आयकरअपीलीयअधिकरण, अहमदाबादन्यायपीठ''सी''अहमदाबाद।

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No. 751/Ahd/2018
निर्धारणवर्ष/Assessment Year: 2014-15

Gujarat Fluorochemicals Ltd., 2nd Floor, ABS Tower, Old Padra Road, Baroda-390007 PAN : AAACG 6725 H	Vs.	DCIT, Circle 1(1)(1), Baroda
अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Shri S.N. Soparkar, Sr. Advocate & Shri Parin Shah, AR
Revenue by :	Shri Samir Tekriwal, CIT-DR

सुनवाई की तारीख/Date of Hearing : 11.10.2022
घोषणा की तारीख /Date of Pronouncement: 28.12.2022

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of learned Commissioner of Income-Tax(Appeals)-3, Vadodara [hereinafter referred to as "CIT(A)"] dated 15.12.2017 relating to Assessment Year 2014-15.

2. Ground No.1 raised by the assessee reads as under:-

"Learned CIT(A) erred…

1. *In respect of disallowance u/s 14A*

a) *In confirming the action of the Assessing Officer of invoking provisions of Rule 8D u/s 14A*

b) *In confirming that appellant's contention cannot be accepted since business funds are mixed up and it cannot be accepted that funds deployed for earning tax free income were entirely out of interest free funds.*

c) *In confirming that where tax free income earning activity and taxable income earning activity are both carried out using the common kitty of funds, it would be reasonable to apportion the interest burden between the two activities.*

d) In confirming that disallowance under Rule 8D would be interest u/r 8D(2)(ii) plus direct expenses u/s 8D(2)(i) and disallowance u/r 8D(2)(iii).

e) In respect of addition of disallowance u/s 14A read with Rule 8D for computing Book profit u/s 115 JB.

f) In extending explanation to section 115JB to sub-section (2) & (3) of section 14A and by adding the amount disallowed u/s 14A read with Rule 8D to book profit computed u/s 115JB of the Act."

3. Learned Counsel for the assessee pointed out that the issues raised in the above ground relate to disallowance of expenses incurred by the assessee pertaining to exempt income earned, as per the provisions of Section 14A of the Income-tax Act, 1961 [hereinafter referred to as "the Act"] read with Rule 8D of the Income-Tax Rules, 1962, as also the adjustment of the impugned disallowance of expenses under Section 14A to the book profits of the assessee for the purposes of Minimum Alternate Tax (MAT) to be paid on the book profits as per the provisions of Section 115JB of the Act.

4. At the outset, learned Counsel for the assessee stated that both the issues raised in aforesaid ground were covered in favour of the assessee by the decision of Hon'ble jurisdictional High Court in the case of the assessee itself in the preceding year both on the issue of disallowance made while computing the taxable income as per normal provisions of the Act and, for the purpose of adjustment made to the book profits as per Section 115JB of the Act.

5. Drawing our attention to the facts of the case from paragraph Nos. 4 to 4.3 of learned CIT(A)'s order, it was pointed out that the assessee had shown Rs.51.40 lakhs as Dividend Income exempt from tax under the Act, earned during the impugned year. The Assessing Officer noted that the assessee had interest bearing borrowed funds on which the interest was paid during the year and the business funds were mixed funds. He noted that the assessee did not maintain separate account for source of funds utilized for the investment activities. He, therefore, held that where tax free activities and taxable income

earning activities were carried out using a common kitty of funds, interest burden needed to be apportioned between the two activities since the case fell under Section 14A(2) of the Act. Applying Rule 8D for the purpose of calculating the attribution of interest and other expenses as per Section 14A(2) of the Act to the exempt income earned, the Assessing Officer went on to disallow the expenses amounting to Rs.7,92,83,524/- comprising of the following:-

a)	Expenditure directly relating to income which does not form part of total income	-	Rs. 5,73,433/-
b)	Expenses incurred on interest attributable to exempt-income		Rs. 6,09,33,656/-
c)	Other expenses	-	Rs. 2,58,49,868/-
	Total disallowance u/s 14A r.w. Rule 8D	-	Rs. 8,73,56,957/-
Less (-)	(i) amount of expenditure directly relating to income disallowed by the assessee	-	(-) Rs. 5,73,433/-
	(ii)Total disallowance made by the assessee of other expenses on estimation basis	-	(-) Rs. 75,00,000/-
	Net disallowance made by the Assessing Officer	-	Rs.7,92,83,524/-

6. The Assessing Officer further went on to make addition to the book profits of the assessee under Section 115JB of the Act the amount of total disallowance computed under Section 14A of the Act, of Rs.8,73,56,957/-.

7. Aggrieved by the aforesaid additions made by the Assessing Officer, the matter was carried in appeal before the learned CIT(A), where besides other arguments raised, the assessee pointed out calculation errors in computing the disallowance as per Rule 8D of the Rules, which he pointed out was allowed by the Ld.CIT(A) in A.Y 2011-12 and the DRP in A.Y 2013-14. It was pointed out that the disallowance as per the correct working came to Rs.3,45,82,170/- as against Rs.7,92,83,524/- worked out by the AO. The Ld. CIT(A) found merit in

the contention of the assessee and directed disallowance to be reworked as allowed in A.Y 2011-12 after reducing the suo-moto disallowance made by the assessee amounting to Rs.80,73,433/-.

8. Before us, learned Counsel for the assessee pointed out that the Hon'ble jurisdictional High Court in the case of the assessee itself had held that the disallowance under Section 14A of the Act, in any case, cannot exceed the exempt income. He drew our attention to the decision of Hon'ble jurisdictional High Court in the case of PCIT Vs. Gujarat Fluorochemicals Ltd (assessee before us) in Tax Appeal No. 11 and 28 of 2019 dated 17.06.2019. Drawing our attention to paragraph Nos. 19 to 21 of the order where the issue was dealt with by the Hon'ble High Court, learned Counsel for the assessee pointed out that the question proposed by the Revenue before the Hon'ble High Court was whether the disallowance under Section 14A read with Rule 8D can exceed the exempt income which the Hon'ble High Court held in favour of the assessee following its own decision in the case of Corrtech Energy P. Ltd., 223 Taxman 130. Paragraph Nos. 19 to 21 of the order of the Hon'ble High Court in this regard are as under:-

> *"19. The second question proposed by the revenue is; whether the disallowance under Section-14A read withRule-8D can exceed the exempt income [administrative expenses]. In context of the aforesaid question proposed by the revenue, the findings recorded by the ITAT areas follows*
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> > *15. Next fold of dispute relates to working out of administrative expenses relatable to earning of exempt income.*
> >
> > *16. As pointed out by the ld. counsel for the assessee that Hon'ble Gujarat High Court (in Corrotech) and Hon'ble Delhi High Court in (Chemvest) have concurred with each other that if there is no dividend income or tax free income in a year then no disallowance u/s.14A can be made. This explication was amplified and employed subsequently by ITAT to construe that working of expenditure for disallowance u/s.14A should not exceed more than dividend income itself. In the case of Joint Investment Pvt. Ltd. Vs. CIT (ITA No.117/2015, decided on 25.2.2015) Hon'ble Delhi High Court has observed that by no stretch of imagination can section 14A or Rule 8D be interpreted so as to mean that entire tax exempt*

income is to be disallowed. The ITAT, Ahmedabad has restricted the disallowance equivalent to exempt income (ITA No.3266/AHD/2015, ITA No.261/AHD/2012, ITA No.1281/AHD/2012 decided on 7.12.2016. The ld. counsel for the assessee agreed for disallowance to the extent of dividend income earned by it in both the years. However, that would give an excessive relief to the assessee in the assessment year 2013-14 because assessee itself has disallowed a sum of Rs.75 lakhs whereas dividend income is only Rs.43.35 lakhs. Thus, we confirm disallowance to the extent of Rs.1.55 crores (Rupees One Crore Fifty Five Lakhs) in the assessment year 2012-13, which is equivalent to the dividend income, whereas in the assessment year 2013-14 the assessee itself disallowed a sum of Rs.75 lakhs which can take care of administrative expenditure of earning dividend income at Rs.43.35 lakhs. Accordingly, both these grounds are partly allowed. We confirm disallowance at Rs.1.55 crores (Rupees One Crore and Fifty Five Lakhs) in the assessment year 2012-13 and Rs.75 lakhs (Rupees Seventy Five Lakhs) in the assessment year 2013-14. Rest of the disallowance made by theAO are deleted.

20. In taking aforesaid view, the ITAT placed reliance on the following decisions:-

(1) Corrtech Energy P. Ltd.
223Taxman 130

(2) CIT, Vadodara-2 Vs. Vision Finstock Ltd.
Tax Appeal No.486 of 2017 (Guj. High Court)

(3) CIT, Vadodara-2 Vs. Vision Finstock Ltd.
SLP Civil No.13152 of 2018 (SC)

(4) Joint Investment Pvt. Ltd. Vs. CIT
(ITA No. 117/2015) (Del HC)

21. The aforesaid second question is squarely covered by the decision of this Court in the case of Correctch Energy Pvt. Ltd. (supra). In our opinion, no error not to speak of any error of law could be said to have been committed by the ITAT in this regard."

9. With regard to the issue of adjustment to the book profits of the assessee by adding the disallowance of expenses made under Section 14A of the Act for the purposes of Minimum Alternate Tax (MAT) to be paid by the assessee on the book profits as per the provisions of Section 115JB of the Act, the learned Counsel for the assessee pointed out that the issue was squarely covered in favour of the assessee by the decision of the Special Bench of the ITAT in the

case of ACIT Vs. Vireet Investment Private Limited, reported in [2017] 82 taxmann.com 415 (Delhi - Trib.) (SB) as well as by the decision of Hon'ble jurisdictional High Court in assessee's own case in Tax Appeal Nos. 11 & 28 of 2019 vide order dated 17.06.2019. Our attention was drawn to paragraph Nos. 22 to 24 of the order of the Hon'ble High Court which reads as under:-

> *"22. The third question proposed by the revenue is in context with the adjustment made on account of the disallowance under Section 14A in computing the book profit. In this context, the findings recorded by the ITAT are as follows:-*
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> > *17. Next common issue involved in both years is, whether the amount disallowed under section 14A read with rule 3D deserves to be added back in the book profit for the purpose of section 115JB. In other words, whether the additions which have been confirmed by the Tribunal at Rs.1.55 crores in the assessment year 2012-13 and Rs.75 lakhs in the assessment year 2013-14, deserves to be added back in the book profit computed for the purpose of section 115JB.*
> >
> > *17.1 The Id. counsel for the assessee at the very outset contended that this issue is covered in favour of the assessee by the judgment of Hon'ble Gujarat High Court in the case of CIT Vs. Alembic Ltd. in Tax Appeal No. 1249 of 2014 as well as decision of Hon'ble Bombay High Court in the case of CIT Vs. Bengal Finance & Investment P. Ltd. in Tax Appeal No.337 of 2013. He placed on record copies both these decisions. Apart from the above, he placed upon reliance Special Bench decision of the ITAT in the case of CIT Vs. Vireet Investment P. Ltd. 165 ITD 27. On the other hand, ld. CIT-DR relied upon the order of DRP.*
> >
> > *18. We have duly considered rival contentions and gone through the record carefully. We find that ld. DRP has relied upon the order of the ITAT, Mumbai in the case of DCIT Vs. Viraj Profiles Ltd., (2016) 46 ITR (Trib) 0626 (Mum) and held that addition required tobe made in the book profit could be calculated as per Rule 3D of the Income Tax Rules. The ld. DRP thereafter made reference to decision of Hon'ble Delhi High Court in the case of CIT Vs. Geotze India Ltd., 361 ITR 505. According to the Id. DRP, this decision has been considered by the Special Bench in the case of Vireet Investment P. Ltd, (supra) but placed reliance upon Hon'ble Bombay High Court in the case of Vodafone India Services P. Ltd. ACIT, 361 ITR 0531 (Bom) and held, that DRP is not bound by the ratio laid down by the Special Bench. The discussion made by the DRP on this issue in the assessment year 2013-14 -reads as under:*

"10.3 In the case of Viraj Profiles Ltd. [2015] 64 taxmann.com 52 (Mum Trib), the Hon'ble Bench has elaborately discussed the issue and held that the disallowance is liable to be calculated as per Rule 8 D of the Rules. After discussing the decisions which have also been relied on by the appellant, the Hon'ble Bench has concluded that:

"In view of our foregoing discussion, we find no infirmity with the orders of the AO and we hold that the AO has rightly disallowed the expenditure of Rs.73,07,018/- by invoking the provisions of Section 14a of the Act read with the Rule 8D of Income Tax Rules, 1962 for computing book profit u/s.115JB(2) of the Act read with clause (f)to Explanation 1 to clause 115JB(2) of the Act. We, therefore, set aside the orders of the CIT(A) and restore the orders of the AO. We order accordingly.

In the case of CIT (Central-II) Vs. Goetze (India) Limited, the Hon'ble Delhi High Court has in ITA No. 1179/2010 vide order dated 09.12.2013, held that the disallowance u/s.14A is to be taken into consideration for the purposes of calculating book profits u/s.115JB. The relevant paras of the judgment are reproduced below.

"36. By order dated 16th May, 2012, the following substantial questions of law were framed in the present appeals:-

11 (i) Whether the Income Tax Appellate Tribunal was right in holding that while computing book profit under Section 115JA (sic. Section 115JB) of the Income Tax Act, 1961, no disallowance under Section 14A was required to bemade?

Learned counsel for the respondents-assessee, during the course of hearing, has fairly conceded that the first question has to be answered in favour of the Revenue and against the assessee in view of specific provisions in the Explanation 1 belowSection 115JB(2) clause (f)

The Assessing Officer it is stated had made anaddition of Rs.88,292/- to the book profits towards expenditure incurred having nexus withdividend income, which were exempt under Section 10(33). Recording the said statement, the first question is answered in favour of the appellant-Revenue and against the respondent-assessee."

The assessee has relied upon the judgment of ITAT special bench in the case ofVireet Investment Pvt. Ltd. In this regard, it is pertinent to mention that Hon'ble Bombay High Court in the case of Vodafone India Services Pvt. Ltd. Vs. Additional Commissioner of Income Tax & Ors. (2014) 264 CTR 0030 (Bom) : (2013) 96 DTK 0193 (Bom) : (2014) 361 ITR 0531 (Bom) : (2014) 221 Taxman 0166 (Bom); has held that the

proceedings before DRP are extension of assessment proceedings. Therefore, they are not bound by the decision of Tribunals unlike CIT(A) as long as the issue is not acceptable on merit and/or the issue is being contested by the department. In this case, the decision of Hon'ble Delhi High Court in the case of Goetze (India) Ltd cited above is also in favour to the department on this issue which also shows that the view of AO confirmed by the Panel is a plausible view.

19. There were contradictory orders at the end of the Tribunal. Therefore, Special Bench was constituted to consider the question:

"Whether expenditure incurred to earn exempt income computed under section 14A could not be added while computing book profit under section 115JB of the Act."

20. When the Special Bench has considered this question, it was confronted with two decisions of the Hon'ble Delhi High Court diagonally opposite to each other. One referred by the Id. DRP also in the present case, rendered in the case of CIR Vs. Goetze India Ltd. (Supra) and other in the case of Pr. CIT Vs. Bhushan Steel ITAT, Special Bench has reproduced both these orders in Vireet Investment P. Ltd. (supra) and thereafter it considered as to which decision ought to be followed by a subordinate authority. The department advanced an argument that in the case of Bhushan Steel, Hon'ble Delhi High Court failed to consider subsequent decision of CIT Vs. Goetze India Ltd. (supra). However, the Tribunal after placing reliance upon the decision of Hon'ble Supreme Court in the case of CIT Vs. Vegetable Products Ltd., 88 ITR.192 (SC) and other decisions has held that it is incumbent upon it follow the decision of Hon'ble Delhi High Court in the case of Bhushan Steel. In this case, Hon'ble Delhi High Court has held as under:-

"However, Id. Senior Counsel has relied on the decision in the case of Bhushan Steel Ltd. (supra) wherein it has been held as under:-

"ITA 593/2015
PR. CIT ....Appellant
Through: Mr. N.P. Sahni, Senior Standing Counsel with Mr. Nitin Gutati, Advocate
Versus
BHUSHAN STEEL LTD. ...Respondent
Through: Ms.KavitaJha, Advocate. With Ms. Roopali Gupta, Advocate.
ORDER 29.09.2025
** ** **
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7. Question No.6 concerns deletion of addition of Rs.89,00,000 made by the AO for computation of the income for the purposes of Minimum Alternate Tax (MAT) under section 115JB of the Act. This pertained to the expenditure incurred for earning exempt income under section 14A read with Rule 3D. The ITAT has rightly held that this being in the nature of disallowance, and withExplanation 115JB not specifically mentioning Section 14A of the Act, the addition of Rs.89,00,000 was not justified. The view taken by the ITAT cannot be faulted with. It is consistent with the decision in Apollo Tyres Ltd. V. Commissioner of Income Tax 255 ITR 273 (SC) which held that "the Assessing Officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to Section 115J." The Court declines to frame a question on the above issue."

21. Apart from the above, we have a binding precedent before us - one from Hon'ble jurisdictional High Court and other from the Hon'ble Bombay High Court. The question considered by the Hon'ble Gujarat High Court in the case of Alembic Ltd. (supra) is as under:-

"Whether on the facts and in the circumstances of the case and in law, the ITAT was justified inholding that adjustment made on account of disallowance u/s.14A of the Act in computation of book profit u/s. 115JB of the Act is not as per law without appreciating that the amount disallowable under section 14A is covered under clause (f) of Explanation to section 115JB(2) and, thus, said amount has to be added back while computing amount of book profit?"

22. The Hon'ble Gujarat High Court has replied this question as under:

7. So far as issue Nos.(iii) and (iv) are concerned, the learned counsel for the assessee has relied on the decision of this court in the case of Commissioner of Income-tax-1 v. Gujarat State Fertilizers & Chemicals Ltd., reported in (2013) 358 ITR 323 (Gujarat) Where this court has held in paragraph Nos.6 to 6.5this court has observed as under:

> *6. So far as the fourth question is concerned, it pertains to addition of Rs.1,14,43,040/- under Section 115JB of the Act being the expenditure estimated on earning of dividend income under Section 14A of the Act.*
>
> *6.1 The Assessing Officer on referring to the said provision of Section 115JB(2) of the Act added the said amount considering that any amount of expenditure relatable to the income exempted*

under Section 10 of the Act shall need to be added in the profit shown in the 'Profit and Loss Account'.

When the matter travelled to the CIT (Appeals), since it deleted the addition of Rs.1,14,43,040/- while deciding the question No. 1, it consequently deleted such addition under Section 115JB of the Act on the ground that this would not serve any purpose.

The Tribunal decided the said issue as follows:

"94. We have considered the rival submissions and we find that similar issue was raided by Revenue as per ground No.3 above in respect of regular assessment of income andwhile deciding that ground, we have already upheld that disallowance of Rs.5 lakh in respect of administrative expenses will meet the ends of justice and no disallowance is called for in respect of interest expenditure. Hence, for the purpose of computing book profit u/s.115JB of the Act also, we hold accordingly and confirm the addition of Rs.5 lakh. This ground of Revenue's appealis partly allowed."

As rightly held by both, the CIT (Appeals) and the Tribunal, this issue has a direct correlation with thefirst question. It was argued by the Revenue that while computing the book profit under Section 115JB of the Act, the disallowance of interest expenditure on exempt income was wrongly negatived by both the authorities on the ground that it was not the liabilityfor expenses, but a liability relating to assets.

We find no fault in the approach adopted by both the authorities. The addition under section 115JB of the Act of a sum of Rs.1,14,43,040/- when wasmade as an expenditure estimated on earning of dividend income under Section 14A of the Act, without reiterating the rationale of confirming deletion of such amount as has been elaborately done at the time of deciding question No.1, this deletion requires to be confirmed."

8. Taking into consideration the evidence on record and considering the decision of this court in the case of Commissioner of Income-tax-1 vs. Gujarat State Fertilizers & Chemicals Ltd. (supra), we are of the opinion that issue Nos.(iii) and (iv) required to be answered in favour of the assessee and against the revenue. In that view of the matter, we answer questions (iii) and (iv) referred to us in favour of the assessee and against the revenue. The appeal of revenue is dismissed.

23. Similarly, Hon'ble Bombay High Court has formulated following question in the case of Bengal Finance & Investments P. Ltd. (supra) and replied as under:-

(b) Whether on the facts and in the circumstances of the case, and in law, the ITAT is justified in deleting the addition of Rs.78,84,387/- under clause (f) of Explanation 1 to Section 115JB relying upon the decision in the case of Goetze (India) Ltd. Vs. CIT (2009) 32 SOT 101 (Del), which has been followed by ITAT, Mumbai in the cases referred to in para 5 of the impugned orderwithout appreciating that the above decision in the case of Goetze (India) Ltd. was rendered by the ITAT, Delhi Bench on completely distinguishable set of facts, peculiar to the said case?

……

4. So far as question (b) is concerned, the impugned order of the Tribunal followed its decision in M/s. Essar Teleholdings Ltd. Vs. DCIT in ITA No.3850/Mum/2010 to held that an amount disallowed under section 14A of the Act cannot be added to arrive at book profit for purposes of Section 115JB of the Act. The Revenue's Appeal against the order of the Tribunal in M/s. Essar Teleholdings (supra) was dismissed by this Court in Income Tax Appeal No.438 of 2012 rendered on 7th August, 2024. In view of the above, question (b) does not raise any substantial question of law.

24. Respectfully following the above decision, we hold that no addition in the book profit would be made on the basis of calculations worked out under section 14A of the Act. We allow this ground of appeal in both the years and delete the additions."

23. We take notice of the fact that in context with the third proposed question, the ITAT placed reliance on the following decisions :-

(1)CIT Vs. Alembic Ltd.
(Tax Appeal No.1249/2014)

(2) CIT-I Vs. Gujarat State Fertilizers & Chemicals Ltd.
(2013) 358 ITR 323

24. The issue is squarely covered and in our opinion, no error could be said to have been committed by the ITAT in taking the view that no addition in the book profit can be made on the basis of the calculations worked out under section-14A of the Act."

10. The learned Departmental Representative was unable to controvert the above contention of the assessee that both the issues were covered by the decision of the Hon'ble jurisdictional High Court and the Special Bench decision of the ITAT as stated by the learned Counsel for the assessee before us

nor was he able to point out any distinguishing facts with respect to the said decisions.

11. In view of the above, we hold that the disallowance under Section 14A of the Act of expenses incurred for the purposes of earning exempt income be restricted to the extent of exempt income earned by the assessee during the year amounting to Rs.51,40,000/- in accordance with the decision of the Hon'ble jurisdictional High Court in the case of the assessee itself as cited before us. Further, we direct that no adjustment be made to the book profits of the assessee under Section 115JB of the Act of the expenses disallowed under Section 14A of the Act again following the decision of the jurisdictional High Court in the case of the assessee itself as cited before us and the Special Bench of the ITAT in the case of Vireet Investment Private Limited (supra).

12. The issues raised by the assessee in this regard in Ground No.1 are accordingly partly allowed in above terms.

13. Ground No. 2 raised by the assessee reads as under:-

"Learned CIT(A) erred…

2. in respect of deduction u/s 80IA(4)

(a) in applying regulated price of Rs.3.80 per unit i.e. average purchase price at which poweris purchased by GUVNL against the variable rate charged by Dakshin Gujarat Vij Company Limited (DGVCL) and Madhya Gujarat Vij Company Limited (MGVCL) as the rate to beapplied for all captive consumption of power while computing the profits of 80IAundertakings of the assessee engaged in generation of power.

b) On the basis of (a) above, in recomputing and allowing deduction of Rs. Nil against Rs. 347.96 lakhs claimed by the Company u/s 80IA in respect of Dahej Coal Based Captive Power undertaking.

(c) On the basis of (a) above, in reducing the claim of deduction by Rs. 2850.52 lakhs u/s 80IA in respect of Mahidad Wind Power undertaking against Rs.2980.53 lakhs claimed by the Company u/s 80IA.

(d) On the basis of (a) above, in recomputing the losses of other captive power undertakings eligible for deduction u/s 80IA."

14. Drawing our attention to the facts of the case from paragraph Nos. 5 to 5.3 of the learned CIT(A)'s order, learned Counsel for the assessee pointed out that during the impugned year the assessee had claimed deduction under Section 80IA of the Act amounting to Rs.33,28,49,068/- in respect of Captive Power Generation Plants. The Assessing Officer noted that, for the purposes of computing the said deduction, the assessee had claimed an amount of Rs.1,42,60,85,488/- as total notional revenue of the 80IA claiming Captive Power Plant units from sale of electricity of total 21,89,94,687 KWH units. The assessee had contended that for the different Captive Power Plants (CPP) the rate taken for the units sold to it was on the basis of the variable rate charged by the respective State Electricity Companies, i.e ***the selling price*** of the Electricity companies i.e. Madhya Gujarat Vij Company Limited, Dakshin Gujarat Vij Company Limited, etc. The Assessing Officer, however, held that the appropriate rate which the assessee ought to have applied for determining the revenue earned from sale of electricity to the CPP units was the weighted ***average rate at which GUVNL purchased units***. Accordingly, he determined the total revenue from sale of power to CPP units at Rs.83,21,79,811/- as against Rs.1,42,60,85,488/- claimed by the assessee. Accordingly, the eligibility of claim of deduction under Section 80IA of the Act was reworked by the Assessing Officer and the deduction claimed by the assessee was restricted to an amount of Rs.1,30,00,897/- as against Rs.33,28,49,068/- claimed by the assessee. Thus, the claim of deduction under Section 80IA of the Act was reduced by an amount of Rs.31,98,48,171/-.

15. The matter was carried in appeal before the learned CIT(A) who upheld the disallowance of deduction following the orders of the learned CIT(A) in the case of the assessee itself in AYs 2009-10 & 2011-12 and the directions of the DRP in AY 2013-14.

16. Before us, learned Counsel for the assessee contended that this issue was also decided by the Hon'ble jurisdictional High Court in favour of the assessee in its own case in Tax Appeal Nos. 11 & 28 of 2019 vide order dated 17.06.2019.

17. Our attention was drawn to the question framed in this regard to the High Court :

> *"(d) Whether on the facts and in circumstances of the case, the learned ITAT has erred in law and on facts in allowing the assessee's claim of deduction u/s 80IA(4) of the Income Tax Act, 1961 at the rate on which the GEB supplied power to its consumers ignoring the rate on which power generating company supplied its power to GEB?"*

17.1 And the order of the Hon'ble Court at paragraph No.25 as under:

> *"25. The forth question proposed by the revenue is with respect to the deduction under Section 80IA(4) of the Act at the rate on which the GEB supplied power to its customers ignoring the rate at which the power generating company supplied to the GEB. This issue is directly covered by the decision of this Court in the case of CIT vs. Gujarat Alkalies and Chemicals Ltd.; 395 ITR 247. It is also covered by the decision of the Supreme Court in the case of M/s. Alembic Ltd. (Tax Appeal No.553 &554 of 2017). It appears that Special Leave Petitions filed by the revenue are pending before the Supreme Court questioning the correctness of the view taken by this Court in the aforesaid two judgments. So far as the Gujarat Alkalies and Chemicals Ltd, (supra) is concerned, it takes the view as under:-*
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> 3. *In both the tax appeals though slightly differently worded, the questions concerning the same assessee are identical and concern the issue of deduction under section 80IA of the Income 'Tax, Act granted to the assessee by the Tribunal on captive power generation plant. The second question is with respect to recognising such claim on the basis of purchase price of power from GEB and substituting the rates of 2.47 per unit adopted by the Assessing Officer.*
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> 4. *Since both the issues are covered by various Judgments of this Court, we do not find it necessary to record facts at any length. Division Bench of this Court by judgment dated 22.11.2011 in Tax Appeal No.2092/2010 in somewhat similar controversy observed as under:*
>
> *3. With respect to Question [B], the issue pertains to sub-Section (8) of Section -80IA of the; Income Tax Act, 1961. The assessee had a CPP Unit*

generating electricity which was supplying it to a general unit. The electricity generated is being supplied to other consumers also. The CPP unit charged Rs.5.40 ps. per unit from the general unit. The Assessing Officer applying sub-Section (8) of Section .80IA restricted the same to Rs.5.32 ps. per unit and, thereby, restricted the deductions claimed by the assessee under Section 801A of the Act. This restriction was primarily on the basis that the rate of Rs.5.40 ps, charged by Gujarat Electricity Board (GEB for short) was inclusive of 8 paise per unit of electricity duty. This component of electricity duty the Assessing Officer discarded for the purposes of ascertaining market value of the electricity generated by the CPP Unit and supplied to its general unit.

4. CIT (Appeals) confirmed the view of the Assessing Officer on the same line of reasoning. The Tribunal, however, on further appeal by the assessee, reversed the orders passed by the Revenue authorities referring to and relying upon the decisions of other Tribunals. The Tribunal was of the opinion that the market value of the electricity supplied by the CPP Unit to the general unit would be the same being charged by GEB from theconsumers.

5. Counsel for the Revenue contended that the component of 8 paiseper unit was the electricity duty which GEB was not authorized to retain but had to pass on to the Government.In essence, GEB was only collecting 8 paise per unit as electricity duty for and on behalf of the Government. He submitted that the market value of the electricity should be reckoned on Rs.5.32 ps. per unit as was done by the Revenue authority.

6. Under sub-Section(S) of Section 801A of the Act, if it is found that where any goods or services held for the purposes of the eligible business are transferred to any other business carried on by the assessee or where any goods or services held for the purposes of any other business carried on by the assessee are transferred to the eligible business and in either case the consideration for such transfer does not correspond to the market value of such goods as on the date of the transfer, then for the purposes of deduction under Section 80IA in case of the eligible business as if the transfer had been made at the market value of such goods or services. It is in this context that the question of substituting the actual consideration by the market value comes into picture."

18. As is evident from the above, the Hon'ble High Court had held that it was the selling price of electricity which was to be considered for determining the Revenue generated from sale to CPP for the purposes of computing profits eligible to deduction u/s 80-IA(4) of the Act, applying the ratio laid down by it in the case of Gujarat Alkalies (supra).

19. The learned Departmental Representative was unable to point out any distinguishing facts nor was any contrary decision of the Hon'ble jurisdictional High Court or the Hon'ble Apex Court brought to our notice.

20. In view of the above, since the issue already stands decided in favour of the assessee in its own case by the Hon'ble jurisdictional High Court, the disallowance made by the Assessing Officer and confirmed by the learned CIT(A) of deduction claimed under Section 80IA of the Act to the extent of Rs.31,98,48,171/- is directed to be deleted.

21. Ground No. 2 of appeal of the assessee is accordingly allowed.

22. Ground No.3 raised by the assessee reads as under:-

"Learned CIT(A) erred

3. in respect of claim of revenue from Carbon credit as capital receipts.

a) In not accepting the appellants contention that the revenue earned from the sale of carbon credits (net of expenses) as a Capital Receipt, not subject to tax and not directing the Assessing Officer to exclude the same while computing taxable income.

b) In considering that the revenue from carbon credit (net of expenses) is either taxable under the head income from business or short term capital gains and consequently there shall be no change in the total income of the appellant."

23. Drawing our attention to the facts of the case from paragraph Nos. 7 to 7.2 of the learned CIT(A)'s order, learned Counsel for the assessee pointed out that the revenue earned by the assessee from sale of Carbon Credits, net of expenses was held by the Assessing Officer to be taxable in the hands of the assessee as opposed to the assessee returning the same as capital receipts not subject to tax. The learned CIT(A) upheld the order of the Assessing Officer following his order in the case of the assessee itself for AY 2010-11.

24. Before us, the contention raised by the learned Counsel for the assessee was that this issue now stood covered in favour of the assessee by the decision of Hon'ble jurisdictional High Court in assessee's own case in Tax Appeal Nos. 11 & 28 of 2019 vide order dated 17.06.2019. Our attention was drawn to paragraph Nos. 26 to 27 of the said order of the Hon'ble High Court which reads as under:-

> *"26. The fifth question proposed by the revenue whether the income from the Carbon Credits is capital in nature. This issue is squarely covered by the following decisions:*
>
> *(1) M/s. Alembic Ltd.*
> *Tax Appeal No.553 & 554 of 2017*
>
> *(2) CIT Vs. My Home Power Ltd.*
> *[2014] 46 Taxmann.com 314*
>
> *(3) Subhash Kabini Power Corporation Ltd. (KHC)*
> *[2016] 69 Taxmann.com 394*
>
> *27. We quote the relevant observations made by this Court in the Alembic Limited (supra) as under:*
>
> > *"6. The last surviving question pertains to the treatment that the assessee's income from trading of carbon credits should be given. The Tribunal held that receipts should be in the nature of capital receipts and therefore, would not invite tax. This issue has been examined by two High Courts. The Karnataka High Court in case of CIT v. SubhashKabini Power Corporation Ltd. reported in (2016) 385 ITR 592 (Karn) and Andhra Pradesh High Court in case of Commissioner of Income-tax v. My Home Power Limited reported in (2014) 365 ITR 82 (AP) have held that receipts of carbon credit are in nature of revenue receipts. Following the decision of said two High Courts, this questionis also not considered."*

25. Learned Departmental Representative was unable to controvert the above contention of the assessee - either on facts or in law.

26. In view of the above, the issue being covered by the decision of the Hon'ble jurisdictional High Court in favour of the assessee in its own case, we hold that the profit earned by the assessee for Carbon Credits is capital in nature; and, the addition made by the Revenue by treating them as revenue in nature is directed to be deleted.

27. Ground No.3 of assessee's appeal is accordingly allowed.

28. In effect, the appeal of the assessee is partly allowed.

Order pronounced in the Court on 28th December, 2022 at Ahmedabad.

Sd/-	**Sd/-**
(T.R. SENTHIL KUMAR) **JUDICIAL MEMBER**	**(ANNAPURNA GUPTA)** **ACCOUNTANT MEMBER**

Ahmedabad; Dated 28/12/2022
**%*

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

1. **अपीलार्थी** / The Appellant
2. **प्रत्यर्थी** / The Respondent.
3. **संबंधित आयकर आयुक्त** / Concerned CIT
4. **आयकर आयुक्त (अपील)**/ The CIT(A)-
5. **विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजोकट**/DR,ITAT, Ahmedabad,
6. **गार्ड फाईल /**Guard file.

आदेशानुसार/ BY ORDER,

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सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad