IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'B', NEW DELHI

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. KUL BHARAT, JUDICIAL MEMBER

(THROUGH VIDEO CONFERENCING)

ITA No.1001/Del/2018
(Assessment Year : 2013-14)

ACIT Circle – 22(2), New Delhi PAN : AADCS 9993 C	Vs.	SBEC Bioenergy Ltd. 1400, Hemkunt Tower 98, Nehru Place, New Delhi-110019
(APPELLANT)		**(RESPONDENT)**

Assessee by	Shri Premjit Singh Kashyap, C.A.
Revenue by	Ms. Rinku Singh, Sr. D.R.

Date of hearing:	02.09.2021
Date of Pronouncement:	06.09.2021

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-43, New Delhi 07.11.2017 for Assessment Years 2013-14.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company stated to be engaged in the business of generation and supply of power. The power generated by the company is supplied to SBEC Sugar Limited (SSL) and Uttar Pradesh State Electricity Board (UPSEB). Assessee electronically filed its return of income for A.Y. 2013-14 on 30.09.2013 declaring loss of Rs.2,18,00,962/-. The case was selected for scrutiny and thereafter the assessment was framed u/s 143(3) of the Act vide order dated 17.03.2016 and the total income was determined at Rs.3,24,93,658/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 07.11.2017 in Appeal No.323/2016-17 allowed the appeal of the assessee. Aggrieved by the order of CIT(A), Revenue is in appeal before us and has raised the following grounds of appeal:

> *"1. Whether the Ld CIT(A) was justified in deleting the addition of Rs.5,35,56,896/- made by the AO on account of profit from sale of steam despite the fact that in earlier years the company has accounted for income on sale of steam bit in this year company has supplied steam to SSL free of cost.*
> *2. The appellant craves leave to add, alter or amend any of the ground(s) of appeal before or during the course of the hearing of the appeal."*

4. During the course of assessment proceedings, AO noticed that assessee has shown production of steam of 2,26,936 ton, which was supplied, to SSL free of cost instead of Rs.75/- per ton being sold in earlier years. Assessee was asked to explain as to why no income has been accounted on the account of sale of steam supplied to SBEC Sugar Ltd. and why rate of steam sold to SSL should not be taken at Rs.236/- per ton as per earlier years. It was *inter alia* submitted that assessee had received intimation

from SSL informing the decision not to pay for any exhaust steam under the conversion agreement since October 2001. It was further submitted that the conversion agreement dated 10th December 1998 entered between the SSL & SIAL was subject to the approval of PICUP and no approval has been received till date from PICUP. It was further submitted that SSL had stopped making payment for the same w.e.f October 2001. The submission of the assessee was not found acceptable to AO. AO was of the view that supply of steam free of cost on the basis of letter dated 02.11.2002 of SSL not to pay for any steam received since October 2001 was not acceptable. He was further of the view that steam definitely had a value and in earlier years assessee has recognized the receipt from steamed. He accordingly considered the sale of steam @ 236/- per ton and for the quantity of 2,23,936 tons determined the value at Rs.5,35,56,896/- and made its addition. Aggrieved by the order of AO, assessee carried the matter before the CIT(A). CIT(A) noted that the identical issue arose in assessee's own case in earlier years i.e. Assessment Years 2003-04 to 2009-10 wherein the issue has been decided in favour of the assessee by the Tribunal. He therefore following the decision of the Tribunal in assessee's own case deleted the addition.

5. Aggrieved by the order of CIT(A), Revenue is now in appeal before us.

6. Before us, Learned DR supported the order of AO.

7. Learned AR on the other hand reiterated the submissions made before the lower authorities and supported the order of CIT(A). Learned AR also pointed that for A.Y. 2014-15, the Co-ordinate Bench of Tribunal in ITA No.6097/Del/2017 order dated 19.03.2021 has decided the issue in favour of the assessee by following the Tribunal order for A.Y. 2007-08. He pointed to the copy of the relevant order in the paper book. He therefore submitted that considering the aforesaid facts, the appeal of Revenue be dismissed.

8. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the addition made on account of notional receipt from supply of steam. We find that CIT(A) while deciding the issue in favour of the assessee had noted that identical issue arose in assessee's own case in earlier years and the Tribunal has decided the issue in those years in assessee's favour. We also find that identical issue arose in assessee's own case in A.Y. 2014-15. In Revenue's appeal, the Co-ordinate Bench of Tribunal vide order dated 19.03.2021 and by following the order of the Tribunal in ITA No.3440/Del/2011 for A.Y. 2007-08 had dismissed the appeal of the Revenue thereby deciding the issue in favour of the assessee. The relevant observations of the Tribunal are as under:

> *"3. Only one issue is involved in the appeal of the revenue relates to contention of the assessee against estimating notional receipt by the AO towards the supply of power of Rs.5.32 Cr. as against the real income Nil.*
>
> *4. At the outset, it was brought to our notice that this issue has been covered by the orders of the Co-ordinate Benches of ITAT for many assessment years.*

5. For the sake of ready reference, the relevant portion of the order of the ITAT dated 07.03.2012 in ITA No. 3440/Del/2011 for the assessment year 2007-08 is reproduced as under:

> *"2. Adverting first to ground nos. 1 to3 in the appeal, facts in brief, as per relevant orders are that the return declaring income of Rs.35,19,791/- after claiming deduction of Rs.1,49,09,636/- u/s 80-IA of the Income-tax Act,1961[hereinafter referred to as the 'Act'] under the normal provisions of the Act and book profit of Rs.1,55,10,901/- u/s 115JB of the Act, filed on 30.10.2007 by the assessee, generating power, after being processed on 06.10.2008 u/s 143(1) of the Act, was selected for scrutiny with the service of a notice issued u/s 143(2) of the Act on 15.09.2008. During the course of assessment proceedings, the Assessing Officer (A.O. in short) noticed that the assessee had shown production of 2,89,240 tonne of steam, which was supplied to SBEC Sugar Ltd.[SSL in short] free of cost instead of @ Rs.236 per tonne and Rs.75 per tonne , in earlier years. To a query by the AO as to why no income on account of sale of steam to SBEC Sugar Ltd. was shown and why rate of steam sold to SSL be not taken at Rs.236 per tonne as in earlier years, the assessee replied vide letter dated 14.12.2009 that the assessee received a communication from SSL, informing their decision not to pay for any exhaust steam under the conversion agreement since October, 2001. It was further pointed out that SSL supplied baggase and water free of charge to the assessee beside steam condensate. In these circumstances, no adjustment on account of supply of steam by the assessee was necessary, it was pleaded. After considering the submissions of the assessee and in the light of his own findings for the preceding years, the AO added an amount of Rs.68,284,240/-(289340 x 236) to the income of the assessee. Inter alia, the assessee's claim for deduction u/s 80IA on*

sale of steam was also disallowed on the ground that steam was not power within the meaning of provisions of section 80-IA of the Act. Besides, on the basis of his findings in the preceding years, the AO disallowed the claim for deduction u/s 80IA of the Act on the 50% of the receipts on sale of power to UPSEB, expenditure incurred being higher than the net sale proceeds of power.

3. On appeal, the learned CIT(A) following the decision of the ITAT in the preceding assessment year 2000-01, followed in AYs. 1999-00, 2001-02 ,2003- 04 to 2006-07, allowed the claims of the assessee in the following terms:

> *"5. Ground No.2 is aqainst addition of Rs 6,82,84,240/- being estimated receipts from SSL against supply of exhaust steam. The appellant had admittedly not shown any income from supply of steam to SSL because no real income accrued to or was admittedly received by the appellant. It is noted that similar additions were made in AY 2006-07, AY 2005-06, AY 04-05 and AY 03-04 in the case of appellant which were disputed in appeal and were decided by CIT(A) by order dated 23/03/2009, 26/02/2008, 12/04/07 and 10/10106 respectively. The issue was discussed in detail at para 2.1 to 2.12 in the appeal for AY 04-05 (from page 2 to page 7) and the addition made was deleted. For ready reference the relevant paras of the said order are reproduced as under:*

Extract from the order of the CIT(A) in Appeal No.211/06- 07 dated 12-04-2007)

> *"2.1 Ground No.2 is against addition Rs 9,93,41,508/- being the sale value of steam supplied to SSL worked by the AD @ of Rs.236/- per ton. The appellant had shown sale proceeds in respect of supply of power to UPSEB and SSL aggregating to*

Rs.11,59,51,575/- However no sale proceeds in respect of exhaust steam supplied to SSL were shown in the accounts. The AO noted that in the earlier years the appellant had sold exhaust steam to SSL @ Rs.236 & Rs.75 per ton for varying periods. During this year however the steam was supplied free of cost. The AO therefore proposed to treat the sale proceeds of exhaust steam worked out at the rate of Rs.236 per ton claimed income from the appellant in the same was as in earlier years. In response to show cause notice the appellant made written submissions by letter dated 3/2/06 and thereafter by letter dated 13/3/06. The contents of letter dated 13/3/06 have been reproduced by the AO on page 4 of the assessment order. Since the said letter gives gist of history of this issue but same is reproduced in this order also even at the cost of repetition:

i. Receipts from steam during A Y 2000-01 were recognized in the books @ Rs.236 per ton. However, due to revision of rates, in A Y 01-02 a reversal entry was passed in the books reducing the receipts excess accounted for in A Y 2000-01.

ii. In the assessment proceedings for A Y 2000-01 the assessee company claimed that the receipts be reduced by Rs.3,82,59,074/- since the rate of steam with retrospective effect had been revised to Rs.75 per ton.

iii. The AO has rejected this claim of the assessee company by observing in the order passed u/s 143(3) dated 28/02/03 for A Y 2000-01 that "the effect for what has happened in the next assessment year would be seen next year during the course of further proceedings."

iv. The assessee went in appeal before CIT (A) and thereafter to ITAT against this rejection.

v. ITAT which is the final fact finding authority has mentioned the following facts in its order in ITA No.5461/De1/2003 & 1007/Del/2004 dated 26.3.04 as under (copy enclosed as Annexure B):

a. The assessee company had entered into a conversion contract dated 1/10/98 with SBEC Sugar Ud (SSL). This agreement was subject to PICUP's approval.

b. In view of PICUP's objection, an interim arrangement dated 26th August 99 was agreed. Under this interim arrangement, the parties agreed that they would pay and receive Rs.236 per metric ton for steam. For electrical energy it was to charge at the same rate at which electricity was supplied to UPSEB.

c. Revenue in the books of accounts was recognized on the basis of this interim arrangement.

d. The interim arrangement was subsequently revised and under the revised arrangement it was agreed that the receipt from steam would be @ Rs 75 per metric ton.

e. The revenue has not doubted the genuineness of these agreements.

f. No material has been placed by the revenue to hold that this agreement of revision was not genuine and was prospective and not retrospective.

Thus the fact that the rate of steam was Rs.75 per metric ton as per second arrangement letter dated 20/6/01 was accepted and not subject matter of dispute. In A Y 2000-01 the department has never doubted the genuineness of this agreement. The only dispute was

regarding retrospective applicability of this arrangement since the arrangement was entered after the close of the previous year vide letter dated 20/6/01. In this regard we would like to bring to your notice that question sought to be referred by the department to the Hon. Delhi High court in A Y 2000-01 reads as under:

> *"Because retrospective proviso of arrangement by which rates per unit were revised by subsequent letter dated 20/6/01 cannot exempt the income already accrued upto31/3/2000."*

Further as submitted in our letter dated 3/2/06 only real income could be taxed. SSL has stopped paying for charges of exhaust steam with effect from Oct. 2001. Thus no receipt should be estimated and taxed on account of steam in the present assessment year. The proposed estimated income of steam computed @ Rs 236 per tone is unjustified and against the principles laid down by the Supreme Court and various High Courts including the territorial judicial High court.

2.2 As can be seen the appellant agreed that in the earlier years steam was sold @ Rs.236 per ton and that rate was retrospectively changed to Rs. 75 per ton. However with effect from Oct. 2001 SSL has refused to make any payment towards supply of steam. Since there was uncertainty about realization of any sale price of supply of steam the appellant did not recognize the value following the Accounting Standard 9 as notified u/s 145(2) of the Income Tax Act. Since there was no right to receive any amount for supply of steam and neither was any amount actually received there cannot be any income from sale of steam. It was contended that only the real income can be taxed under IT provision. The AO did not accept the explanation submitted by the appellant on the ground that the steam definitely has a value and the appellant was recognizing the receipts

from sale of steam in earlier years. He mentioned that the rates regarding supply to SSL were never finalized as the conversion contract was subject to approval by PICUP. Sale value of steam was always recognized as per interim arrangements. The AO has mentioned that although addition on this issue made in earlier years were decided by the appellate authorities in favor of appellant, department had not accepted reduction of price of steam for Rs.236 per ton to Rs.75and has filed further appeal before ITAT in AY 2001-02 & High court in AY 2000-01. Hence there was no question of accepting the appellant's contention regarding supply of steam free of cost. In view of this the AD worked out sale proceeds of steam supplied by the appellant to SSL at Rs. 9,93,41,5081- and added to the total income.

2.3 In the appeal proceedings paper book running into 447 odd pages was filed along with written submissions for all the grounds. In the written reply the appellants AR explained the background, facts relating to the dispute between the appellant company and SSL regarding price paper for supply of steam. Correspondence between the appellant and SSL on this issue by way of various letters exchanged was submitted in the paper book. The facts stating to this issue in simple terms were explained like this. The power plant of the appellant company and sugar factory of SSL are located at the same place side by side. SSL supplies bagasse (sugarcane remains after extraction of juice) and water to the appellant company free of cost. The bagasse is used as fuel and burnt to produce steam from water. The steam is used to produce electricity using steam turbines by appellant company. The electricity generated is supplied to SSL and surplus, if any, to UPSEB. The exhaust steam after running the turbines is also supplied to SSL. Initially it was agreed between the two companies that the appellant company would receive conversion

charges from SSL for converting bagasse and water into electric power and exhaust steam which will be supplied to SSL. For this purpose a Conversion Contract dated 10112198 was executed. According to this Conversion Contract following payments were to be received by the appellant from SSL as conversion charges:

- *A fixed fee of Rs.19.75/- million per month during the production season.*

- *Variable charges in proportion to the quantities of electricity and steam supplied:*

  Rs. 0.521 per unit of electricity energy, i.e. electricity Rs.40 per ton of thermal energy, i.e. steam

2.4 The fixed fee of Rs.19.75 million per month included 50% of income received from sale of surplus electricity to UPSEB. Therefore, it was provided in clause 7.11 that 50% of such realization from UPSEB would be returned to SSL. As per Article 18 of the Conversion Contract the said agreement was to be approved by PICUP who had given loan of Rs 8 crores to SSL. PICUP strongly objected to payment terms as per Conversion Contract and did not give its approval. In view of PICUP's objection re-negotiation of the payment terms were proposed between the appellant & SSL. Pending the negotiations, interim arrangement dated 26/8/99 for payment was agreed to. According to this, Rs 236 per ton was to be paid for steam and supply to SSL. For electrical energy the same rate as for UPSEB was to be charged by appellant from SSL. For some period the appellant raised the bills and SSL made payment for supply of steam as per this arrangement. However even this arrangement was objected to by PICUP on the ground that accepted rate of return justified in power industry was 16% of capital employed as against 21% adopted for making the interim arrangement. In view of this SSL informed the

appellant company that the proper rate of steam would be Rs. 75 per ton as against Rs 236 applied earlier. The rate of Rs 75 per ton was agreed to retrospectively i.e. from the 1st year of operation. The earlier invoices raised @ RS 236 per ton were also revised in view of this retrospective amendment to the interim arrangement. The appellant passed reversal entry in subsequent year and claimed reduction of income from sale of steam in AY 2000-01, before the AO during the assessment proceedings. The AO as also CIT(A) did not allow the reduction of receipt on the ground that it had already accrued. However ITA T Delhi in their order dated 26/3/04 held that the income cannot be said to accrue @ Rs. 236 per ton in view of retrospective amendment to the said agreement.

2.5 Subsequently SSL informed the appellant company by letter dated 2/11/02 the decision not to pay anything for exhaust steam since Oct 2001. It was further followed by another letter dated 21/2/03 wherein the main reasons for this decision were stated to be as under:

- *The Conversion Agreement dated 10/12/98 never came into operation, as PICUP has not approved the contract.*

- *The SSL supplies baggase and water free of any Charge to SIAL.*

  Without these SIAL cannot generate power. In addition water and steam condensate are also supplied free of any Charge.

- *The steam that is supplied is exhaust steam, which has no value and cannot otherwise be used or sold. On the other hand, the baggase supplied to SIAL free of any charge is easily saleable by SSL, for which it does not get any compensation. No reduction/adjustments are also on that*

account in the charges for electric power that are being paid by SSL.

2.6 In view of this SSL stopped paying anything for exhaust steam from Oct. 2001.Since there was a lot of uncertainty regarding realization of any amount for steam supplied from Oct. 01, the appellant did not raise any invoice to recognize revenue for the same. The appellant relied on Accounting Standard 9 (AS 9) issued by ICAI on revenue recognition. It is now mandatory to follow such standards as accounting practice. The relevant clause is 10 to 12 of AS 9 were reproduced in the submissions It was therefore stated that the appellant was fully justified in not recognizing any sale proceeds of steam applied to SSL. The main contention was that only real income can be taxed under IT Act. Notional income on estimated basis cannot be brought to tax. In support of this legal contention also the appellant relied on a few judicial decisions. Therefore according to appellant the income estimated by AO from supply of steam to SSL and at the rate of 236 per ton was highly unjustified and against the judicial principles. Without prejudice, it was also stated that the AO has not given justification for adopting the rate of steam at the rate of 236 per metric ton when only Rs 75 was chargeable by the appellant as per the revised interim arrangements made with SSL. It was mentioned by the appellant that the addition made in earlier years when the rate of steam was reduced from Rs 236 per metric ton to Rs 75 per metric ton was deleted by ITAT in A Y 00-01 whose order has been followed by the ClT (A) in A Y 01- 02 order dated 26/7/04 and 99-00 order dated 4/1/06.

2.7 Subsequently by letter dated 5/9/06 the appellant further submitted that bagasse supplied by SSL to the appellant was a marketable commodity which could be sold @ around Rs 500 per ton. If the market value of

bagasse supplied by SSL to appellant, free of cost, was worked out it would be about Rs 6.28 crores. As against this, even if the cost of 2,89,340 tons of steam supplied by appellant to SSL is determined @ 236 it would amount to 6.83 crores. Hence it was not that the arguments of SSL in denying any payment for steam supplied by the appellant were without any basis. According to SSL the bagasse supplied by them to appellant did have a marketable value whereas steam supplied by SSL was not of any use as it was not a freely marketable commodity.

2.8 I have carefully considered the submission made on behalf of the appellants. There is no dispute to the fact that the appellant has not credited any sale proceeds in respect of steam supplied to it and has also not actually paid anything for that. The AO has estimated the sale value of steam at the rate of Rs 236 per metric ton which according to him was the real rate of steam in view of agreement applicable in earlier years. So far as estimating the value of steam @ 236 per ton against Rs.75 in earlier year is concerned, the issue is covered in favour of appellant by order of ITAT in AY 00-01. Hence the only issue to be decided is whether the appellant was right in not showing any revenue at all from supply of steam to SSL It is to be noted that transaction of purchase/sale is in the form of contract between to the two parties. Sale price is the income of seller & liability being purchase price to the purchaser. It can be treated as income accrued in the hands of the seller (and liability crystallized in the hands of the purchaser) only if the relevant contract is accepted by both the parties to contract. There is no doubt that the steam was supplied by the SSL as it was done in earlier years. However, earlier the income (being sale value of steam) was credited in the accounts at the rate agreed and confirmed by the SSL. In fact the rate was retrospectively rendered &

such reduction was agreed to by both the parties. On this basis itself the ITAT in A Y 00-01 allowed reduction of income from sale of steam. The point to be noted is that the income from any contract (sale) can be said to accrue as per agreed terms of such contract. If there is any dispute by ether party the accrual of income (of expenditure in the hands of other party) will be subject to the outcome of such dispute & accordingly contingent. Normally the income in such cases can be said to accrue in the year in which the dispute is resolved & other party acknowledges the debt. Even in such cases some party may choose to recognize its income or liability as accrued accordingly to facts & circumstances whereby it is certain to be able to enforce the terms of the contract. However, the appellant did not recognize any revenue from sale of steam in current year according to AS-9, since SSL had categorically refused to make any payment for supply of steam. Therefore, non-recognition of any accrual of income from supply of steam does not appear to be, unjustified.

2.9 It may be noted that normally if some buyer refuses to make payment for goods supplied to it; the seller would immediately stop supply of goods. However the appellant did not stop supply of steam to SSL even in the face of clear declaration of not getting any payment for the same. This appears to be unusual unless the appellant being other party to contract also accepted the said proposal finally. Since appellant's stand on contention of SSL was not specified the appellants AR was requested to clarify the stand of the appellant company on the proposal of SSL not to pay any price for supply of steam. In response to this it was submitted by the appellant's AR that the matter was discussed by the Board of Directors of the appellant company in their meeting on 8/7/03. A copy of the minutes of the Board Meeting for that day was submitted when asked to do so .It

was stated that in the said meeting it was decided not to raise any invoice for supply of steam as it would unnecessarily result into unrealistic receivables. The Board also decided to reverse the billing made in the FY 01-02 and revise the income tax return. The AR was further asked to clarify as to whether apart from not raising any bills, the decision of SSL has been accepted by the company or still the matter was being pursued with them for payment of steam charges. It was then stated that some dispute in respect of allotment of shares to foreign collaborator of the joint venture was pending before Company Law Board. The said matter has been since decided and after that appellant company has confirmed by letter dated 9/1/06 to SSL that no conversion charges in respect of steam would be claimed from them w.e.f 1/10/01. On asking a copy of said letter dated 9/1/06 was filed.

2.10 In view of the clarification above there does not remain any doubt that both the parties to contract have agreed that no payment in respect of supply of steam was to be made to appellant by SSL. Therefore there cannot be said to be any accrual of income for supply of steam. The basis for this arrangement is also clear since it is a kind of barter system where bagasse and water is supplied by SSL to appellant company free of charges while the appellant supplies electricity and steam to SSL. The appellant's income is from sale of surplus power to UPSEB. Even if theoretically the price of steam is computed at Rs. 236/- per ton (which however was never agreed and acted upon between the two parties) it is almost equivalent to the cost of bagasse worked out at the market price. Therefore in this kind of transaction there is no profit or loss in money terms to any of the company. However transaction of exchange of bagasse & water for power & steam is for mutual benefit and convenience.

2.11 Even if we look at things from a different perspective, the income of one company will be a deductible expenditure for the other and between the two there is no tax gain from this transaction. The income in the case of appellant is eligible to 100% deduction u/s80 lA also. Hence no allegation of tax planning can be attributed in this transaction, which appears to be wholly for business considerations. It may not be out of place to reproduce hereunder a part of letter dated 2/11/02 written by SSL to the appellant company.

"The sugar and power generation project are for all practical purposes two limbs of a single project one cannot survive without the other. In 1994, when the construction of the sugar plant was first taken up, the power generation facility was an integral part of the project and owned by the company itself."

Subsequently in 1995 air Liquide offered to invest substantial monies in the power project and for doing so insisted that the power project be transferred to and owned by a separate company, independent from SSL. The ownership of the Plant &Machinery then came to be divided. Under this arrangement, the power generating facility was agreed to be transferred to and owned by SI–AL SBEC Bioenergy Limited, which was to be the joint venture between the Modi Group and Air Liquide ISIDEC. In 1997 after the project had been implemented and the JC Company incorporated, serious disputes arose with Air Liquide and SIDEC which exposed both companies to be risk of liquidation, In those compelling circumstances, a compromise was worked out wherein various unreasonable terms insisted upon by air Liquide and SIDEC had to be accepted to protect the companies from liquidation, to avoid cancellation of the loan sanctioned by IREDA and to enable the two projects to be completed.

The terms for the conversion contract then stipulated by air Liquide and SIDEC through the JV Company were totally one sided and in favour of the power company for the sole purpose of ensuring an adequate flow of funds to facilitate the repayment of the investments made by SIAL in the share capital of the JC Company. SIAL had made it clear that it was in fact a lender and not an investor. This is evident from the documents signed then in particular the agreements where under it was agreed that the SIAL shareholdings would be brought out."

Please note that it is our decision that on resolution of the controversies with SI–AL Bioenergie, France, SSL will acquire the entire share capital the JV Company and make it its wholly owned subsidiary unless of course it then decided to amalgamate the JV Company with this company and bring the power project also directly into the ownership of SSL. (Emphasis Supplied).

2.12 From the above, it can be seen that the entire project of sugar production plant of SSL as well as power generation unit of the appellant was infact part of same project owned by one company. The power generation unit was separated to get investment from French company Air-Liquide, which agreed to join as JV (Joint Venture) partner. Therefore the transaction of exchange of bagasse & water with power & steam is in fact between two limbs of same project. If the whole project was owned by one company (as in fact it was initially) only the net profit of the entire project had been taxable. As can be seen in the last paragraph reproduced above from the letter of SSL, the appellant company proposed to be made the subsidiary of SSL (and in fact has already become so). Looked from this angle, the transaction is between the holding and

subsidiary company. Therefore in my opinion the action of the appellant company in not charging for steam supplied to SSL is quite justified on fact and cannot be said to be deliberate or motivated. Moreover even if an assessee gives (sells) his goods free of cost to other, there is no provision in the IT Act to tax its sale value as income on presumptive basis. Legally Speaking since no income has accrued & neither any payment has actually been received by the appellant company, making addition in respect of estimated price of steam amounts to taxing of notional income which is not permissible. In view of this addition of Rs. 9,93,41,508/-(Rs.8,49,14,188/-after rectification) is deleted."

5.1. The above order for the A Y 2004-05 has been followed by the CIT (A) for the A Y 2005-06 and A. Y 2006-07 also. It may be noted that ITAT in AY 01-02 and AY 99-00 has followed its order for AY 00-01 where in it has been held that appellant had actually realized sale proceeds of steam @ Rs.75 per ton and not Rs.236/- per ton in the relevant years and accordingly notional income can't be taxed. Further it may be mentioned that the ITAT in AY 2003-04, AY 2004-05 A. Y. 2005-06 and A. Y 2006-07 also has dismissed the appeal of the revenue and has upheld the order of the CIT (A). It is further to be noted this year also the addition was made on the similar basis as was done in earlier years. The facts related to the issue are same based on the same set of agreements. The appellant's submissions are also on the same lines as in last year. Therefore following the discussion made in A Y 2004-05 and subsequent orders, the addition made on this account during the year under consideration is deleted."

6. Ground No.3 is taken without prejudice to the ground NO.2. In this ground it is claimed that steam was a form of power and therefore

even if some income was estimated from sale of steam, it was eligible for 100% deduction u/s80 IA (4) (iv). It is noted that even these grounds are similar to grounds NO.3 & 4 in the appeal for AY 2004-05 referred to above. It was pointed out in that order that this issue was decided in appellant's own case by ITAT in AY 2000-01 reported in 83 TT J 866. In para 34 to 36 of that order the Hon'ble IT AT held that steam was another form of power and income from sale of the same was eligible for deduction u/s 80 IA (4) (iv). It is also to be noted that the similar issue was decided by ITAT in AY 99-00 and AY 01-02. The ITAT followed its order for AY 00-01 wherein it has been held that steam is a form of power. However, since the estimated addition in respect of sale of steam itself has been deleted fully, these grounds become infructuous & hence dismissed for statistical purposes.

4. The Revenue is now in appeal before us against the aforesaid findings of the ld. CIT(A). At the outset, the ld. AR on behalf of the assessee while inviting our attention to the impugned order contended that since the ld. CIT(A) have decided the issues on the basis of orders of the ITAT in the preceding years, no interference is warranted. The ld. DR, on the other hand, did not oppose these submissions of the ld. AR while contending that matter is pending before the Hon'ble High Court.

5 We have heard both the parties and gone through the facts of the case. As is apparent from the aforesaid findings of the ld. CIT(A) on each of the three issues, he merely followed the decisions of the ITAT in the preceding assessment years and decided in favour of the assessee. The ld. DR did not place before us any contrary decision nor any other material in order to controvert the findings of the ld. CIT(A) so as to enable us to take a different view in the matter. In these circumstances, we have no

alternative but to reject ground nos. 1 to 3 in the appeal."

6. Since, the matter stands squarely covered by order orders of the appellate authorities as well as the Tribunal for the past six years, we hereby dismiss the appeal of the revenue."

9. Before us, Revenue has not pointed to any distinguishing feature in the facts of the case in the year under consideration and that of the earlier years. Revenue has also not placed any material on record to demonstrate that the ITAT orders in assessee's own case for earlier years has been stayed/ set aside/ overruled by higher judicial forum. We therefore, following the order of the Tribunal in assessee's own case for A.Y. 2014-15 and for similar reasons hold that no interference to the order of CIT(A) is called for in the year under consideration. **Thus the ground of Revenue is dismissed.**

10. **In the result, appeal of the Revenue is dismissed.**

Order pronounced in the open court on 06.09.2021

Sd/-	**Sd/-**
(KUL BHARAT)	**(ANIL CHATURVEDI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Date:- 06.09.2021
PY*
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ASSISTANT REGISTRAR
ITAT NEW DELHI