IN THE INCOME TAX APPELLATE TRIBUNAL "H", BENCH MUMBAI

BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER
&
SHRI RAVISH SOOD, JUDICIAL MEMBER

ITA No.2764/Mum/2018
(**Assessment Year: 2013-14**)

DCIT, CC-5(1) Room No.1928 19th Floor Air India Building, Nariman Point Mumbai-400 021	Vs.	M/s. Hubtown Ltd. Akruti Trade Centre, 6th Floor Road No.7, Marol-MIDC Andheri(E) Mumbai-400 093
		PAN/GIR No. AAACA6101D
(Appellant)	..	**(Respondent)**

&

Cross Objection No.163/Mum/2019
(**Assessment Year: 2013-14**)

M/s. Hubtown Ltd. Akruti Trade Centre, 6th Floor Road No.7, Marol-MIDC Andheri(E) Mumbai-400 093	Vs.	DCIT, CC-5(1) Room No.1928 19th Floor Air India Building, Nariman Point Mumbai-400 021
PAN/GIR No.AAACA6101D		
(Appellant)	..	**(Respondent)**

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DCIT, CC-5(1) Room No.1928 19th Floor Air India Building, Nariman Point Mumbai-400 021	Vs.	M/s. Hubtown Ltd. Akruti Trade Centre, 6th Floor Road No.7, Marol-MIDC Andheri(E) Mumbai-400 093
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M/s. Hubtown Ltd. Akruti Trade Centre, 6th Floor Road No.7, Marol-MIDC Andheri(E) Mumbai-400 093	Vs.	DCIT, CC-5(1) Room No.1928 19th Floor Air India Building, Nariman Point Mumbai-400 021
PAN/GIR No.AAACA6101D		
(Appellant)	..	**(Respondent)**

Assessee by	Shri. Vijay Mehta & Govind Jhaveri, AR,s
Revenue by	Shri. Vodal Raj Singh, DR
Date of Hearing	**04/10/2019**
Date of Pronouncement	**13/12/2019**

आदेश / O R D E R

PER G.MANJUNATHA, Accountant Member:

These two appeals filed by the revenue for Assessment Year (AY) 2013-14 and 2014-15 and two cross objections filed by the assesee for AY 2013-14 and 2014-15 are directed against identical, but separate orders of ld. Commissioner of Income tax (Appeals)-53, Mumbai, dated 26/02/2018 and 27/02/2018. Since, the facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are disposed -off by this consolidated order.

ITA No. 2764/Mum/2018-ASST YEAR 2013-14

2. The revenue has raised the following grounds of appeal.

1. "Whether on the Facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing deduction u/s 80IB, for Rs.29,13,06,959/-.

2. "Whether on the facts and circumstances of the case and in law the Ld. CIT(A) failed to appreciate the fact that the assesses had transferred FSI to the associate concern for Rs.13,672/- as against the ready reckoner rate of Rs.11,520/-.

3. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) Ignored that the provisions of section 80IB(13) r.w.s. 80IA(10) were clearly applicable against the assessee

4. "Whether on the fact And circumstances of the case and in law the Ld. CIT(A) failed to appreciate the fact that the decision relied upon by him in the case of Aarti Project has been contested before the Hon'ble High Court and the appeal is still pending.

3. The brief facts of the case are that the assesee is engaged in the business of development of immovable properties, including projects under Slum Rehabilitation Scheme of the Government of Maharashtra, in accordance with DCR 33(10). The assessee has filed its return of income for A.Y. 2013-14 on 30-11-2013, declaring total income of Rs. 63,72,61,220/- and which was revised on 31-03-2015, declaring total income of Rs. 54,81,07,960/-. The case was selected for scrutiny and the assessment was completed u/s 143(3) of the Income Tax Act, 1961 on 12/03/2016 and determined total income of Rs. 95,64,40,510/-, by making additions towards disallowance of deduction claimed u/s 80IB(10) of the Income Tax Act, 1961. The assessee carried matter in appeal before first appellate authority and the ld. CIT(A), for detailed reasons recorded in appellate order dated 26/02/2019, partly allowed appeal filed by the assessee, where he had allowed relief towards disallowance of deduction claimed u/s 80IB(10) of the Act, for Rs.34,91,35,308/- towards sale of FSI, but confirmed additions made towards disallowance of expenditure incurred in relation to exempt income u/s 14A of the Income Tax Act, 1961. Aggrieved by the CIT(A) order, the revenue is in appeal before us and the assessee has filed cross objection.

4. The core issue in the appeal of the revenue revolves on the tenability or otherwise of the claim for deduction u/s. 80-IB(10) of the Act for 34,91,35,308/-. The disputed amount represents the sale consideration of the FSI generated from its slum development project at Mayanagar, Worli (hereinafter referred to as the 'Mayanagar project' in short). This project was completed in accordance with the procedure prescribed in Regulation No. 33(10) of Development Control Regulations for Greater Mumbai, 1991 [hereinafter referred to 'DCR 33(10)'in short]. The costs involved in the construction of such projects on behalf of the Government are reimbursed in kind, i.e. in the form of FSI and not in monetary terms, which is a well-known practice followed by the State. Besides, the FSI granted by the Government for undertaking such projects could be utilized by the developers either for construction of saleable units in their own projects, or else could be transferred to third parties for consideration. In order to encourage such rehabilitation projects under the aegis of the State Government, deduction of hundred percent of the profits generated there from is granted u/s. 80-IB(10) of the Act, subject to fulfillment of other terms and conditions. Needless to state that the aforesaid practice followed under DCR 33(10) of the Government of Maharashtra has also been notified as a scheme- for the purposes of S. 80-IB(10) of the Act, vide Notification No. 67/2010 dated 03.08.2010 as modified by corrigendum dated 05.01.2011.

5. In its return of income filed for the previous year relevant to the year under consideration, the assessee had claimed deduction u/s,80IB(10) of the Act, for an amount of Rs.34,91,35,308/- being the sale consideration of FSI of 29,050 sq.feet generated from its

Mayanagar project, for which approval was granted on 26.11.1998 and completed as per DCR 33(10). In response to the query raised as to the tenability of the claim, the assessee submitted an exhaustive reply vide its letter dated 17.12.2015 which has been extracted on pages 2 to 11 of the assessment order. The Assessing Officer, however, was not inclined to accede to the pleadings made by the assessee mainly for the following reasons:

(a) since the claim for deduction *u/s 80IB(10)* of the Act on deemed sale made in A.Y. 2003-04 was already rejected and It was not contested in appeal, there was no justification for seeking relief under this very provision in the year under consideration;

(b) the benefit of the notifications dated 03.08.2010 and 05.01.2011 could be availed of in respect of housing projects approved by SRA on or after 01.04.2004 and before 31.03.2008, and since the requisite approval was granted to the assessee on 26.11.1998, the aforesaid notifications would not be applicable to the case of the assessee;

(c) since the consideration for construction of the rehabilitation building was received in kind and not in cash/cheque, the benefit of S. 80-IB(10) of the Act was not available to the assessee; and

(d) the FSI received under DCR 33(10) was sold to Fourjone Realtors Pvt Ltd, group concern, @ Rs. 13,672/- per sq. ft. as against prevailing ready reckoner rate of Rs.11520/- per. sq. ft.

6. In view of the above, the claim of the assessee for deduction u/s. 80-IB(10) of the Act was rejected by the Assessing Officer by observing as under:

> *"B. The assessee during the course of assessment proceedings was asked as to how it was claiming the deduction u/s. 80IB(10) twice, first in A.Y. 2003-04 on the deemed sale value as per stamp duty ready reckoner rate and then again in A. Y. 2013-14 on the difference between actual sale value less the value at which the TDR is disclosed in the books of account In response to the above, assessee submitted that in the earlier year, profit from sale of TDR was claimed on deemed safe value as per ready reckoner rate basis as was its policy at that time while presently, the TDR is actually sold and deduction is claimed on the profit from actual sale. The assessee has further argued that the project being a notified project, eligible to claim deduction u/s. 80IB(10) of the Act, deduction to the same should be allowed. The assessee has however not explained as to what is the change in circumstances and facts of the case which would mean that the same project, disallowed in A. Y. 2003-04 has become eligible in A. Y 2013-14.*
>
> *……*
>
> *C. On the perusal of the scheme, it leaves no doubt that the benefit of the said notification applies only to housing projects approved by SRA on or after 1st April 2004 and before 31st March, 2008. It is in this context to mention that the project in question was approved by SRA on 26.11.1998. Therefore, the plea of assessee that project is covered by notification No, 67/2010 & 1/2011 of CBDT is without force. It appears that the assessee in its endeavor to substantiate its claim of deduction u/s. 80-IB(10) of the IT. Act, has tried to extend the beneficial period of exemption to A. Y 1998-99 which is much earlier than that mentioned in the notification which specifically mentioned that the same extends only to the projects approved from 01.04.2004 to 31.03.2008.*
>
> *D. Attention is also invited that the assessee is further claiming deduction of Rs, 34,91,35,308/- on the transfer of TDR of Rs. 39,71,71,600/- and not on actual receipt of consideration in cash or Cheque or equivalent means. Deduction u/s. 80-IB(10) is allowable on the actual consideration received. In this case, the actual consideration is not cash, cheques or Its equivalent but is in terms of right to construct in the form of FSI/TDR, It may be mentioned here that though the above has been part of litigation between the department and the assessee, there has been no finality on the issue by the judicial authorities which would show the correct path to be adopted. The issue of claim of deduction u/s. 80-IB(10) of the Act on the transfer TDR is not accepted by the department The decision of the Hon 'ble Bombay High Court in CIT v/s. Sonasha Enterprises ITA appeal no. 1391 of 2012 has not been accepted by the department and SLP vide D. No. 11467/2015 is pending before the Hon'ble Apex Court as per the official website of the Hon'ble Supreme Court*

F. Without prejudice to the points discussed above, it has been found that the assessee has transferred the TDR 29,050 sq. feet and received Rs. 39,79,94,100/- @ Rs. 13.672/- per sq. feet after effecting sales to M/s, Four/one Realtors Pvt Ltd., a group concern of the assessee company as is admitted by the assessee company vide submission dated 22.12.2015. The promoters of the assessee company and that of M/s. Four/one Realtors Pvt Ltd. are common. However, value of TDR as per stamp duty Ready Reckoner is found to be Rs. 11,520/- per sq. ft. The assessee was asked to show cause as to why the excess receipts of Rs. 6,25,15,600/- as the difference between the actual rate and Ready Reckoner rate of TDR per sq. ft not be disallowed by invoking the provision of section 80IB(10) of the I. T. Act. This should be seen 35 an attempt of the assessee to claim excess deduction u/s. 80IB(10) of IT Act. In response to the above, the AR has submitted that the valuation of the TDR had been done at the market value after considering the location and the demand of TDR at that point of time. The assessee has also further submitted a valuation report justifying the rate charged by it on sale of TDR to M/s. Fourjone Realtors Pvt Ltd. The submission of the assessee has been considered, however, the same is not acceptable in absence of the corroborative/ supporting documents/evidences to support its contention. Therefore the deduction of Rs.34,91,35,308/- on the transfer of TDR claimed u/s. 80IB(10) of the I, T. Act is withdrawn." Against the order thus passed by the Assessing Officer, the assesse preferred appeal before the CIT(A).

7. Aggrieved by the assessment order, the assesee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assesee has reiterated its submissions made before the AO. The assessee, further drawing support from the proviso below Explanation to S. 80IB (10) of the Act, aforesaid notifications dated 03.08.2010 and 05.01.2011 issued by CBDT on the subject and relying upon various case laws so a so the order dated 28.12.2017 passed u/s. 143(3) of the Act for A.Y. 2015-16 granting similar relief, the disallowance was assailed. The CIT(A) after considering the totality of the facts and circumstances of the case, S. 80IB(10) of the Act, precedent and the decision taken by the Assessing Officer himself on similar fact-situation in A.Y. 2015-16, was deleted the disallowance in his exhaustive order. It is against this order that the revenue is in appeal on the grounds mentioned hereinabove.

8. The Ld. DR submitted that the Ld.CIT(A) was erred in allowing deduction u/s 80IB (10) of the I.T. Act, 1961 for Rs. 34,91,35,308/-, without appreciating the fact that the assesee had transferred FSI to the associated concerns for Rs. 13,672/- as against ready reckoner rate of Rs. 11,520/-, ignoring detailed reasons brought out by the Ld.AO to deny the benefit. The Ld. DR, further submitted that the Ld.CIT(A) was erred in allowing the benefit, ignoring the fact that the provisions of section 80IB(13) r.w.s. 80IA(10) were clearly applicable against the assesee. He, further, submitted that the Ld.CIT(A) has also failed to appreciate the fact that the decisions relied upon by Ld.CIT(A), in the case of Arthi Project and constructions vs DCIT in ITA No. 4190/Mum/2016, dated 05/01/2017 was not accepted by the department and appeal their against was filed before the Hon'ble Bombay High court. The Ld. DR, further submitted that this issue has been considered by the AO for AY 2004-05, where the assesee has accepted the findings of the AO and not preferred any appeal before the appellate authorities. However, for the year under consideration without there being any changes in facts, the assesee has claimed the benefit. The Ld. AO after considering the relevant facts has rejected the claim of the assesee for deduction u/s 80IB(10) of the I.T. Act, 1961 and his order should be upheld.

9. The Ld. AR for the assesee, on the other hand, strongly supporting order of the Ld.CIT(A) submitted that the main reasons for the AO to deny the benefit of deduction u/s 80IB(10) of the Act, is on the basis of rejection of said claim for the AY 2003-04. However, the fact remains that there is substantial changes in facts, after the assessment for the assessment year 2003-04, as per which, the claim of the assesee was supported by the notification

issued by the CBDT exempting notified project from the condition of completion of the project. He, further submitted that the project on which deduction has been claimed was approved on 26/11/1998 and notification issued by the CBDT is squarely established the fact that limitation prescribed in clause (a) and (b) were inapplicable to projects completed as per scheme of central and state government. Indisputedely, the Maya nagar project was sanctioned under the scheme of Government of Maharashtra under DCR 33(10) for rehabilitation of the slum dwellers, and it was covered by the notifications. Therefore, in view of the unambiguous language of the proviso, the project completed by the assesee was excluded from the restrictions imposed by clauses (a) and (b) of sub-s. (10) of Sec.80IB of the Act. The Ld. AR, further submitted that the Ld.CIT(A) has considered all these aspects and also by following judicial precedents, including the decision of ITAT, Mumbai Tribunal decisions, in the case of Ramesh Gunshi Dedhia vs. ITO [148 ITD 356 (Mum)] held that as a consequence of the provision, the conditions prescribed in clauses(a) and (b) are relaxed, if the housing project was carried out in accordance of the scheme of the Central or State Government. Since, the project on which deduction was claimed u/s 80IB(10) approved by the state Government of Maharashtra under DCR-33(10) regulations, the deduction has been rightly granted by the Ld.CIT(A) and his order should be upheld.

10. We have heard both the parties, perused the material available on record and gone through orders of the authorities below along with case laws cited by both the parties. The main dispute between the assessee and the Assessing Officer is with regard to availability

of the benefit of deduction u/s 80IB(10) of the Act, in light of proviso to section and also more particularly in light of clause (a) and (b) of said proviso. As per the said proviso, clause (a) and (b) regarding date of commencement and date completion of project has no application, if such project is approved by central or state Government under any laws. It is an admitted fact that the project on which the benefit of deduction was claimed u/s 80IB(10) of the Act, was approved by the state Govt. of Maharashtra, under SRA scheme. In this factual background, if you examine the claim of the assessee, we find that the Government does not compensate the developers the cost of construction of the tenements in slum development projects but only grants FSI, which could be utilized by them either for construction of saleable area in other projects, or sold in open market as per their choice. Since, the assessee did not utilize the FSI of 29,050 sq. feet granted by the government in lieu of the cost suffered in undertaking the Mayanagar project as per DCR 33(10), it was entitled to sell it to anyone without any restriction. The assessee, therefore, sold the FSI generated from its Mayanagar project to Fourjone Realtors Pvt Ltd., a group concern, as per the then prevailing market rate.

11. The AO has denied the benefit on three grounds. In so far as, the objection of the Assessing Officer that since deduction u/s. 80IB(10) of the Act made in A.Y. 2003-04 was rejected and as it was not assailed in appeal, the assessee could not repeat the same in the year under consideration. It is noted that in A.Y. 2003-04 the claim was rejected on the ground that the whole of the project was not completed. Most importantly, the assessment order for that year was passed on 30.12.2008 whereas the CBDT issued the

notification, exempting notified projects from the condition of completion of the project, on 05.01.2011. Therefore, the assessee has not contested the said order. As against the above, during the relevant previous year, the entire project was completed and the FSI granted by the Government in lieu of the cost factor was in fact sold. It is, therefore, the reference made by the Assessing Officer to the proceedings of A.Y. 2003-04 was illogical and uncalled for as the claim made in the year under appeal was not dependent upon that of the earlier year; and the CIT (A) was perfectly justified in refuting such argument canvassed by the Assessing Officer in paragraph 4.12 of his order.

12. With respect to the objection that since the Mayanagar project was approved on 26.11.1998, the benefit of the Notification No. 67/2010 dated 03.08.2010 and the corrigendum issued vide Notification No. 02/2011 Income Tax dated 05.01.2011 was not available. In this regard, it is noted that the inference drawn by the Assessing Officer is contrary to the statutory provisions set out under section 80IB(10) of the Act. For ready reference, it is necessary to reproduce section 80-IB(10) of the Act, as applicable to the year under consideration below:

> *"(10) The amount of deduction in the case of an undertaking developing and building housing projects approved before the 31st day of March, 2008 by a local authority snail be hundred per cent of the profits derived in the previous year relevant to any assessment year from such housing project if. -*
> *(a) such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October, 1998 and completes such construction.-*
> *(i) in a case where a housing project has been approved by the local authority before the r' day of April 2004, on or before the 31st day of March, 2008;*
> *(ii) in a case where 3 housing project has been, or, is approved by the focal authority on or after the 1st day of April, 2004 but not*

later than the 31st day of March, 2005, within four years from the end of the financial year in which the housing project is approved by the local authority;

(iii) in a case where a housing project has been approved by the focal authority on or after the 1st day of April, 2005, within five years from the end of the financial year in which the housing project is approved by the local authority.

Explanation.- For the purposes of this clause,-

(i) in a case where the approval in respect of the housing project is obtained more than once, such housing project shall be deemed to have been approved on the date on which the building plan of such housing project is first approved by the local authority;

(ii) the date of completion of construction of the housing project shall be taken to be the date on which the completion certificate In respect of such housing project is issued by the local authority;

(b) the project Is on the size of 3 plot of land which has a minimum area of one acre:

Provided *that nothing contained in clause (a) or clause (b) shall apply to a housing project earned out in accordance with a scheme framed by the Central Government or a State Government for reconstruction or redevelopment of existing building in areas declared to be slum areas under any law for the time being in force and such scheme is notified by the Board in this behalf.* "(Emphasis supplied).

13. If, you go through the provisions of S.80-IB(10) of the Act, extracted above and the aforesaid notifications issued by the CBDT, we find that the Assessing Officer clearly erred in disregarding the proviso which mandates that the limitations prescribed in causes (a) and (b) were inapplicable to housing projects completed as per the scheme of Central or State Government. Indisputably, the Mayanagar project was sanctioned under the scheme of the Government of Maharashtra under DCR 33(10) for rehabilitation of the slum dwellers, and it was covered by the Notifications. Therefore, in view of the unambiguous language of the proviso, the project completed by the assessee was excluded from the restrictions imposed by clauses (a) and (b) of sub-s. (10) of S. 80-IB

of the Act Hence, we are of the considered view that rejection of assessee's claim for deduction u/s, 80-IB(IO) of the Act was unjustified, and it was rightly so held by the CIT(A) in paragraph 4.10 of his order.

14. We, further noted that a similar interpretation as drawn by the Assessing Officer with respect to the notification dated 05.01.2011, that it was to extend the permissible period in respect of projects approved after 01.04.2004, was considered and adjudicated by the co-ordinate Bench of this Tribunal in the case of Ramesh Gunshi Dedhia v. ITO [148 ITD 356 (Mum)], which was relied upon before the CIT (A). In the said case, it was held that as a consequence of the proviso, the conditions prescribed in clauses (a) and (b) are relaxed if the housing project was carried out in accordance with the scheme of the Central or State Government. Since, the CIT(A) has extracted in extenso the findings recorded by the Tribunal in paragraph 4.16 on pages 23-26 of his order, for the sake of brevity, we refrain from repetition thereof.

15. The other objection of the Assessing Officer is that since the consideration for construction of the rehabilitation building was received in kind and not in cash/cheque, the benefit of S. 80-IB(10) of the Act would not available to the assessee. It is noted that this inference drawn by the Assessing Officer is also untenable as held in various decisions, cited before and considered by the CIT (A) in paragraph 4.19 of his order holding to the contrary. In the premises, we are of the considered view that the CIT (A) was justified in rejecting the argument of the Assessing Officer that since the consideration *was* received in kind and not in cash/cheque, the

assessee was not entitled to the deduction in paragraph 4.19 of his order The order of the CIT (A), therefore, does not call for any interference on this count too.

16. Most importantly, in A.Y. 2015-16 also, a similar claim for deduction u/s. 80-IB(10) of the Act was preferred in respect of the FSI granted and sold in identical fact-situation. We find that after taking note of the entire scheme, statutory provisions and notifications cited hereinabove, the Assessing Officer himself had granted the deduction sought for vide his order dated 28.12.2017 passed u/s. 143(3) of the Act. The following findings recorded by the Assessing Officer in the aforesaid order dated 28.12.2017 are noteworthy:

> *"3.2 The submission of the assesses has been thoroughly considered with the documents annexed to the submission. It is claiming that construction of Rehab building was approved by Slum Rehabilitation Authority under DC regulation 33(10) of the DCR and the approval was granted to the assesses company for the said project on 26.11.1998. Consequent to the construction of the Rehabilitation building, the assessee has received TDR In lieu of this construction which has been sold to its group concerns during the A. Y. under consideration. The assessee is of the view that it is a eligible for claiming deduction u/s. 80-IB(10) of the I.T. Act on the sale of said TDR. I have gone through the facts of the case as submitted by the assessee and the submission of the assesses I find that DC regulation 33(10) of Development Control Regulation for Greater Mumbai 1991 under which the assesses has constructed the rehab buildings and has been notified by the CBDT. Further the facts based on which the deduction was denied in earlier years do not persist and have changed since then and the project satisfies the conditions stated in section 80IB(10) of the Act. Considering the same and further considering the facts of the case, the contention of the assessee merits acceptance. Therefore the deduction of Rs. 29,13,06959/-* ***on the*** *transfer of TDR claimed u/s. 80IB(10)* ***of*** *the I. T. Act* ***is allowed."***

17. We further noted that in arriving at his decision to delete the disputed disallowance during the year under consideration, the CIT

(A) has also taken note of the aforesaid order dated 28.12.2017 passed u/s. 143(3) of the Act for A.Y. 2015-16 in paragraph 4.21 of his order. For all the above reasons, we are of the view that the denial of deduction claimed u/s. 80-IB(10) of the Act was unwarranted and unjustified. The reasoned order of the CIT (A) deleting the disallowance is in order and it does not call for any interference.

18. In regard to the other objection raised by the Assessing Officer that the FSI granted was *sold* to a group entity at an inflated rate, we find that the statute does not prohibit such sale to group concern. Further, the ready reckoner rate is not sacrosanct, and there might be innumerable reasons for demanding higher price. In any case, the transaction under consideration is supported by a valuation report submitted to A.O. in which the rate of FSI was supported with the help of three comparable instances. Further, the inference drawn by the Assessing Officer is based upon his own theory, and neither supported by any independent verification nor after discrediting the valuation submitted by the assessee for valid reasons. We, therefore, are of the considered view that the CIT(A) was justified in refuting the aforesaid stand taken by the Assessing officer.

19. The other objection raised by the Assessing Officer vide ground No. 4, is that since the order of the Tribunal in the case of Aarti Projects and Constructions v. DCIT [ITA No. 4190/Mum/2016 dated 05.01.2017] was not accepted by the Department and appeal there against was filed before the Hon'ble Bombay High Court and the CIT (A) ought not have relied upon the same. In this regard, it is noted that until and unless the order of the jurisdictional Tribunal is set

aside or reversed by the Hon'ble High Court, it holds the field and the authorities functioning within their jurisdiction are bound to follow the same.

20. Last but not the least, we may also refer to the brief note of the Addl. CIT, C.R-5, Mumbai dated 02.08.2019. As per this note, the disputed claim was rejected by the Assessing Officer in A.Y. 2003-04 and it was also accepted by the assesses, and the disallowance made in the year under appeal was pursuant to Notification No. 02/2011/Income Tax dated 25.01.2011, The other stand taken by the Addl. CIT was that in A.Y. 2015-16 the assessee had suppressed relevant facts relating to claim u/s. 80-IB(10) of the Act for securing the relief from the Assessing Officer, and the CIT (A) had followed such an order while granting the relief. Lastly, it is stated in this note that the order for A.Y. 2015-16 has been made subject to proceedings u/s, 263 of the Act. In this regard, we are of the view that all the above points, except that concerning initiation of proceeding u/s. 263 of the Act for A.Y. 2015-16, which is separate and distinct, have been discussed in the preceding paragraphs and, hence, they are not repeated for the sake of brevity. The reason for which the disallowance made in A.Y. 2003-04 was not challenged in further proceedings, and as to why the claim was made in A.Y, 2013-14 have been considered by the CIT (A) and also discussed elaborately in the preceding paragraphs. For the reasons already stated, the assertions made in the aforesaid note of the Addl, CIT deserve to be rejected.

21. In this view of the matter and considering facts and circumstance of this case, we are of the considered view that the

limitations prescribed in clause (a) and (b) of proviso to section 80IB(10) of the Act, in respect of date of commencement and completion of the project has no application to projects undertaken under the scheme of Central or State Govt. Thus, in view of the fact that the project on which the benefit of deduction was claimed u/s 80IB(10) of the Act, was approved under DC regulation 33(10) of Govt. of Maharashtra, and also notified by the CBDT u/s 80IB(10) of the Act, we are of the considered view that the assessee is entitled for deduction towards sale of FSI/TDR. The CIT(A) after considering relevant facts, has rightly allowed the benefit and deleted addition made by the AO. Hence, we are inclined to uphold the order of the ld. CIT(A) and dismissed appeal filed by the revenue.

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

CO.No. 163/Mum/2019-ASST YEAR 2013-14

23. The assesee has raised the following grounds of cross objection: -

> *"1. The learned CIT (A) ought to have directed the Assessing Officer to delete the disallowance of Rs. 5,91,97,243/- made by the Assessing Officer u/s. 14A r.w.r. 8D(2)(ii) of the Act on account of proportionate interest expenditure.*
> *2. The learned CIT (A) ought to have directed the Assessing Officer to delete the disallowance of Rs. 273,97,518/- made by the Assessing Officer u/s. 14A r.w.r. 8D(2)(iii) of the Act in respect of other expenditure.*
> *3. The learned CIT (A) ought to have directed the Assessing Officer to delete the dis3fiowance made u/s. 14A of the Act while calculating the book pro fit u/s, 115JB of the Act"*

24. At the outset, the Ld. AR for the assesee submitted that the cross objection filed by the assesee is delayed by 77 days, for which necessary petition along with affidavit for condonation of delay has

been filed explaining the reasons for delay in filing cross objection. The Ld. AR, further submitted that the assesee did not file further appeal against order of the Ld.CIT(A) in confirming additions made by the AO towards disallowance of expenditure u/s 14A, for want of proper advise, however while preparing for the hearing of appeal filed by the department, the assesee was advised by the counsel to challenge the issue of disallowances of expenditure u/s 14A of the Act, because such disallowance was not as per the law and also, the law has been evolved by the courts and Tribunals, which may favor the assesee. Accordingly, the assesee has immediately filed the captioned cross objection without any further delay. He further submitted that since, delay was not deliberate, but for want of proper advice, a lenient view may be taken and cross objection may be admitted for adjudication in accordance with law. In this regard, he relied upon the decision of ITAT, Mumbai Tribunal in the case of Sundaram Multipap Ltd. V. DCIT in CO.No. 272/Mum/2017. The assesee has relied upon the decision of Hon'ble Supreme court in the case of Collector of land acquisition vs Mst Katiji 167 ITR 471.

25. The Ld. DR, on the other hand, strongly opposing condonation petition filed by the assesee submitted that there is no merit in contention of the assesee, because the assesee has chosen not to file appeal against order of the Ld.CIT(A), as it was withdrawn the ground raised before the Ld.CIT(A). The Ld. DR, further submitted that once, the ground has been withdrawn and has been rejected on that basis, the same cannot be interfered with unless, there is cogent evidences in favor of the party, which says that ground has been pressed. In this regard, he relied upon the decision of Hon'ble Bombay High Court in the case of Cenzer Industries Ltd vs ITAT

(2015) 53 taxmann.com 280. The Ld.DR has also relied upon the decision of Hon'ble Rajasthan High Court in the case of Rajendra Prasad Gupta vs CIT (2006) 202 CTR 284.

26. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The statute provides for appeal to aggrieved parties, but such right is not absolute. As per the provisions of the Act, the assesee shall file appeal or cross objection against order of the Ld.CIT(A) before the ITAT on or before 60 days from the date of receipt of impugned order. Further, the provision of section 253 of the Act provides inherent powers to the Tribunal to condone delay in filing appeal or cross objection, if the assesee makes out a case that said delay is not deliberate or for the reasons beyond the control of the assesee. Therefore, in order to condone the delay in filing appeal or cross objection, it is for the assesee to explain the reasons, which prevented the assesee to file appeal within prescribed time allowed under the Act. Further, the Hon'ble Supreme court, in the case of Collector of land acquisition vs Mst. Katiji (supra) had considered condonation of delay in filing appeal and held that when, technicalities and merits are pitted against each other, the substantial justice should prevail over technical consideration. The Hon'ble Court also explained that every day delay must be explained. In the light of above legal proposition, if we examine the case of the assesee, we find that the reasons given for not filing appeal or cross objection within time allowed under the Act, comes under the purview of reasonable cause as provided under the Act. We further noted that although, the assesee has not pressed the ground before the Ld.CIT(A), but the Ld.CIT(A) has decided the

issue on merits. Further, the issue involved in cross objection filed by the assesee is with regard to disallowances of expenditure incurred in relation to exempt income u/s 14A of the Act. The provisions of section 14A is highly controversial and there are number of cases, which deal with the law as enumerated u/s 14A of the I.T. Act, 1961. As such, day by day the law has been evolved by various courts and Tribunals. Therefore, the assesee while preparing for appeal filed by the department came to know that the disallowances computed u/s 14A is not in accordance with law and also, various decisions of courts and Tribunals are in favor of the assesee and accordingly, has decided to file cross objection, which resulted in delay of 77 days. Therefore, we are of the considered view that the reasons given for not filing cross objection within time allowed under the Act, seems to be within the ambit of reasonable cause as provided under the Act.

27. In this regard, it is pertinent to discuss the case laws relied upon by the assesee. The assesee has relied upon the decision of ITAT, Mumbai bench in the case of Sundaram Multipap vs DCIT in CO.No. 272/Mum/272, which was disposed-off along with the appeal of the revenue in ITA No. 5327/Mum/2015, dated 20/04/2018. In this case, there is a delay of 180 days in filing cross objection and for similar reasons the delay was condoned by the Tribunal by observing as under:-

> *"9……..When the appeal filed by the Revenue was discussed with the Counsel, it was explained to the assessed that there was no requirement to make any disallowance u/s. 14A of the Act as the assessee has not received any dividend 'income and the law in this regard has been explained in various decisions rendered by the Hon'ble High Courts. Accordingly, the assesses was advised to file Cross objection. Accordingly, the cross objection was filed by the assessee with*

> *a delay of 186 days. The learned AR further submitted that an identical issue of condoning delay in filing the cross objection on the advice received subsequently was considered by the coordinate Bench in the case of M/s. DBS Bank Ltd. v. Dy. CIT (CO No. 189/Mum/2013 dated 15.6.2016) and the coordinate Bench has condoned the delay.....*
> *11. We have heard the rival submissions on this preliminary issue and perused the record. We noticed that an identical issue relating to condoning delay in filing the cross objection, which was filed belated after the advice received from other counsel was considered by the Coordinate Bench in the case of DBS Bank Ltd. (supra) and the delay was condoned with the following observations:.....,.....,.....*
>
> *12. Accordingly, following the above said order of the Tribunal and also in order to render substantial justice to the assesses, we condone the delay and admit the cross objection.*

28. The assesee is relied upon the decision of ITAT, Mumbai, in the case of Galaxy Medical devices Pvt.Ltd. vs ITO in ITA No. 3218/Mum/2010 dated 30/09/2011. In this case also exactly an identical situation arose and it was resolved by observing as under:-

> *"4. We have heard the arguments of both sides and also perused the relevant material available on record The learned D.R. has submitted that the disallowance on account of travelling expenses was made by the A.O. on agreed basis as the A.R. of the assesses had agreed for the said disallowance during the course of assessment proceedings. However, as held by the co-ordinate Bench of the Tribunal in the case of R. T. Balasuhramaniam vs. ITO reported in 50 ITD 513 (Mad) cited by the learned counsel for the assesse, it cannot be said that the assessee is not aggrieved by the order of assessment made by the A. O. on the basis of the agreement made by the AR. and consequently he cannot be denied the right of vindicating his grievance before higher forum.....,.....,....."*

29. Coming to case laws relied upon by the ld.DR. The Ld.DR has relied upon the decision of Hon'ble Bombay High Court in the case of Cenzer Industries Ltd. vs. ITAT (Supra). We find that case before the Hon'ble Bombay High Court was, whether there is any mistake in the order of the Tribunal in as much as findings recorded to the effect that whether, the assesee has pressed ground at the time of

hearing or not. Under those facts, the Hon'ble High Court came to the conclusion that once, assesee had withdrawn challenge on a particular issue, by not pressing it before the Tribunal, non-consideration of said issue would not be considered as mistake on part of Tribunal. Similarly, the ld. DR has relied upon the decision of Hon'ble Rajasthan High court in case of Rajendra Prasad Gupta Vs CIT (supra), where it was held that once, authority say that ground has not been pressed and that has been rejected on that basis, same cannot be interfered with unless, there is cogent evidence in favor of the party, which says that ground has been pressed.

30. In this case, the issue is altogether different, because although, the assesee has not pressed the ground before the Ld.CIT(A), but the Ld.CIT(A) has decided the issue on merits. Therefore, we are of the considered view that cases laws relied upon by the Ld. DR are not applicable to the facts of the present case. Therefore, we are of the considered view that the delay in filing cross objection needs to be condoned and accordingly, the delay in filing cross objection is condoned and cross objection is admitted for adjudication.

31. The brief facts of the cross objection filed by the assesee are that during the course of assessment proceedings, in response to the show cause notice issued by the Ld.AO as to why, disallowance u/s 14A of the Act, be not made, the assesee vide letter dated 26/02/2016, had worked out such disallowance at Rs. 2,73,08,768/- The Ld. AO, however computed the disallowances u/s 14A of the Act r.w. Rule 8D at Rs. 8,65,06,011/-.

32. The Ld. AR for the assesee submitted that the Ld.AO was erred in disallowed interest under Rule 8D(2)(ii), in respect of interest expenditure, ignoring the fact that the assesee has own funds amounting to Rs 1,658.28 crores, which exceeds the value of the investment of Rs. 594.29 crores. In this regard, he relied upon the decision of Hon'ble jurisdictional High Court of Bombay in the case of CIT vs. Reliance Utilities Power Ltd 313 ITR 340 (bom) and CIT vs HDFC Bank Ltd. (366 ITR 505(bom). The assesee has also relied upon the decision of Hon'ble Supreme Court, in the case of CIT vs Reliance Industries Limited 410 ITR 466 (SC). The Ld. AR, further submitted that in respect of disallowances of expenditure under Rule 8D(2)(iii), the disallowances may be restricted to the extent of exempt income earned and only those investments, which have yielded such income be taken into account for arriving at the average value of investments, He, further submitted that if any suo-moto disallowances made by the assesee exceeds the exempt income, it may be restricted to the extent of the exempt income. In this regard, he relied upon the decision of Hon'ble Delhi High Court in the case of ACB vs ACIT (374 ITR 108) and CIT vs Interglobe Enterprises Ltd. In ITA No. 456/2016, dated 19/08/2016. The assesee has also relied upon the Special Bench decision of ITAT, in the case of ACIT vs Vireet Investments Pvt Ltd, 165 ITD 27 (Delhi). The ld. AR, further submitted that insofar as, re-computation of book profit u/s 115JB of the I.T. Act, 1961 towards disallowances of expenditure u/s 14A of the Act, 1961, this issue is squarely covered in favor of the assesee by the decision of ITAT, special bench, in the case of ACIT vs Vireet investment Pvt.Ltd. 165 ITD 27, where it was held that while, computing book profit u/s 115JB, no

adjustments could be made on account of disallowance made u/s 14A of the Act.

33. The Ld. DR, on the other hand, strongly supporting order of the Ld.CIT(A) submitted that there is no merit in contention of the assesee that no interest expenditure should be disallowed under Rule 8D(2)(ii) because, the assesee never placed any records before the lower authorities to prove availability of own funds in excess of investments made in shares and securities, which yield exempt income. The Ld. DR, further submitted that insofar as, disallowances of expenditure under Rule 8D(2)(iii), the assesee never pleaded for restrictions of such disallowances to the extent of exempt income and hence, no relief can be given to the assesee on this count. He further submitted that insofar as, re-computation of book profit u/s 115JB, in respect of disallowances of expenditure u/s 14A of the Act, although, the issue has been covered in favor of the assesee by the decision of ITAT Special Bench, in the case of ACIT vs Vireet Investments Pvt. Ltd., but the department has not accepted said decision and further, appeal has been preferred before the High Court and hence, the disallowances computed by the Ld. AO should be upheld.

34. We have heard both the parties, perused the material available on record and gone through orders of the authorities below along with case laws cited by both the parties. The ld. AO has disallowed expenditure incurred in relation to exempt income u/s 14A of the Act, by invoking Rule 8D(2)(ii) and (iii) of I.T. Rules, 1962. According to the Ld. AO, disallowances contemplated u/s 14A shall be determined, in accordance with prescribed procedure provided

under Rule 8D, whether or not the assesee has earned exempt income for the year under consideration. It is the contention of the assesee that when, own funds are in excess of investments made in shares and securities, which yield exempt income then no disallowances can be made towards interest expenditure under Rule 8D(2)(ii). The assesee further contended that insofar as, disallowances of other expenditure under Rule 8D(2)(iii), the said disallowances cannot shallow entire exempt income earned by the assesee for the year under consideration. In other words, it was argued that disallowances of expenditure should be restricted to the extent of exempt income earned for the year under consideration.

35. Having heard both the sides, we find merit in the arguments of the Ld. AR for the assesee for the reasons that the Hon'ble Supreme Court, in the case of CIT vs Reliance Industries Limited(supra) had considered an identical issue and held that no interest disallowances can be made u/s 14A of the Act, if own funds are sufficient to cover-up the value of the investments. The Hon'ble jurisdictional High Court of Bombay, in the case of CIT vs Reliance Utility and Power Limited(supra) held that when, mixed funds including own funds are more than the value of the investments, then a general presumption goes in favor of the assesee that investments made in shares is out of own funds, consequently no disallowance could be made towards interest expenditure. A similar ratio has been laid down by the Hon'ble Bombay High Court, in the case of CIT vs HDFC Bank Limited (supra). Therefore, we are of the considered view that the Ld. AO was erred in disallowed interest expenditure u/s 14A, r.w. Rule 8D(2)(ii) of the I.T. Rules, 1962 and hence, we direct

the AO to delete disallowance of interest expenditure u/s 14A of the I.T. Act, 1961.

36. Coming back to the disallowance of expenditure under Rule 8D (2)(iii) of the I.T. Rules, 1962. We find that the Hon'ble Delhi High Court, in the case of Joint investments Pvt. Ltd. vs CIT (2015) 372 ITR 694(Del) held that disallowances contemplated u/s 14A shall not shallow entire exempt income earned for the year under consideration. A similar view has been expressed by the Hon'ble Delhi High Court, in the case of Chem investment Ltd. vs CIT (2015) 378 ITR 33(Del), where it was held that disallowances shall not exceed exempt income earned for the year under consideration. Further, the Hon'ble Delhi High Court, in the case of ACB vs ACIT (supra) and CIT vs Interglobe enterprises Limited(supra) had considered an identical issue and held that for the purpose of disallowances u/s 14A of the Act, only those investments are to be considered from, which exempt income has been received during the year. The sum and substance of ratio laid down by the various High Courts are that disallowances contemplated u/s 14A shall not exceed exempt income earned for the year under consideration. Therefore, we are of the considered view that the disallowance contemplated u/s 14A shall not exceed exempt income earned for the year. But, in this case, facts with regard to exempt income earned for the year is not coming out from the orders of the lower authorities. Even, the assesee has not furnished any details with regard to exempt income earned for the year under consideration and hence, we are of the considered view that the issue needs to go back to the file of the AO. We, therefore, set aside the issue to the file of Ld.AO for the limited purpose of ascertaining the fact with

regard to the exempt income earned for the year under consideration and restrict disallowance of expenditure u/s 14A to the extent of exempt income; if at all any exempt income is earned for the year under consideration. Insofar as, the arguments of the Ld. DR that if disallowances u/s.14A is restricted to the extent of exempt income, then the assessed income may go below the return income, which is not permissible under the law. We find that the co-ordinate bench of ITAT, Mumbai 'E' bench in the case of M/s Sundaram Multipap vs DCIT in ITA No. 5327/Mum/2015 and cross objection no. 272Mum/2017 had considered an identical issue and by following another decision of co-ordinate bench in the case of TATA Industries Limited (supra) held the issue in favor of the assesee and accordingly, we reject the contention of the Ld. DR.

37. Coming to ground No.3 of cross objection which assail, the disallowance made u/s 14A, while calculating the book profit u/s 115JB of the Act. We find that this issue has been squarely covered in favor of the assesee by the decision of ITAT, Mumbai bench in the case of Mrinalini Trading Company Ltd. Vs DCIT ITA No. 1211/Mum/ 2014, where the Tribunal by following the order of Tribunal Special Bench, in the case of ACIT vs Vireet Investments Pvt. Ltd(supra) held that computation of book profit in terms of clause (f) of Explanation (1) to Section 115JB (2) is to be made without resorting to computation as contemplated u/s 14A r.w. Rule 8D. The relevant findings of the Tribunal are as under: -

> *10. Coming to the additional ground raised by the assessee challenging the adjustment made towards book profit computed u/s 115JB of the Income-tax Act, 1961. The assessee contends that no adjustment can be made towards book profit computed u/s 115JB for any disallowance made under section 14A r.w.r.8D. The assessee further contended that*

the book profit under the provisions of section 115JB has to be computed as per Explanation 1 which permits add back of only certain items to the book profit as listed out in the Explanation 1. Since disallowance u/s 14A r.w.r. 8D is not covered u/s 115JB, no adjustment can be made towards disallowance made u/s 14A. We find merits in the arguments of the assessee for the reason that the ITAT, Special Bench in the case of ACIT vs Vireet Investments Pvt Ltd (2017) 82 Taxmann.com 415 (Del Trib)(SB) has considered similar issue and after considering the provisions of section 115JB(2) observed that computation of book profit in terms of clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to computation as contemplated u/s 14A r.w.r.8D. Therefore, considering the facts of the case and also following the decision of ITAT, Delhi Special Bench, we are of the view that no adjustments can be made towards book profit computed u/s 115JB on account of disallowance made u/s 14A for the purpose of computation of book profit u/s 115JB of Income-tax Act, 1961.

38. In this view of the matter and considering the case laws discussed hereinabove, we direct the Ld. AO to delete adjustments made towards book profit computed u/s 115JB, in respect of disallowance of expenditure 14A of the I.T. Act, 1961.

39. In the result, cross objection filed by the assesee is treated as allowed for statistical purpose.

ITA No.2765/Mum/2018- ASST YEAR 2014-15

40. The revenue has raised the following grounds of appeal.

1. Whether on the facts and circumstances of the case and in law, the Id. CIT(A) erred in directing the AO to reduce the amount of Rs.30 Cr., being provision for Debenture Redemption Reserve (DRR), while calculating income u/s. 115 JB.?."
b)"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate the fact that the decision of Hon'ble ITAT in assessee's own case for earlier year has not been accepted by the department and appeal is pending before the Hon'ble High Court?."
2. a) "Whether on the facts and circumstances of the case and in law, the CIT(A) erred in allowing deduction u/s 801A(4) for Rs.12,6273967/--,?."
b) "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the assessee's scheme was approved

on 05.06.2006 and the provisions of section 80IA(4)(iii) required approval under the Industrial Park Scheme 2008,?"

41. The brief facts of the case are that for the previous year relevant to the year under appeal, the assessee filed its return of income on 30.11.2014 declaring 'nil' income and a revised return was e-filed thereafter on 31.03.2016 repeating the same income. The return filed on 31.03.2016 was initially processed u/s. 143(1) of the Act, but later on selected for scrutiny under CASS. In response to the statutory notices, the assessee made due compliance. In the computation of book profits for the year under consideration, the assessee had not made any adjustment with respect to a sum of 30 crore, which represented the Debenture Redemption Reserve (hereinafter referred to as 'DRR' in short), created under the provisions of S. 117C of the Companies Act, 1956 out of the profits. Such amount, according to the assessee, was not a 'reserve' but in the nature of an ascertained liability. The Assessing Officer, however, entertained the view that it was only a 'reserve' as per clause (b), of Explanation (1) to S. 115JB of the Act. He, therefore, directed the assessee to justify its computation of book profits. In response to the notice, a detailed reply was filed which has been extracted in paragraph 5.1 on pages 3-12 of the assessment order. Amongst various other arguments, it was also submitted that in A.Ys, 2010-11 and 2011-12 additions made by the Assessing Officer in the computation of book profits on similar line of argument were deleted by the CIT (A) in the first appeals.

42. The Assessing Officer, however, was not inclined to endorse the pleadings made by the assessee as, according to him, the decision arrived by the CIT (A) in his orders for the preceding years

on this issue was not accepted by the department and second appeals were filed before the Tribunal. He went on to state that even though the second appeal filed for A.Y. 2010-11 was dismissed vide order in ITA No, 1704/Mum/2014 dated 04.05.2016, it was on technical ground, i.e. low tax effect and not on merit, The findings of the Assessing Officer to reject the claim of the assessee, as recorded in paragraph 5.2 of his order, are as under:

> *"5.2 The assessee's submission has been considered but not found to be tenable. Explanation (1) to clause 2 to section 115JB clearly states the following (relevant extract):*
> *(b) the amounts carried to any reserves, by whatever name called [other than a reserve specified under section 33AC]; or*
> *(c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities.....*
> *Also, while computing the books profit u/s. 115JB, the specified adjustments are required to be made to the profit and loss account prepared in accordance with the provisions of Part II and III of Sch. VI to the Companies Act 1956.*
> *(ii) As per Explanation - l(b) to section 115JB, the amounts carried to any reserves, by whatever name called, other than a reserve specified u/s. 32AC, are required to be added to the book profit declared.*
> *(iii) The proposed adjustment is covered under Explanation -l(b) to section 115JB, as discussed above.*
> *(iv) The amount involved was mentioned by the assessee itself*
> *as reserve and, therefore, is required to be adjusted and added back to the book profit in view of Explanation l(b) to section 115JB.*
>
> *In the present case the terminology as well as the nature of the reserve set aside is in the nature of a reserve other than the specified reserve. It is therefore squarely covered within the ambit of disallowances for the purpose of calculation tax u/s. 115JB of the Act. The said addition has also been made in earlier assessment years. The assessee has stated that the CIT(A) has decided the issue m its favour. It is pertinent to state that the decision was not accepted by the Department and further appeal was preferred to the Hon'ble ITA T. The Hon'ble ITA T vide order dated 4.5.2016 has dismissed the appeal in limine due to low tax effect without adjudicating upon merits. Considering the same and the fact that the addition of debenture redemption reserve has been added back to the book profit u/s. 115JB in A.Y. 2011-12 and 2012-13, to maintain the principle of consistency, the amount of debenture redemption reserve of Rs. 30,00,00,000/- is added back to the income for the purpose of calculation of tax u/s. 115JB of the Act 1961."*

43. Aggrieved by the assessment order, the assesee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assesee has reiterated its submissions made before the Ld. AO. In additions, it was submitted that though the appeal of the revenue for A.Y. 2010-11 was dismissed *in limine*, the appeal for A.Y. 2011-12 was rejected by passing a speaking order in ITA No. 7696/Mum/2014 dated 30.06.2017. Upon consideration of the totality of the facts and circumstances of the case, analyzing the DRR account and precedent the CIT (A) was decided the dispute in favour of the assessee by relying upon the order of the Tribunal in assessee's own case for A.Y. 2011-12 [ITA No. 7696/Mum/2014 dated 30.06.2017]. The relevant observations made by the CIT (A) are as under:-

> *"6.6 I find that the Hon'ble ITAT in the appellant's own case for A. Y. 2011-12 in TTA No. 7696/Mum/2014 dated 30.06.2017 has decided this issue in favour of the appellant and has allowed the deduction of Debenture Redemption Reserve while computing the book profit u/s 115J of the IT. Act. Respectfully deferring to the judicial hierarchy, this ground of appeal is decided In favour of the appellant and the ground of appeal no. 2 is allowed.*"

44. The Ld. DR submitted that the Ld.CIT(A) was erred in directing the Ld.AO to reduce amount of Rs. 30 crores being provision for Debenture Redemption Reserve (DRR), while calculating the book profit u/s 115JB of the I.T. Act, 1961. The Ld. DR, further submitted that the Ld.CIT(A) failed to appreciate fact that the decisions of ITAT in assesee's own case for earlier yeas has not been accepted by the department and appeal is pending before the Hon'ble High Court. The Ld. DR, further submitted that an identical issue has been considered by the Hon'ble Delhi High Court in the case of SREI Infrastructure Finance Limited vs Add.CIT 281 CTR 532, wherein it has been held that the amount transferred to the Special Reserve,

pursuant to the provision of section 45-IC of the Reserve Bank of India Act, 1934 and the amount transferred to the DRR, were includible in the book profit under clause (b) of the Explanation to section 115JB of the act. The Ld. DR, further referring to the decision of Hon'ble Supreme court, in the case of CIT vs National Rayon Corporation Limited (227 ITR 754), submitted that the Hon'ble Supreme Court has clearly held that provision for Debenture Redemption Reserve (DRR) would be includible in book profit computed u/s 115JB of the Act, 1961. The Ld.CIT(A) without appreciating these facts has directed the AO to excluded DRR from book profit computed u/s 115JB of the I.T. Act, 1961.

45. The Ld. AR for the assesee, on the other hand strongly supporting order of the Ld.CIT(A) submitted that this issue is squarely covered in favor of the assesee by the decision of ITAT, Mumbai in assesee's own case for AY 2012-13, in ITA No. 1962/Mum/2017, where under identical set of facts , the Tribunal by following the decision of Hon'ble Bombay High court in the case of CIT vs Raymond Ltd (2012) 21 taxmann.com 60 held that adjustment to the amount of DRR made, while computing the book profits u/s 115 JB of the Act is permissible and is within the purview of the law. The Ld. AR, further submitted that this issue has been considered by the Tribunal in various cases and after considering the arguments of the revenue, in light of the decision of SREI Infrastructure and Finance Limited vs CIT (supra) held that provision for DRR should be excluded from book profit computed u/s 115JB of the Act. The Ld.CIT(A), after considering relevant facts has rightly deleted additions made by the AO and his order should be upheld.

46. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The issue involved in the present appeal regarding exclusion of DRR from book profit computed u/s 115JB of the Act, 1961 is squarely covered in favor of the assesee by the decision of ITAT in assesee's own case for AY 2012-13 in ITA no. 962/Mum/2017, where under identical set of facts the Tribunal by following decision of Hon'ble Bombay High Court, in the case of CIT vs Raymond Ltd. (supra) held that adjustment of the amount of DRR, made while computing the book profit u/s 115JB is permissible and is within the purview of the law. We further noted that the disallowance made in A.Y. 2011-12 was so for identical reasoning's, but as stated hereinabove, the disallowance made by the Assessing Officer was deleted in first appeal by following the binding judgments in the case of CIT v. Raymond Ltd. [2012] 21 taxrnann.com 60 (Bom) and taking note of the judgment of the Hon'ble Supreme Court in National Rayon Ltd. v. CIT [227 ITR 764 (SC)], copies of which are placed at pages 5-7 and 8-15 respectively of the paper book. Further, the order of the CIT (A) was also in consonance with the ratio laid down by the co-ordinate Bench of this Tribunal in the case JSW Energy Ltd. v. ACIT (150 ITD 406 (Mum)], a copy of which is also placed at pages 16-21 of the paper book. The facts of the case, arguments of the parties and the decision arrived at by the Tribunal in the order dated 30.06.2017 in ITA No, 7696/Mum/2014 (pages 1-4 of PB), are extracted below for the sake of convenience:

> *"3. As a perusal of the aforesaid ground of appeal reveals, the solitary dispute relates to the manner of computation of book profits for the purposes of determination of tax liability u/s. 115JB of the Act Notably, while computing the book profits for the purposes of Sec. 115JB of the Act, the assessee-company deducted a sum of Rs. 74,75,00,000/- which represented Debenture Redemption Reserve. The said amount was*

created out of the profits set-aside as Debenture Redemption Reserve, As per the Assessing Officer, the said Debenture Redemption Reserve was a reserve in terms of clause (b) of Explanation to Sec 115JB of the Act whereas according to the assessee, the said amount was not a reserve, but in the nature of an ascertained liability. The CIT(A) has since upheld the stand of the assessee by relying on the judgment of the Hon'ble Bombay High Court in the case of Raymond Ltd,, [2012] 209 Taxman 65 (Bom) as well as the judgment of the Hon'bie Supreme Court in the case of National Rayon Ltd., 227ITR 764 (SC). Accordingly, the CIT(A) directed the Assessing Officer to re-compute the book profits for the purposes of Sec. 115JB of the Act after excluding the amount of Rs. 74,75,00,000/- set aside by the assessee as Debenture Redemption Reserve. Against such a decision, Revenue is in appeal before us.

4. Before us, the Id CIT-DR has reiterated the stand of the Assessing Officer, which is primarily to the effect that the impugned amount was merely a Reserve and, therefore, was not deductible while determining the book profits u/s. 115JB of the Act.
5. On the other hand, the learned representative for the assessee pointed out that the CIT(A) made no mistake in allowing the claim of the assessee, which is also in consonance with the decision of the Tribunal on a similar issue in the case of JSW Energy Ltd. [2014] 150 ITD 406 (Mumbai- Trib.).
6. We have carefully considered the rival submissions. In our considered opinion, having regard to the judgment of the Hon'ble Bombay High Court in the case of Raymond Ltd. (supra) as well as the decision of our coordinate Bench in the case of JSW Energy (supra), the Tribunal was considering the deducibility of the amount set apart as Debenture Redemption Reserve for the purposes of computing the book profits u/s. 115JB of the Act After detailed discussion, it has been held that adjustment of the amount of Debenture Redemption Reserve made while computing the book profits u/s. 115JB of the Act is permissible and is within the purview of the law. The decision of CIT(A) is in consonance with the aforesaid legal position and even before us, no contrary decision has been brought out by the Revenue and as a consequence, we hereby affirm the decision of CIT(A) on this aspect Thus, the Revenue fails in its appeal."

47. We, further, noted that in A.Y. 2012-13 also, the Assessing Officer had made similar addition, but the same was deleted in first appeal. The order of the CIT(A) was unsuccessfully challenged in the second appeal in this year too in ITA No. 962/Mum/2017 on the following ground:

"1. On the facts and in the circumstances of the case- and in law, the ld. CIT(A) erred in holding that the amount of Rs. 30,00,00,000/- set apart by

the assessee as DRR is not a reserve within the meaning of Explanation 1(b) to section 115JB of the Act"

48. After narrating the facts of the case and relying upon the order passed in ITA No. 7696/Mum/2014 dated 30.06.2017, the order impugned was endorsed by the Tribunal vide ITA No. 962/Mum/2017 dated 31.05.2019. The relevant paragraphs from the aforesaid order for AY. 2012-13 are reproduced below for the sake of convenience:

"4. The facts in brief are that the AO on the perusal of return of income and other details filed by the assessee observed that assessee has set apart Rs. 30 crores towards the debentures and redemption reserve out of profit of the current year. The assessee was asked to justify the allowability of the said debentures redemption reserve from book profit clause © to explanation 1 to sect/on 115JB of the Act which was replied by the assessee vide written submission date 18.03.2014 submitting that during the year under consideration the company issued debentures of Rs. 245 crore and therefore while finalizing the accounts for the year ended 31.03.2012 company has appropriated Rs. 30 crores towards debentures redemption reserve out of the profits of the years. The ld. A.R. submitted that the assesse company has credited debentures redemption reserve to the extent of Rs. 30 crores under the provisions of section 117C of the Companies Act, 1956. While filing the return of income for A. Y. 2012-13 the said appropriation towards redemption reserve has been reduce from book profit as per explanation 1 to section 115JB of the Act. The reply of the assessee did not find favour with the AO and the AO came to the conclusion that the reserve set aside is in the nature of reserve which is not covered in the definition of specified reserve and therefore squarely covered within the ambit of disallowance for the purpose of calculation of book profit under section 115JB of the Act and added hack to the Income of the assessee by observing that in A. Y 2010-11 and 2011-12 also similar setting apart was added back to the profit of the assessee.

5. The id. CIT(A) allowed the appeal of the assessee by following the decision of Hon'ble Jurisdictional Bombay High Court in the case of C1T vs. Raymond Ltd [2012] 21 taxmann.com 60 (Bom).

6. The Ld.AR, at the outset, submitted that the issue is covered in favour of the assessee by the decision of the co-ordinate bench of the Tribunal in its own case in ITA No. 7696/M/2014 A. Y. 2011-12 vide order dated 30.06.2017 which was passed by following the decision of the Hon'ble Bombay High Court in the case of CIT vs. Raymond Ltd. (supra). The id A.R. therefore prayed before the Bench that the ground raised by the Revenue may kindly be dismissed in view of the decision of the co-ordinate bench of the Tribunal.

7 The id D.R., on the other hand, relied on the order of authorities below and grounds raised in the memorandum of appeal.

8. After hearing both the parties and perusing the material on record including the decision of the co-ordinate bench of the Tribunal in assessee's own case in ITA No. 7696/M/2014 (supra), we observe that the identical issue has been decided in favour of the assessee. The operative part is reproduced as under:
……

9. Since the facts in the year under consideration are identical, we, therefore, respectfully following the decision of the coordinate bench of the Tribunal uphold the order of id. CIT(A) by dismissing the ground raised by the Revenue'

49. Needless to state, S. 117C of the Companies Act, referred to in the aforesaid order, mandates creation of adequate amount of debenture redemption reserve in similar circumstances. For ready reference, this section, a copy of which is placed at page 24 of the paper book, is reproduced below:

"117C. LIABILITY OF COMPANY TO CREATE SECURITY AND DEBENTURE REDEMPTION RESER VE

(1) Where a company issues debentures after the commencement of this Act, it shall create debenture redemption reserve for the redemption of such debentures, to which adequate amounts shall be credited, from out of its profits every year until such debentures are redeemed.

(2) The amounts credited to the debenture redemption reserve shall not be utilized by the company except for the purpose aforesaid.

(3) The company referred to in sub-section (1) shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue. ,

(4) Where a company fails to redeem the debentures on the date of maturity, the Tribunal may, on the application of any or all the holders of debentures shall, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith by the payment of principal and interest due thereon.

(5) If default is made in complying with the order of the Tribunal under sub-section (4), every officer of the company who is in default, shall be punishable with imprisonment which may extend to three years and shall also be liable to a fine of not less than five hundred rupees for every day during which such default continues.,"

50. We, further, noted that the Tribunal has decided this very issue in favour of the assessee earlier in the case of Rachana Finance & Investment P, Ltd. and Repute Properties P. Ltd. for A.V, 2012-13 [ITA Nos. 5817 & 5816/Mum/2015 dated 31.05.2017] too. The Tribunal after considering the facts of the case and the binding judgment of the Hon'ble Bombay High Court in the case of CIT vs. Raymonds Ltd. (2012) 21 taxmann.com 60, the issue was decided in favour of the assesses by observing as under:

> *"7. In the similar case ITAT Ahmadabad Bench in the case of ACIT vs. Genus Electrotech Ltd (2016) (161 ITD 644 (Ahd - Trib) has held that the adjustment claimed by the assessee for Debt Redemption Fund was declined with a short observation that Debt Redemption Fund was an appropriation for the purpose of creating a reserve and was a below line adjustment and it did not fail in any category of adjustments provided u/s. 115JB of the Act. Respectfully following the Hon'ble Bombay High Court in the case of Raymond Ltd. (supra), we allow the claim of the assessee. The orders of the lower authorities are reversed and deduction is allowed."*

51. Likewise, the orders of the Pr. CIT passed u/s. 263 of the Act, in the case of Housing Development and Infrastructure Ltd. for A.Ys, 2009-10 and 2010-11 with respect to those of the Assessing Officer granting deduction for DRR, were reversed in ITA Nos. 3530 and 3531/Mum/2018 vide order dated 10.01.2019. The relevant findings recorded by the Tribunal for setting aside the directions issued by the CIT on this count are as under:

"24. We have heard rival contentions on this issue. There should not be any dispute that the decision rendered by the jurisdictional High Court is binding on all authorities below it In the case of Raymond Ltd. (supra), the Hon'ble Bombay High Court has held that the Debenture Redemption Reserve is an ascertained liability and is deductible from Net profit for the purpose of computing Book Profit u/s. 115JA of the Act. The claim made by the assessee as well as allowed by the AO gets support from the decision rendered by the jurisdictional High Court The ld. Pr. CIT has taken the view that the Hon'ble Bombay High Court has not considered The decision rendered by the Hon'ble Supreme Court in the case of National Rayon Corporation (227ITR 764) in proper perspective and further observed that the Hon'ble Bombay High Court did not consider the fact that the Debenture Redemption Reserve operates in Capita! field and hence appropriation of profit is not deductible for fax purposes. Accordingly, 'the ld. Pr. CIT has taken the view that the decision rendered by Hon'ble Bombay High Court is per incuriurn. Whatever may be the reasoning given by id, Pr CIT, it cannot be denied that the id. Pr. CIT has taken different view in the mater, without noticing that he decision rendered by jurisdictional 'High Court is binding on him also. On the contrary, the claim made by the assessee was well as allowed by the gets support from the decision rendered by the jurisdictional! High Court, meaning thereby, the AO has followed binding decision of the jurisdictional High Court, which cannot be found fault with."

52. In view of the above, and considering facts and circumstance of this case, we are of the considered view that the amount of Rs.30 crores set apart was undoubtedly an ascertained liability and not a

'reserve' covered by clause (b) of Explanation (1) to S. 115JB of the Act, as inferred by the Assessing Officer and hence, the AO was, therefore, unjustified in holding such amount as covered within the ambit of disallowance provided in clause (b) of Explanation (1) to S, 115JB of the Act. The CIT (A), in our considered view, was perfectly in order in deleting such disallowance and his order, on this count, does not call for any interference for all the aforesaid reasons.

53. During the course of the hearing, in support of his attack to the order of the CIT (A), the D.R. placed reliance on the judgment of the Hon'ble Delhi High Court in the case of SREI Infrastructure Finance Ltd.v. Addl. CIT (281 CTR 532), rendered on 13.02.2015 wherein it has been held that the amount transferred to the special reserve pursuant to the provisions of S, 45-IC of the Reserve Bank of India Act, 1934, and the amount transferred to the DRR, were includible in the book profits under cl. (b) of the Explanation (1) to S. 115JB of the Act. We find that the said decision has been rendered based on peculiar facts of its own case. The specific distinguishing features in the said judgment are evident from paragraph 22 of the order, which is extracted below:

> *"22. In respect of redemption reserve of Rs. 18,66,00,000, no specific explanation was given; on what account and why the said reserve was created Nothing has been shown or pointed out to us to show why the said reserve was created The reply dt. 9th March, 2009 quoted in the assessment order refers to definition of the term 'provision or reserve' and various decisions and in the end it is stated that the amounts set apart for provision of the debt redemption reserve to meet any known liability cannot be termed as 'reserve' as the same was essentially a 'provision' to Explanation 1. Why and for what reasons the amount of Rs. 18,66,00,000 represented an ascertained and known liability, is not indicated or stated. The nature and character of debt is not mentioned and adverted to. The AO also noticed that in the*

earlier years, the debt redemption reserve was offered or added by the assessee himself for computation of book profit The assessment order records that the assessee had created a 'reserve' for meeting any kind of debt without specifying its details or particulars."

54. Unlike the position existed in the above decision, the DRR was created by the assessee in the present case as per the mandate given under S. 117C of the Companies Act. It is also an ascertained liability and not a mere provision as has been held in the binding judgments of the Hon'ble Bombay High Court discussed hereinabove. It may also be stated that the aforesaid judgment, rendered by the non-jurisdictional High Court, was considered but still the issue was decided in favour of the assessee by the coordinate Benches of this Tribunal in Rachana Finance & Investment P. Ltd. and Repute Properties P. Ltd. v. ITO for A.Y. 2012-13 in ITA Nos. 5817 and 5816/Mum/2015 dated 31.05.2017. Similarly, in a subsequent order in the case of Housing Development and Infrastructure Ltd. v. Pr. CIT for A.Ys. 2009-10 and 2010-11 in ITA Nos. 3530-3531/Mum/2013 dated 10.01.2019 also, the coordinate Bench of this Tribunal, even after considering the aforesaid judgment of the Hon'ble Delhi High Court had decided the issue in favour of the assessee. In the premises, the ratio laid down in the aforesaid judgment of the Hon'ble Delhi High Court would not be applicable to the case of the assessee.

55. In this view of the matter and consistent with view taken by the coordinate bench, we direct the AO to delete additions made towards provisions for DRR to book profit computed u/s 115JB of the I.T. Act, 1961.

56 The next issue that came up for our consideration from ground No.2 of revenue appeal is rejection of deduction u/s 80IA(4) of the I.T. Act, 1961 amounting to Rs. 12,62,73,967/-. The Ld. AO has rejected deduction claimed towards notified industrial park u/s 80IA(4), on the ground that the benefit of the Industrial Park scheme, 2008 was not available to the assesee, since it was received the requisite approval 05/06/2006. The Ld. AO, further observed that the completed assessment for AY 2008-09 and 2009-10, granting deduction u/s 80IA(4) of the Act, were re-opened and the objection received by the assesee were rejected. Therefore, he opined that assesee is not entitled for deduction u/s 80IA(4) in respect of sale of units from its industrial park at Akruti Centre Point u/s 80IA(4)(iii) of the I.T. Act, 1961. The relevant observation of the AO are as under:-

> *"8. During the year, the assessee has claimed a deduction of Rs. 12,62,73,967/- on sale of units from its Industrial Park at Akruti Centre Point u/s. 80-IA 4(iii) of the Act. The condition for eligibility of Industrial Park for the benefit under this section have been specified in Rule 18C of the Income Tax Rules. One of the conditions mentioned therein is that the undertaking and the Industrial Park shall be notified by the Central Government under the Industrial Park Scheme, 2008. It is seen that the notification in respect of the approved Industrial Park was issued in the assesee's case only on 5th June 2006 i.e. the Park is not notified under the Industrial Park Scheme, 2008.*
>
> *It is pertinent to state here that the assessee's case has been reopened for A. Y. 2008-09 and 2009-10 on the same issue. The then assessing officers had rejected the objections raised by the assessee company to the reassessment proceedings. Subsequent to that the assessee has filed a writ petition under Article 226 of the Constitution and the matter is still subjudice.*

57. Aggrieved by the assessment order, the assesee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), it was submitted that the industrial parks of the assessee were not covered by the 2008 Scheme, as erroneously inferred by the Assessing Officer, rather they were covered by the Industrial Park Scheme, 2002 (hereinafter referred to as 'the 2002 Scheme'). It was submitted that the approval for the industrial parks of the assessee was issued on 05.06.2006 which itself established that they were not covered by the 2008 Scheme. The CIT (A) in his elaborate order considered the detailed written submissions filed (page 160-181 of the paper book), the 2002 Scheme and 2008 Scheme, the requisite approvals granted to the assesee and various notification.; issued on the subject. In addition, the first appellate orders in A.Ys, 2005-06 and 2006-07 were also considered, and he has deleted the disallowance by observing as under:

> *"8.19 Finance Act 1997 extended the benefits of tax holiday to industrial parks set up as per the Scheme of the Central government and notified in this regard The Industrial parks had to start operations between 1.4.1997 to 31.3.2002. This was subsequently amended to Industrial Parks to be set up by 31.3.2006. Now it is noted that the Industrial Parks developed by the appellant are under the Scheme of 2002 and are operative prior to 1.4.2006. The approvals by the Ministry of Commerce and the CBDT notifications clearly state so. Once the conditions stipulated are satisfied, the benefit is available for 10 consecutive years in a block of 15 years. The first year of claim was 2005-06. The claim for A. Y. 2005-06 and A. Y. 2006-07 has been upheld all the way up to the Hon'ble Bombay High Court. The assessment year before me is AY 2014-15 which is the last year of the claim. Earlier the objection raised was that the CBDT*

notification was received in Previous Year relevant to AY 2007-08 and hence deduction was not allowed in A Y2005-06 and 2006-07. The claim was allowed in AY 2007-08. It was allowed in AY 2008-09 and AY 2009-10 also though subsequently notice u/s. 148 to deny the claim was issued which was challenged by way of Writ Petitions by the appellant and is subjudice (discussed earlier). The claim has been allowed in subsequent assessment years 2010-11 2011 -12, 2012-13 Si 2013-14. Now for AY 2014-15, the last year of claim, the assessing officer has contended that approval should have been under Industrial Park Scheme, 2008. There is no reason to now hold that the appellant is not entitled to deduction u/s. 8IA(4)(iii) and that its industrial park should have been approved under the Industrial Park Scheme 2008 which clearly is applicable to cases where the date of commencement of the Industrial Park Is on after the 1st day of April, 2006 and not later than 31 5l of March; 2009. Also the Industrial park Scheme 2008 dearly refers to approval under Industrial Park Scheme 2002 to continue. Thus appellant's approval under the 2002 Scheme continues. Further, the matter before the Hon'ble High Court Is in respect of the reopening of assessment and net on merits. Other than to mention the argument that approval under Scheme of 2008 should have been taken, no other reasons for findings of objections are recorded by the assessing officer for denying the claim in AY 2014-15." It is against the well-reasoned order of the CIT(A) that the aforesaid ground has been raised.

58. The Ld. DR submitted that the Ld.CIT(A) was erred in allowing the deduction u/s 80IA(4) towards sale of units in industrial park at City Akruti Point, without appreciating the fact that the scheme was

approved on 05/06/2006, and the provision of section 80IA(4)(iii) required approval under the industrial park scheme, 2008. The Ld. AO has brought out clear facts to the effect that the assesee is not entitled for deduction. However, the Ld.CIT(A) has negated observations of the Ld.AO without any reason, as how the project approved before the Industrial Park Scheme, 2008 is eligible for deduction 80IA(4)(iii) of the I.T. Act, 1961.

59. The Ld. AR for the assesee, on the other hand, strongly supporting order of the Ld.CIT(A) submitted that the objections of the AO was untenable and it was rightly deleted by the CIT(A), because the industrial Park scheme, 2008 relied upon by the AO to reject the claim of the assesee did not apply to assesee case. The assesee had applied for approval of two Industrial Park, under 2002 Scheme and the approval were given by DIPP vide letter No. 5/09/02-IP &D dated 31/03/2004 vide letter No. 15/43/05 IP &D dated 09/2/2005 under Industrial Park Scheme, 2002. Further, the CBDT had also notified the said Industrial Park vide notification No. 129/2006 and 176/2006 dated 05/06/2006 and 12/06/2006 respectively. Since, the industrial parks of the assesee were duly approved by the DIPP and also, notified by the CBDT, the inference drawn by the AO to the contrary was unjustified and unwarranted. The Ld. AR further submitted that if you go through clause 4.1 and clause 5.6 of the Industrial Park, Scheme, 2008, it is not understood as to how the Ld.AO had inferred that the industrial parks of the assesee for which approvals were granted under 2002 Scheme were covered by the 2008 scheme. The Ld. AR, further submitted that a similar claim was made in AY 2005-06 and AO was not accepted the claim of the assesee. The ld. CIT(A) has reversed the findings of the Ld.AO for

both the years and the revenue carried the mater unsuccessfully in further appeals to the Tribunal and Tribunal had accepted the fact that the assesee's industrial parks are covered under Industrial Park Scheme, 2002 and also notified by the CBDT and hence, the assesee is eligible for deduction u/s 80IA(4) of the I.T. Act, 1961. Although, the revenue has challenged the matter before the Hon'ble High Court, but the Hon'ble High Court vide their judgment dated 22/02/2013 in ITA 71 and 72/Mum/2012 had dismissed such appeals. The Ld.CIT(A) after considering the relevant facts has rightly deleted additions made by the AO and his order should be upheld.

60. We have heard both the parties, perused the martials available on record and gone through orders of the authorities below. At the outset, the rejection of the claim for deduction u/s. 80-IA(4)(iii) of the Act by the Assessing Officer was untenable and it was rightly deleted by the CIT(A). Further, the 2008 Scheme, relied upon by the Assessing Officer to reject the claim of the assesses, did not apply to its case. The assessee had applied for approval of Two industrial parks under 2002 Scheme and the approvals were given by DIPP vide letter No. 15/09/02-1 P&D dated 31,03.2004 and vide letter No. 15/43/05 IP&D dated 09,12.2005 under Industrial Park Scheme, 2002. Further, the CBDT had also notified the said Industrial Park vide Notifications Nos. 129/2006 and 176/2006, dated 05.06.2006 and 12.06.2006 respectively. It would not be out of place to mention here that since the industrial parks of the assessee were, thus, duly approved by DIPP and also notified by the CBDT, the apex body of the department the inference drawn by the Assessing Officer to the contrary was unjustified and unwarranted. In any case, the assessee

was not covered by 2008 Scheme, as erroneously inferred by the Assessing Officer since it was applicable to industrial parks which were commenced on or after 01.04,2006, but not later than 31.03.2011. On the other hand, the industrial parks of the assessee were fully covered by the 2002 Scheme. This is evident from clause 4.1 and clause 5.6 of the 2002 Scheme itself, a copy of which is placed at pages 110-121 of the paper book. The aforesaid clauses are reproduced below for ready reference:

> *"4. Criteria for approval- An undertaking shall be considered for notification under clause (iii) of sub-section (4) of section 80-IA of the Act, if it fulfills all of the following conditions, namely:-*
>
> 1. *The date of commencement of the Industrial Park should be on or after the 1st day of April, 2006 and not later than 31st of March, 2009. "*
>
> ***"5. General Conditions:-***
>
> *.....*
>
> *6. An industrial park approved under Industrial Park Scheme, 2002 will continue to be governed by the provisions of that Scheme to the extent it is not in contravention with the provisions of Act, as amended from time to time."*

61. In view of the unambiguous language of clause 4.1 and clause 5.6 of the Industrial Park Scheme, 2008 extracted hereinabove, it is not understood as to how the Assessing Officer had inferred that the industrial parks of the assessee, for which approvals were granted under 2002 Scheme were covered by the 2008 Scheme. Therefore, we are of the considered view that the rejection of the claim of the assesses which was in accordance with the statutory provisions and supported by requisite approvals and notifications was rightly reversed by the CIT (A). Further, a similar claim was made in A,Y, 2005-06 for a sum of Rs. 10,59,66,901/-. During the course of

scrutiny, the Assessing Officer observed that in respect of the same properties the assesee had offered rental income as 'income from house property' in A.Ys 2001-02 to 2004-05 in the returns filed u/s. 139(1) of the Act. Hence, the treatment of such income from Industrial Parks as 'business income' was not accepted by the Assessing Officer and, the claim of deduction u/s. 80-lA(4)(iii) of the Act was rejected. On same lines, the claim made u/s. 80-IA(4)(iii) for A,Y. 2006-07 was also declined. Since the orders of the Assessing Officer for both the years were reversed by the CIT (A), the revenue carried the matter unsuccessfully in further appeals to Tribunal. The relevant observations made by the Tribunal in the order dated 24.06.2011 in ITA Nos. 4851/Mum/2009 for AY 2005-06 (which were followed in ITA No. 4852/Mum/2009 for A.Y. 2006-07) were as under:

> *"12.1 We find the A.O. disallowed the claim of deduction u/s. 80-IA(4)(iii) on the ground that the CBDT approval was given on 5.6.06 and 12.7.06 and, therefore, the same relates to A. Y. 2007-08 only. From the various details furnished by the assesses we find the assessee made the application to the member, CBDT, New Delhi for notification on 16.6.05, i.e. before filing its return of Income for AY. 2005-06, claiming deduction u/s. 80IA(4)(iii). The above fact brought on record by the Id CIT (A) at para No. 5.3 of his order has not been controverted by the Id D.R. We find as per Rule 18-C(4), the CBDT is required to issue the requisite notification once the approval is given by the Commerce Ministry. In the instant case, we find the Ministry of Commerce and Industry vide their letter dated 209th Aug., 2002 had approved the proposal of the assesses company for setting up of the Industrial park hi terms of the scheme notified by the department in exercise of the powers u/s. 80IA(4)(iii) subject to certain conditions. We find the Commerce Ministry vide their letter dated 12th Nov. 2003 has modified the notification of the approval letter dtd. 23th Aug. 2002. We find the Ministry of Commerce and Industry again vide their letter dtd. 31st December, 2004 has approved the revised application for modification wherein it was mentioned that Income-tax benefit*

u/s. 80IA(4)(iii) will be available only if the proposed number of Industrial units mentioned in para 1(vii) of this approval letter are located in the Industrial park. We find, a copy of such notification was forwarded to the Director (ITA -I), Office of Central Board of Direct Taxes, Department of Revenue, North Block, New Delhi and a copy of which is placed at paper book pages 15 to 17. We find the assessee company has fulfilled all the requisite conditions for claiming deduction u/s. 80IA(4)(iii) of the Act. The requisite number of units located in Industrial Park were completed and the completion certificates were also obtained by 24^{h} December 2003, a finding given by the ld CIT(A) and not controverted by the ld. D.R. Under these circumstances, we do not find any infirmity in the order of the CIT(A) allowing the claim of deduction u/s 80IA(4)(iii). The ground No. 1 raised by the Revenue is accordingly dismissed."

62. It would not be out of place to mention here that the aforesaid order of the Tribunal was carried in proceedings u/s. 260A of the Act by the revenue but in vain. The Hon'ble High Court vide their judgment dated 22.02.2013 rendered in ITA Nos. 71 and 72 of 2012, had dismissed such appeals. Further, in the subsequent year, i,e. A.Y. 2007-08, similar claim preferred was granted after due verification vide assessment order dated 30,12.2008. In A.Y. 2008-09 also, claim u/s. 80-IA4(iii) of the Act made by the assessee was allowed in the order passed u/s. 143(3) of the Act dated 24.12.2010 and in respect of which proceedings u/s. 147 of the Act were initiated, and the matter is subjudice before the Hon'ble High Court. In any case, it is on the reopening part and not on the merits.

63. Considering the totality of the facts and circumstances of the case, more particularly in absence of any non-compliance of statutory requirements by the assessee, the rejection of its claim for deduction u/s. 80-IA(4)(iii) of the Act was uncalled for. The CIT (A) was, therefore, perfectly justified in correcting the error committed by the Assessing Officer by passing *an* exhaustive; elaborate and

reasoned order. Hence, we are inclined to uphold order of the ld. CIT(A) and reject grounds raised by the revenue.

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

CO.No. 164/Mum/2019- ASST YEAR 2014-15

65. The assesee has raised the following grounds of cross objection:-

> *"1. The learned CIT (A) ought to have directed the Assessing Officer to delete the disallowance of Rs. 10,44,08,023/- made by the Assessing Officer u/s. 14A r.w.r. 8D(2)(ii) of the Act on account of proportionate interest expenditure.*
> *2. The learned CIT (A) ought to have directed the Assessing Officer to delete the disallowance of Rs. 2,90,10,684/- made by the Assessing Officer u/s. 14A r.w.r. 8D(2)(iii) of the Act in respect of other expenditure.*
> *3. The learned CIT (A) ought to have directed the Assessing Officer to delete the dis3fiowance made u/s. 14A of the Act while calculating the book pro fit u/s, 115JB of the Act"*

66. At the outset, the Ld. AR for the assesee submitted that the cross objection filed by the assesee is delayed by 177 days, for which necessary petition along with affidavit for condonation of delay has been filed explaining the reasons for delay in filing cross objection. The ld. AR as well as the ld. DR has made it clear that arguments advanced for assessment year 2013-14 are equally applicable for this year as well and they do not have any fresh arguments. We, therefore, not inclined to record their arguments in this cross objection for the sake of breviety.

67. We have heard both parties and have gone through condonation petition filed by the assessee. We find that a similar condonation petition filed by the assessee for Asst. year 2013-14 has been decided in favour of the assessee and condone the delay in filing cross objection. Further, the facts and reaons given by the assessee for this assessment year are also identical to the facts and reasons considered by us for Asst. Year 2013-14. The reasons given by us in preceeding paragraphs No. 28 to 31 of CO.No. 163/Mum/2019 shall mutatis mutandis apply to this cross objection as well. Therefore, for detailed reasons recorded in preceding paragraph, we condone delay in filing cross obection and admit the issue for adjudication on merits.

68. The facts and issue involved in this cross objection filed by the assessee is identical to the facts and issue which we had considered in preceding paragraph in CO. 163/Mum/2019 for Asst. Year 2013-14. The reasons given by us in preceding paragraph No. 35 to 39 shall mutatis mutandis apply to this cross objection as well. We, therefore, for detailed reasons recorded in preceding paragraph in CO.163/Mum/2019, direct the AO to follow the findings of the Tribunal for Asst. Year 2013-14 and restrict disallowances of expenditure u/s 14A of the Act, to the extent of exempt income earned for the year. We, further direct the AO to delete adjustment made to book profit computed u/s 115JB of the Act, towards disallowance u/s 14A of the Income tax Act, 1961.

69. In the result, cross objection filed by the assesee is treated as allowed for statistical purpose.

70. As a result, appeals filed by the revenue for AY 2013-14 and 2014-15 are dismissed and cross objection filed by the assesee for both AY's are treated as allowed for statistical purpose.

Order pronounced in the open court on this 13/12/2019

Sd/-	**Sd/-**
(RAVISH SOOD)	**(G. MANJUNATHA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai; Dated 13/12/2019
Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai