

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

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

आयकर अपील सं./ITA No. 772/JP/2018
निर्धारण वर्ष/Assessment Year : 2013-2014

The DCIT, Circle-6, Jaipur.	बनाम Vs.	M/s Rajasthan Renewable Energy Corporation Ltd., E-166, Yudhister Marg, C-Scheme, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACL 3171 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 817/JP/2018
निर्धारण वर्ष/Assessment Year : 2013-14

M/s Rajasthan Renewable Energy Corporation Ltd., E-166, Yudhister Marg, C-Scheme, Jaipur.	बनाम Vs.	The DCIT, Circle-6, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACL 3171 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 11/10/2018
उदघोषणा की तारीख / Date of Pronouncement: 10/12/2018

आदेश / ORDER

PER: SHRI VIKRAM SINGH YADAV, A.M.

These are the cross appeals filed by the Revenue and the assessee directed against the order of Id. CIT(A)-2, Jaipur dated 23.03.2018 for A.Y. 2013-14. These appeals were heard together and are being disposed off by this consolidated order. The respective grounds of the appeal are as under:-

Revenue's grounds of appeal (ITA No. 772/JP/2018):

"(i) Whether in the facts and in the circumstances of the case and in law, the Id. CIT(A) was justified in deleting the disallowance of Rs. 20,00,000/- made by the AO with regard to the contribution to the State Renewal Fund?.

(ii) Whether in the facts and in the circumstances of the case and in law, the Id. CIT(A) was justified in deleting the disallowance of Rs. 8,60,731/- made by A.O. for depositing the employees' contribution to PF & ESI beyond the prescribed time limit provided in respective Acts?

(iii) Whether in the facts and in the circumstances of the case and in law, the Id. CIT(A) was justified in holding that employee's contribution to PF & ESI are governed by the provisions of section 43B and not by section 36(1) (va) r.w.s. 2(24)(x) of the I.T. Act?

(iv) Whether in the facts and in the circumstances of the case and in law, the Id. CIT(A) was justified in deleting the disallowance of energy Conservation Fund of Rs. 1,00,00,000/- without appreciating the fact that the expenses was not incurred wholly and exclusively for the business purposes and it is only application of income?"

Assessee's grounds of appeal (ITA No. 817/JP/2018):

"1. The Ld. Commissioner of Income Tax (Appeals) has erred in facts and in law in directing the AO to decide the issue as to the contribution to Rajasthan Bhawan of Rs. 1 crore in accordance with the direction of the Hon'ble ITAT, Jaipur instead of deciding the issue when assessee as per the said direction of the Hon'ble ITAT has submitted the requisite letter from the Government of Rajasthan. The direction so given by the Id. CIT(A) is otherwise against the provisions of Section 251 of the Act.

2. The Ld. Commissioner of Income Tax (Appeals) has erred in facts and in law in confirming the disallowance of 50% of the expenses of Rs. 57,98,634/- incurred on Publicity and Advertisement on the ground that in lot of entries details of expenditure are not appearing in the ledger amount without providing opportunity to furnish such detail ignoring the explanation given about the nature of the expenditure incurred which is wholly and exclusively for the purpose of business.

3. The Ld. Commissioner of Income Tax (Appeals) has erred in facts and in law in confirming the disallowance of Rs. 2,33,005/- out of the prior period expenditure on the ground that it could not be ascertained whether the expenses crystallized in the previous year or not.

4. The Ld. Commissioner of Income Tax (Appeals) has erred in facts and in law in disallowing the claim of deduction U/s 80IA by Rs. 10,63,92,647/- (10,73,66,052-9,73,405) out of the total claim of Rs. 12,21,63,337/- by excluding the indirect income of Rs. 10,63,92,647/- but at the same time not excluding the indirect expenses of Rs. 7,53,19,051/-. She has further erred in not considering the revised claim of deduction u/s 80IA at Rs. 8,56,70,349/- computed by the assessee as per the direction of Hon'ble ITAT for earlier assessment years."

2. Firstly, we take up the Revenue's appeal. In ground no. 1, the Revenue has challenged the deleting of addition of Rs. 20 lacs towards contribution to the State Renewal Fund. The Id. AR has contended that this issue is covered in favour of assessee by ITAT's order in assessee's own case for AY 2011-12 in ITA No. 202/JP/2015 dated 18.08.2017. It was further submitted that the issue is also covered in favour of assessee by the decision of Hon'ble Rajasthan High Court in case of Pr. CIT Vs. Rajasthan State Seeds Corporation Ltd. in DBIT Appeal No.4/2016 dated 29.04.2016 reported in 386 ITR 267. In view of same, CIT(A) has rightly deleted the addition and thus the ground of the department be dismissed.

3. In this regard, our reference was drawn to the decision of the Coordinate Bench in ITA No. 202/JP/2015 dated 18.08.2017 for the A.Y. 2011-12 wherein the Coordinate Bench has held as under:-

*"5. In D.B Appeal No. 4/2006 dated 29.04.2016, the Hon'ble Rajasthan High Court in case of **Principal CIT vs Rajasthan State Seed Corporation Ltd** has held as under:*

"9. 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, it is for the assessee to decide whether any expenditure should be incurred in the course of business and expenditure of this nature being for

business expediency is certainly allowable deduction under section 37(1) of the Act. 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."

6. *In the present case, it is noted that the State Renewal Fund was set up to provide safety to the employees working under the state owned entities in case of restructuring/wind-up/closure of the undertaking. Based on the study done by the State Government, the assessee has provided an amount of Rs 20 lacs for the purposes of welfare and benefit of the employees. The facts of the case are thus pari-materia to the facts of the case before the Hon'ble Rajasthan High Court in case of Rajasthan Seed Corporation Ltd and respectfully following the same, we affirm the order of the Id CIT(A) who has rightly deleted the disallowance made by the AO towards contribution to State Renewal Fund. In the result, the ground no. 1 of the revenue's appeal is dismissed."*

4. Undisputedly, there are no changes in the facts and circumstances of the case. Following the decision of Coordinate Bench referred supra, we affirm the order of the Id CIT(A) who has rightly deleted the disallowance made by the AO towards contribution to State Renewal Fund. In the result, the ground no. 1 of the revenue's appeal is dismissed.

5. In ground No. 2 and 3, the Revenue has challenged the deleting the disallowance of Rs. 8,60,731/- made by the A.O. for depositing the employees contribution to PF & ESI beyond the prescribed time limit provided in respective Act and holding the employees contribution to PF & ESI are governed by the provisions of section 43B and not by section 36(1)(va) r.w.s. 2(24)(x) of the IT Act.

6. The Id. AR has contended that this issue is covered in favour of assessee by ITAT order in assessee's own case for AY 2011-12 in ITA No. 202/JP/2015 dated 18.08.2017. It was further submitted that the issue is also covered in favour of assessee by the decisions of Hon'ble Jurisdictional High Court in case of CIT vs. State Bank of Bikaner & Jaipur (2014) 99 DTR 131, CIT vs. Jaipur Vidyut Vitran Nigam Ltd. 363 ITR 307, CIT vs. Udaipur Dugdha Utpadak Sahakari Sangh Ltd. (2013) 366 ITR 163, PCIT vs. Rajasthan State Beverages Corpn. Ltd. and CIT vs. M/s Rajasthan State Ganganagar Sugar Mills Ltd. (2017) 393 ITR 0421.

7. Admittedly, the employees's contribution to PF has been paid before the due date of filing of return of income u/s 139(1) of the Act. The issue is no more *res integra* in light of various judicial pronouncements of the Hon'ble Rajasthan High Court referred supra. We accordingly affirm the order of the Id CIT(A) who has rightly deleted the disallowance made by the AO towards employees contribution to PF. In the result, the ground no. 2 & 3 of the Revenue's appeal is dismissed.

8. In ground No. 4, the Revenue has challenged the deletion of disallowance of energy conservation fund of Rs. 1 crore without appreciating the fact that the expenses was not incurred wholly and exclusively for the business purchases and it is only application of income. The Id. AR has contended that this issue is covered in favour of assessee by ITAT order in assessee's own case for AY 2008-09 in ITA No. 983/JP/2013 dated 30.09.2015 and for AY 2012-13 in ITA No. 88/JP/2016 dated 18.08.2017.

9. In this regard, our reference was drawn to the decision of the Coordinate Bench in ITA No. 88/JP/2016 dated 18.08.2017 for the A.Y. 2012-13 wherein the Coordinate Bench has held as under:-

"91. In respect of ground No. 7, the Revenue has challenged the action of Id CIT(A) in deleting disallowance of contribution to energy conservation fund of Rs. 1 crore. Brief facts of the case are that the assessee contributed Rs.1 crore to State Energy Conservation Fund to be spent on conservation of energy as and when required. The AO held that the contribution so made is not wholly & exclusively for assessee business of generating renewable energy. He therefore, disallowed the same. On appeal, the Ld. CIT(A) by relying on the decision of Coordinate Bench in assessee's own case in ITA No.983/JP/13 for AY 2008-09 deleted the disallowance.

92. The Id AR submitted that the issue is covered by the decision of Hon'ble ITAT in assessee's own case for AY 2008-09. It was further submitted that the contribution is made to Rajasthan State Energy

Conservation Fund constituted as per section 16 of the Energy Conservation Act, 2001. The object of the fund is mentioned at Pg 11-12 of the CIT(A) order. The assessee is incorporated with the object of promoting the non conventional and renewable energy sources and therefore the contribution so made is wholly & exclusively for the purpose of business. Otherwise also, any contribution made to a statutory fund is allowable as deduction as held by Supreme Court in case of CIT Vs. New Horizon Sugar Mills Pvt. Ltd. 269 ITR 397 where it was held that amount set apart towards molasses storage reserve fund is to be excluded from assessee's total income on the principle of diversion of income by overriding title. In view of above, CIT(A) has rightly deleted the disallowance and thus the ground of the department be dismissed.

93. *The relevant finding of the Id. CIT(A) are reproduced as under:-*

" 5.3 I have perused the facts of the case, the assessment order and the submissions of the appellant. The fact of this issue is similar to the fact in assessee's own case for the assessment year 2008-09, appeal No. ITA No. 983/JP/2013. This issue has been decided in favour of the assessee as follow:-

"This amount was paid towards energy conversation contribution fund, which is statutory liability as per provisions of Energy Conservation Act, 2001. The case law relied by the assessee of the judgment of the Hon'ble jurisdictional High Court in the case of CIT Vs. Raj Shipping and Weaving Mills Ltd. (supra) is squarely applicable in the case of the assessee wherein it has been held that contribution to the fund set up for products which was also the business of the assessee has direct nexus to the advancement of the assessee business."

Following the above judgment, the disallowance on account of contribution to energy conservation fund of Rs. 1,00,00,000/- made by the Assessing Officer is directed to be deleted. This ground is allowed."

94. Undisputedly, there is no change in the facts and circumstances of the case or any authority which has been brought to our notice subsequent to the decision of the Coordinate Bench in assessee's own case in AY 2008-09. Respectfully following the decision of the Coordinate Bench referred supra, we affirm the findings of the Id CIT(A) and the ground taken by the Revenue is dismissed."

10. Undisputedly, there are no change in the facts and circumstances of the case. Following the decision of the Coordinate Bench referred supra, we affirm the findings of the Id CIT(A) and the ground no. 4 taken by the Revenue is dismissed.

11. Now coming to ground no. 1 of the assessee's appeal wherein the assessee has challenged the action of Id CIT(A) in confirming the disallowance of Rs. 1 crore in respect of contribution to Rajasthan Bhawan.

12. Briefly the facts of the case are that the assessee contributed Rs.1 crores to the Government of Rajasthan towards construction of 'Rajasthan Bhawan' at Mumbai wherein employees of the Rajasthan Government and its companies can stay during their visit for government work in view of the resolution passed by Board of Directors

in its 65th Board meeting dated 13.12.2010 where it was decided to contribute Rs.2 crores for construction of Rajasthan Bhawan at Mumbai out of which Rs.1 crores was paid in AY 2011-12 and balance Rs.1 crores was paid the year under consideration. Accordingly, assessee claimed the same as expenditure u/s 37(1). The AO made the disallowance by holding that the expenditure so incurred by way of contribution to Rajasthan Bhawan is not wholly and exclusively for assessee's business of generating renewable energy and it is a clear cut case of application of income.

13. In appellate proceedings before the Id CIT(A), the assessee filed a copy of letter dated 24.10.2017 issued by Government of Rajasthan whereby the Government of Rajasthan has 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.

14. It was submitted by the Id AR that the Ld. CIT(A) though accepted that assessee filed the letter from Government of Rajasthan but still directed the AO to decide the issue in accordance with the direction of Hon'ble ITAT for AY 2011-12 whereby Hon'ble ITAT in absence of any document set aside the matter to AO and the relevant findings are 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."

15. It was further submitted that this issue is covered by the decision of Hon'ble ITAT in case of RIICO Ltd. for AY 2012-13 where after considering its decision in assessee's case for AY 2011-12 in Para 36 it was held as under:-

"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."

16. Heard both the parties and perused the material on record. In view of the aforesaid 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 Mumbai. Accordingly, 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 and the AO is directed to allow the same. In view of the same, ground no. 1 of assessee's appeal is allowed.

17. In respect of ground no. 2, the assessee has challenged the confirmation of disallowance of 50% of the expenses of Rs. 57,98,634/- incurred on publicity and advertisement on the ground that in lot of entries, details of expenditure are not appearing in the ledger account without providing opportunity to furnish such detail ignoring the explanation given about the nature of the expenditure incurred which is wholly and exclusively for the purpose of business.

18. The Id AR has submitted that the assessee claimed expenditure of Rs.57,98,634/- on account of publicity & advertisement. In support of

the expenditure, assessee filed the ledger account of the expenses and explained the justification for such expenses as per letter dt. 05.12.2015 reproduced at Pg 11 of the assessment order. The AO observed that expenditure is not incurred wholly and exclusively for generation of electricity but is only an application of income and therefore, he disallowed the expenditure. On appeal, the Ld. CIT(A) accepted that expenditure is incurred for the purpose of business but he noted that in the ledger account against certain entries no detail is given. He therefore, restricted the disallowance to 50% of the expenditure.

19. It was submitted by the Id AR that after the order of Ld. CIT(A) there is no dispute that expenditure is incurred for the purpose of business. However, the Ld. CIT(A) has wrongly held that against certain entries no details is given whereas in the ledger account against all the entries, the description of the nature of expenses or period of expenses or bill no. is mentioned. These expenditure are incurred on publication of Akshay Urja Sandesh on quarterly basis or on advertisement through newspaper, brochures, magazines, etc. for disseminating the details of subsidies offered under various programs of renewable energy sources, publishing the scheme of Bureau of Energy Efficiency (BEE), information about star labelled product, awareness & importance of national mission, i.e. Jawaharlal Nehru Solar Mission, national mission on enhanced energy efficiency, etc. As a result, assessee received sum of Rs.6.42 crores as registration fees from various entrepreneurs for setting renewable energy plants. The Ld. CIT(A) without requiring assessee to furnish further detail in respect of the expenditure debited

in the ledger account has summarily disallowed 50% of the expenses by holding that no details are given in the ledger account for almost 50% of the expenditure.

20. It was further submitted that similar expenditure of Rs.3,25,71,656/- incurred by the assessee in AY 2012-13 was allowed by the Ld. CIT(A) and this order is upheld by Hon'ble ITAT in ITA No. 88/JP/2016 dated 18.08.2017 wherein the Coordinate Bench has held as under:-

"100. In respect of ground no. 9, the Revenue has challenged the action of Id CIT(A) in deleting disallowance of publicity and advertisement expenses of Rs. 3,25,71,656/- on account of topographic survey, recruitments, technical investigation, printing of energy policy, inviting tenders, etc. The AO observed that these expenditures are in the nature of development/exploration of new business and disallowed the same. The Ld. CIT(A) after considering the nature of the expenditure which largely related to payment to advertisement, printing & publishing agencies allowed the expenditure incurred by the assessee.

101. During the course of hearing, the Id AR submitted that the object of the assessee is to promote and facilitate energy conservation measures. For this purpose it carries out mass communication in public awareness programs by publication of Akshay Urja Sandesh on quarterly basis, distributing brochures, leaflets & hand bills and advertising through TV, radio, cable network, cinema slides, display

boards, hoardings, etc. As a result, assessee received a sum of Rs.16.77 crores as registration fees from various entrepreneurs for setting renewable energy plants. Only an amount of Rs.3.50 lacs is incurred for topographic survey which is also a part of its business activity. Hence, the expenditure incurred by the assessee on advertisement is wholly & exclusively for the purpose of business and the same is allowable u/s 37(1). In view of above, Id CIT(A) has rightly deleted the disallowance and thus the ground of the department be dismissed

102. The relevant finding of the Id. CIT(A) are reproduced as under:-

"7.3 I have perused the facts of the case, the assessment order and the submissions of the appellant. The Assessing Officer has made the disallowance under this head as he found that the expenditure had been incurred for topographic survey, recruits members, technical investigations, printing of energy policy and inviting tenders etc. and was of the opinion that this seemed in the nature of new business development and exploration of business opportunity. Further, it was also felt that this expenditure had increased exceptionally during the year almost 4 times.

In the present proceedings, the AR in his written submissions has stated that the assessee company being the State Nodal Agency of the Ministry of new & renewable energy department, Govt. of India, is required to popularize the usage of Renewable Energy Source & policy deployment too.

Further, in the F.Y. 2010-11, the State Government of Rajasthan, Issued "Rajasthan Solar Energy Policy, 2011 Vide Notification No. F.20(6) Energy/2010 dated 19.04.2011 for the promotion the solar energy in Rajasthan, Prior to enactment to this policy, the promotion of solar energy was being done under the policy for promoting generation of electricity through Non-Conventional Energy Sources, 2004.

The company was also appointed as Nodal Agency for Single Window Clearance of project of Solar Power project set up in the state of Rajasthan, as per Rajasthan Solar Energy policy, 2011 as notified and issued by the Government of Rajasthan Energy Department vide dated 19.04.2011.

The ledger account of the expenditure has been filed and perused. Largely, the expenditure is related to payment to advertising agencies and printing and publishing agencies. A small amount of 3.50 lakhs approx. is fixed for topographic survey Geo technical investigation which has been explained by AR as in pursuance of the promulgation of the new policy.

In view of the above the disallowance made by the Assessing Officer is deleted."

103. We have heard the rival contentions and perused the material available on record. One of the business objects of the assessee company is to promote and facilitate energy conservation and popularize the usage of renewable energy sources & encourage companies to set up renewable energy plants. As part of its activities, the assessee company has incurred the publicity and advertisement expenditure during the year. The Id CIT(A) has given a findings on perusal of ledger account that these expenditure largely related to payment to advertising agencies and printing and publishing agencies. The said finding of the Id CIT(A) remain uncontroverted before us. In the result, we confirm the order of the Id CIT(A) and ground of appeal taken by the Revenue is dismissed."

21. The Id DR is heard who has relied on the findings of the Id CIT(A) which reads as under:

"8.3 I have perused the facts of the case, the assessment order and the submissions of the appellant. The Assessing Officer noted that the appellant has claimed expenses of Rs. 57,98,634/- for publicity and advertisement. The Assessing Officer had that the expenditure has not been incurred wholly and exclusively in connection with the generation of electricity which is the business of the assessee. The amount was held not allowable under section 37(1) of the I.T. Act.

In the present proceedings, it has been submitted that the company is engaged in the business for development of non conventional energy in the State of Rajasthan and is also the nodal Agency of the Ministry of new and Renewable Energy Department, Government of India and is required to popularise usage of renewable energy. The ledger account of this expenses was also enclosed. It is seen that in a lot of entries, it is only mentioned that the amount is paid for publicity expenses but no details are given and this is also 50% of the expenditure. Since, the details of these expenditure are not appearing in the ledger account, the veracity cannot be verified and the disallowance made by the Assessing Officer is restricted to 50% of the expenditure under this head. Ground of appeal is partly allowed."

22. Heard both the parties and perused the material on record. The matter is remanded to the file of the AO to examine the details of expenditure incurred under the head publicity and advertisement after providing reasonable opportunity to the assessee. In the result, the ground is allowed for statistical purposes.

23. In ground no. 3, the assessee has challenged the confirmation of disallowance of Rs. 2,33,005/- out of the prior period expenditure on the ground that it could not be ascertained whether the expenses crystallized in the previous year or not.

24. The Id AR submitted that the assessee debited Rs.3,71,601/- under the head prior period expenditure. The AO disallowed the same holding that same is not eligible for deduction. The Ld. CIT(A) after considering the ledger account filed by the assessee allowed expenditure of Rs.1,38,604/- by holding that the same crystallised during the year but for the remaining expenditure he held that it could not be ascertained whether they crystallised during the year or not and thus, confirmed the disallowance to the extent of Rs.2,33,005/-.

25. It was further submitted that assessee is a State Government Corporation. No expenditure is booked without the approval of the competent authority. From the ledger account it can be noted that the remaining expenditure is on payment of salary, bonus, publicity expenses, AMC charges, etc. which are accounted for only after approval of such expenditure by the competent authority. Bonus of Rs.9,631/- is otherwise allowable u/s 43B on payment basis. Similarly expenditure of Rs.35,037/- was booked since this amount was receivable from MNRE but since they have not given this amount after discussion it was charged to expenditure during the year. Otherwise also the tax rate being the same, it doesn't make any difference whether the expenditure is allowed in the year in which it is accounted for or in the year to which it relates to. In support, reliance was placed

on CIT Vs. Excel Industries Ltd. 358 ITR 295 (SC), Pr. CIT Vs. Rajasthan State Seeds Corporation Ltd. (2016) 386 ITR 267 (Raj.), Saurashtra Cement & Chemical Industries Ltd. Vs CIT 213 ITR 523 (Guj.), Rajasthan State Industrial Development & Inv. Corpn. Ltd. Vs. ACIT (66 & 354/JP/08, dated 30-09-2008 for AY 2004-05 and 138 & 235/JP/09 for AY 05-06 dated 08-01-2010).

26. We have heard the rival contentions and perused the material available on record. The incurrence of expenditure for the purposes of business is not been disputed by the Revenue. Further, the Id AR has explained that the expenditure has been booked after seeking the approval from the competent authority during the year and the same is consistent with the accounting practice of booking the expenses in earlier years. We accordingly donot see any basis for disallowance of the expenditure so claimed by the assessee. In view of the same, the AO is directed to allow the same and the ground no. 3 of assessee's appeal is allowed.

27. In ground no. 4., the assessee has challenged the disallowing the claim of deduction u/s 80IA by Rs. 10,63,92,647/- out of the total claim of Rs. 12,21,63,337/- by excluding the indirect income of Rs. 10,63,92,647/- but at the same time not excluding the indirect expenses of Rs. 7,53,19,051/-. She has further erred in not considering the revised claim of deduction U/s 80IA at Rs. 8,56,70,349/- computed by the assessee as per the direction of Hon'ble ITAT for earlier assessment years.

28. Briefly the facts of the case are that the assessee claimed deduction u/s 80IA(4)(iv) in respect of its power generating undertakings at Rs.12,21,63,337/-. The working of the same is given by the AO at Page 15-16 of the order. In assessment proceedings, the AO observed that revenues in form of sales of services of Rs 7,80,18,030, FDR interest income of Rs 2,76,01,651, other income of Rs 7,72,966 and amount received on account of shortfall in the generation of electricity amounting to Rs. 9,73,405 totalling to Rs 10,73,66,052/- are not eligible for deduction. He therefore, reduced the claim of deduction u/s 80-IA to this extent and thus, allowed deduction u/s 80-IA at Rs.1,47,97,286/- as against originally claim of Rs.12,21,63,337/-.

29. Being aggrieved, the assessee carried the matter in appeal before the Id CIT(A) and it was submitted that the cost auditor has taken the indirect income on proportionate basis and indirect Head office expenses have been taken wrongly at Rs 7,53,19,050 as against common head office expenses of Rs 5,14,57,675 and necessary working in form of a chart was furnished. The Ld. CIT(A) however following the decision of the Coordinate Bench for AY 2012-13 allowed the deduction on income on account of shortfall/ low generation of power of Rs.9,73,405/- but confirmed the disallowance of the remaining amount. Now, the assessee is in appeal before us.

30. During the course of hearing, the Id. AR submitted that both the lower authorities have excluded the gross receipts from sale of services, FDR interest and other income for allowing deduction u/s 80-IA without allocating any expenditure against these receipts. As a result, all the

expenditure has been considered against the income which is eligible for deduction u/s 80-IA.

31. The Id. AR further submitted that the assessee has two activities, one is from sale of power eligible for deduction u/s 80-IA and another is receipt from services, FDR interest and other receipts not eligible for deduction u/s 80-IA. Against the sale of power and shortfall in generation of power of Rs.30,25,45,701/-, the expenditure directly relatable to this activity is Rs.21,14,66,341/- and thus, profit from this activity is Rs. 9,10,79,361/-. From this amount, after reducing the office expenses and salary expenses of those units who are exclusively looking after this activity at Rs.35,59,240/-, the remaining profit from this activity is Rs.8,75,20,120/-. After considering the direct expenses, the indirect expenses remains at Rs.27,93,611/-. This expenditure when allocated in the ratio of turnover of both the activities, the expenditure allocable to the activities eligible for deduction u/s 80-IA works out at Rs.18,49,771/- and thus, the profit eligible for deduction u/s 80-IA works out at Rs.8,56,70,349/- (8,75,20,120-18,49,771). Therefore, as against the claim made by the assessee u/s 80-IA at Rs.12,21,63,337/-, the assessee is eligible for deduction at Rs.8,56,70,349/- as per the revised working placed at pages 7-8 of paperbook. This working has been accepted by Hon'ble ITAT in AY 2011-12 as per the discussion made at Para 42 to 45 of the order and the same was followed in AY 2012-13 as per the finding extracted at Pg 34 of the order of Ld. CIT(A).

32. In this regard, our reference was drawn to the decision of the Coordinate Bench in ITA No. 202/JP/2015 dated 18.08.2017 for the A.Y. 2011-12 wherein the Coordinate Bench has held in para 42 to 45 as under:-

"42. We have heard the rival contentions and perused the material available on record. Undisputedly, the assessee is eligible for deduction under section 80IA(4)(iv) in respect of its seven wind and solar power plants established at various locations in Rajasthan. The AO while examining the quantum of deduction claimed by the assessee company, has observed that only direct operation and maintenance expenses have been considered and expenses of common nature i.e, head office and other day-to-day management and supervision expenses have not been apportioned amongst the units/plants claiming deduction under section 80IA of the Act. The AO invoked the provisions of section 80IA(5), relied upon the decision of the Coordinate Bench in case of Nitco Tiles (30 SOT 474 Mum) and held that administrative, head office and other expenses have a direct nexus with the running of various eligible units. In our view, there cannot be any dispute that the provisions of section 80IA(5) are attracted in the instant case. At the same time, provisions of section 80IA(5) have to be read harmoniously along with the provisions of section 80IA(1) which provides for profits and gains derived from an eligible business.

43. In this regard, we refer to the decision of the Hon'ble Bombay High Court in case of **Zandu Pharmaceuticals Works Ltd. vs. CIT** reported in 350 ITR 366 wherein drawing support from the decision of

Hon'ble Supreme Court in case of CIT v. Sterling Foods reported in 104 Taxman 204, it was held as under:

"13. The Supreme Court held that there must be for the application of the words "derived from" a direct nexus between the profits and gains and an industrial undertaking. Sections 80-I and 80-IA also use the expression "derived from". If there must be a direct nexus between the profits and gains and an industrial undertaking, it must follow equally that there must be a direct nexus between an industrial undertaking and the expenses which are sought to be apportioned/attributable to it. Expenses which do not relate to an industrial undertaking/unit under consideration and they relate to other units or to the head office of the assessee, cannot be taken into consideration while computing the deduction under the said provisions."

In light of above, what is to be examined is whether there is proximate connection or direct nexus which has been established between the expenditure and the industrial undertaking in the instant case.

44. The expenditure under consideration falls under two broad baskets. The first expenditure relates to payment to and provision for employees amounting to Rs 3,02,06,576. In this regard, the Id AR has submitted that all the seven power plants have been given to the third party operators for operation and maintenance and the assessee is liable to pay specified amounts as per the agreement executed with them. Therefore, assessee is not required to employ any person for day-to- day operation and maintenance of these plants. It was further submitted that as far as the expenditure of Rs. 3,02,06,576/- on

account of payment and provision to employees is concerned, it was submitted that from the employee-wise details of the expenditure under this head, it can be noted that salary to the employees who are exclusively employed towards promotional activities is of Rs.2,56,29,076/-. The remaining salary of Rs.45,77,500/- is both towards the promotional activities and the power projects which can at the most be allocated towards the power plants in the ratio of the turnover of the power plants to the total turnover of the assessee which comes to Rs 18,13,289/-. It is noted from details available on record at APB 189-190 that there are employees like financial advisor, Chief accounts officer, executive director, technical manager, project manager, etc which have been shown as performing work for both the promotional activities as well as activities relating to power plants. These are employees who are involved in the overall management and supervision in technical and financial arena and employed at the Head office and thus have a direct nexus with the activities of the seven plants if not at the operational level but definitely at the strategic and management level. The salary expenses of Rs.45,77,500/- is thus required to be allocated to the eligible units in the ratio of their turnover to the total turnover of the assessee company. The AO is accordingly directed to allocate common expenditure of Rs 45,77,500 to the power units out of total expenditure of Rs. 3,02,06,576/- in the ratio of their turnover to the total turnover while working out the eligible profits under section 80IA of the Act.

45. *Now coming to the second category of expenditure amounting to Rs.4,76,62,462/- which falls under the head*

administrative/establishment and other relates expenses. Out of the said expenditure, the expenditure of Rs.24,84,561/- has already been considered by the assessee while working out the profit of power units. Further, Id CIT(A) has held that an amount of Rs.2,61,09,810/- on biomass fuel supply discount, IEC plan expenses, expenses relating to rural village electrification (RVE), energy conservation contribution expenses pertain directly to the promotional activities of the appellant and cannot be apportioned on proportionate basis with power generation activity. The said finding of the Id CIT(A) remain uncontroverted before us. Thereafter, an amount of Rs. 1,90,68,091/- remains as the common head office expenditure under the head 'administrative/ establishment expenses'. In this regard, it was submitted that expenditure of Rs. 1 crores is on account of contribution given by the assessee for construction of Rajasthan Bhawan at Mumbai and it has no nexus with the power units. Further, it was submitted that the balance amount of Rs 90,68,091/- again has no nexus but the assessee has offered to allocate 5% of the said expenditure before the Id CIT(A) and where the same is not acceptable, it was submitted that the same can be allocated in the ratio of turnover of the power plants to the total turnover of the assessee. We agree with the assessee's contention to restrict the pool of common expenses to Rs 90,68,091. Given the fact that these are common head office expenses relating to the activities in the nature of management and supervision at the Head office, they have a direct nexus with the activities of the seven plants at the strategic and management level. As we have directed earlier to allocate the salary expenses of the Head office employees, the common head office expenses are also directed to be allocated in the ratio of

turnover of the power plants to the total turnover of the assessee company. In our view, this is the most rational and reasonable basis for allocation of common expenses in absence of anything more specific which has been brought on record. In any case, the pool of common expenses has been brought down to a large extent as the expenses which have a direct nexus with the promotional activities have already been excluded and the assessee has also accepted this allocation methodology. The AO is accordingly directed to allocate Rs 90,68,091 out of the total administrative/establishment expenses of 4,76,62,462/- to the power units in the ratio of their turnover to the total turnover while working out the eligible profits under section 80IA of the Act.”

33. We have heard the rival contentions and perused the material available on record. Firstly, it is not under dispute that revenues in form of sales of services, FDR interest income and other income are not eligible for deduction u/s 80(IA) and hence, the said action of the AO is hereby confirmed. The second issue relates to allocation of indirect expenses incurred at the Head office in form of employees and administrative/establishment expenses. The Id AR has contended that the assessee has worked out the allocation of indirect expenses as per the directions of the Coordinate Bench in AY 2011-12 and as per its working, the indirect expenses allocable to the eligible undertakings amounts to Rs 18,49,771. Further, taking the same into account, as per the revised working, it is eligible for deduction u/s 80IA at Rs 8,56,70,349 as against original claim of Rs 12,21,63,337. The matter is accordingly set-aside to the file of the AO to examine and verify the said revised working so furnished by the assessee available at

assessee's paperbook pages 7-8 after providing reasonable opportunity to the assessee, and where the same is found to be in compliance with the directions of the Coordinate Bench referred supra, allow the same to the assessee. In the result, the ground of appeal is allowed for statistical purposes.

In the result, the appeal of Revenue is dismissed and the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 10/12/2018.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member
जयपुर / Jaipur

दिनांक / Dated:- 10/12/2018.

*Santosh.

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

1. अपीलार्थी / The Appellant- DCIT, Circle-6, Jaipur.
2. प्रत्यर्थी / The Respondent- M/s Rajasthan Renewable Energy Corporation Ltd., Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. ITA No. 772 & 817/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar