IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH MUMBAI

BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&

SMT KAVITHA RAJAGOPAL, JUDICIAL MEMBER

ITA No.1967/Mum/2022
(**Assessment Year :2011-12**)

Assistant Commissioner of Income Tax 6(1) (1), Mumbai. Room No. 504, Aayakar Bhavan, M.K.Road, Churchgate Mumbai 400 020	Vs.	Century Textile & Industries Ltd. 2nd Floor, Century Bhavan, Dr Annie Besant Road, Worli, Mumbai-400030
PAN/GIR No. AAACC2659Q		
(Appellant)	..	**(Respondent)**

ITA No.2085/Mum/2022
(**Assessment Year :2009-10**)

Century Textile & Industries Ltd. 2nd Floor, Century Bhavan, Dr Annie Besant Road, Worli, Mumbai-400030	Vs.	Assistant Commissioner of Income Tax 6(1) (1), Mumbai. Room No. 504, Aayakar Bhavan, M.K.Road, Mumbai 400 020
PAN/GIR No.AAACC2659Q		
(Appellant)	..	**(Respondent)**

Assessee by	Mr. Yogesh Thar, Adv. Chaitanya Joshi
Revenue by	Mr. Ujjawal Chavhan, Sr.AR & Mr. Kishor Dhule, CIT
Date of Hearing	**10/11/2022**
Date of Pronouncement	**13/12/2022**

आदेश / O R D E R

PER M.BALAGANESH (A.M.) :

1. This appeal in ITA No. 1976/Mum/2022 preferred by the Revenue arises out of order passed by the National Faceless Appeal Centre (NFAC) [hereinafter referred to as ld. CIT(A)] in Appeal No. ITBA/IFAC/S/250/2022-23/104308543(i) dated 11.06.2022 against the order passed by the learned Deputy Commissioner of Income Tax Circle – 6(2), Mumbai [hereinafter referred to as a ld. AO] under section (u/s) 143(3) of the Income Tax Act [hereinafter referred to as the 'Act'] on 28.03.2014 for the Assessment Year (A.Y.) 2011-12.

2. The grounds No. 1 & 2 raised by the revenue are challenging the action of the ld. CIT(A), who had held that the purchase price of the Assessee from the electricity board would be the market price to be adopted in respect of inter unit transfer of power under captive consumption, for the purpose of claiming deduction u/s 80IA of the Act.

3. We have heard the rival submissions and perused the materials available on record. We find that assessee is engaged in the business of manufacturing of cotton piece goods, denim yarn, viscose, rayon, tyre cord, caustic soda, carbon-di-sulphide, sulphuric acid, salt and by products, cement, pulp and paper apart from power generation, rendering engineering services and engaged in floriculture business. The return of income for the AY

2011-12 was filed by the Assessee Company on 28.09.2011 declaring total income of Rs. 272,07,57,213/-.

4. The Assessee Company has several units which are located in different parts of the country. The Assessee Company has claimed deduction u/s 80IA of the Act in respect of the following two power plants:-

A.	Century Cement thermal Power Plant (II)(10 MW)	- Rs. 14,98,17117/-
B.	Maihar Cement thermal Power Plant (II)(15 MW)	– Rs. 23,11,39,596/-
	TOTAL	38,09,56,713/-.

5. The Assessee submitted the audit report in Form No. 10CCB as required in the provisions of section 80-IA of the Act. The assessee supplied power internally in other units. In other words, the power generated by the Assessee in its thermal plants was captively consumed by transferring the said power to other units. No sale of power was made by the assessee to the state electricity board. The ld.AO asked the Assessee company to give the basis of charges recovered from the other units for supply of power, which were duly furnished by the Assessee. The Assessee vide later dated 23.12.2013 submitted copies of bills raised by state electricity board and made the following submissions:-

> *"With further reference to our letter dated 18.12.2013, we are enclosing herewith details for clarification regarding charges for supply of power, the same have been calculated in line with prevailing market price in the area le power rate charged by State Electricity Board or other Power distributing Company in the respective areas. Necessary details in this respect are enclosed herewith for your reference.*
>
> *This will make it clear that the profit for the purpose of claiming deduction u/s 801A has been calculated considering the power realization rate for the power supplied to Century Cement in line with*

the prevailing market price in the area i.e. power rate charged by Chhattisgarh State Electricity Board for the power supplied by them during the Assessment year 2011-12.

Similarly power realization rate for the power supplied to Maihar Cement Unit No. Il is also in line with the prevailing market price in the area i.e. power rate charged by M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd during the Assessment year 2011-12"

6. The ld.AO did not agree to the contentions of the Assessee and concluded that assessee had adopted higher rate for the purpose of computing profits eligible for deduction u/s 80IA of the Act. The ld.AO accordingly resorted to re compute the deduction u/s 80 IA of the Act on similar lines as was made for Assessment years 2008-9, 2009-10, 2010-11. The ld.AO accordingly estimated that the power distributing agency is charging after considering mark up of 25% over its cost of purchase. Accordingly, the ld. AO reduced the mark up portion of Rs. 7,61,86,103/- (380930513 x 25/125) from the claim of deduction u/s 80 IA of the Act. The Ld. CIT(A) (NFAC) granted relief to the assessee by observing as under:-

For its own consumption of electricity, the assessee has set up two captive power plants in the name and style of Century Cement Thermal Power plant which supplies power to Century Cement Plant, where as Maihar Cement Power Thermal Plant supplies power generated to Maihar Cement Plant. For the power supplied to cement plants for captive consumption the assessee charges at cost price. For claiming deduction u/s 801A for power generation plant the assessee calculates the cost of power supplied to two cement plants at market value by adopting the rate per unit at which it purchases power from SEB's during the relevant period, in the revision order u/s 263 passed the hon CIT held that the rate at which assessee purchases power from SEB's cannot be the market value of power supplied sold by the assessee to cement plants, The CIT u/s 263 alleged that the AO while allowing the assessee's claim under sec 801A, has not examined whether the market value of power at generated by the captive power plants can be adopted on the basis of rate of electricity supplied by the respective The ITAT held against this finding of CIT u/s 263. The ITAT held that on a perusal of material placed on record, during the course of assessment proceedings, AO has specifically enquired into the computation of deduction under sec 80 IA in respect of power generation units. The

assessee has furnished all necessary details relating to the computation of deduction and the basis for the rate applied for computing the quantity of electricity sold/supplied to Cement Units. Thus allegation of CIT that Assessing Officer has not examined the market value in totally unfounded according to ITAT. Assessen had clearly stated the basis of deriving market value of electricity supplied to the Cement units is the rate which assessee purchases electricity from the respective SEB's. The ITAT held that under given circumstances, the market value of electricity sold/supplied as provided under 80 IA(6) can be adopted at the rate at which the assessee purchases electricity from concerned SEB's during the relevant period. When there is no other method to find out the market value. Accordingly, to ITAT it is rational and reasonable to adopt the rate at which SEB's Supplies electricity to similar types of consumers as the market value. The ITAT relied on the decisions of-

CIT Vs Godavari Power and Ispat (2004) 42 taxmann.com 551

According to the ITAT the computation of deduction u/s 801A in respect of sales supply of electricity to its own units adopting the rate at which SEB's supply electricity to other consumers and the AO having accepted the same after due enquiry, the assessment cannot held to be erroneous and prejudicial to the interest of revenue. More over the determination of market value by adopting the aforesaid method can very well be considered to be one of the possible views. Therefore, only because of the adoption of such view there might be some prejudice to the interests of revenue for that reason alone the assessment order cannot be held to be erroneous. Thus, one of the conditions of sec 263 is not satisfied Relying on the decision of SC in Max India, the exercise of power under sec 263 to revise the assessment order cannot be sustained. Accordingly the impunged order of CIT (Appeals), was quashed and assessment order was restored. In effect the ITAT has adopted the selling rate of electricity to SEB's as the market rate rejecting the department's finding that the rate adopted by Power Distribution Agencies is the market rate to be adopted. Following this finding of the ITAT for AY 2006-07 in order dated 14/6/2017, the 801A deduction disallowed by the assessing officer @ Rs 7,61,86,103 is deleted.

7. Aggrieved the Revenue is in appeal before us. At the outset, we find that the ld. AO in order to arrive at the aforesaid conclusion had nearly relied on the findings of administrative CIT in earlier years. We find, that this tribunal in ITA No. 6158/Mum/2010, 3021/Mum/2013, 3022/Mum/2013 for Assessment years 2007-08, 2008-09 & 2009-10 respectively; in ITA No. 3030/Mum/2013 & 3031/Mum/2013 for the

Assessment years 2008-09 & 2009-10 respectively dated 14.02.2018 had decided the issue in favour of the Assessee. The relevant operative portion of said order is reproduced is hereunder:-

> *11. Under this issue the assessee has challenged the confirmation of the finding of the AO in which the claim of the assessee u/s 80-IA of the Act was reduced to the tune of Rs.8,36,47,008/-. The assessee has claimed the deduction u/s 80-1A of the Act in respect of following four power plants namely:-*
>
> *(i)Century Cement Thermal Power Plant (15 MW) Rs.10,47,38,366*
> *(ii) Century Cement Thermal Power Plant 11 (10MW) Rs.6,56,19,618*
> *(iii) Maihar Cement Thermal Power Plant (15.7 MW) Rs. 14,58,24,883*
> *(iv) Maihar Cement Thermal Power Plant II(15.7 MW) Rs 10,20,52,172*
>
> *Rs.41,82,35,039*
>
> *12. The Assessing Officer was of the view that the assessee was selling the unit on the basis of Government Electricity Selling Authority and the Government Electricity Selling Authority was purchasing the electricity from the other agencies and distributing agencies was charging after considering the market value of 25% of their cost of purchases, therefore, the claim of the assessee to the extent of 25% mark up to the tune of Rs.8,36,47,008/- was declined and the admissible deduction u/s 80-IA of the Act was assessed to the tune of Rs.3,34,58,803/- The Ld. Representative of the assessee has argued that the AO has recalculating deduction u/s 80-IA by taking adhoc 25% markup price of Power Generating by appellant captively used following CIT directions vide his order dated 22.12.2008 passed u/s 263 of the Act for the A.Y. 2006-07 which has been quashed by Tribunal vide its order dated 14.06.2017. It is also argued that there is no basis for taking adhoc 25% as mark up of cost price of Power Generating Agency for determining market value u/s 80 IA of the Act and appellant was not selling the power to the State Distribution Agency, therefore, the cost at which State Electricity Board purchases power was not relevant to the appellant. It is also argued that the Electricity Board was independent body in different States and different electricity boards purchase power from different generating units according to the requirement which cannot be the basis to determine the cost of power generated by the appellant. The appellant has considered the prevailing market price of power in the area at which the power rate is charged by M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd. (Electricity Board) during the A.Y. 2007-08 u/s 80 IA i.e.,, profit of eligible business has to be determined having regard to Market value of the goods & service that are transferred by eligible business to other business carried on by assessee. It is also argued that The explanation at the foot of Sec. 80 IA(8) also elucidate on the concept of market value in the following such as for the purpose of the Sub-section, market value in relation to any goods & service means the price that such goods & service would ordinarily fetch in the open market. It is also argued that the case of the assessee has duly been covered by the*

assessee's own case for the AY 2006-07 wherein Hon'ble ITAT in ITA. No. 115/M/2011 dated 14.06.2017 has held that the market value of Electricity sold/supplied as provided u/s 80IA (8) of the Act can be adopted and the rate at which the assessee purchases electricity from the concerned State Electricity Board during the relevant period. There is no other method to find out the market values, it is rational and reasonable to adopt the rate at which the State Electricity Board Supplies electricity to similar types of consumers at the market value. The assessee also relied upon the cases i.e Principal CIT Vs. Gujarat Alkalies & Chemicals Ltd. (395 ITR 247), West Coast Paper Mills Vs. Jt. CIT(100 TTJ 833), ACIT VS. Jindal Steel & Power Ltd. (16 SOT 509) & CIT Vs. Godawari Power & Ispat Ltd., 42 Taxmann.com 551. However, on the other hand, the Ld. Representative of the Department has refuted the said contentions. Taking into account, facts and circumstances of the case, we noticed that the issue in question has duly been covered by the assessee's own case for the A.Y. 2006-07 decided by Hon'ble ITAT in ITA No. 115/M/2009 and 5473/M/2011 vide order dated 14.06.2017 in which it is specifically held that the market value of electricity sold/supplied as provided u/s 80IA(8) can be adopted and the rate at which the assessee purchases electricity from the concerned state electricity board during the relevant period. When there is no other method to find out the market value, it is rational and reasonable to adopt the rate at which the State Electricity Board supplies electricity to similar type of consumers at market value. The other law relied by the ld. Representative of the assessee also speak the same language. Taking into account, all the facts and circumstances of the case of assessee has duly been covered by the assessee's own case (supra). Therefore, the said circumstances, we set aside the finding of the CIT(A) on this issue and allowed the claim of the assessee u/s 80IA of the Act. Accordingly, this issue is being decided in favor of the assessee against the revenue.

8. Further, we find that this issue is no longer res integra in view of the decision of Hon'ble Jurisdictional High Court in case of CIT vs. Reliance Industries Ltd. reported in 421 ITR 686 (Bombay) wherein it was held as under:-

***9.** Additionally, we also notice that similar issue came up for consideration before Chhattisgarh High Court in case of CIT v. Godawari Power & Ispat Ltd. [2014] 42 taxmann.com 551/223 Taxman 234, in which the Court held and observed as under:*

"31. The market value of the power supplied to the Steel-Division should be computed considering the rate of power to a consumer in the open market and it should not be compared with the rate of power when it is sold to a supplier as this is not the rate for which a consumer or the Steel-Division could have purchased power in the open market. The rate of power to a supplier is not the market rate to a consumer in the open market.

> *32. In our opinion, the AO committed an illegality in computing the market value by taking into account the rate charged to a supplier: it should have been compared with the market value of power supplied to a consumer."*

10. *Gujarat High Court in case of Pr. CIT v. Gujarat Alkalies & Chemicals Ltd. [2017] 395 ITR 247/88 taxmann.com 722 also had occasion to examine such an issue. It referred to earlier order in case of Asstt. CIT v. Pragati Glass Works (P.) Ltd. [Tax Appeal No. 1646 of 2010, dated 30-1-2012] in which following observations were made:—*

> *"7. To our mind, Tribunal has committed no error. Assessing Officer and CIT (Appeals) while adopting Rs. 4.51 per unit as the value of electricity generated by eligible unit of assessee and supplied through its non eligible unit only worked out cost of such electricity generation. In fact CIT (Appeals) in terms recorded that Rs. 4.51 was computed as the reasonable value of the electricity generated by eligible unit of assessee. This amount included Rs. 4.17 per unit which was the cost of electricity generation and Rs. 0.34 per unit which was duty paid by the assessee to GEB for such power generation. Thus the sum of Rs. 4.51 per unit only represented the cost of electricity generation to the assessee. In Section 80IA(8) of the Act what is required to be ascertained is the market value of the goods transferred by the eligible business, when such transfer is by eligible business to another non eligible business of the same assessee and the consideration recorded in the accounts of the eligible business does not correspond to market value of such goods. Term "Market Value" is further explained in explanation to said sub-section to mean in relation to any goods or services, price that such goods or services will ordinarily fetch in the open market. To our mind sum of Rs. 4.51 per unit of electricity only represented cost of electricity generation to the assessee and not the market value thereof. It is not in dispute that the GEB charged Rs. 5 per unit for supplying electricity to other industries including non eligible unit of the assessee itself. Tribunal therefore, while adopting the said base figure and excluding excise duty therefrom to work out Rs. 4.90 as the market value of the electricity generated by the assessee, to our mind, committed no error. It can be easily seen that if the assessee were to supply such electricity or was allowed to do so in the open market, surely it would not fetch Rs. 4.51 per unit but Rs. 5 per unit as was being charged by GEB. Since the excise duty component thereof would not be retained by the assessee, Tribunal reduced the said figure by the nature of excise duty and came to the figure of Rs. 4.90 to ascertain the market value of electricity generated by the eligible unit and supplied to non eligible business of the assessee. No error was committed by the Tribunal. No question of law therefore, arises. Tax Appeal is dismissed."*

11. *Judgment of Calcutta High Court in case of CIT v. ITC Ltd. [2016] 236 Taxman 612/[2015] 64 taxmann.com 214 was also brought to our*

notice in which the said High Court has taken a different stand. However, since the issue has already been examined by this Court earlier and in view of the decisions of the Chhattisgarh and Gujarat High Court, we see no reason to entertain this question.

10. The ld. DR had filed his written arguments in respect of this issue which are reproduced as under .:-

	OFFICE OF THE Commissioner of (ITAT), Bldg. *Income Tax (DR) 'C' BENCH Room Annexe,* *No. 706, 7th Floor, Old CGO M.K.* *Road, Mumbai 400 020.*
No.CIT DR/ITAT/C-Bench/2022-23	*Dated : 10-11-2022*

To,
The Hon'ble Members,
C Bench, ITAT, Mumbai

M/s Century Textile Industries AY 2011-12

Sir / Madam,

Kindly find the written note of arguments today in ITAT regarding issue of deduction u/s 80IA deduction in above mentioned case.

Issue under dispute

: 80IA Deduction

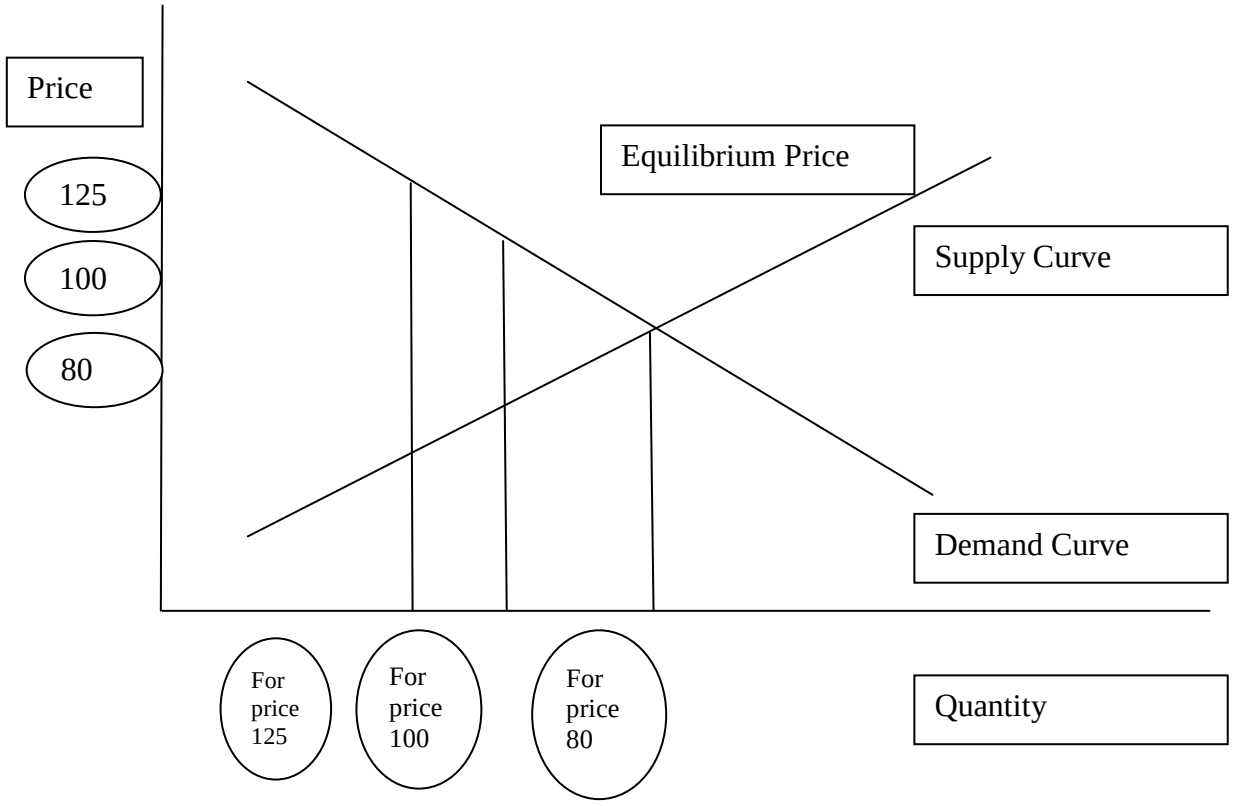
: Sale price of eligible unit.

Relevant Facts :-

*1. What is the **production cost** of electricity generated by eligible unit?*

***Production cost** becomes 'equilibrium price' where demand and supply curve intersect at perfect market conditions.*

***2. Sale price** of eligible unit in the market.*



80 = Production cost

= "Equilibrium price" at perfect market competition in long run
100 = Sale price of electricity of eligible unit in market
= Production Cost plus Profit

125 = Purchase price of non eligible unit
= Purchase price of state electricity board + **cost** (for transmission, transmission losses, depreciation of assets, salary, Finance cost, taxes etc) + **profit**

Facts not relevant : Purchase price of non eligible unit -
Because it contains cost, profit and taxes of state electricity Boards.

Revenue's contentions are-
1) Sale price of eligible unit should be determined and purchase price of non-eligible unit should be discarded.
II) Method may be decided to arrive at Sale price of eligible unit.

Method can be -
A) Production cost
B) Production cost plus mark up profits.

As AR of the assessee agreed on equilibrium price where demand and supply matches should be sale price, issue may be set aside to the file of AO who shall determine production cost of the eligible unit

Yours faithfully.

(Dr. Ujjwalkumar Chavhan)
Sr. AR, ITAT C Bench, Mumbai.

Copy to :- The Assessee.

Sr. AR, ITAT C Bench, Mumbai.

11. In our consider opinion, the aforesaid arguments of the ld. DR need not be gone into as the issue in dispute is covered in favour of the assessee by the decision of Hon'ble Jurisdictional High Court referred supra and also the decision of this Tribunal in Assesse's own case in earlier year. Accordingly, the ground Nos. 1 and 2 raised by the revenues are dismissed.

12. The ground No.3 raised by the Revenue is challenging the deletion of disallowance made on account of foreign travel expenses spent on the travel of wife of the director and wife of president of the company.

13. We heard the rival submissions and perused the materials available on record. The Assessee has incurred foreign travelling expenses of Rs.2,05,923/- of Smt. Sarla Devi Birla who accompanied her husband Shri B.K. Birla, Chairman of the company and Smt. Nisha Dalmia Rs. 1,10,688/- who accompanied her husband Shri R.K. Dalmia, President of the company, during the foreign tour. In this regard, the Assessee submitted that aforesaid expenses were incurred wholly and exclusively

for the purpose of business and in the modern world, these expenses are necessitated by social aspects and as a matter of social etiquette. Further, this would help in strengthening the cordial relationship between the Assessee company and foreign company and to maintain a high level of goodwill between the two companies. Regarding the foreign travel expenses incurred by wife of Director/Chairman amounting to Rs 4,06,611/-, the contention of the revenue was that said expenses are not incurred wholly and exclusively for the business purposes. We find that this issue has been already adjudicated in assessee's own case in earlier years in which the claim of the assessee has been allowed by the Hon'ble Bombay High Court in ITA No.4218 of 2009 for AY 1996-97 vide order dated 21/6/2011 and in ITA No.3723 of 2009 for AY 97-98 vide order dated 21/6/2022. The ld. CIT(A) had followed the decision of Hon'ble Bombay High Court and deleted the disallowance made on account of foreign travel expenses.

14. We have gone through the said orders of the Jurisdictional High Court referred (Supra) which are enclosed in pages 82-88 of the case law paper book. The question raised before the Hon'ble Jurisdictional High Court was as under:-

> *Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified in law in deleting the dis-allowance of Rs.2,58,000/- on account of foreign travel expenses of Smt. S.D. Birla in spite of the fact that this expenditure was in no way connected with the business of the assessee company?*

This question was answered in favour of the Assessee by Hon'ble High Court by observing as under:-

> *As regards the third question is concerned, the Tribunal following its decision in the assessee's own case for earlier years has allowed the*

> *claim of the assessee. As held by this court in the case of Commissioner of Income-Tax ys. Alfa Laval (1) Limited, reported in (2006) 282 I.TR.445 (Bom.), the expenditure on foreign travel expenses of Director's wife may be allowed, depending on the status of the parties, nature or character of the trade or venture, the purpose for which the expenses were incurred and the object sought to be achieved by incurring such expenses. In the present case, the I.TA.T. after considering all facts on record has allowed the claim. Moreover, similar expenses allowed in the past have attained finality. In this view of the matter, in our opinion, question no.3 raised by the revenue the revenue cannot be entertained.*

15. It is pertinent to note that the parameters for allowing the deduction which were stated by the Hon'ble Jurisdictional High Court above were satisfied by the assessee in the instant case. This is evident from the fact that the ld.AO had agreed that the foreign travel of Director and President of the company were meant for the purpose of business of the Assessee Company. Respectively, following the aforesaid decision, we do not find any infirmity in the order of ld. CIT(A) granting relief to the Assessee in this regard. Accordingly, the ground No.3 raised by the Revenue is dismissed.

16. The ground Nos. 4 & 5 raised by the Revenue are general in nature and does not require any specific adjudication.

17.In the result the appeal of the Revenue for AY 2011-12 in ITA No. 1967/Mum/2022 is hereby Dismissed.

ITA No. 2085/2022-AY 2009-2010-Assessee Appeal

18. This appeal of the arises out of order passed by the ld.CIT (A) NFAC in ITBA/NFAC/S/250/2022-23/104,346,1276(i) dated 16.06.2022 for the AY 2009-2010 against the order of ACIT – 6(2) (1)Mumbai giving effect to Tribunal order dated 14.02.2018.

19. For the sake of convenience, the order giving effect to Tribunal order dated 14.02.2018 passed by the ld. AO on 19.10.2020 is reproduced here under:-

Name of the assessee

M/s. Century Taxtile And Industries Ltd
Century Bhavan, Dr. Annie Besant Road
Worli, Mumbai- 400 030

Pan No	AAACC2659Q
Assessment Year	2009-10
Status	Company
Date of Order	19-10-2020

ORDER GIVING EFFECT TO ITAT & CIT(A) ORDERS

Consequent to the orders of the Hon'ble I.T.A.T in ITA No.: 3022/M/2013 and no. 3031/M/2013 dated 14.02.2018, the Total income/ loss of the Company is revised as under:

Total Income as assessed by the AO vide Order		**1,26,60,19,165**
Giving Effect to the CIT(A) dated 12/05/2017.		
Less: Relief granted vide composite ITAT Order No. ITA 3022/M/13 and 3031/M/13 dated 14.02.2018 :		
1. Deduction u/s. 80IA	5,14,93,837	
2. Deduction u/s. 80IC on sale of pulp*	-	
3. Deduction u/s. 80IC on certain receipts	6,63,69,641	11,78,63,478
Revised Taxable Income after ITAT order effect		**1,14,81,55,687**
Total Tax on above		
Income Tax (@30%)	34,44,46,706	
Surcharge (@10%)	3,44,44,671	
Cess (@3%)	1,13,66,741	**39,02,58,118**

*During the year, assessee has not claimed 80IC deduction on sale of pulp in return of income filed even theough ITAT has directed to allowe the deduction u/s. 80IC on sale of pulp assessee is not entitled for any deduction u/s. 80IC on sale of pulp.

Give credit of taxes paid after due verification. Charge interest as per act Issue D.N/R.O

(Ravindra V. Shinde)

20. From the above, it is evident that the ld. AO had denied deduction u/s 80 IC of the Act to Assessee on sale of pulp. But, we find the Tribunal in Assesse's own case for AY 2007-08, 2008-09 & 2009-10 vide its order dated 14.02.2018 had directed the Ld. AO to grant deduction on profits derived from eligible business of sale of pulp u/s 80 IC of the Act. We find that the ld. AO had granted deduction u/s. 80 IC of the Act for sale of pulp for AY 2007-08 & 2008-09 while giving effect to Tribunal order. However, for AY 2009-10, the same deduction has been denied to the Assessee on the ground that Assessee had not claimed in the return of income. This is factually incorrect. In fact, Assessee had actually claimed deduction u/s 80 IC of the Act in the return of income and in the original scrutiny Assessment order passed u/s 143(3) of the Act dated 26.12.2011, the ld. AO had elaborately discussed about the said claim in para 10 to 10.3 of his order. In any case, we find that the ld. AO does not have any Jurisdiction to travel beyond the directions of this Tribunal. This Tribunal had directed the ld. AO to grant deduction u/s 80 IC of the Act on sale of pulp. We find that the ld. AO by factually incorrect considerations and factually irrelevant observations had denied deduction u/s 80 IC of the Act to the Assessee on sale of pulp in the instant case for A.Y. 2009-10. This action of the Revenue is strongly condemned and dismissed.

21. When the matter travelled to ld. CIT Appeal, he upheld the action of the ld. AO on a totally different consideration, forgetting the fact that the Tribunal already allowed relief to the Assessee on the impugned issue. We hold that the action of ld. CIT (A) also require to be equally condemned in the instant case. If at all, the Revenue is having any

grievance against the order passed by the Tribunal dated 14.02.2018 on the impugned issue, they should have preferred an appeal before the Hon'ble High Court. Even if the ld. AO/ ld.CIT (A) are not in agreement with the order of this Tribunal, they are duty bound to give effect to the order of the Tribunal in the same letter & spirit as directed by the Tribunal. This is the basic pre-requisite of respect for Judicial Hierarchy. Hence, we have no hesitation to hold that the ld.AO as well as the ld. CIT (A) NFAC, had travelled beyond their briefs without respecting the law of binding precedent in the instant case. Accordingly, the grounds raised by the Assessee are allowed.

22. To sum up, appeal of the Assessee in ITA No. 2085/Mum/2022 For AY- 2009-10 is **allowed** and the appeal of the Revenue for AY- 2011-12 in ITA No 1967/Mum/2022 is **dismissed.**

Order pronounced on 13/12/ 2022 by way of proper mentioning in the notice board.

Sd/-	Sd/-
(KAVITHA RAJAGOPAL)	**(M.BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai; Dated 13/12/2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai