an irrelevant issue in as much as when the AO has adopted one method of valuation of the stock of land, he should not deviate from the same in the subsequent year only because the same result into reduction in income. If this is permitted, it would result in double taxation which is not permitted in law. It may be noted that in AY 2012-13, the CIT(A) has also confirmed the addition made by the AO in this account

and therefore, also the Ld. CIT(A) is correct in directing the AO to reduce the income of the assessee for the year under consideration by Rs.372.56 lakhs.

11.6 The AO has referred to the decision of Goetze (India) Ltd. to justify his action. The reliance placed by him on this decision is misplaced in as much as the assessee is not making any claim of deduction rather only requesting the AO to compute the income by considering the method of valuation of stock already adopted by him in earlier years. Further in this decision Supreme Court has clarified that the issue in this case is limited to the power of the assessing authority and does not impinge on the power of the ITAT u/s 254 to entertain for the first time a point of law provided the facts on the basis of which the issue of law can be raised before the Tribunal are available before it. Thus this decision does not restrict the power of the Appellate Authorities to allow a claim even if it is not made by way of filing the revised return before the AO. For this proposition, reliance is placed on the following cases:

- Rajesh RasikLal Shah vs. DCIT 35 DTR 388 (Mum.)
- Ascharajlal Ram Parkash vs. CIT [1973] 090 ITR 0477 (All)
- Double Dot Finance Ltd. Vs. ACIT 38 DTR 220 (Mum.)
- CIT Vs. Ramco International 332 ITR 306 (P&H)

11.7 After hearing both the parties, we find that an identical issue has been considered by this Bench in assessee's own case for the assessment year 2009-10 in ITA No. 420/JP/2017 dated 23.02.2018 wherein we have held as under:-

"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 Id. 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."

11.8 We have heard the rival contentions and perused the material available on record. It is noted that during the year under consideration, the valuation of the stock of land in the books of accounts has increased by Rs.372.56 lakhs as compared to the last year due to reduction in valuation of the encroached land which was valued at Rs.5580.66 lakhs as on 31<sup>st</sup> March, 2012 and which has reduced to Rs.5208.11 lakhs as on 31<sup>st</sup> March, 2013. It has been contended before us that the assessee from AY 2006-07 has been valuing such land at NIL but the same is disallowed by the AO and the incremental amount is added to the income. Therefore, when there is a

decrease in the value of land under litigation/encroachment as compared to the last year, the AO ought to have reduced the same in computing the total income. It was further submitted that when the AO has adopted one method of valuation of the stock of land, he should not deviate from the same in the subsequent year only because the same result into reduction in income and if the same is permitted, it would result in double taxation which is not permitted in law.

11.9 It is noted that the subject matter relating to valuation of encroached land came up for the consideration before the Coordinate Bench in AY 2007-08 where the addition made on account of valuation of such stock of land was referred back to the file of the AO for deciding the same afresh. Thereafter, this matter has come up before this Bench in ITA No. 420/JP/2017 for AY 2009-10 wherein we have held that the addition made by the AO is dependent on the outcome of the additions made by the AO for the earlier years and the matter was accordingly set-aside to the file of the AO. For this year also, we believe that the valuation of encroached land is dependent on the valuation and outcome for the earlier years and also the fact that there is overall reduction in quantum of encroached land during the year. Therefore, in view of the earlier decisions of the Tribunal and to maintain the rule of consistency, we set-aside the matter to the file of the AO for deciding the same afresh in terms of directions given by the Tribunal in AY 2007-08 and subsequent years and also taking into consideration the quantum of land which remain encroached at the year end. In the result, the ground no. 6 of the Revenue's appeal is allowed for statistical purposes.

12. Now we take up cross appeals in ITA No. 381/JP/2017 and 512/JP/2017 pertaining to Assessment Year 2014-15.

13. In assessee's ground no. 1, it has challenged the action of the Id CIT(A) in confirming the disallowance of Rs. 40,42,000/- of claim of CSR expenses made the AO by holding that CSR expenditure is an appropriation out of profit and is not incurred wholly and exclusively for the purpose of business.

13.1 We find that during the year under consideration, the assessee has incurred expenditure of Rs 3.06 lacs on payment to Anurag Sangeet Sansthan, Rs 3.54 lacs on payment to Muskan Foundation, Rs 29.60 lacs on payment to Apparel Training Design Centre and Rs 4.01 lacs on payment to Joint Secretary, Animal Husbandary. Following our aforesaid decision in ITA No. 380/JP/17 and to maintain the rule of consistency, these expenditure are not allowable under section 37(1) of the Act in absence of any nexus between the expenditure and the objects and business activity of the assessee. In the result, the ground of appeal is dismissed.

14. In assessee's ground no. 2, it has challenged the action of the Id CIT(A) in confirming the disallowance of Rs. 37,19,337/- made by the AO by applying Rule 8D(2)(iii) of the Income Tax, Act. He has further erred in adding this amount in computing the book profit u/s 115JB. In Revenue's ground no. 3, it has challenged the action of the Id. CIT(A) in allowing relief to the assessee out of addition made u/s 14A of the Income-tax Act.

14.1 Both the parties fairly submitted that the facts and circumstances of the case are exactly identical to facts and circumstances of the case in ITA No. 380/JP/17 and 511/JP/2017 and identical grounds of appeal have been taken by the assessee and the Revenue in their respective appeals. Our findings and directions contained in ITA No. 380/JP/17 and 511/JP/2017 shall

therefore apply *mutatis mutandis* to this matter and the respective grounds are disposed off accordingly.

15. In assessee's ground no. 3, it has challenged the action of the Id CIT(A) in not allowing the claim of deduction u/s 80IA on other income other than on retention charges, unauthorized construction and transfer charges. In Revenue's ground no. 4, it has challenged the action of the Id. CIT(A) in allowing deduction u/s 80IA on interest income including penal interest income and on other income.

15.1 Both the parties fairly submitted that the facts and circumstances of the case are exactly identical to facts and circumstances of the case in ITA No. 380/JP/17 and 511/JP/2017 and identical grounds of appeal have been taken by the assessee and the Revenue in their respective appeals. Our findings and directions contained in ITA No. 380/JP/17 and 511/JP/2017 shall therefore apply *mutatis mutandis* to this matter and the respective appeals are disposed off accordingly.

16. In assessee's ground no. 4, it has challenged the action of the Id CIT(A) in confirming the addition of Rs. 1,64,16,000/- made by the AO by holding that assessee has not credited the service tax receivable to that extent in the profit and loss account.

16.1 Both parties submitted that the facts and circumstances of the case are exactly identical to facts and circumstances of the case in ITA No. 380/JP/17. Our findings and directions contained in ITA No. 380/JP/17 shall therefore apply *mutatis mutandis* to this ground of appeal and the same is disposed off accordingly.

17. In Revenue's ground no. 1, it has challenged the action of the Id CIT(A) in deleting addition of Rs. 2,00,00,000/- on account of contribution to CDOS.

17.1 Both parties submitted that the facts and circumstances of the case are exactly identical to facts and circumstances of the case in ITA No. 511/JP/17. Our findings and directions contained in ITA No. 511/JP/17 shall therefore apply *mutatis mutandis* to this ground of appeal and the same is disposed off accordingly.

18. In Revenue's ground no. 2, it has challenged the action of the Id CIT(A) in deleting the addition of Rs. 36,44,553/- on account of prior period expenses.

18.1 Both parties submitted that the facts and circumstances of the case are exactly identical to facts and circumstances of the case in ITA No. 511/JP/17. Our findings and directions contained in ITA No. 511/JP/17 shall therefore apply *mutatis mutandis* to this ground of appeal and the same is disposed off accordingly.

In the result, both set of cross appeals for the respective assessment years are disposed off with above directions.

Order pronounced in the open Court on 10/04/2018.

Sd/-  
(श्री विजय पाल राव)  
(VIJAY PAL RAO)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(विक्रम सिंह यादव )  
(VIKRAM SINGH YADAV)  
लेखा सदस्य /Accountant Member

Jaipur

Dated:- 10/04/2018.

Ganesh Kr./

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant-M/s Rajasthan State Industrial Development & Investment Corp. Ltd., Jaipur.
2. The Respondent – ACIT, Circle-6, Jaipur.
3. The CIT.
4. The CIT (4),
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 380, 511, 381,& 512/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar