

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'A' CHANDIGARH

BEFORE: SMT. DIVA SINGH, JUDICIAL MEMBER &
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA Nos. 281 & 436/CHD/2018

Assessment Year : 2010-11 & 2011-12

The DCIT, Circle, Mandi Gobindgarh, (Hq-Sirhind).	बनाम VS	M/s Amber Enterprises(India) Pvt.Ltd., C-1, Phase-II, Focal Point, Rajpura.
स्थायी लेखा सं./PAN /TAN No: AABCA3456E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate

राजस्व की ओर से/ Revenue by : Shri Arvind Sudershan, Sr.-DR

तारीख/Date of Hearing : 19.07.2022

उद्घोषणा की तारीख/Date of Pronouncement : 08.09.2022

आदेश/ORDER

PER DIVA SINGH

In both these appeals filed by the Revenue pertaining to 2010-11 and 2011-12 assessment year, the correctness of the separate orders dated 18.12.2017 and 16.02.2018 passed by Id. CIT(A) Patiala is assailed on identical grounds.

2. Accordingly, it was a common stand of the parties before the Bench that since identical grounds have been raised by the Revenue in both the appeals on same facts and circumstances, hence, the arguments advanced in ITA-281/CHD/2018(A.Y. 2010-11) shall fully address the issues

raised by the Revenue in ITA 436/CHD/2018 (A.Y. 2011-12).

2.1 In view of this common request which on facts is found by us to be correct, the grounds raised in ITA 281/CHD/2018 are reproduced hereunder:

- 1. Whether on the facts and circumstances of the case, the Ld.CIT(A) has erred in deleting the addition made by Assessing Officer on account of the issue of disallowance of interest u/s 36(l)(iii) of I.T. Act, 1961.*
- 2. Whether on the facts and circumstances of the case, the Ld.CIT(A) has erred in deleting the addition made by Assessing Officer on account of denial of deduction u/s 80IC of the Income Tax Act, 1961 in respect of Kala Amb Unit, even when the assessee does not fulfill the necessary conditions for claiming deduction u/s 80IC of the I.T. Act, 1961.*
- 3. It is prayed that the order of the Ld. CIT(A) be set-aside on the above issues and that of the Assessing Officer be restored.*
- 4. The appellant craves leave to add or amend any grounds of appeal before the appeal is heard and kindly disposed off.”*

2.2. At the cost of re-iteration, the parties have unanimously submitted that the arguments advanced in ITA 281/CHD/2018 would address the grounds in the other appeal also. Accordingly, in the said background the arguments advanced by the parties on the issues arising are addressed.

3. The ld. Sr.DR inviting attention to the assessment order specific page 29 of the assessment order submitted that he would be arguing ground No.2 raised by the Revenue first as for Ground No. 1 he would merely be relying on the assessment order.

4. Thus, addressing Ground No. 2 attention was invited to page 29 of the assessment order. Referring to the order, it was his submission that the assessee has claimed 80IC deduction for its Kala Amb Unit. The said unit, it was submitted, came into operation on 08.01.2010 and the AO considering the expenses claimed in respect thereof required the assessee vide ordersheet entry dated 08.03.2013 to furnish the reasons for low expenses. The assessee, it was submitted, explained vide reply dated 15.03.2013 that inadvertently labour expenses and electricity expenses by mistake were booked in the name of a sister concern M/s Amrit Aircon System Pvt.Ltd. from whom the specific premises had been taken on rent. The AO, it was submitted, took note of the fact that the product manufactured by M/s Amrit Aircon System Pvt.Ltd. and that of the assessee was similar i.e. Air Conditioners. The AO, it was submitted, further considered the fact that in the comparative electricity consumption expenses of M/s Amrit Aircon System Pvt.Ltd. for the months of January, February and March, there was a remarkable jump of almost three times when compared to the previous months. Accordingly, he concluded that such a high jump was not possible without the use of old machines of M/s Amrit Aircon System Pvt.Ltd. alongwith the new machines of the assessee company. He agreed that

the AO noticed that there were new machines which had been installed after 08.01.2010. Thus, it was his submission that both old as well as the new machines claimed to be used was questioned. It was submitted that there was no evidence that the old machines of M/s Amrit Aircon System Pvt.Ltd. had been disconnected or were not used in production. The AO also questioned that sale of more than Rs.22 Crores in less than three months was not possible inspite of the number of new machines set up in Kala Amb Unit.

4.1 Taking note of the fact that the wages and electricity expenses had been borne by M/s Amrit Aircon System Pvt.Ltd. and that there was no new electricity connection with the assessee and electricity connection of M/s Amrit Aircon System Pvt.Ltd. was being used and there was a jump in electricity consumption after installation of new machinery and that there was no proof that the new unit is an independent separate unit from the old one, the assessee's explanation was called forth. The AO, it was submitted vide ordersheet entry dated 22.03.2013 required the assessee to explain why the deduction claimed u/s 80IC should not be disallowed. The assessee's reply made available on 28.03.2013 was considered by the AO. This reads as under :

" As far as question of disallowance of deduction of Kala Amb unit u/s 80IC of the Income Tax Act is concerned it has repeatedly been submitted by us that there is no reason for disallowance of this deduction. The unit was set up as a new unit with machinery worth Rs. 94 lac app. All the proofs of setting up of this unit like clearance from pollution control board, VAT/CST number, certificate from Industries Department, application for power connection etc. have already been submitted to your goodself. "

4.2 The explanation offered by the assessee, it was submitted, was faulted with by the AO. The AO held that the assessee had not provided evidence which had been sought earlier. The specific shortcomings set out in the assessment order highlighted by the Sr.DR and heavily relied upon by the Revenue are extracted hereunder for completeness. These read as under :

"It is to be noted that even after issue of show cause dated 22.03.2013 assessee company had not given any evidence or proof to prove that i) old machines of its sister concern M/s Amrit Aircon System Pvt Ltd have not been used in the production of the Kala Amb unit of the assessee company; ii) the high electricity consumption after commencement of Kala Amb unit is exclusively due to setting up of new machines ; iii) the electrical capacity of the new machines is high enough to justify the high consumption after 08.01.2010; iv) the new unit is an integrated and independent one; v) the old machines have not been used after 08.01.2010 and electricity connection to old machines was disconnected."

4.3 Accordingly, it was his submission that the AO directed that a spot enquiry be carried out and consequently authorized Shri Parvinder Singh, ITO and Shri Paramjit Singh, ITI u/s 131 to verify the claim of the assessee company with regard to its 80-IC. The spot verification, it was submitted, was conducted on 29.03.2013 and an

Enquiry Report was submitted by them to the AO on 30.03.2013. The Enquiry Report, it was submitted, can be summed up by stating that it was concluded that the assessee had used old machines of his sister concern. It was submitted that the assessee was confronted on 30.03.2013 itself with the copy of the verification/Inspection Enquiry Report got conducted by the AO.

4.4 The assessee's reply was invited and was made available on 31.03.2013. It was submitted that it has been extracted in the assessment order and considered by the AO. The reply is also extracted for completeness and reads as under :

" 1. With reference to allowability of deduction u/s 80IC of the Income Tax Act, 1961 we reiterate that manufacturing of the Air Conditioners in the Kala Amb unit started before March, 2010 and there is enough material on record which was also available at the unit at Kala Amb, when your Income Tax Officer visited to record the statement of account of Sohail Ahmed and Mr Gyan Chand Sharma on 29/03/2013. As far as statement of Sohail Ahmed is concerned, he is not a person with knowledge of Tax Tax nor he is from the accounts. He was a mere worker and was not authorized by us to make any statement on our behalf, therefore his statement cannot be considered as piece of evidence. The assessee has not been given time and opportunity to controvert the same. As far as the statement of Mr Gyan Chand Sharma is concerned he himself has stated that he has joined Kala Amb unit on 16th January, 2013. He has also stated that the entire machinery belongs to Amber Enterprises India Pvt Ltd and it is now manufacturing Phillips lighting from September, 2012 and prior to it was manufacturing the Air Conditioners. His statement supports our submissions. No adverse evidence has been given by Mr. Gyan Chand Sharma.

2/Copies of bills of machinery required by the Income Tax Officer who visited Kala Amb on 29/03/2013 are enclosed herewith for your kind perusal. "

4.5 This reply of the assessee, it was reiterated, was considered by the AO and noticing that more than sufficient time had been given to the assessee to reply to the ordersheet entry dated 22.03.2010, the Inspection/Enquiry Report of the ITO and ITI and the reply filed, it was submitted, was considered. It has been extracted in pages 33 to 36 of the order. As a result of this, the AO, it was submitted, has passed a detailed order elaborating the reasons why 80IC claim of the assessee was to be disallowed.

4.6 Heavy reliance was placed upon the reasons set out in the assessment order :

In view of the above, following facts are proved beyond doubt:

- 1. The manufacturing process of the assessee company is similar to its sister concern i.e M/s Amrit Aircon Systems Pvt Ltd and both are in the business of manufacturing of Air Conditioners.*
- 2. The old machines belonging to the sister concern of the assessee company i.e M/s Amrit Aircon System Pvt Ltd have been used by the sister concern for production in M/s Amrit Aircon System Pvt Ltd during the earlier period before the commencement of production in the Kala Amb Unit. This means that the old machines have been used for production of finished goods by M/s Amrit Aircon System Pvt Ltd in the period prior to commencement of production in Kala Amb Unit of the assessee company.*
- 3. The new unit set up at Kala Amb by the assessee company is not an integrated and independent unit which is separate from the old unit of its sister concern i.e M/s Amrit Aircon System Pvt. Ltd. The old machinery of M/s Amrit Aircon System Pvt Ltd and new machinery of assessee company have been installed under the same shed, without any clear demarcation and have been installed in such a way that the production cycle is incomplete in absence of running of any of the old machines.*
- 4. The layout plan of machines proves that the old machines of M/s Amrit Aircon System Pvt Ltd are being used in the production of finished goods for Amber Enterprises (India) Pvt Ltd. This fact is further corroborated by the electricity connection of the machines. Further there is no evidence to prove that*

electricity connection to the old machines have been removed in the past and were not used earlier.

5. *At the time of inspection/ verification also the old machines of Amrit Aircon were running/functioning along with new machines of assessee company. Further there is no evidence found at the site during inspection which showed that the new machines might have been installed at a separate location, from the present one, which was independent and integrated one at the time of commencement of production and have been shifted to its present location later on. The inspection clearly proved that these new machines have been installed at the present location since the commencement of production on 08.01.2010 and there is no change or shifting of these machines from another site/location to the present site/location.*
6. *Even at the time of commencement of production of Kala Amb Unit on 08.01.2010, complete machinery was not installed and there was some machinery installed after the date of commencement of production. Hence production on 08.01.2010 cannot commence without the use of old machinery in the production process of the assessee company.*
7. *The electric connection of Amrit Aircon System Pvt Ltd has been used by the assessee company in the month of January 2010, February 2010 and March 2010 and high consumption of electricity in these months as compared to earlier months clearly proves that the old machines of Amrit Aircon System Pvt. Ltd have been put to use by the assessee company in its year of commencement of production and also in the later years.*
8. *As per plan of installation of machinery and manufacturing process, it is not possible to run the unit without the use of old machines of M/s Amrit Aircon System Pvt Ltd.*
9. *The wages and salary of the assessee company for the month of January 2010, February 2010 and March 2010 have been borne by its sister concern M/s Amrit Aircon System Pvt Ltd.*
10. *Assessee company has failed to prove that the new machines have started production of finished goods after disconnection of electricity to the old machines of its sister concern i.e it has failed to prove that the production in Kala Amb unit has taken place exclusively out of new machines only without the use of old machines. The assessee company has failed to prove that the old machines of M/s Amrit Aircon Systems Pvt Ltd have not been put to use in the manufacturing process of the assessee company and have been lying idle since commencement of production in Kala Amb unit from 08.01.2010. It has failed to prove that electrical capacity of new machines is so huge that high production in Kala Amb unit from 08.01.2010 to 31.03.2010 is possible without the old machines being put to use.*
11. *The assessee company has been using the old machines of its sister concern in its manufacturing process but has not transferred them in its books in order to avoid disallowance of deduction u/s 80IC of the Income Tax Act, 1961.*

12. *The value of old machinery being used in the production process of new unit is more than 20% of the value of new machinery and thus one of major condition for availing deduction u/s 80IC has been violated. Further at the time of commencement of production on 08.01.2010 the value of new machinery installed was Rs. 57,50,308/- and not Rs. 94,70,803/-. Though on paper assessee company has not shown transfer of old machines of its sister concern to the new unit, yet in practical terms it is utilizing the old machinery of its sister concern (more than 20% value) in the new unit. This has been done to avail the deduction u/s 80IC of the Income Tax Act, 1961.*
13. *Hence practically, for availing deduction u/s 80IC, the new unit never came into existence since it was never an integrated / independent unit capable of producing finished goods of its own.*
14. *It is to be noted that M/s Amrit Aircon Systems Pvt Ltd had availed deduction u/s 80IC for the first time @ 100% in A.Y 2005-06. In A.Y 2010-11, M/s Amrit Aircon Systems Pvt Ltd was eligible for deduction u/s 80IC @ 30% in its 6th year. In order to avail 100% deduction on account of production from the old machines assessee company camouflaged the production from old machines by setting up some of new machines in the name of other sister concern i.e M/s Amber Enterprises (India) Pvt Ltd. Though new unit was shown to have started its operation on 08.01.2010, but the production was not entirely out of new machines but also through old machines of M/s Amrit Aircon System Pvt Ltd (more than 20% value) and hence was not eligible for 80IC deduction.”*

4.7 Relying upon the above reasons extracted in the assessment order it was his submission that the relief granted by the CIT(A) on facts is challenged by the Revenue.

4.8 Referring to the impugned order it was submitted that the CIT(A) has tabulated the reasons of the AO alongwith the assessee's submissions from pages 7 to 12 and thereafter allowed a relief to the assessee. The order was assailed on the ground that the AO on facts has relied upon the Inspection Report carried out u/s 131. Accordingly, relief

granted by the CIT(A) it was submitted, is unjustified on facts.

5. The ld. AR appearing on behalf of the assessee relied upon the synopsis filed. Addressing these issues, attention was also invited to the sequence of dates stated to be emerging from the single paged document filed on 02.07.2021. The submissions summed up in the synopsis read alongwith the 97 paged Paper Book on submissions on facts and 128 paged Paper Book on decisions was heavily relied upon. It was submitted that these have been relied upon to argue that relief granted to the assessee by the CIT(A) on facts was fully justified on facts.

5.1 For ready reference, we first extract the relevant chart of dates wherein documents available in the respective Paper Book are highlighted and the sequence of events is stated to be emerging:

<i>Event</i>	<i>Date</i>	<i>Relevant Page of Paper book</i>
<i>Return Filed on</i>	<i>13.10.2010</i>	
<i>Date of start of commercial production at Kala Amb unit (The other units were working at 100% capacity and to meet the additional demand of customers, new unit at Kala Amb was set up)</i>	<i>08.01.2010</i>	<i>83</i>
<i>Application for extension of Electricity Load (From 179 KW to 400 KW)</i>	<i>09.09.2010</i>	<i>58-60</i>
<i>Closed AC Manufacturing at Kala Amb Unit</i>	<i>September 2011</i>	<i>90</i>
<i>Inspection carried on by Department's Inspector (at the time of inspection, the assessee was engaged in manufacturing of Philips Lighting Luminaries and not ACs)</i>	<i>29.03.2013</i>	<i>90</i>
<i>Submission of enquiry report</i>	<i>30.03.2013</i>	
<i>Date of passing of assessment order</i>	<i>31.03.2013</i>	

5.2 Before referring to the specific submissions highlighted in the synopsis Id. AR first invited attention of the Bench to the fact that the assessee started commercial production at Kala Amb on 08.01.2010. It was also submitted that this venture was not out of the blue, the assessee is continuing to be engaged in commercial production of Air Conditioners in various places in the country and the ACs produced by the assessee are sold under the various brand names of renowned companies like LG, Voltas etc. The assessee, it was clarified, does not carry out any branding and only undertakes manufacturing. The said activity, it was submitted, was also started by the assessee in Kala Amb wherein new machinery was purchased and production was started after seeking necessary Pollution Certificates complying with the Excise requirements etc. These facts and evidences are not rebutted by any cogent evidence. The assessee, it was submitted, did manufacture ACs and as a result thereof sold these. These sales are not doubted or rebutted on record. No evidence let alone the cogent evidence upsetting these facts is available on record. The assessee, it was submitted, initially used the electricity connection of its earlier sister concern whose premises were taken on rent. The earlier concern, it was submitted, had stopped its manufacturing activity and the premises were lying idle. It

was his submission that since manufacturing of ACs is a highly competitive business activity where the market is very sensitive to every new technology , hence manufacturing of ACs started may suddenly require to be stopped. It was his submission that every change in technology/knowledge of how AC was to be rated or considered most suitable dictated that new requirements were required to be inbuilt in the product being manufactured. These marketing gimmicks and strategies often resulted in manufacturing of products which were thus found to be out of sync with the marketing requirements. Hence, manufacturing of certain type of ACs at times had to be stopped abruptly. The earlier activity consequently had to be stopped. The expenses incurred for setting up the new plant, it was submitted, is accepted by the AO. It The heavy use of electricity usage by the assessee has also been noticed by the AO resulted in sale worth of Rs.22 Crore which also has been noticed by the AO. The business was carried on, it was submitted, till Sept.,2011, however, on account of some problems, the assessee had to shut down its AC manufacturing unit in the highly competitive market and the assessee instead started manufacturing activity of products for Philips lights and luminaries from 29.03.2013 from the same premises. This fact, it was submitted, has not been rebutted by the

Revenue. The assessee, it was submitted, continues to remain in the business of manufacturing ACs and undertook manufacturing of Philips lights and luminaries etc. on account of losses incurred in Kala Amb A.C. manufacturing unit. In manufacturing of Philips lights and luminaries etc. the assessee incurred a loss and no 80IC was claimed in view of this fact. It was argued that the assessee is a long term player in this manufacturing activity and not a fly by night operator. It was submitted that if the assessee had to fudge up its accounts, there was no impediment for the assessee to continue to claim that manufacturing of ACs was still continuing and continue to claim 80IC deduction on manufacturing of ACs. However, since a new venture was starting, the assessee correctly placed the correct facts on record. The fact that this was the very first year wherein this business venture had been set up is not in dispute. The fact that it did not succeed it was submitted, is also not in dispute. No 80IC on this failed venture has been claimed by the assessee. In the facts, the assessee, it was submitted, for no fault of it has been visited with the orders by the AO.

5.3 These facts, it was submitted, would be highlighted from a few facts evident from the assessment order itself.

5.4 Attention was invited to assessment order page 31 to show that the spot enquiries carried out on 29.03.2013 u/s 131 by Shri Parvinder Singh, ITO and Shri Paramjit Singh, ITI. Reading from the third fresh para of assessment order, it was highlighted that the Enquiry Report was available to the AO on 30.03.2013. For ready reference, relevant extract from page 31 of the assessment order is reproduced hereunder :

“Thereafter, Sh. Parvinder Singh ITO and Sh. Paramjit Singh ITI were authorised u/s 131 of the Income Tax Act, 1961 to carry out on spot inquiries for verifying the claim of the assessee company with regard to deduction u/s 80 IC of the Income Tax Act, 1961. The on spot verification was conducted on 29.03.2013 and the enquiry report dated 30.03.2013 was submitted.”

5.5 Inviting attention to the assessment order page 32 it was submitted that the reply of the assessee was submitted on 31.03.2013 which has also been extracted in the order. Inviting attention to page 1 of the assessment order it was submitted that the assessment order was passed on 31.03.2013. In the said background, it was his submission that the assessee admittedly before the AO did not get a reasonable opportunity to argue its case although a reply was made available. It was submitted that a meaningful and effective opportunity for a fair hearing admittedly was before the First Appellate Authority. These facts itself will show that the AO without giving an effective opportunity to the

assessee to address the material available on record passed the unfair and incorrect order.

5.6 In the said background, attention was invited to pages 7 to 12 of the impugned order wherein all allegations made by the AO had been tabulated by the assessee for the benefit of the First Appellate Authority. These, it was submitted, have been extracted in para 8 by the Id. CIT(A). These facts it was submitted, have not been not rebutted by the Revenue in the present proceedings. These were heavily relied upon.

5.7 It was argued that the Revenue is aggrieved that the Inspector's Report was discarded. This report, it was submitted, has no relevance as the two persons deputed to inspect could not distinguish between the machinery required for manufacturing ACs or Philips luminaries. They did not even care to ask a responsible person what was being manufactured. The statement of two employees one being a brand new employee and the other too low level employee and definitely not authorized to convey information in regard to the assessee, hence the exercise, it was submitted, was of no value. These submissions on facts accepted by the CIT(A) have not been rebutted. The findings arrived at in para 9 to 13, it was his submission supports the case of the assessee. Relying on the said finding and the submissions, it was

submitted, that no infirmity has been pointed out by the Revenue.

5.8 The case law relied upon by the ld. CIT(A) it was submitted, is available at page 74 to 94 (Shiva Exports Vs ITO, Parwanoo 28 SOT 512 (CHD-TRIB) and page 95 to 128 (Assistant Commissioner of Income Tax Vs Octave Exports (2019) 165 TTJ 425 (CHD-TRIB). Accordingly, it was his submission that the claim of the assessee deserves to be allowed.

6. The ld. Sr.DR in reply relies on the assessment order.

7. We have heard the rival submissions and perused the material available on record. The written submissions on this issue made available to the ld. DR and filed in the Registry on 02 June, 2021 relied upon by the ld. AR at pages 9 to 12 which had also been read out in the Court reads as under :

2. ISSUE OF DISALLOWANCE OF DEDUCTION CLAIMED U/S 80-IC OF THE ACT RELATED TO KALA AMB UNIT

a) The disallowance of deduction u/s 80 IC of the Act related to Kala Amb Unit, wherein 100% deduction was claimed u/s 80-IC of the Act, had been made by the AO by stating that unit at Kala Amb is not an integrated and complete unit in itself and does not qualify for deduction u/s 80-IC of the Act. In this regard, the highlights of our submission filed before the AO is as under:

- ❖ The assessee has set up its unit at Kala Amb which is an area notified u/s 80-IC of the Act and producing notified things as per the guidelines of the said section.*
- ❖ There is no doubt that assessee has carried its operations from the premises taken on rent from sister concern namely M/s Amrit Aircon System Private Limited and such fact nowhere violates the conditions for claiming deduction u/s 80-IC of the Act. The*

rent deed is forming part of paper book at Pg 42 to Pg 48. The said rent deed was entered on 22.12.2008 and it was valid for the period of 5 years.

- ❖ *Now, we would like to explain that assessee is a newly established unit which is evident from following points:*
- ❖ *Unit at Kala Amb is an Independent Unit started with an investment of Rs. Rs. 94 Lacs in Machinery which includes a complete oven unit, assembling unit, conveyor line, gas charging line etc. The List of machineries purchased by assessee (Pg 61 of PB) along with their electricity load (Pg 62-63 of PB) and line diagram (Pg 64 of PB) depicting manufacturing process of air conditioners is forming part of paper book.*
- ❖ *Clearance certificate dated 06.05.2009 from Himachal Pradesh Pollution Control Board (HPPCB) was obtained after due inspection of site and machinery. The certificate is forming part of paper book at Pg 55 to Pg 56.*
- ❖ *Separate registration was obtained from the Director of Industries (DIC) which is a Nodal Agency and legally recognized authority of the Government to regulate setting up of industries wherein date of commencement of production is mentioned as 08.01.2010. The registration certificate is forming part of paper book at Pg 52 to Pg 54.*
- ❖ *Separate inspection has been done by Central Excise Department and after due consideration they have also accepted the fact that a new manufacturing facility has been set up by M/s Amber Enterprises (I) Pvt. Ltd. The copy of inspection report is forming part of paper book at Pg 55.*
- ❖ *A Copy of certificate dated 06.05.2009 from Himachal Pradesh Electricity Board Limited for sanction of electricity load in the favour of Amber Enterprises (India) Pvt. Ltd. and further grant of additional electricity load. The same is forming part of paper book at Pg 58-60.*
- ❖ *The certificates and inspections made by other statutory bodies do have evidentiary value unless proved otherwise and the AO has nowhere in his assessment order had denied the approval granted by these legal bodies.*
- ❖ *Further, we wish to explain that assessee has not used any old machinery of its sister concern namely M/s Amrit Aircon System Private Limited which is evident from following points:*
- ❖ *The ACs manufactured by the assessee are for specific clients and they are based on the technical requirements of the customer being serviced from these units such as Voltas, Whirlpool etc. The reason for set-up of a new unit at Kala Amb by the assessee as the other unit located at Selaqui IV (Dehradun) was 100% booked for production and supply of ACs to LG and during this year two new units at Selaqui had been established which were dedicated for supply to LG only. Thus, considering the demand of the customers it was a prudent business decision to set up a new unit at Kala Amb.*
- ❖ *The assessee does not conduct any sales in the open market i.e. it does not produce goods under its own name and the entire production is order based with the brand name of clients.*

The machinery deployed, process/technology used for manufacturing is customer specific and any change in the machinery/process/technology cannot be made without the consent of clients.

The vendors from whom the raw material is to be procured by the assessee are also predefined by the clients.

The assessee is not allowed to sell AC's in the open market as there is complete reconciliation with the clients for raw material purchased from their predetermined vendors and production made by the assessee.

The clients frequently checks the specification of machineries which are engaged in the manufacturing process and all this is done to make sure the quality of finished goods to be sold by them.

The assessee company has invested appx. Rs. 94 Lacs in the Plant & Machinery up to 31.03.2010 which is sufficient enough to run a plant at the initial stage

In the F.Y 2008-09 as well as in the initial months of year under consideration, M/s Amrit Aircon System Private Limited was working in full swing and there was no intention of the said concern to reduce its production and transfer its machinery to assessee company.

From the details of machinery purchased by assessee in the year under consideration, it is clear that all the machineries necessary for the production of AC's has been newly purchased by the assessee in its own unit.

Initially, the Kala Amb unit was established for manufacturing and assembling of AC's, however, at the time of physical inspection of machinery i.e. 29.03.2013, the assessee was engaged in the manufacturing/assembling of Phillips goods for which totally different type of machinery is used by the assessee

It is also pertinent to note that assessee has stopped production of AC's in the month of September 2011 and the related machinery was not in working condition at the time of physical verification by inspectors of department.

- *Further, inspection report as done by the Department is incorrect and unreliable on the following issues:*

firstly, at the time of inspection the assessee was not producing AC's and therefore, question of any determination of use of old machinery of M/s Amrit Aircon System Private Limited was not possible.

Secondly, the inspectors were not technical persons who can inspect' the manufacturing process and machinery used in it which is also evident from the fact that the inspectors were not even able to identify the difference between the machinery previously used in the manufacturing of AC's and machinery actually used at the time of inspection of Philips Luminaries.

Lastly, also, the Inspector is not a qualified Engineer to comment upon the functioning and Working of machines and neither he is a technical valuer/qualified person to assess the age of particular machines and thus the report of inspectors seems to be more of guess work and estimation rather than any actual fact on record.

At the time of inspection on 29.03.2013, the assessee was producing Philips Lighting luminaries and not AC's as the manufacturing of AC's was closed in September 2011 and all the machineries related to AC's were lying idle since then. This fact is also evident from the statement recorded by Suhel Ahmed and Sanjay Sharma and the same is not controverted by the AO. Therefore, the statement of inspectors that electricity connection attached to machineries seems to be old and therefore, the machineries are old is incorrect.

The manufacturing process and machinery used for Philips Lighting System is totally different from the AC's which is evident from the machines inspected by the inspectors and bills for the same produced before the AO.

The inspectors as well as the AO have not clearly identified the machineries of M/s Amrit Aircon System Private Limited being used by the assessee.

Further, the observations of the AO as given at Pg 39-42 of the assessment order were distinguished in detail in submission filed before the CIT(A) in Para 6.17 of the submission and the same is forming part of paper book at Pg 65 to Pg 97. The said submissions are also reproduced by the CIT(A) in his order dated 08.12.2017 at Pg 7-13.

As far as the question of salaries/wages and electricity consumption is concerned, the assessee has itself admitted that due to inadvertent error, a portion of these expenditures is claimed by M/s Amrit Aircon System Private Limited. This fact was brought to the notice of the AO during the course of assessment proceedings and it was also explained to the AO that the portion of expenditure excessively claimed by M/s Amrit Aircon System Private Limited has already been disallowed by the AO of that concern in its assessment order passed u/s 143(3) of the Act. The copy of the order passed by AO u/s 143(3) of the Act in the case of M/s Amrit Aircon System Private Limited is forming part of paper book at Pg 49 to Pg 51.

Regarding a quantum jump in the electricity expenditure in the months of Jan-March, as pointed by the AO, as compared to the very low expenditure in the earlier months, it is submitted that the AO has failed to appreciate the fact that M/s Amrit Aircon (P) Ltd had a turnover of approx Rs. 8 Cr in the months of Oct-Dec 2009 whereas M/s Amber Enterprises (P) Ltd had a turnover of Rs. 22.63 Cr in the months of Jan-March 2010. Since, Amrit Aircon's business had reduced by a huge extent, thus it had a turnover of around Rs 64 lac in the last quarter i.e Jan-March 2010. Thus, the reason of huge hike in the electricity in respective quarters is explainable with respect to the production done by both the companies.

b) From the above, it is amply clear that the assessee had set-up an independent and self sufficient unit wherein the production of ACs was being carried out and therefore, the disallowance of claim of deduction u/s 80-IC of the Act as made by the AO is incorrect and the same has been rightly deleted by the CIT(A) by stating as under:

"In view of the aforesaid, it can be said with a fair amount of certainty that there is no cogent material on record to establish the allegation of the AO that the plant and machinery of the sister concern was utilised to manufacture air conditioners in the new unit, in derogation of the eligibility criterion mandated in section 80-IC. The AO has, evidently, overlooked and disregarded the overwhelming array of documentary evidences and fact situations in suggesting that the new unit carried out production by using and utilizing plant and machinery of the sister concern. It has been consistently held by the higher appellate forums that suspicion, howsoever strong, cannot take the place of proof. The Hon'ble Supreme Court, in the case of Dhirajlai Giridharilal [1954] 26 ITR 736, has held that when a Court of fact acts on material, partly relevant and partly irrelevant, it is impossible to say as to what extent, the mind of the Court was affected by the irrelevant material used by it in arriving at its finding. Such a finding is vitiated because of inadmissible material. In this regard, the decision of the Hon'ble Chandigarh Bench of the Tribunal in the case of M/s Shiva Exports Vs. ITO as reported in 28 SOT 512 is directly in support of the appellant wherein under similar circumstances, the claim of deduction under section 80-IA was

allowed. On similar lines is another decision of the Hon'ble Chandigarh Tribunal in the case of ACIT Vs. M/s Octave Exports, 165 TTJ 425. Considering the whole gamut of facts, it is held that the action of the AO in disallowing the claim of deduction under section 80-IC of the Act is not based on correct reasoning and hence not sustainable. The grounds of appeal pertaining to the aforesaid impugned issue are, thus, considered allowed."

7.1. It is also relevant to extract the specific objections of the AO tabulated by the assessee and addressed by the assessee before the First Appellate Authority in para 8 :

8. Contesting the aforesaid observations of the AO, the appellant insisted that the eligibility criterion for the claim of deduction under section 80IC was fulfilled in all parameters and that the disallowance of the said claim was not only unwarranted but also arbitrary. The appellant's contention with regard to each of the objections of the AO was furnished in an annotated form during the appellate proceedings. It would be apposite to extract the same here in below:

Sr. No.	AO's Comments	Assessee's submissions
1.	The assessee and its sister concern namely M/s AmritAircon System Private Limited are engaged in the same line of business.	<p><i>There is no bar in the Act which prohibits the assessee to carry on the same business as carried by its sister concern at the same place where premises of sister concern is situated and therefore, the deduction claimed u/s 80-IC of the Act cannot be denied on the ground that same business is carried on by assessee and its sister concern.</i></p> <p><i>If the assessee had used the rented premises of any other person instead of its sister concern for its production process, probably there would not have any doubt in the mind of the AO regarding use of old machinery etc. and merely because, the assessee has used the premises of its sister concern and both are carrying the same business does not lead to a conclusion that there is no separate identity of both.</i></p> <p><i>Identity, integration and independence of a business is always considered from the point of view of a technical person who is primarily a businessman who is the sole in-charge of its business and then other legal bodies like DIC, HPPCB and Excise authorities in the case of assessee which have been specifically established by the Government of India for these purpose only.</i></p> <p><i>Therefore, a mere fact assessee and its sister concern are carrying on the same business does not lead to a conclusion that they have used the resources of each other.</i></p>
2.	Old Machinery has been used for production of goods by M/s AmritAircon	The fact that M/s Amrit Aircon System Private Limited was using old machinery or new machinery does not affect the

	<i>System Private Limited period prior to commencement of production of Kala Amb Unit of assessee.</i>	<i>deduction u/s 80-IC of the Act claimed by assessee. Moreover, when the assessee has produced its list of machinery along with their purchase bills, then to say that old machinery of M/s Amrit Aircon System Private Limited is merely a guess work of AO.</i>
3.	<i>There was no clear demarcation between the space used by assessee and M/s Amrit Aircon System Private Limited and machineries of both the companies are installed in same shed in such a way that production is incomplete in absence of running of any of the old machinery. Therefore, the unit of assessee is not an integrated and independent unit.</i>	<p><i>Just because appellant was manufacturing from the leased shed with common power connection of its sister concern, it cannot be assumed that assessee is not an integrated and independent unit.</i></p> <p><i>Independence and integrity of a business is matter of technical inspection wherein various factors like production cycle, manufacturing process, machinery deployed investments made and technology used are key decisive factors. Therefore, the ITO and 777, on whose report the AO has placed Reliance and who are not technical persons, cannot draw a conclusion in the inspection of only few hours that assessee is not an integrated and independent unit.</i></p> <p><i>As per inspectors, there was no clear demarcation of machinery of assessee and M/s Amrit Aircon System Private Limited at factory premises, it is submitted that production cycle is a technical process and only technical persons like production manager can explain it better and as evident from the Page 5 of statement of Sh. Sanjay Sharma (Production Manager) as recorded during the course of physical inspection, that machinery installed in the working area of assessee is purely related to assessee itself and bills of machinery were also produced by him. Moreover, the assessee has prepared separate lease deed from the premises taken on rent from M/s Amrit Aircon System Private Limited wherein the area taken on rent is clearly identifiable.</i></p> <p><i>Lastly and most importantly, at the time of Inspection i.e. FY 2012-13, there was no production of ACs by either the Kala Amb unit of the assessee or the other company namely M/s AmritAircon, therefore, there being no active set up related to production of ACs at the assessee's premises, the report of the ITO is rather flimsy and unreliable.</i></p>
4.	<i>The layout plan of machineries further corroborated by electricity connection proves that old machines of M/s Amrit Aircon System Private Limited has been used by assessee.</i>	<p><i>A list of machinery purchased by assessee along with their electricity load was filed with your goodself vide our earlier submission along with paper book at pg 161-172. On comparison of the electric load available and the wattage of machinery deployed, there is no scope to use machinery other than purchased and deployed by the assessee. Your goodself would notice that sanctioned electricity load was 250 KW and load factor of machines deployed was 232 KW.</i></p> <p><i>Further, electric load cannot be increased or decreased by assessee at its sweet will but is controlled by an outside agency i.e. Himachal Pradesh State Electricity Board which is a Government body and sanctions electric load after due verifications of the requirements of the unit to be set up.</i></p> <p><i>Therefore, to say that electric connection can determine which type of machinery is used in production seems to be a finding of AO without any knowledge of the actual working of machines.</i></p>
5.	<i>At the time of inspection/verification also</i>	<i>The fact is not denied by the ITO or the AO that at the time of</i>

	<i>the old machines of Amrit Aircon were running/functioning alongwith new machines of the assessee company.</i>	<i>inspection, the assessee had been engaged in manufacturing and supply of Luminaries. Infact, the production of ACs was stopped at Kala Amb from September2011 and thus conclusion reached by the Department team is more based on their own presumption and understanding rather than the factual position.</i>
6.	<i>At the time of commencement of the unit at Kala Amb, complete machinery was not installed and some machinery has been installed after 08.01.2010 i.e. date of production.</i>	<i>Substantial machinery had been purchased and installed by the appellatant at Kala Amb in the FY 2008-09 and also in FY 2009-10 and thus it cannot be said that the unit was incapable of carrying out the production in January 2010.</i>
7.	<i>The use of old electricity connection of M/s Amrit Aircon System Private Limited by assessee and high consumption of electricity from January 2010 to March 2010 proves that machinery of M/s AmritAircon System Private Limited has been used by assessee in its year of commencement of production as well as in the subsequent years.</i>	<i>It is an admitted fact that and till the date of sanction of its own electricity load, the assessee has used the electricity connection of M/s AmritAircon System Private Limited and there is no violation of conditions of section 80-IC of the Act.</i> <i>Further, the high consumption of electricity by assessee as compared to M/s Amrit Aircon System Private Limited is obvious due to the fact that in the entire FY 2009-10 and more so majorly upto December 2009, M/s Amrit Aircon System Private Limited had made sales of Rs. 55.50Crores as against the sales of Rs.22.63 Crores achieved by the Kala Amb unit in a period of 8th January 2010 to March 2010 and which obviously would have a huge upward effect on the consumption of electricity.</i> <i>Moreover, to achieve its sales targets, the Kala Amb unit is working in shifts which 'is stated by the Production Manager Sh. Sanjay Sharma in its statement recorded before the inspectors. In its statement, Production Manager has stated that normal working hours of the factory are 9AM to 5.30PM. Some workers work for 2-3 hours extra from 5.30PM. The press shop works for two shifts i.e. 9AM to 5.30PM and 9PM to 5.30AM for the next day. Therefore, high consumption of electricity as compared to sales achieved by assessee is not an abnormal thing which can assist the AO to negate the claim of deduction u/s 80-IC of the Act.</i>
8.	<i>As per plan of installation of machinery and manufacturing process, it is not possible to run the unit without the use of old machines of M/s AmritAircon System Private Limited.</i>	<i>This again is more of a presumption on the part of the AO rather than any actual fact as the unit was not manufacturing ACs during the time of inspection.</i>
9	<i>The wages from January 2010 to March 2010 have been borne by M/s AmritAircon System Private Limited.</i>	<i>As mentioned in earlier paras, the assessee has itself accepted the fact that due to inadvertent error, a portion of wages has been claimed by M/s AmritAircon Private Limited and the same has already been disallowed by the AO of that concern in its assessment order passed u/s 143(3) of the Act. Therefore, no adverse inference in this regard is called for.</i>
10.	<i>The assessee has failed to prove that the production in Kala Amb has taken place exclusively out of new machines only and it has failed to prove that electrical capacity of new machinery is so huge that high production at Kala Amb unit from January to March 2010 is possible without the old machinery being put to use.</i>	<i>This observation of the AO is again a presumption rather than anything factually on ground. Rather, the AO has himself mentioned in para 4 on page 38 of his order that M/s AmritAircon has total gross block of machinery of only Rs.82.27 Lacs and thus when the said company was engaged in full fledged production of Air Conditioners then why the assessee's unit with an investment of Rs.94.70 Lakhs in the machinery is not considered as self sufficient by the AO has not, been clarified by him while passing the Assessment</i>

		<i>Order.</i>
11.	<i>The old machinery of M/s Amrit Aircon System Private Limited has not been transferred in books of assessee in order to avoid disallowance of deduction u/s 80-IC of the Act.</i>	<i>This conclusion of AO is rather his own belief without any fact on record.</i>
12.	<i>The value of new machinery installed on 08.01.2010 was Rs.57,50,308/-not Rs.94,70,803/- and therefore, the assessee is using old machinery of its sister concern which is more than 20% of the value of new machinery and therefore, the assessee has violated the conditions of section 80-IC of the Act.</i>	<i>It is a fact on record that all major machineries worth Rs.81.22 Lakhs were installed and running in the assessee's unit by January 2010 and it is not mandatory that all the machinery including gensets etc must be installed for start of commercial production.</i>
13.	<i>The unit was never capable of producing goods of its own and therefore, has never come into existence.</i>	<i>This again is a presumption of the AO whereas on the other hand, M/s Amrit Aircon which is the other company at the same premises was earlier running a similar activity with the same kind of investment set up in machineries and further during the course of inspection carried out by the ITO of the Department, they have verified the fact that at the time of inspection, it was the assessee's unit that was functioning and manufacturing of Luminaries was being carried out therefore how the AO alleges that the assessee's unit never came into existence.</i>
14.	<i>M/s Amrit Aircon System Private Limited was in &h year of its production i.e. rate of deduction was reduced to 30% and therefore, to avail 100% deduction that too from machineries, the assessee has camouflaged the production from old machinery by setting up some of the new machinery and therefore, the production was not entirely out of new machineries of assessee.</i>	<i>The AO failed to appreciate the fact that during the year under consideration, the assessee had established 5 new manufacturing units out of which 3 were established in areas where exemption u/s 80-IC was available and other two units were in areas where no 80-IC was available. Had there been any intention to establish the manufacturing facilities only to claim the deduction claim u/s 80-IC of the Act, the assessee would not have established any unit in non 80-IC areas. It is also evident from the fact that in Unit-V Selaqui, where assessee can claim 100% deduction u/s 80-IC, there is loss and no deduction u/s 80-IC has been claimed by the assessee. The establishment of unit at Kala Amb was a business need and not a motive to claim higher deduction u/s 80-IC of the Act. Moreover, the assessee has made huge investments in Plant 8i Machinery and other assets to establish these units and thus it is submitted that it was purely a business decision rather than a motive to claim higher deduction without any actual production. <i>Therefore, there is no logic behind the contention of the AO that unit at Kala Amb was established to avail higher deduction u/s 80IC of the Act.</i></i>

7.2 Considering these facts, it is seen that the issue has been decided by the CIT(A) holding as under :

9. On a conspectus of all the facts and circumstances obtaining in the case of the appellant, it is held that withdrawal of the claim of deduction under section

80IC is unsustainable. The eligible new unit, admittedly, commenced operations from the leased premises with the aid of electricity connection and labour, also taken on lease from the sister concern viz. Amrit Aircon Pvt. Ltd. In the assessment proceedings, it was admitted that the expenses on electricity, fuel, wages & salary amounting to Rs.7,57,793/-were inadvertently booked in the accounts of the sister concern, which was subsequently taken care of in the assessment proceedings of the said sister concern for the A.Y.2010-11. The eligible unit of the appellant company was set up with a capital outlay of approximately Rs.94 lakhs in purchase and procurement of plant and machinery. Besides, all the necessary legal clearances for setting up of the unit was stated to have been complied with. The eligibility conditions as specified in section 80IC is seen to have been met in entirety. **Merely because the new unit was set up in leased premises, its existence and operationality cannot be doubted. It is not the case of the Assessing Officer that there was no investment in plant and machinery for setting up the eligible unit. Neither the invoices produced in support of the purchase of plant and machinery required for setting up of the new unit have been found to be doubtful by the AO. The detailed manufacturing flowchart explained by the appellant substantiates the fact that the appellant had set up a comprehensive unit as required by it for its manufacturing activity. Obtainment of clearance from the Himachal Pradesh Pollution Board, registration from the Director of Industries as also with the Excise Department are vital evidences which go on to prove that a new and independent unit was established by the appellant company. During the appellant proceedings, copy of the return filed in Form A for the quarter ending March 2010 was adduced, wherein the total units of air-conditioners and its parts manufactured and sold by the appellant reported in such return has been accepted by the Excise Authorities. Even the AO, in the assessment proceedings, has accepted the purchases and sales made by the appellant and no doubt, whatsoever, has been cast on the book results declared by it.**

10. The total sanctioned load of the appellant's sister concern was 250KW whereas the load factor of the machinery employed by the appellant's new unit was 232KW and hence it was not possible that the appellant company could have used the plant and machinery of two different units on the same electricity load. **The doubts raised by the AO that the consumption of electricity in the last quarter of the year 2010 i.e. in the months of January, February and March in the books of the sister concern had increased substantially is a fact supporting the case of the appellant than that of the AO as it is during this period that the new unit commenced its operations. As stated earlier, it is also a fact on record that electricity, wages and salary debited in the accounts of the sister concern was disallowed in the assessment proceedings of the said concern for the reason that those expenses actually pertained to the business activities carried out by the eligible unit of the appellant company at the premises taken on lease from the said sister concern.**

11. **The report of the inspecting officials and the statement recorded during the course of the inspection also seem to be based more on assumption than any factual reality seen at the time of inspection. The team of the Assessing Officer visited the premises after the closure of the manufacturing of air conditioners and any conclusion drawn on such basis cannot be relied upon to deny the claim of deduction to the appellant under section 80IC of the Act. It is a fact on record that at the time of inspection in March, 2013, the process of**

manufacturing of air-conditioners stood ceased since November, 2011 and the plant and machinery installed at the said premises with substantial modification was, instead, seen to have been used for the production of Philips luminaries. In such a situation, it is nothing but presumptuous on the part of the inspecting team to observe or comment that the machines installed in the unit were old or appeared to have old power connection of more than 5-6 years vintage or that the old machines of the sister concern were used in the manufacturing of air-conditioners at the relevant point of time. Reliance on such observations of the inspecting team falls in the realm of giving credence to tendentious or fanciful thinking. The report beset with such fatalities cannot be relied upon to draw any adverse inference with regard to the existence of the facility for manufacture of air conditioners at the relevant point of time.

12. Besides the above factual and direct evidences, there are various circumstantial and contemporaneous evidences to support the case of the appellant that it had genuinely established a new unit and was indeed manufacturing air conditioners in the year under consideration. The sister concern of the appellant company had a gross block of machinery of Rs.82.27 lakhs and if this was considered an integrated and complete unit capable of claiming deduction under section 80IC, it defies logic as to how the appellant company could not have established a new and independent unit with latest technology by investing an amount of approximately Rs.94 lakhs in plant and machinery. The argument that had it been the intent of the appellant company only to claim deduction under section 80-IC on enhanced profits, then it would have neither established other manufacturing units in non-eligible jurisdictions, which it did, nor would it have changed its line of production to Philips lighting and luminaries within a period of 1.5 to 2 years from the date of the start of this unit even though there was 100% exemption eligibility for 5 years, cannot be overlooked or lightly dismissed. It is also a fact on record that the appellant company did not claim any deduction in one of the eligible units[Selaqui unit-V] as instead of profits, the said unit incurred a loss.

13. In view of the aforesaid, it can be said with a fair amount of certainty that there is no cogent material on record to establish the allegation of the AO that the plant and machinery of the sister concern was utilised to manufacture air conditioners in the new unit, in derogation of the eligibility criterion mandated in section 80-IC. The AO has, evidently, overlooked and disregarded the overwhelming array of documentary evidences and fact situations in suggesting that the new unit carried out production by using and utilizing plant and machinery of the sister concern. It has been consistently held by the higher appellate forums that suspicion, howsoever strong, cannot take the place of proof. The Hon'ble Supreme Court, in the case of Dhirajlal Giridharilal [1954] 26 ITR 736, has held that when a Court of fact acts on material, partly relevant and partly irrelevant, it is impossible to say as to what extent, the mind of the Court was affected by the irrelevant material used by it in arriving at its finding. Such a finding is vitiated because of the use of inadmissible material. In this regard, the decision of the Hon'ble Chandigarh Bench of the Tribunal in the case of M/s Shiva Exports Vs. ITO as reported in 28 SOT 512 is directly in support of the appellant wherein under similar circumstances, the claim of deduction under section 80-IA was allowed. On similar lines is another decision of the Hon'ble Chandigarh Tribunal in the case of ACIT Vs. M/s Octave Exports, 165 TTJ 425. Considering the whole gamut of facts, it is held that the action of the AO in disallowing the claim of deduction under section 80-IC of the Act is not based on correct reasoning and hence not sustainable.

The grounds of appeal pertaining to the aforesaid impugned issue are, thus, considered allowed.”

(emphasis supplied)

8. On a careful consideration of the entirety of facts before us, as referred to hereinabove from the record we find no infirmity in the order. In the face of the unrebutted factual findings on record, the suspicions aroused by the Report have no credibility. The reliance placed by the Revenue accordingly on the Inspector's Report wherein the inspection was conducted on 29.03.2013 cannot be relied upon to conclude what was the state of affairs in or upto November,2011. The said observation is given notwithstanding the fact that the Inspector's Report even lacks technical knowledge or awareness of the product being manufactured. It is evident that they also were not fully versed with the facts which they were required to look into. The distinction in the end product being manufactured itself namely Philips Luminaries at the time of inspection as opposed to ACs being manufactured in 2011 itself was not noticed by them. We have seen that the employees whose statements have been relied upon were admittedly not the authorized personnel, hence not competent to comment. The report, accordingly, is a meaningless exercise. The fact that it was carried out on 29.03.2013 and the Report was filed on 30.03.2013 and was made available to the assessee also on

the very same day and was somehow replied to scantily by the assessee also on 31.03.2013 leading to the passing of the order also on 31.03.2013, we find does not inspire any confidence in the fairness of the decision making process and hence is questionable. Effective and a fair hearing on the issues was denied to the assessee by the AB. The facts as thrashed out by the CIT(A) referring to the supporting evidences culled out from the assessment order itself taken into consideration by the CIT(A), we find are not rebutted by the Revenue. We find that the unrebutted facts on record are that the unit has duly been set up in the leased premises, electricity usage demonstrates the claim of the assessee, machinery has been purchased by the new unit. These facts are not disputed by the Revenue, ACs have been manufactured and sold. These have also been accepted by the AO Excise Tax records and all contemporaneous evidence remains unassailed on record. Accordingly, in the facts as they stand, we find that the facts as available on record cannot be faulted with. Being satisfied by the reasoning and conclusion drawn by the ld. CIT(A), the ground No.2 raised by the Revenue is dismissed.

9. On the first issue raised by the Revenue, ld. Sr.DR drew specific attention to page 24 para 9 of the assessment order. Referring to the same it was submitted, that the assessee company was required to furnish unit-wise Profit & Loss

Account on 30.11.2012. This, it was submitted, was furnished on 18.01.2013. The assessee, it was submitted, thereafter vide ordersheet entry dated 04.02.2013 was required to furnish details of allocation of expenses amongst various units. The assessee was required to explain why expenses may not be allocated on the basis of turnover of each unit as it was noticed that the expenses pertaining to all the units have been entered for all the units, however, it was noticed that they have mostly been debited to non 80IC units. The assessee, it was submitted, as per reply dated 28.03.2013 claimed that the books of account of each unit were maintained as an independent unit and were consequently accounted for in that unit only.

9.1 The AO considering the record, it was submitted, concluded that no proof or evidence had been submitted to prove that the expenses relating to interest other than term loan, Directors remunerations and bill discounting charges were exclusively related to that unit only. Accordingly, it was concluded that the assessee company was claiming more expenses in the non-exempted units and less from the exempted units. It was submitted that by this type of allocation, the AO concluded that the assessee company is transferring profits from non-exempted units to exempted units.

9.2 Accordingly, considering the legal position on this issue, the allocation of interest expenses were allocated proportionately i.e. in the ratio of turnover of these units to total turnover.

9.3 Inviting attention to the impugned order, it was submitted that the addition made by way of disallowance has been deleted by the CIT(A) which order is under challenge in the present proceedings. The finding arrived at in para 15 to 16 and 18 to 19 is challenged.

10. The ld. AR inviting attention to the synopsis filed submitted that the assessee had made additions of Rs. 2,38,00,011/- under the head 'Building & Construction' and these expenses were from assessee's own funds which were to the tune of Rs.88.13 Cr in the share of share capital and reserves in services of Rs.86.34 Cr. This expenditure, it was submitted, was not out of borrowed funds as all borrowed funds had already been invested in the existing business of the assessee. It was submitted that the AO infact has also made disallowance on account of machinery under installation. Inviting attention to the synopsis filed, it was submitted that units of Kala Amb Unit, Kasna Unit and Unit-5 Selaqui in respect of which, disallowance of interest has been made, they have not incurred any finance cost. Thus,

since the interest free own funds of the group were available to the assessee in the shape of share capital and reserves and surplus, the investment of only Rs.3,29,35,109/- in the plant & machinery was from its own funds.

10.1 Similarly, the assessee has made an investment to the tune of Rs.1,47,50,000/- which is also subject matter of disallowance u/s 36(1)(iii) of the Act. The investment was made in the sister concern M/s Amber Aviation Pvt. Ltd. It was submitted that the investment was not made in the year under consideration and the assessee had more than sufficient reserves and surplus available to the tune of Rs.12,34,00,000/- odd in the said year for an advance amounting to Rs.1.47 Cr for business purpose out of its own interest free funds.

10.2 Accordingly, relying upon the synopsis pages 3 to 6, the findings arrived at in the impugned order relying upon decisions of the Apex Court and the jurisdictional High Court, it was his submission that the departmental ground may be dismissed.

10.3 For ready reference, the submissions advanced by the assessee heavily relied upon in the present proceedings are extracted from pages 3 to 6 of the synopsis is reproduced hereunder :

OUR SUBMISSIONS:

1. Regarding first issue of disallowance made by AO u/s 36(1)(iii) of the Act, our point wise submission is as under:

a) Issue of disallowance made by AO u/s 36(1)(iii) of the Act on account of Building under Construction (BUC)

During the year under consideration, the assessee has made additions of Rs. 2,38,00,011/- under the head Building under Construction (as evident from page 1 of the paper book wherein under the head of Fixed Asset, balance of Capital Work in Progress (CWIP) has been separately shown) and unit wise details of the same are tabulated below.

These additions were made out of sufficient own funds of Rs. 88,13,69,061/- in the shape of Share Capital (Rs. 1,79,04,800/-) and Reserves and Surplus (Rs. 86,34,64,261/-) which is much more the total balance of Building under Construction of Rs. 2,38,00,011/-. The same is evident from Consolidated Balance Sheet forming part of paper book at Pg 1 of the Paper Book.

The appellant company practices proper method of specific identification of borrowed funds used for the capital purposes and accordingly, has duly capitalized interest in its books of accounts, wherever required.

The unit wise secured loan structure (Term loan as well as CC Limit) of the assessee company as tabulated hereunder specifies that all the borrowed funds have already been invested in the existing business of the assessee and therefore, no part of borrowed funds have been used for the building under construction.

b) Issue of disallowance made by AO u/s 36(1)(iii) of the Act on account of Machinery under Installation

During the year under consideration, the AO has made disallowance of interest on CWIP of Machineries in respect of three units namely Kala Amb Unit, Kasna Unit and Unit-V-Selaqui. These units have started their working in the year under consideration itself in the first week of January 2010. Further, these units have neither raised any borrowed funds nor claiming any interest expenditure in their respective Profit & Loss Accounts. However, in its consolidated Balance Sheet, the assessee has claimed interest expenditure of Rs. 3,29,79,299/- which includes interest amounting to Rs. 1,10,50,061/- on cash credit limits, interest amounting to Rs. 2,09,17,237/- on term loans and interest amounting to Rs. 10,12,102/- on interest to others. The unit wise break up of interest cost is tabulated as under:

Name of Unit	Term Loan Interest Amount (in Rs.)	C/C Limit Interest Amount (in Rs.)	Other Interest Amount (in Rs.)	Total Interest Amount (in Rs.)
Rajpura Unit	30,25,294	46,73,556	8,86,521	85,85,370
Kasna Unit	NIL	NIL	NIL	NIL
Eco Tech Unit	51,95,143	NIL	1,25,481	53,20,624
Pune Unit	NIL	NIL	NIL	NIL
Selaqui Unit IV	97,97,499	63,76,505	NIL	1,61,74,004
Selaqui Unit V	NIL	NIL	NIL	NIL
Selaqui Unit VI	28,99,301	NIL	NIL	28,99,301
Kala Amb	NIL	NIL	NIL	NIL
Total	2,09,17,237	1,10,50,061	10,12,102	3,29,79,299

From a perusal of above chart, your goodself would notice that the units namely Kala Amb Unit, Kasna Unit and Unit-V-Selaqui in respect of which disallowance of interest has been made by the AO have not incurred any finance cost. Therefore, at a first instance there is no question of disallowing interest in respect of these units.

Now coming on the second thought that if these units have not raised any borrowed funds then from which source these units have met their capital needs, it is submitted that on consolidated basis, the group has interest free own funds of Rs. 88,13,69,061/- in the shape of Share Capital and Reserves and Surplus which are sufficient enough to make investments of Rs. 3,29,35,109/- (amount of P & M on which interest disallowance has been made by the AO) in the Plant & Machinery.

c) Issue of disallowance made by AO u/s 36(1)(iii) of the Act on account of investment in shares of sister concern

❖ In the financial year ending on 31.03.2007, the assessee company had made investments to the tune of Rs. 1,47,50,000/- in its sister concern namely M/s Amber Aviation (I) Pvt. Ltd.

❖ The assessee has not earned any income, either exempt or taxable, from the said investments.

❖ The assessee has not made any investments/nor given any share application money during the year under consideration and therefore, there is no nexus between the investments made in earlier years and interest expenditure claimed in year under consideration.

❖ In the F.Y 2006-07, the assessee was having sufficient interest free sources available in the shape of Reserves and surplus to the tune of Rs. 12,34,88,806/- which is enough to make advances to the tune of Rs. 1,47,50,000/- and in this regard it is a settled law that where the interest free resources available with the assessee are more than the investments made, it will be presumed that investments have been made out of interest free own funds.

❖ Furthermore, the balance of secured loan to the tune of Rs. 4.31 crores as on 31.03.2006 has reduced to Rs. 3.32 crores as on 31.03.2007 which depicts that instead of raising fresh loan, the assessee has repaid the loans taken in earlier years.

❖ No fresh borrowed funds were availed during F.Y 2006-07 to make investments in subsidiary company which is clear from the Financial Statements of 2006-07.

❖ All these facts were admitted as well as encapsulated by the worthy CIT(A) in Para 18-19 of the order dated 08.12.2017 passed by him.

❖ A comparative data of Investments, loans and interest free funds available with the assessee as under:

Financial Year	Balance of Reserves and Surplus (in Rs.)	Cash and Bank Balance (in Rs.)	Working Capital Limit (in Rs.)	Other Secured Loans (in Rs.)
2006-07	12,34,88,806	4,22,03,521	NIL	3,21,63,041
2007-08	61,82,37,705	2,95,56,053	2,91,17,134	5,46,07,533
2008-09	69,01,06,517	3,21,75,414	5,88,31,506	10,35,40,643

From a perusal of above chart, your goodself would appreciate that the sufficient own funds were available with the assessee in the year of making investments as well as in the subsequent years as compared to borrowed funds taken by assessee and therefore, to take a presumption that investment has been made out of borrowed funds would be baseless and against the facts of the case.

It is also pertinent to mention here that the AO has not been able to prove any nexus between the borrowed funds with the investments made in the sister concern and the said fact is clearly admitted by CIT(A) in his order dated 08.12.2017 in Para 19 of the order.

d) For all the issues sited above and after a perusal of above chart, the submissions of the assessee and findings of the CIT(A)-Patiala are as under:

Objections of the AO	Findings of the CIT(A)-Patiala	Submissions of the assessee
<p>1. The assessee company failed to provide detail of all direct/indirect expenses incurred by it in managing its affairs.</p> <p>2. All the funds of the business belong to the common kitty as held in the case of M/s Abhishek Industries Ltd. (286 ITR 1).</p> <p>3. Funds utilized in machinery and building by the assessee company come from the common kitty and portion of interest bearing fund are utilized by the assessee company In construction of building and installation of Plant 6t Machinery.</p>	<p>1. There was availability of adequate and sufficient interest free funds with the appellate company to cover up the investments in BUC and P & M.</p> <p>2. The appellate has successfully proved the utilization of borrowed funds for its business purpose.</p> <p>3. The appellant has followed a systematic accounting system of recognizing the interest cost for specific purposes for which the borrowed funds have been used.</p> <p>4. The AO has not proved any nexus of borrowed funds with the amount spent on BUC/additions made to the machinery</p>	<p>1. There are no borrowed funds in units situated at Kala Amb, Kasna and Unit-V, therefore, it is incorrect on the part of the AO to say that investment in Building under construction has been made out of borrowed funds.</p> <p>2. There are either old term loans brought forward from earlier years which have no correlation with the additions made in Plant 6t Machinery/Building during the year under consideration. Such old term loans already stand invested in the business assets which are in use by the assessee company and hence their corresponding interest cost is allowable as revenue expenditure.</p> <p>3. There are new term loans availed in certain units which have been specifically utilized for the new assets and the corresponding interest cost stands capitalized with the respective assets up to the date of put to use of that asset.</p> <p>4. The CC Limit/Working Capital Loans stands invested in the business inventory and thus, its corresponding interest cost is revenue expenditure for the assessee.</p> <p>5. In spite of fresh loans taken during the year under consideration, the assessee has repaid old loans which evidences the fact that the assessee has sufficient own funds which have been used for repayment of old loans.</p>

11. We have heard the rival submissions and perused the material available on record. The relevant finding of the Id. CIT(A) under challenge in the present proceedings is reproduced hereunder :

15. *Challenging the action of the AO, the appellant contended that the amount appearing in the balance sheet of the company under the head CWI P is related only to the building under construction, as is clearly demonstrated in the unit-wise audited balance sheet maintained by the appellant. It was further submitted that the amount spent on the construction of building was out of own non-interest-bearing funds which were more than sufficient to cover up the expenses on that account and, therefore, no capitalization of interest was called for on the CWI P on building. Regarding the amount spent on installation of machinery, it was contended that there was no CWI P of machinery as per the balance sheet of the appellant company as plant and machinery were purchased at various units and were also put to use during the year under consideration. It was also averred that the appellant company had voluntarily capitalized interest of Rs.39,77,405/-under the head "plant and machinery" in its various units where borrowed funds were used for making such additions/installations, calculated on the basis of time-lag between purchase of the machinery and their having been put to use. For the rest of the units, wherein, additions to plant and machinery have been made but no interest was capitalized, it was submitted that those units have neither taken any secured loan nor incurred any finance cost. On the contrary, investment has been made by utilizing own interest-free funds available in the shape of share capital as well as reserves and surplus. The appellant further contended that it had sufficient own funds to the extent of Rs.88.13 crores in the shape of share capital and reserves in its balance sheet which was much more than the total amount spent on building under construction of Rs.2.38 crores and investment in plant and machinery to the tune of Rs.3.29 crores. The appellant further averred that it followed unit -wise accounting and maintained the books of accounts accordingly. Unit -wise secured loan structure of the appellant company and its utilization in the existing business of the respective units was clearly demonstrated. It was also brought out that the old term loans brought forward from the earlier years already stand invested in the business assets of the company which are already put to use. Reliance was placed on various judicial decisions including those of the jurisdictional Tribunal and the Hon'ble High Court of Punjab and Haryana, having the underlying principle that where interest-free funds are sufficient to make the investments, there can be no presumption that interest-bearing funds have been used by the appellant. Reference was also made of the appellant's case in the immediately preceding Assessment Year 2009-10, where under similar circumstances, disallowance of interest on account of non-capitalization towards building under construction and plant and machinery under installation was not approved by the first appellate authority.*

16 *The facts of the case and the submissions of the appellant have been considered. It has been demonstrated by the appellant that there was availability of adequate and sufficient interest-free funds with the appellant company to cover up the investments in building under construction and plant and machinery. The appellant has also successfully proved the utilization of borrowed funds for its business purposes and the fact that it has followed a systematic accounting system of recognizing the interest cost for the specific purposes for which the borrowed funds have been used. On the other hand, it is*

evident from the impugned assessment order that the AO has not proved any nexus of borrowed funds with the amount spent on building under construction in additions made to the machinery. In the circumstances, and respectfully following the judicial precedents of the jurisdictional Benches of the Tribunal and the jurisdictional High Court, the disallowance of Rs.17,54,534/- & Rs.8,56,995/- aggregating to Rs.26,11,529/- is directed to be deleted. The grounds of appeal pertaining to this issue are, thus, treated as allowed.

17. The next ground of appeal [Ground Nos. 2.1 & 2.2] pertains to the disallowance of interest of Rs.17,70,000/- computed @ 12% on the investment of Rs. 1,47,50,000/- made by the appellant in its sister concern. The case set up by the AO is that the appellant is having interest expenditure in its profit and loss account and simultaneously it has shown a total investment of Rs.1,47,50,000/- in the shares and share application of its sister concern M/s Amber Aviation (I) Private Limited. The AO mentions that the said investment was made by the appellant in the earlier years and the same cannot be said to be in the nature of business activity carried out by the company. The AO also noted that the said investment could, at best, earn dividend income which is exempt from tax under the provisions of the Act. The AO finally concluded that the commercial expediency of making the investment by the appellant could not be established and, thus, following the ratio of the judgement of the Hon'ble Punjab and Haryana High Court in the case of Abhishek Industries Ltd, 286 ITR 1, disallowed the proportionate interest @ 12% on Rs.1,47,50,000/- amounting to Rs. 17,70,000/-.

18. The admitted facts on record are that the appellant had made the above investment in the Financial Year 2006-07 and the said investment has not earned any income, whether taxable or exempt, during the year on the said investments. During the appellate proceedings, attention was drawn to the facts in the Financial Year 2006-07 i.e. the year of making the investment, wherein the total borrowed funds were Rs.3.32 crores which included secured loans of Rs.3.21 crores and unsecured loans of Rs. 10.67 lakhs. It was also submitted that as on 31/03/2007 there was a debit balance in the cash credit limit account of the appellant of Rs.60.56 lakhs, meaning thereby that there was no working capital loan. The secured loans have been stated to be utilised for the specific purposes of acquisition of assets for which the same were availed. The appellant further submitted that the balance of secured loans as all 31/03/2007 is Rs.3.32 crores as against Rs.4.31 crores as on 31/03/2006, leading to the conclusion that during the above year the appellant had, in fact, repaid the borrowed funds. It was again argued on behalf of the appellant that the appellant had sufficient own funds for making the said investments, which were to the extent of Rs. 12.34 crores in the year of making the investment. It was, further, canvassed that it is the prerogative of the appellant to make investment in its sister concern, which decision cannot be doubted on the touchstone of commercial expediency and for buttressing this proposition, reliance was placed on the decision of the Hon'ble Punjab Haryana High Court in the case of M/s Bright Enterprises Private Limited[2016] 381ITR 107.

19. The submissions of the appellant have been considered. The same issue had come up for consideration in the appellant's own case for the immediately

preceding Assessment Year 2009-10 wherein there was a finding that the said investments have not been made in the year under consideration. It has also been held that no borrowed funds have been used for the purposes of making such investments and further more the investments have been made in a group concern falling under the same management. On the other hand, the AO has not been able to prove any nexus between the borrowed funds with the investments made in the sister concern. Accordingly, considering the facts of the case and in view of the detailed findings in the appellate order in the appellant's own case for the immediately preceding year, the disallowance made by the AO is, hereby, directed to be deleted. The grounds of appeal pertaining to the aforesaid issue are, thus, allowed.

12. We on a careful consideration of the entire facts and circumstances as available on record and considering the same in the light of the submissions advanced by the Id. Sr.DR and the reply of the assessee in the present proceedings are of the view that the ground raised by the Revenue and the prayer of the Revenue on facts cannot be allowed. The facts taken into consideration available on record namely that the assessee had sufficient interest free funds available sources in the year under consideration and the availability also in the year when the amount was advanced to M/s Amber Enterprises which advance admittedly was not in the year under consideration are all relevant and cogent facts. These we find have not been assailed. Being satisfied with the detailed finding on facts based on evidences available on record, which have been considered by the First Appellate Authority. In the absence of any infirmity in the conclusion arrived at we find no good reason to interfere

with the order. Ordered accordingly. Accordingly, the ground of the Revenue is dismissed.

13. In the result, the appeal of the Revenue is dismissed.

14. In ITA 436/CHD/2018, the following grounds have been raised by the Revenue :

1. *In the facts and circumstances of the case, whether the Ld. CIT(A) was correct in deleting the addition made by Assessing Officer on account of the issue of disallowance of interest u/s 36(1)(iii) of the Income Tax Act, 1961.*
2. *In the facts and circumstances of the case, whether the Ld. CIT(A) was correct in deleting the addition made by Assessing Officer on account of denial of deduction u/s 80IC of the Income Tax Act, 1961 in respect of Kala Amb Unit, even when the assessee does not fulfill the necessary conditions for claiming deduction u/s 80IC of the I.T. Income Tax Act, 1961.*
3. *It is prayed that the order of Ld. CIT(A) be set-aside and that of the Assessing Officer be restored.*
4. *The appellant craves leave to add or amend any grounds of appeal before the appeal is heard and finally disposed off.*

15. These have been decided by the CIT(A) in the following manner :

5. *The disallowance of the claim of deduction u/s 80-IC amounting to Rs.2,37,29,548/- in respect of the Kala Amb Unit has been agitated by the appellant vide Ground Nos. 3.1 to 3.4 of the appeal. On consideration of the facts and circumstances of the case as stated in the assessment order, it is clear that the only reason for making the said disallowance was the finding and observations of the AO for the AY 2010-11 and the reason for making the disallowance are identical for the AY 2011-12. The aforesaid assessment order for the AY 2010-11 was agitated in appeal which has been decided earlier vide the order dated 08.12.2017 in Appeal No.82/IT/CIT(A)/PTL/2013-14 and accordingly for similar reasons and findings as given in the said appellate order, the impugned disallowance of deduction u/s 80-IC is not sustainable. Hence, these grounds of appeal are allowed accordingly.*
6. *Vide grounds Nos. 1.1 to 1.2, the appellant has sought to challenge action of the AO in making a disallowance of Rs.11,82,030/- computed 12% on the investments of Rs.99,40,000/- made by the appellant in its sister concerns. The case set up by the AO is that the appellant is having interest expenditure in its profit and loss account and simultaneously it has shown a total investment of Rs.99,40,000/- in the shares of*

its sister concerns namely M/s Amber Aviation (I) Pvt Ltd. of Rs.98,50,000/- and M/s Amber Organic Farming Pvt Ltd of Rs.90,000/-. The AO mentions that the said investment in M/s Amber Aviation (I) Pvt Ltd. was made by the appellant in the earlier years and the same cannot be said to be in the nature of business activity carried out by the company. The AO also noted that the said investment could, at best, earn dividend income which is exempt from tax under the provisions of the Act. The AO finally concluded that the commercial expediency of making the investment by the appellant could not be established and, thus, following the ratio of the Judgment of the Hon'ble Punjab and Haryana High Court in the case of Abhishek Industries Ltd., 286 ITR 1, disallowed the proportionate interest @ 12% on Rs.99,40,000/- amounting to Rs.11,82,030/-.

7. *The admitted facts on record are that the appellant had made the investment of Rs.98,50,000/- in the shares of M/s Amber Aviation (I)/PJ5 Ltd. in the FY 2006-07 and the said investment has not earned any income, whether taxable or exempt, during the year on the said investment. During the appellate proceedings, attention was drawn to the facts in the FY 2006-07 i.e. the year of making the investment, wherein the total borrowed funds were Rs.3.32 Crores which included secured loans of Rs.3.21 Crores and unsecured loans of Rs.10.67 Lakhs. It was also submitted that as on 31.03.2007, there was a debit balance in the cash credit limit account of the appellant of Rs.60.56 lakhs, meaning thereby that there was no working capital loan. The secured loans have been stated to be utilized for the specific purposes of acquisition of assets for which the same were availed. The Appellant further submitted that the balance of secured loans as at 31.03.2007 is Rs.3.32 Crores as against Rs.4.31 crores as on 31.03.2006, leading to the conclusion that during the above year the appellant had, in fact, repaid the borrowed funds. It was again argued on behalf of the appellant that the appellant had sufficient own funds for making the said investments, which were to the extent of Rs.12.34 Crores in the year of making the investment. It was, further, canvassed that it is the prerogative of the appellant to make investment in its sister concern, which decision cannot be doubted on the touchstone of commercial expediency and for buttressing this proposition, reliance was placed on the decision of the Hon'ble Punjab & Haryana High Court in the case of M/s Bright Enterprises Pvt. Ltd.[2016] 381 ITR 107. Similarly, regarding the investment of the appellant of the appellant of Rs.90,000/- only in the shares of M/s Amber Organic Farming Pvt. Ltd. made in the year under consideration, the appellant submitted that it had sufficient own funds to the tune of Rs.67.61 Crores as on 31.03.2011 and even the net profit before taxes for the said year are Rs.23.00 Crores and thus the same are more than sufficient to cover the minor investment amount of Rs.90,000/-. The appellant also furnished detailed chart of borrowed funds versus the utilization of the same for business purposes to support the argument that no borrowed funds have been utilized for making the said investment.*

8. *The submissions of the appellant have been considered. The said issue had come up for consideration in the appellant's own cases for the AY 2009-10 and AY 2010-11 wherein in respect of the investment of the appellant in its sister concern namely M/s Amber Aviation (I) Pvt. Ltd., there is a finding that the said investment has not been made out of borrowed funds and further more the appellant had sufficient own funds to make the said investment. Even in respect of the investment of*

Rs.90,000/- made by the appellant in its sister concern M/s Amber Organic Farming Pvt. Ltd., the appellant has demonstrated the sufficient availability of own funds and accordingly, considering the facts of the case and in view of the detailed findings in the appellate orders in the appellant's own case for the AY 2009-10 and 2010-11, the disallowance made by the AO is, hereby, directed to be deleted. Thus, the grounds of appeal pertaining to the aforesaid issue are allowed.”

16. We find that in terms of the common arguments of the parties before the Bench wherein it has been submitted that the facts, submissions and arguments in respect of the grounds in 2011-12 assessment year are fully covered with the arguments advanced in ITA 281/CHD/2018 (2010-11 A.Y.) we find that the said submissions on facts is correct. Accordingly, for the reasons addressed at length in ITA 281/CHD/2018, the departmental grounds in ITA 436/CHD/2018 are also dismissed.

17. In the result, appeals of the Revenue are dismissed.

Order pronounced on 08 September,2022.

Sd/-

Sd/-

(VIKRAM SINGH YADAV)
लेखा सदस्य/ Accountant Member

(DIVA SINGH)
न्यायिक सदस्य/ Judicial Member

“Poonam”

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar