

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

BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2440/Mum./2011
(Assessment Year : 2004-05)

Tata Chemicals Ltd.
Bombay House, Fort
Mumbai 400 001
PAN – AAAC4059M

..... Appellant

ITA no.2692/Mum./2012
(Assessment Year : 2005-06)

v/s

Dy. Commissioner of Income Tax
Circle-2(2), Mumbai

..... Respondent

ITA no.2733/Mum./2011
(Assessment Year : 2004-05)

Dy. Commissioner of Income Tax
Circle-2(2), Mumbai

..... Appellant

ITA no.2553/Mum./2012
(Assessment Year : 2005-06)

v/s

Tata Chemicals Ltd.
Bombay House, Fort
Mumbai 400 001
PAN – AAAC4059M

..... Respondent

Assessee by : Shri Nitesh Joshi a/w
Shri Vanish Bhansali
Revenue by : Smt. Somogyan Pal, CIT DR

Date of Hearing – 04/05/2022

Date of Order – 06/07/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present cross appeals have been filed by the assessee and Revenue challenging the separate impugned orders dated 21/01/2011, and 31/01/2012, passed under section 250 of the Income Tax Act, 1961, (*'the Act'*) by the learned Commissioner of Income Tax (Appeals)-6, Mumbai, [*'learned CIT(A)'*], for the assessment years 2004-05 and 2005-06, respectively.

2. Since both the cross appeals pertain to the same assessee and issues involved are, inter-alia, common, therefore these appeals were heard together as a matter of convenience and are being adjudicated by way of this consolidated order. Further, as the basic facts in both the cross appeals are same, we have elaborately mentioned only the facts for the first assessment year (i.e. 2004-05) before us for the sake of brevity. However, if any particular issue is arising in other year for the first time, facts pertaining to the same are discussed accordingly.

ITA No. 2440/Mum./2011 **Assessee's appeal – AY 2004-05**

3. In this appeal, the assessee has raised the following grounds:

"1. The learned Commissioner of Income Tax erred upholding the disallowance of provision for bad and doubtful debts for computing the book profit u/s 115JB.

2. The learned Commissioner of Income Tax erred in upholding the disallowance of Rs.3,89,81,600 paid to Tata Sons Ltd., towards the

subscription paid for The Brand Equity and Business Promotion (BEPB) Agreement.

3. The learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance u/s 80M/section 14A with a direction to rework the same in respect of indirect expenses.

4. The learned Commissioner of Income Tax (Appeals) erred in limiting the claim of deduction in respect of Early Separation Scheme / Voluntary Retirement Scheme (VRS) to Rs.12,08,80,000, against the claim of Rs. 53,74,96,642.

5. The learned Commissioner of Income Tax (Appeals) erred in holding that 90% of the following Miscellaneous Income:

<i>a. Interest on ICDs and Sundry Advances</i>	<i>Rs. 5,95.05.671</i>
<i>b. Town Income</i>	<i>Rs. 1,08,64,761</i>
<i>c. Miscellaneous Income</i>	<i>Rs. 4,14,27,408</i>

should be excluded from the profits of the business for computing deduction u/s 80HHC.

6. The learned Commissioner of Income Tax (Appeals) erred in upholding the disallowance of deduction w/s 80(IB) of Rs.8,22,06,000, in respect of a fertilizer Unit at Haldia:

a. without going through the detailed factual submissions made,

b. Holding that the Sales Tax Incentive Scheme does not have a direct nexus with the activities of the industrial unit;

c. Holding that the Fertilizer Subsidy provided by the Government, as price concession, was not relatable to income from the industrial undertaking and therefore not eligible for deduction u/s 80(IB).

7. The learned Commissioner of Income Tax (Appeals) erred in upholding the denial of deduction of Rs.2,18,09,383, in respect of amortization of lease rental deposits.”

4. At the outset, during the course of hearing, Shri Nitesh Joshi, learned counsel appearing for the assessee, submitted that grounds no. 1, 4 and 5 are not pressed. Accordingly, the aforesaid grounds raised by the assessee are dismissed as not pressed.

5. The issue arising in ground no. 2, raised in assessee's appeal, is pertaining to disallowance of subscription paid to Tata Sons Ltd under the Brand Equity and Business Promotion Agreement.

6. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is manufacturer and dealer of various types of organic, inorganic and heavy chemicals. The assessee is a major producer of soda ash, salt, cement and fertilisers. During the year, assessee continued to produce all these products. For the year under consideration, assessee filed its return of income on 01/11/2004 declaring total income of Rs.349,71,39,843, under the normal provisions of the Act. The assessee filed revised return of income on 20/04/2005 declaring total income of Rs. 371,48,26,981, under normal provisions of the Act. During the course of assessment proceedings, from the perusal of clause 17 (a) of tax audit report, it was observed that assessee has paid an amount of Rs.3,89,81,600 as subscription for brand equity, however, the same has not been treated as capital expenditure. Accordingly, following the approach adopted in earlier years, the Assessing Officer vide order dated 07/12/2006 passed under section 143(3) of the Act disallowed the aforesaid amount treating the same as non-business expenditure.

7. In appeal, before the learned CIT(A) assessee submitted that the said payment was made vide agreement dated 01/01/1999 titled 'Tata Brand Equity and Business Promotion Agreement' vide which the assessee had to pay 0.25% of its annual profits to M/s Tata Sons Ltd for using the

Tata logo etc. The assessee further submitted that such payment was made annually on recurring basis. The learned CIT(A) vide impugned order dated 21/01/2011 dismissed the appeal filed by the assessee on this issue, by observing as under:

"10.3 I have considered the facts of the issue and the submissions made by the AR. There is merit in AO's finding that the company is well known as a Tata Group Company since 1939 having its own reputation as a household name. Further, the AO is right in noting that the appellant had its own well established logo which clearly indicated the linkage of the appellant with the Tata Group. Hence, the company did not need to make any payments for utilizing the Tata logo to promote its sales or to further get identified with the Tata Group. Hence, the finding of the AO that the said payment was being made under a mandatory direction from the holding company and was not for business consideration is perfectly in order. Thus, the same cannot be allowed as a deduction. Hence, the order of the AO disallowing the said payment is confirmed. Alternatively, even if the decision of the DRP is followed, still the said expenditure cannot be allowed as a revenue expenditure. Hence, this ground is dismissed."

Being aggrieved, assessee is in appeal before us.

8. During the course of hearing, learned counsel submitted that this issue has been decided in favour of the assessee by decisions of the coordinate bench of the Tribunal in the preceding assessment years.

9. On the other hand, Smt. Somogyan Pal, learned Departmental Representative ('learned DR') vehemently relied upon the orders passed by the authorities.

10. We have considered the rival submissions and perused the material available on record. We find that the coordinate bench of Tribunal in assessee's own case in Tata Chemicals Limited vs DCIT, in ITA No. 2439/Mum./2011, for assessment year 2003-04, vide order dated 19/02/2021,

decided similar issue, following the precedents in assessee's own case, by observing as under:

"10. We have heard the rival submissions and perused the relevant materials on record. Similar issue arose before the Tribunal in assessee's own case for AY 2002-03 in ITA No. 3383/Mum/2015, wherein it is noted that the same issue has been decided in favour of the assessee in its own case for AY 2000-01 (ITA No. 5446/M/2014, dated 21.06.2017) and AY 2001-02 (ITA No. 6366/M/2014, dated 15.09.2017) by the Tribunal. Also in the case of its subsidiary company i.e. Rallis (India) Ltd., the same issue has been decided in favour of the assessee by the Tribunal in ITA No. 5257/M/2008 vide order dated 30.08.2001. Therefore, the Tribunal in AY 2002-03 affirmed the order of the Ld. CIT(A) deleting the addition made by the AO.

Facts being identical, we follow the above order of the Co-ordinate Bench in assessee's own case and delete the addition of Rs.3,73,88,538/- made by the AO. Thus the 2nd ground of appeal is allowed."

11. The learned DR could not show any reason to deviate from the aforesaid order and no change in facts and law was alleged in the relevant assessment year. The issue arising in the present appeal is recurring in nature and has been decided in favour of the assessee by the decisions of the coordinate bench of the Tribunal in preceding assessment years. Thus, respectfully following the order passed by the coordinate bench of Tribunal in assessee's own case cited supra, we direct the Assessing Officer to delete the disallowance made on account of subscription paid to Tata Sons Ltd. As a result, ground no. 2 raised in assessee's appeal is allowed.

12. The issue arising on ground no. 3, raised in assessee's appeal is pertaining to allocation of expenses towards earning dividend income and disallowance under section 14A of the Act.

13. The brief facts of the case pertaining to this issue, as emanating from the record, are: For the year under consideration, the assessee had received dividend income on shares and income from units of mutual funds amounting to Rs. 36,88,68,929, which was claimed as exempt under section 10 of the Act. During the course of assessment proceedings, the assessee was asked to quantify the interest expenses attributable to such investments and explain why the same should not be disallowed under section 14A of the Act. In reply, assessee submitted that the main business of the assessee company is manufacturing and sale of chemicals, cement, detergent and urea. The assessee further submitted that surplus funds are invested in shares and other securities and at no stage borrowed funds are diverted for investment in shares. The Assessing Officer vide order passed under section 143(3) of the Act did not agree with the submissions of the assessee and held that considering the nature and quantum of transactions it is not possible to identify the exact source of investments and vice versa it is also not possible to prove that the investments have been made out of the capital and reserves. The Assessing Officer further held that a common pool of funds is source of all outgoings. Accordingly, the Assessing Officer made the disallowance of Rs. 7,88,00,000 under section 14A of the Act, by observing as under:

"Having said so, since it is not possible to identify the source of each out going from the common pool of funds including both own funds as well as borrowed funds, what is more important is to determine the tangible cost of capital employed i.e. the actual interest expenses with respect to the fund employed for investment in shares which is worked out as under.

A. Total Fund	Rs.4129.68 crore
B. Total loan	Rs.765.54 crore
C. Ratio of B to A	18.54%
D. Total investment	Rs.559.07 crore
E. Investment out of borrowed fund = 18.54% of D	Rs.103.65 crore
F. Ratio of E to B	13.54%
G. Total interest expenses	Rs.58.27 crore
H. Interest related to exempt income = 13.54% of G	Rs.7.88 crore

Accordingly, an amount of Rs.7.88 crores is attributed as interest expense towards the investment in shares and securities and units of Mutual fund, income from which is exempt from tax and hence Rs.7.88.00.000/- is disallowed u/s. 14A of the I.T. Act.

14. In appeal, learned CIT(A) vide impugned order dated 21/01/2011, upheld the assessment order to the extent of disallowance under section 14A, was made by the Assessing Officer, however, directed the Assessing Officer to rework such disallowance on reasonable basis keeping in view the findings of Hon'ble jurisdictional High Court in Godrej and Boyce Manufacturing Co. Ltd. v/s DCIT, ITA No. 626/2010 and W.P. No.785 / 2010), without resorting to the provisions of Rule 8D. Being aggrieved, assessee is in appeal before us.

15. During the course of hearing, learned counsel submitted that subsequent to the impugned order, the Assessing Officer passed order dated 03/08/2011 giving effect to the directions of the learned CIT(A), whereby, disallowance under section 14A of the Act was estimated at 5% of the exempt income and accordingly, Rs. 1,84,43,450 was disallowed under section 14A of the Act. Learned counsel submitted that while computing the disallowance, the Assessing Officer disregarded the suo moto disallowance of Rs. 4,80,000 offered by the assessee, considering

1% of salary of CFO, Deputy CFO, Head Treasury and 5% salary of staff and Treasury Department +10% of overheads thereon. Learned counsel further submitted that suo moto disallowance on similar basis has been accepted in preceding as well as subsequent assessment years.

16. On the other hand, learned DR vehemently relied upon the order passed by the lower authorities.

17. We have considered the rival submissions and perused the material available on record. In the present case, assessee's contention that surplus funds were invested in shares and other securities and borrowed funds were not invested in the shares was rejected by the Assessing Officer and disallowance under section 14A of the Act was made. In further appeal, learned CIT(A) confirmed the disallowance made under section 14A of the Act, however, directed the Assessing Officer to recompute the amount of disallowance on reasonable basis keeping in view the findings of Hon'ble jurisdictional High Court in Godrej and Boyce manufacturing Co Ltd (supra). From perusal of orders passed in preceding and subsequent assessment years, forming part of the additional caselaw paper book, we find that suo moto disallowance offered by the assessee, by taking into consideration 5% of salary of CFO, Deputy CFO and Head Treasury, 5% of salary of staff as well as 10% overheads thereon, has been accepted by the Revenue. However, only in the year under consideration, the Assessing Officer, while giving effect to the directions of

learned CIT(A), did not consider the suo moto disallowance offered by the assessee.

18. It is further pertinent to note that the assessee has also in-principle agreed to the disallowance by invocation of provisions of section 14A of the Act and is also agreeable to methodology adopted by the Assessing Officer for assessment year 2006-07 and methodology upheld by the DRP for assessment year 2007-08, with a view to avoid litigation. In its appeal for assessment year 2005-06, which was heard along with present appeal, assessee has accepted the disallowance made under section 14A of the Act, pursuant to learned CIT(A)'s directions. In view of the fact that there is no change in facts insofar as disallowance under section 14A is concerned, in preceding and subsequent assessment years and as the present appeal pertains to around 17 years old assessment year, therefore, in the larger interest of justice, we deem it appropriate to direct the Assessing Officer to apply the similar methodology as adopted and accepted in other assessment years and compute the disallowance under section 14A of the Act accordingly. Such an approach will also put a quietus to this recurring issue, insofar as the relevant assessment year is concerned. Thus, we order accordingly. As a result, ground no. 3 raised in assessee's appeal is allowed for statistical purpose.

19. The issue arising in ground no. 6, raised in assessee's appeal, is pertaining to disallowance of claim of deduction under section 80 IB of the Act in respect of fertiliser unit at Haldia.

20. The brief facts of the case pertaining to this issue, as emanating from record, are: The assessee, while filing the revised return of income, claimed deduction of 2,87,39,000 at 30% of the profits (being 5th year of claim) under section 80IB of the Act, in respect of erstwhile Hind Lever Chemicals Ltd. As in assessment year 2003-04, sales tax remission and price concession (subsidy) forming part of section 80IB claim was rejected, the Assessing Officer vide order passed under section 143(3) of the Act disallowed the above 2 items included in computation of deduction claimed under section 80IB of the Act. The learned CIT(A) vide impugned order dismissed the appeal filed by the assessee on this issue. Being aggrieved, the assessee is in appeal before us.

21. During the course of hearing, learned counsel submitted that the coordinate bench of the Tribunal in assessee's own case has granted relief in respect of this issue. On the other hand, learned DR vehemently relied upon the orders passed by the lower authorities.

22. We have considered the rival submissions and perused the material available on record. We find that, while deciding similar issue in favour of the assessee, the coordinate bench of the Tribunal in assessee's own case in Tata Chemicals Limited vs DCIT, in ITA No. 2439/Mum/2011, for the assessment year 2003-04, vide order dated 16/02/2022, observed as under:

"021. We have carefully considered the rival contention and perused orders of the lower authorities. The fact shows fertilizers produced by the appellant are under the retention-pricing scheme. Accordingly, the

government decides the maximum retail price and the difference between costs less maximum retail price is paid to the appellant by the way of product subsidy. These are in fact part of the cost recovered from the government and it is directly related to the sale of fertilizer to the farmers. For example, the cost of fertilizer production and its distribution to the manufacturer is ₹ 300 and if it is sold to the farmers at the maximum retail price of ₹ 200 and the balance price of Rs 100/- is recovered from the government by way of the above subsidy. Thus, the manufacturers are paid the above subsidy to enable them to sell the fertilizers at or below the indicated maximum retail price to the farmers. The issue is whether that Rs 100/- received from Government is part of profit derived from the business of eligible undertaking or not.

022. We find that now the issue squarely covered in favour of the assessee by the decision of the honourable Supreme Court in case of *Meghalaya steel (supra)* wherein it has been held as Under:-

"9. We have heard learned counsel for the parties. Before embarking on a discussion of the relevant case law, we think it is necessary to set out Sections 80-IB and 80-IC insofar as they are relevant for the determination of the present case.

"80-IB Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings

(1)	Where the gross total income of an assessee includes any profits and gains derived from any business referred to in sub-sections (3) to (11), (11A) and (11B) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to such percentage and for such number of assessment years as specified in this section.
(2)	This section applies to any industrial undertaking which fulfils all the following conditions, namely:—
(i)	it is not formed by splitting up, or the reconstruction, of a business already in existence: Provided that this condition shall not apply in respect of an industrial undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;
(ii)	it is not formed by the transfer to a new business of machinery or plant previously used for any purpose;
(iii)	it manufactures or produces any article or thing, not being any article or thing specified in the list in the Eleventh Schedule, or operates one or more cold storage plant or plants, in any part of India: Provided that the condition in this clause shall, in relation to a small scale industrial undertaking or an industrial undertaking referred to in sub-section (4) shall apply as if the words "not being any article or thing specified in the list in the Eleventh Schedule" had been omitted.

	<i>Explanation 1- For the purposes of clause (ii), any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely:—</i>
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(a)	<i>such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India;</i>
(b)	<i>such machinery or plant is imported into India from any country outside India; and</i>
(c)	<i>no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee.</i>

(iv)	<i>Explanation 2- Where in the case of an industrial undertaking, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purposes of clause (ii) of this sub-section, the condition specified therein shall be deemed to have been complied with;</i> <i>in a case where the industrial undertaking manufactures or produces articles or things, the undertaking employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power.</i>
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(4) The amount of deduction in the case of an industrial undertaking in an industrially backward State specified in the Eighth Schedule shall be hundred per cent of the profits and gains derived from such industrial undertaking for five assessment years beginning with the initial assessment year and thereafter twenty-five per cent (or thirty per cent where the assessee is a company) of the profits and gains derived from such industrial undertaking:..

"Provided that the total period of deduction does not exceed ten consecutive assessment years (or twelve consecutive assessment years where the assessee is a co-operative society) subject to fulfilment of the condition that it begins to manufacture or produce articles or things or to operate its cold storage plant or plants during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March, 2004:

Provided further that in the case of such industries in the North-Eastern Region, as may be notified by the Central Government, the amount of deduction shall be hundred per cent of profits and gains for a period of ten assessment years, and the total period of deduction shall in such a case not exceed ten assessment years.

Provided also that no deduction under this sub-section shall be allowed for the assessment year beginning on the 1st day of April, 2004 or any

subsequent year to any undertaking or enterprise referred to in sub-section (2) of section 80-IC.

Provided also that in the case of an industrial undertaking in the State of Jammu and Kashmir, the provisions of the first proviso shall have effect as if for the figures, letters and words 31st day of March, 2004, the figures, letters and words 31st day of March, 2012 had been substituted:

Provided also that no deduction under this sub-section shall be allowed to an industrial undertaking in the State of Jammu and Kashmir which is engaged in the manufacture or production of any article or thing specified in Part C of the Thirteenth Schedule."

"80-IC Special provisions in respect of certain undertakings or enterprises in certain special category States

(1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (2), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains, as specified in sub-section (3)."

10. There is no dispute between the parties that the businesses referred to in Section 80-IB are businesses which are eligible businesses under both the aforesaid Sections. The parties have only locked horns on the meaning of the expression "any profits and gains derived from any business".

11. The aforesaid provisions were inserted by the Finance Act, 1999 with effect from 1.4.2000. The Finance Minister in his budget speech for the year 1999-2000 spoke about industrial development in the North Eastern Region as follows:—

"Mr. Speaker, Sir, I am conscious of the fact that, despite all our announcements, the industrial development in North Eastern Region has not come up to our expectations. To give industrialisation a fillip in this area of the country, I propose a 10 year tax holiday for all industries set up in Growth Centres, Industrial Infrastructure Development Corporations, and for other specified industries, in the North Eastern Region. I would urge the industrial entrepreneurs from this part of the country to seize the opportunity and set up modern, high value added manufacturing units in the region."

*12. The reference to the 10 year tax holiday for the industries set up in the North Eastern Region is an obvious reference to the second proviso to sub-section (4) of Section 80-IB set out hereinabove. The speech of a Minister is relevant insofar it gives the background for the introduction of a particular provision in the Income Tax Act. It is not determinative of the construction of the said provision, but gives the reader an idea as to what was in the Minister's mind when he sought to introduce the said provision. As an external aid to construction, this Court has, in *K.P. Varghese v. ITO [1981] 7 Taxman 13 (SC)*, referring to a Minister's speech piloting a Finance Bill, stated as under:—*

"Now it is true that the speeches made by the Members of the Legislature on the floor of the House when a Bill for enacting a statutory provision is

being debated are inadmissible for the purpose of interpreting the statutory provision but the speech made by the Mover of the Bill explaining the reason for the introduction of the Bill can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted. This is in accord with the recent trend in juristic thought not only in Western countries but also in India that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible. In fact there are at least three decisions of this Court, one in Loka Shikshana Trust v. Commissioner of Income-Tax [1975] 101 ITR 234 (SC) the other in Indian Chamber of Commerce v. Commissioner of Income-tax [1975] 101 ITR 796 (SC) and the third in Additional Commissioner of Income-tax v. Surat Art Silk Cloth Manufacturers Association [1980] 121 ITR 1 (SC) where the speech made by the Finance Minister while introducing the exclusionary clause in Section 2 Clause (15) of the Act was relied upon by the Court for the purpose of ascertaining what was the reason for introducing that clause. The speech made by the Finance Minister while moving the amendment introducing Sub-section (2) clearly states what were the circumstances in which Sub-section (2) came to be passed, what was the mischief for which Section 52 as it then stood did not provide and which was sought to be remedied by the enactment of Sub-section (2) and why the enactment of Sub-section (2) was found necessary. It is apparent from the speech of the Finance Minister that Sub-section (2) was enacted for the purpose of reaching those cases where there was under-statement of consideration in respect of the transfer or to put it differently, the actual consideration received for the transfer was 'considerably more' than that declared or shown by the assessee, but which were not covered by Sub-section (1) because the transferee was not directly or indirectly connected with the assessee. The object and purpose of Sub-section (2), as explicated from the speech of the Finance Minister, was not to strike at honest and bona fide transactions where the consideration for the transfer was correctly disclosed by the assessee but to bring within the net of taxation those transactions where the consideration in respect of the transfer was shown at a lesser figure than that actually received by the assessee, so that they do not escape the charge of tax on capital gains by under-statement of the consideration. This was real object and purpose of the enactment of Sub-section (2) and the interpretation of this sub-section must fall in line with the advancement of that object and purpose. We must therefore accept as the underlying assumption of Sub-section (2) that there is under-statement of consideration in respect of the transfer and Sub-section (2) applies only where the actual consideration received by the assessee is not disclosed and the consideration declared in respect of the transfer is shown at a lesser figure than that actually received."

13. A series of decisions have made a distinction between "profit attributable to" and "profit derived from" a business. In one of the early judgments, namely, *Cambay Electric Supply Industrial Co. Ltd. v. CIT* [1978] 113 ITR 84 (SC), this Court had to construe Section 80-E of the Income Tax Act, which referred to profits and gains attributable to the business of generation or distribution of electricity. This Court held:

"As regards the aspect emerging from the expression "attributable to" occurring in the phrase "profits and gains attributable to the business of" the specified industry (here generation and distribution of electricity) on which the learned Solicitor General relied, it will be pertinent to

observe that the Legislature has deliberately used the expression "attributable to" and not the expression "derived from". It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from". Had the expression "derived from" been used it could have with some force been contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. In this connection it may be pointed out that whenever the Legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor General it has used the expression "derived from", as for instance in s. 80J. In our view since the expression of wider import, namely, "attributable to" has been used, the Legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity." (Para 8)

14. In *CIT v. Sterling Foods* [1999] 104 Taxman 204, this Court had to decide whether income derived by the assessee by sale of import entitlements on export being made, was profit and gain derived from the respondent's industrial undertaking under Section 80HH of the Indian Income Tax Act. This Court referred to the judgment in *Cambay Electric Supply Industrial Co. Ltd.'s case* (supra) and emphasized the difference between the wider expression "attributable to" as contrasted with "derived from". In the course of the judgment, this Court stated that the industrial undertaking itself had to be the source of the profit. The business of the industrial undertaking had directly to yield that profit. Having said this, this Court finally held:—

"We do not think that the source of the import entitlements can be said to be the industrial undertaking of the assessee. The source of the import entitlements can, in the circumstances, only be said to be the Export Promotion Scheme of the Central Govt. where under the export entitlements become available. There must be for the application of the words "derived from", a direct nexus between the profits and gains and the industrial undertaking. In the instant case the nexus is not direct but only incidental. The industrial undertaking exports processed sea food. By reason of such export, the Export Promotion Scheme applies. Thereunder, the assessee is entitled to import entitlements, which it can sell. The sale consideration therefrom cannot, in our view, be held to constitute a profit and gain derived from the assessee's industrial undertaking." (Para 13)

15. Similarly, in *Pandian Chemicals Ltd. v. CIT* [2003] 262 ITR 278/129 Taxman 539 (SC), this Court dealt with the claim for a deduction under Section 80HH of the Act. The question before the Court was as to whether interest earned on a deposit made with the Electricity Board for the supply of electricity to the appellant's industrial undertaking should be treated as income derived from the industrial undertaking under Section 80HH.

This Court held that although electricity may be required for the purposes of the industrial undertaking, the deposit required for its supply is a step removed from the business of the industrial undertaking. The derivation of profits on the deposit made with the Electricity Board could not be said to flow directly from the industrial undertaking itself. On this basis, the appeal was decided in favour of Revenue.

16. The sheet anchor of Shri Radhakrishnan's submissions is the judgment of this Court in *Liberty India's case* (supra). This was a case referring directly to

Section 80-IB in which the question was whether DEPB credit or Duty drawback receipt could be said to be in respect of profits and gains derived from an eligible business. This Court first made the distinction between "attributable to" and "derived from" stating that the latter expression is narrower in connotation as compared to the former. This court further went on to state that by using the expression "derived from" Parliament intended to cover sources not beyond the first degree. This Court went on to hold: —

'34. On an analysis of Sections 80-IA and 80-IB it becomes clear that any industrial undertaking, which becomes eligible on satisfying sub-section (2), would be entitled to deduction under sub-section (1) only to the extent of profits derived from such industrial undertaking after specified date(s). Hence, apart from eligibility, sub-section (1) purports to restrict the quantum of deduction to a specified percentage of profits. This is the importance of the words "derived from industrial undertaking" as against "profits attributable to industrial undertaking".

35. DEPB is an incentive. It is given under Duty Exemption Remission Scheme. Essentially, it is an export incentive. No doubt, the object behind DEPB is to neutralize the incidence of customs duty payment on the import content of export product. This neutralization is provided for by credit to customs duty against export product. Under DEPB, an exporter may apply for credit as percentage of FOB value of exports made in freely convertible currency. Credit is available only against the export product and at rates specified by DGFT for import of raw materials, components etc.. DEPB credit under the Scheme has to be calculated by taking into account the deemed import content of the export product as per basic customs duty and special additional duty payable on such deemed imports.

36. Therefore, in our view, DEPB/Duty Drawback are incentives which flow from the Schemes framed by Central Government or from S. 75 of the Customs Act, 1962, hence, incentives profits are not profits derived from the eligible business under Section 80-IB. They belong to the category of ancillary profits of such Undertakings.' (Paras 34, 35 and 36)

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

18. The judgment in *Sterling Foods* case (*supra*) lays down a very important test in order to determine whether profits and gains are derived from business or an industrial undertaking. This Court has stated that there should be a direct nexus between such profits and gains and the industrial undertaking or business. Such nexus cannot be only incidental. It therefore found, on the facts before it, that by reason of an export promotion scheme,

an assessee was entitled to import entitlements which it could thereafter sell. Obviously, the sale consideration therefrom could not be said to be directly from profits and gains by the industrial undertaking but only attributable to such industrial undertaking inasmuch as such import entitlements did not relate to manufacture or sale of the products of the undertaking, but related only to an event which was post-manufacture namely, export. On an application of the aforesaid test to the facts of the present case, it can be said that as all the four subsidies in the present case are revenue receipts which are reimbursed to the assessee for elements of cost relating to manufacture or sale of their products, there can certainly be said to be a direct nexus between profits and gains of the industrial undertaking or business, and reimbursement of such subsidies. However, Shri Radhakrishnan stressed the fact that the immediate source of the subsidies was the fact that the Government gave them and that, therefore, the immediate source not being from the business of the assessee, the element of directness is missing. We are afraid we cannot agree. What is to be seen for the applicability of Sections 80-IB and 80-IC is whether the profits and gains are derived from the business. So long as profits and gains emanate directly from the business itself, the fact that the immediate source of the subsidies is the Government would make no difference, as it cannot be disputed that the said subsidies are only in order to reimburse, wholly or partially, costs actually incurred by the assessee in the manufacturing and selling of its products. The "profits and gains" spoken of by Sections 80-IB and 80-IC have reference to net profit. And net profit can only be calculated by deducting from the sale price of an article all elements of cost which go into manufacturing or selling it. Thus understood, it is clear that profits and gains are derived from the business of the assessee, namely profits arrived at after deducting manufacturing cost and selling costs reimbursed to the assessee by the Government concerned.

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

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

Also, the object behind DEPB entitlement, as has been held by this Court, is to neutralize the incidence of customs duty payment on the import content of the export product which is provided for by credit to customs duty against the export product. In such a scenario, it cannot be said that such duty exemption scheme is derived from profits and gains made by the industrial undertaking or business itself.

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

"We do not find any perversity in the Tribunal's finding that the scheme of transport subsidies is inseparably connected with the business carried on by the assessee. It is a fact that the assessee was a manufacturer of plywood, it is also a fact that the assessee has its unit in a backward area and is entitled to the benefit of the scheme. Further is the fact that transport expenditure is an incidental expenditure of the assessee's business and it is that expenditure which the subsidy recoups and that the purpose of the recoupment is to make up possible profit deficit for operating in a backward area.

Therefore, it is beyond all manner of doubt that the subsidies were inseparably connected with the profitable conduct of the business and in arriving at such a decision on the facts the Tribunal committed no error."

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

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

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

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

Others versus Commissioner of Income Tax, reported in [1997] 228 ITR at page 257 expressed the following views:— "

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

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

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

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

The huge transportation cost for getting the raw materials to the industrial unit and finished goods to the existing market outside the state, was making it unviable for industries in remote parts of the country to compete with industries in central areas. Therefore, industrial units in remote areas were extended the benefit of subsidized transportation. For industrial units in Assam and other north-eastern States, the benefit was given in the form of a subsidy in respect of a percentage of the cost of transportation between a point in central area (Siliguri in West Bengal) and the actual location of the industrial unit in the remote area, so that the industry could become competitive and economically viable."

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

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

27. A Delhi High Court judgment was also cited before us being Dharam Pal Prem Chand Ltd.'s case (supra) from which an SLP preferred in the Supreme Court was dismissed. This judgment also concerned itself with Section 80-IB

of the Act, in which it was held that refund of excise duty should not be excluded in arriving at the profit derived from business for the purpose of claiming deduction under Section 80-IB of the Act.

28. It only remains to consider one further argument by Shri Radhakrishnan. He has argued that as the subsidies that are received by the respondent, would be income from other sources referable to Section 56 of the Income Tax Act, any deduction that is to be made, can only be made from income from other sources and not from profits and gains of business, which is a separate and distinct head as recognised by Section 14 of the Income Tax Act. Shri Radhakrishnan is not correct in his submission that assistance by way of subsidies which are reimbursed on the incurring of costs relatable to a business, are under the head "income from other sources", which is a residuary head of income that can be availed only if income does not fall under any of the other four heads of income. Section 28(iii)(b) specifically states that income from cash assistance, by whatever name called, received or receivable by any person against exports under any scheme of the Government of India, will be income chargeable to income tax under the head "profits and gains of business or profession". If cash assistance received or receivable against exports schemes are included as being income under the head "profits and gains of business or profession", it is obvious that subsidies which go to reimbursement of cost in the production of goods of a particular business would also have to be included under the head "profits and gains of business or profession", and not under the head "income from other sources".*

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

023. Hon Supreme Court has considered whether various types of subsidies received by the assessee manufacturer are eligible for deduction u/s 80 IB / IC of the act or not. It held hat these subsidies are income derived from business of eligible industrial undertaking. The above decision of the honourable Supreme Court has already considered the other decisions of the honourable Supreme Court which are relied upon by the learned CIT – A. Therefore, based on the ratio laid down by the honourable Supreme Court, assessee is eligible for deduction u/s 80 IB of the Income Tax Act on fertilizer subsidy received by it. Accordingly, we hold that the fertilizer subsidy income received by the assessee is income derived from the business of the industrial undertaking and is eligible for deduction u/s 80 IB of the income tax act. Accordingly, ground number 5 of the appeal is allowed to that extent."

23. The learned DR could not show any reason to deviate from the aforesaid order and no change in facts and law was alleged in the relevant assessment year. Thus, respectfully following the order passed by the coordinate bench of Tribunal in assessee's own case cited supra, we direct

the Assessing Officer to allow the deduction claimed by the assessee under section 80 IB of the Act. As a result, ground no. 6 raised in assessee's appeal is allowed.

24. The issue arising on ground no. 7, raised in assessee's appeal, is pertaining to denial of deduction in respect of amortisation of lease rental deposits.

25. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings it was noted that the assessee entered into sale and lease back agreement with L&T, Bajaj Auto and HDFC Ltd. The lease agreements provided for certainly lease deposit and annual rent. Under the agreement, it was agreed between the assessee and the lessors that this deposit is to be written off and adjusted against future lease rentals. Accordingly, the deposit amount of Rs. 38.12 crores was decided to be amortised in the books of the assessee. During the year under consideration, an amount of Rs. 2,18,09,383 was amortised and provided towards lease deposits. While filing the return of income, the provision was disallowed and added back to the computation of income. However, during the course of assessment proceedings, the assessee claimed the said amount of Rs. 2,18,09,383 to be allowed. The Assessing Officer vide order passed under section 143(3) of the Act rejected the request of the assessee in view of decision of Hon'ble Supreme Court in Goetze (India) Ltd. Vs CIT: 284 ITR 323.

26. In appeal, learned CIT(A) vide impugned order dismissed the appeal filed by the assessee on this issue, by observing as under:

"15.3 I have considered the facts of the issue and the submissions made by the AR. It is noted that as per the lease agreement, the deposit was not required to be amortised by the appellant since as per the lease agreement, during the secondary period of lease, the lease rent had been fixed at 6000/- per month. The said sum of 6000/- p.m. towards the lease rental is already being charged to the profit and loss account and claimed as a deduction. Hence, the amortization of the deposit with the lessor cannot be held to be an allowable deduction. The claim made by the appellant itself is tentative since the same was not originally made in the return of income. In view of this discussion, this ground is dismissed.

Being aggrieved, assessee is in appeal before us.

27. During the course of hearing, learned counsel fairly agreed that this issue has been decided against the assessee by coordinate bench of the Tribunal in preceding assessment year.

28. We have considered the submissions and perused the material available on record. We find that coordinate bench of the Tribunal in assessee's own case in Tata Chemicals Limited vs DCIT, in ITA No. 2965/Mum./2015, for assessment year 2002-03, vide order dated 22/04/2019, dismissed the appeal filed by the assessee on similar issue, by observing as under:

"8.5 We have heard the rival submissions and perused the relevant materials on record. The reasons for our decision are given below.

We refer here to the case laws cited by the assessee before the Ld. CIT(A). In the case of CIT v. Ishar Dass Tilak Chand (1979) 120 ITR 440 (P&H), the assessee-firm derived income from selling country liquor as licensed contractor. Annual license fee was payable in specified equal installments. Prescribed percentage was payable in lump sum as security deposit adjustable against license fee arrear or penalty levied for breach of

conditions for license. The Government forfeited security deposit against arrears of license fee. The AO added the forfeited amount in assessable income. The Tribunal allowed security deposit adjusted as revenue expenditure in same manner as payment of license fee. The Tribunal also held that forfeiture was not by way of penalty for breach of any term of license. The Hon'ble High Court held that (i) There is no Tata Chemicals Ltd. 21 ITA Nos. 2965 & 3383/Mum/2015 material on record to show that the forfeiture order was not merely a direction for adjustment of the security amount against the arrears of license fee. The Revenue did not suggest before the Tribunal that the failure to pay any installment of license fee entailed a criminal penalty, nor pointed out that there was any other breach of condition of license or any excise law to support its plea that the said forfeiture resulted from a violation of law disentitling the assessee's claim for deduction of the amount as a business expenditure, (ii) The finding given by the Tribunal that the security deposits was adjusted towards the arrears of license fee and the same was not a forfeiture by way of penalty for the breach of any term of the license etc., was a finding of fact and no question of law arose.

In *Thackers H.P. & Co. v. CIT* (1982) 134 ITR 21 (MP), the assessee- firm, carrying on the business of purchase and sale of tendu leaves, entered into a contract with Orissa Forest Corporation Ltd. for the purchase of tendu leaves and in connection there with, deposited a certain sum as security with the Corporation. As the contract was not fulfilled, the Corporation forfeited the security. For the AY 1974-75, the assessee claimed the security money so forfeited, as a business loss, which was disallowed by the AO. On appeal, the first appellate authority allowed the assessee's claim. On further appeal, the Tribunal restored the order of the AO, holding that the impugned security deposit was in the nature of capital expenditure for commencing the venture and, therefore, could not be deducted as a business loss. On appeal by the assessee, the Hon'ble High Court held that :

"Tata Chemicals Ltd. 22 ITA Nos. 2965 & 3383/Mum/2015 "It is well settled that the forfeiture of a security deposit under a contract is a business loss and not a capital loss. The security amount deposited under a contract is not for obtaining the contract but for the due performance of its items. Moreover, in the instant case, it was obvious that the contract with the corporation was not a new business started by the assessee but was only a venture in the course of business which the assessee was already carrying on and, therefore, it could in no sense be held that the deposit of security was made for acquiring a business. Accordingly, the loss resulting from the forfeiture of security money was a revenue loss."

In *CIT v. Textool Co. Ltd.* (1982) 135 ITR 200 (Mad), the assessee imported certain items necessary for its manufacturing business under licensing scheme, requiring the assessee to deposit advance premium representing full amount of value of licensed imports with Indian Cotton Mills Federation, with stipulation that if assessee did not utilize full import entitlement, Federation would forfeit premium to the extent of resultant short fall. Owing to business exigencies, the assessee could not fully utilize import entitlements and Federation forfeited part of premium which it

wrote off as revenue loss. On appeal by the revenue, the Hon'ble High Court held that:

"when the assessee claims a business loss, the main question to be considered is whether the loss is incidental to the business. Having regard to the facts and findings recorded by it, the Tribunal was correct in coming to the conclusion that the deduction claimed by the assessee in writing off the forfeited amounts was in the course and incidental to the assessee's business. Accordingly, the impugned amounts were deductible from the total income of the assessee".

In the instant case, in the financial year 1994-95, the assessee entered into sale and lease back agreements with L&T, Bajaj Auto and Tata Chemicals Ltd. 23 ITA Nos. 2965 & 3383/Mum/2015 HDFC Ltd. The lease agreements provided for certain lease deposit and annual rent. During the year under reference, an amount of Rs.2,58,92,853/- was amortized and provided towards lease deposit. We find that on the basis of above facts, the present case is distinguishable from the above case laws relied on by the Ld. counsel.

We are of the considered view that the amount paid as consideration for obtaining the lease is for the acquisition of a capital asset which enables the lessee to carry on its business. It is a capital expenditure. It cannot be split up into the number of years of the duration of the lease in order to claim a proportionate fraction as revenue expenditure each year. The acquisition is of exclusive right or privilege over the lease, it a strong point that the consideration paid is on capital account. Receipts and payments in connection with acquiring or disposing of lease are usually on capital account.

In view of the above, we uphold the order of the Ld. CIT(A) and dismiss the 7th ground of appeal."

29. Thus, respectfully following the order passed by the coordinate bench of Tribunal in assessee's own case cited supra, ground no. 7 raised in assessee's appeal is dismissed.

30. The assessee, vide application dated 31/05/2019, sought admission of following additional ground of appeal:

"That the amount of Rs.4,72,42,353, written off in the Appellant's accounts ought to be allowed as a deduction for bad and doubtful debts under section 36(1)(vii) of the Act."

31. During the course of hearing, the aforesaid additional ground was not pressed by the learned counsel. Accordingly, the same is dismissed as not pressed.

32. Vide another application dated 07/11/2020, assessee sought admission of following additional ground of appeal:

"That the Sales Tax Incentive money of Rs.51,81,985 being the amount retained by the company in accordance with section 41 of the West Bengal Sales Tax Act, 1944 (read with The West Bengal Incentive Scheme 1999), was a capital receipt not chargeable to tax under the Income Tax Act.

The appellant craves the leave to add, amend, alter and/or delete any of the grounds of appeal before the time of hearing of the appeal."

33. As the issue raised by the assessee, by way of additional ground of appeal, is purely legal issues which can be decided on the basis of material available on record, we are of the view that same can be admitted for consideration and adjudication in view of the ratio laid down by Hon'ble Supreme Court in NTPC Ltd vs CIT: 229 ITR 338.

34. We find that, while deciding similar issue in favour of the assessee, the coordinate bench of the Tribunal in assessee's own case in Tata Chemicals Limited vs DCIT, in ITA No. 2439/Mum/2011, for the assessment year 2003-04, vide order dated 16/02/2022, observed as under:

"016. In the additional ground number 3 by the assessee it is challenged that the sales tax remission benefit derived by the assessee is not chargeable to income tax as it is a capital receipt. We have carefully perused the West Bengal incentive scheme 1999, which is notified on

22/6/1999 to extend incentive for promotion of industries in the state. The assessee has setup unit in Midnapore district and therefore according to clause number [7] this area was covered under the scheme> According to scheme, assessee has option either to defer the payment of the Sales tax or remission of the Sales tax on sale of finished goods. It is apparent that assessee has opted for the remission of sales tax due for payment by the unit for nine years which is subject to ceiling of 100 % of the gross value of the fixed capital asset of the approved project. On reading of the scheme, it is apparent that it is formulated to extend incentive for promotion of industries in the state.

017. As held by Honourable Supreme court in CIT Madras Vs Ponni Sugar [2008] 174 Taxman 87 (SC)/[2008] 306 ITR 392 (SC)/[2008] it is the object for which the subsidy/assistance is given which determines the nature of the incentive subsidy. The form of the mechanism through which the subsidy is given is irrelevant. In the present case when once the object of subsidy is to industrialize state, it is capital receipt. All the judgments cited before us also lay down the same ratio. Even otherwise subsidy is included in the definition of Income u/s 2 (24) (xviii) with effect from 1/4/2016. Accordingly, we hold that Sales tax incentive money received of Rs 430,61,201/- being the amount retained by the company in accordance with Section 41 of the West Bengal sales tax act, 1944 read with the West Bengal incentive scheme, 1999 was a capital receipt not chargeable to tax under the income tax act."

35. The learned DR could not show any reason to deviate from the aforesaid order and no change in facts and law was alleged in the relevant assessment year. Thus, respectfully following the order passed by the coordinate bench of Tribunal in assessee's own case cited supra, we hold that sales tax incentive money of Rs. 51,81,985 being the amount received by the company in accordance with section 41 of the West Bengal Sales Tax Act, 1944 is capital receipt, which is not chargeable to tax under the Act. As a result, additional ground raised by the assessee is allowed.

36. In the result, appeal by the assessee is partly allowed.

ITA No. 2733/Mum/2011
Revenue's appeal - AY 2004 - 05

37. At the outset, learned counsel submitted that total adjustment to income in respect of revenue's appeal is Rs. 85,62,609 and the tax thereon at 35.875% will be Rs. 30,71,836, which is below the revised monetary limit of Rs. 50 lakhs applicable to appeal is before the Tribunal, as per CBDT Circular no.17 of 2019, dated 8th August 2019. Further, he submitted, none of the exceptions provided in CBDT Circular no.3 of 2018, dated 11th July 2018 r/w circular F. no.279/Misc./142/2007-ITJ-(Pt) dated 20th August 2018, would apply to Revenue's appeal. Thus, the learned A.R. submitted that Revenue's appeal being covered under the aforesaid Circulars is not maintainable.

38. The learned DR could not produce any material before us to controvert the submission so made on behalf of the assessee.

39. Having considered the submissions and perused the material available on record, we are of the view that the tax effect on the amount disputed by the Revenue in the present appeal is below the revised monetary limit of Rs. 50 lakh as per CBDT Circular no.17/2019, dated 8th August 2019, r/w CBDT Circular no.3/2018, dated 11th July 2018, r/w circular F. no.279/Misc./142/2007-ITJ-(Pt) dated 20th August 2018. In view of the aforesaid, Revenue's appeal deserves to be dismissed. However, the Revenue is given liberty to seek recall of this order if, at a

later point of time, it is found that the appeal falls under any of the exceptions provided in the Circulars referred to above.

40. In the result, appeal by the Revenue appeal is dismissed.

ITA No. 2692/Mum/2012
Assessee's appeal - AY 2005 - 06

41. In this appeal, assessee has raised following grounds:

"1. The learned Commissioner of Income Tax erred upholding the disallowance of provision for bad and doubtful debts for computing the book profit u/s 115JB at Rs. 4,72,42,353/-.

2. The learned Commissioner of Income Tax erred in upholding the disallowance of Rs.6,00,000 in respect of Provision for wealth-tax for computing the book profit u/s 115JB.

3. The learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance made under section 14A pertaining to dividend income for the purpose of book profit u/s 115JB.

4. The learned Commissioner of Income Tax (Appeals) erred in upholding the disallowance u/s 14A.

5. The learned Commissioner of Income Tax (Appeals) erred in upholding the disallowance of deduction of premium payable on maturity of FCCB Bonds at Rs. 45.02 lacs.

6. The learned Commissioner of Income Tax (Appeals) erred in upholding the disallowance of machinery hire charges (provision for lease deposit) amounting to Rs.2,17,15,334."

42. At the outset, learned counsel submitted that grounds no. 1, 2, and 5 are not pressed. Accordingly, the aforesaid grounds raised by the assessee are dismissed as not pressed.

43. The assessee, vide application dated 31/05/2019, sought admission of following additional ground of appeal:

"That the amount of Rs.4,72,42,353, written off in the Appellant's accounts ought to be allowed as a deduction for bad and doubtful debts under section 36(1)(vii) of the Act.

44. During the course of hearing, the aforesaid additional ground was not pressed by the learned counsel. Accordingly, the same is dismissed as not pressed.

45. The issue arising on grounds no. 3 and 4, raised in assessee's appeal, are pertaining to disallowance under section 14A of the Act.

46. The brief facts of the case pertaining to this issue, as emanating from record, are: During the year under consideration, assessee received dividend income on shares and income from units on mutual funds amounting to Rs. 31,17,04,902, which was claimed as exempt under section 10 of the Act. The Assessing Officer vide order dated 20/12/2007 passed under section 143(3) of the Act made the disallowance of Rs. 9,87,85,245 under section 14A of the Act. In appeal, the CIT(A) vide impugned order dated 31/01/2012 directed the Assessing Officer to compute disallowance under section 14A in the manner computed for the assessment year 2006-07. Being aggrieved, the assessee is in appeal before us.

47. During the course of hearing, learned counsel submitted that following the learned CIT(A)'s direction, the Assessing Officer vide order dated 23/02/2012 restricted the disallowance under section 14A to Rs. 4,80,000. Learned counsel further submitted that with a view to avoid litigation assessee is agreeable to methodology adopted by the Assessing

Officer for assessment year 2006-07 and methodology upheld by the DRP for assessment year 2007-08.

48. In view of the fact that the suo moto disallowance offered by the assessee has been accepted by the Assessing Officer, while giving effect to the directions of the learned CIT(A), and assessee is agreeable to the methodology adopted by the Assessing Officer, ground no. 4 raised in assessee's appeal is dismissed. Further, as regards ground no. 3, in any case, as per the decision of Special Bench of Tribunal in ACIT vs Vireet Investment (P) Ltd.: [2017] 58 ITR(T) 313 (Delhi - Trib.) (SB), while computing book profit under section 115JB of the Act, disallowance made under section 14A of the Act cannot be added. Accordingly, ground no.3, raised in assessee's appeal is allowed.

49. Ground no. 6 raised in assessee's appeal is pertaining to denial of deduction in respect of lease rental deposits. Thus, our findings/conclusion in assessee's appeal being ITA No. 2440/Mum/2011 for assessment year 2004-05 shall apply *mutatis mutandis*. Accordingly, ground no. 6 raised in assessee's appeal is dismissed.

50. In the result, appeal by the assessee is partly allowed.

ITA No. 2553/Mum/2012
Revenue's appeal - AY 2005-06

51. The issue arising on ground no.1, raised in Revenue's appeal, is pertaining to deletion of disallowance made under section 40A(9) of the Act.

52. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee made contributions to various societies or trusts, which fall within the purview of section 40A(9) of the Act. Details of these expenses are as under:

	<i>Amount (Rs.)</i>
<i>A</i>	<i><u>CORPORATE OFFICE:</u></i>
<i>1</i>	<i>Tata Sports Club</i> <i>3,30,000</i>
<i>2</i>	<i>Fort Medical Society</i> <i>1,454,500</i>
<i>B</i>	<i>MITHAPUR</i>
<i>3</i>	<i>Mithapur Nutan Balshikshan Sangh</i> <i>1,900,000</i>
<i>4</i>	<i>Kindergarten Primary School</i> <i>1,075,000</i>
<i>5</i>	<i>Mithapur Kamdar Club</i> <i>29,000</i>
<i>6</i>	<i>Mithapur Club</i> <i>15,000</i>
<i>7</i>	<i>Flag Day celebration</i> <i>5,000</i>
<i>8</i>	<i>Devasthan Samiti</i> <i>1,00,000</i>
<i>9</i>	<i>National Association for Blind</i> <i>5,000</i>
<i>C</i>	<i>HALDIA</i>
<i>10</i>	<i>Lever Sports Club</i> <i>416,714</i>
<i>D</i>	<i>BABRALA</i>
<i>11</i>	<i>Tatachem D A V Public School</i> <i>4,924,047</i>
<i>12</i>	<i>Tatachem Sports and Cultural Club</i> <i>140,210</i>
	<i>-----</i>
	<i>Total</i> <i>10,394,471</i>

53. The Assessing Officer vide order dated 20/12/2007 passed under section 143(3) of the Act, following the approach adopted in earlier years, disallowed the amount of Rs. 1,03,94,471 and added the same to the total income of the assessee. In appeal, the learned CIT(A) vide impugned order dated 31/01/2012 allowed the appeal filed by the assessee on this

issue, by following the precedents in assessee's own case. Being aggrieved, Revenue is in appeal before us.

54. During the course of hearing, learned DR vehemently relied upon the order passed by the Assessing Officer. On the other hand, learned counsel submitted that this issue has been decided in favour of the assessee by the coordinate bench of Tribunal in preceding assessment year.

55. We have considered the rival submissions and perused the material available on record. From the perusal of the impugned order passed by the learned CIT(A), we find that this issue is recurring nature. We further find that the coordinate bench of Tribunal in DCIT vs Tata Chemicals Limited, in ITA Nos. 3383/Mum/2015, for assessment year 2002-03, vide order dated 22/04/2019, while deciding similar issue, observed as under:

"11.3 We have heard the rival submissions and perused the relevant materials on record.

As per the decisions filed by the Ld. counsel, we find that the above issues have been decided by the ITAT in favour of the assessee in assessee's own case for earlier assessment year. In the case of Tata Sports Club, similar issue has been decided by the Tribunal in favour of the assessee in AY 1995-96 (ITA No. 3082/M/02, dated 26.07.2006) and AY 1996-97 (ITA No. 6496/M/04, dated 17.08.2007).

In case of Nutan Bal Sikshan Sangh and Kindergarten Primary School and Mithapur/Kamgar Club, Mithapur, in AY 1992-93 (ITA No. 4442/M/96, dated 04.02.2000), in case of Tata Chem Sports & Cultural Club, Babrala in AY 1995-96 (ITA No. 3082/M/02, dated 26.07.2006), AY 1996-97 (ITA No. 6496/M/04, dated 17.08.2007), AY 1992-93 (ITA No. 4442/M/96, dated 04.02.2000), in case of Flag Day Collection in AY 1992-93 (ITA No. 4442/M/96, dated 04.02.2000), in case of Fort Medical Society in AY 1995-96 (ITA No. 3082/M/2002, dated 26.07.2006), in AY 1996-97 (ITA No.6496/M/04, dated 17.08.2007) and in case of Tata Chem Co-op. Credit Society in AY 1995-96 (ITA No. 3082/M/02, dated 26.07.2006), in AY

1996-97 (ITA No. 6496/M/04, dated 17.08.2007), A.Y. 1992-93 (ITA No. 4442/M/96, dated 04.02.2000), similar issues have been decided by the Tribunal in favour of the assessee.

Tata Chemicals Ltd. 31 ITA Nos. 2965 & 3383/Mum/2015 Facts being similar, we uphold the order of the Ld. CIT(A) and dismiss the 1st ground of appeal.”

56. The learned DR could not show any reason to deviate from the aforesaid order and no change in facts and law was alleged in the relevant assessment year. The issue arising in the present appeal is recurring nature and has been decided in favour of the assessee by the decisions of the coordinate bench of the Tribunal in preceding assessment years. Thus, respectfully following the order passed by the coordinate bench of Tribunal in assessee's own case cited supra, we find no infirmity in the impugned order passed by the learned CIT(A) on this issue. As a result, ground no. 1 raised in Revenue's appeal is dismissed.

57. Ground no. 2 raised in Revenue's appeal is pertaining to subscription paid to Tata Sons Ltd under the Brand Equity and Business Promotion Agreement. Thus, our findings/conclusion in assessee's appeal being ITA No. 2440/Mum./2011 for assessment year 2004-05 shall apply *mutatis mutandis*. Accordingly, ground no. 2 raised in Revenue's appeal is dismissed.

58. Ground no.3 raised in Revenue's appeal is pertaining to deduction under section 80IB of the Act in relation to price concession of fertilizers (i.e. fertiliser subsidy). Thus, our findings/conclusion in assessee's appeal being ITA No.2440/Mum./2011 for assessment year 2004-05 shall apply

mutatis mutandis. Accordingly, ground no. 3 raised in Revenue's appeal is dismissed.

59. In the result, appeal by the Revenue is dismissed.

60. To sum up, for both the assessment years, appeal by the assessee is partly allowed, while appeal by the Revenue is dismissed.

Order pronounced in the open court on 06/07/2022

Sd/-
PRAMOD KUMAR
VICE PRESIDENT

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 06/07/2022

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

By Order

Assistant Registrar
ITAT, Mumbai