IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)

SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No.5299/Del./2019
(ASSESSMENT YEAR : 2016-17)

ACIT, Circle 2, Faridabad.	vs.	NHPC Limited, NHPC Complex, Sector 33, Faridabad. **(PAN : AAACN0149C)**

ITA No.4915/Del./2019
(ASSESSMENT YEAR : 2016-17)

NHPC Limited, NHPC Complex, Sector 33, Faridabad. **(PAN : AAACN0149C)**	vs.	ACIT, Circle 2, Faridabad.
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Shri Ved Jain, Advocate
Shri Aman Garg, CA
REVENUE BY : Shri Sanjay Pandey, CIT DR

Date of Hearing : 05.09.2023
Date of Order : 14.09.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

These cross appeals filed by the Revenue and assessee are directed against the order of ld. CIT (Appeals), Faridabad dated 29.03.2019 pertaining to assessment year 2016-17.

2. Grounds of appeal taken by the Revenue read as under :-

> "l. Whether, on the facts and in circumstances of the case and in law, the Ld. CIT(A) was right in law in deleting addition of Rs.139,00,00,000/- made under normal provision as well as on book profit by the Assessing Officer under section 14A of the Act by applying Rule 8D?
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> 2. "Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) was right in law in deleting disallowance of Rs.6,68,59,118/- made by the AO in computing the book profit u/s 115JB on account of provisions made for gratuity, leave encashment, post-retirement medical benefits, LTC, Baggage allowance and Matching Contribution on Leave Encashment even though the assessee has failed to establish these provisions to be of ascertained in nature?
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> 3. "Whether on facts and in circumstances of the case and in law, the ld. CIT(A) was right in law in deleting disallowance of Rs.9,03,93,108/- made by the Assessing Officer in computing the book profit u/s 115JB in respect of depreciation claimed on amortization of land Unclassified by the assessee even though there is no depreciation allowable on land under Companies Act and no rate of depreciation is provided in schedule XIV of Companies Act."

3. The assessee has taken the following grounds of appeal :-

> "1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eyes of law and on facts.
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> 2. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO in not allowing deduction amounting to Rs.8,74,67,641/- on the other income claimed by the assessee under Section 80-IA of the Act.
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> (ii) That the above said disallowance of deduction has been confirmed despite the fact that the said income is directly relatable to the business of the assessee.
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> (iii) Without prejudice to the above and in the alternative, the learned CIT(A) has erred both on facts and in law in ignoring settled position of law that in case said income is held not to be eligible for deduction under

> Section 80-IA, corresponding relief on account of expenses related to said incomes may also be given."

4. At the outset, ld. Counsel of the assessee submitted that issues involved in both the appeals are covered in favour of the assessee by the decision of ITAT in assessee's own case.

5. Ld. DR for the Revenue could not dispute this proposition.

ITA No.5299/Del/2019 (Revenue's Appeal)

6. Apropos addition of Rs.139,00,00,000/- made u/s 14A read with Rule 8D under normal provisions as well as in computing book profit u/s 115JB of the Income-tax Act, 1961 (for short 'the Act') : The AO made disallowance of Rs.139,00,00,000/- u/s 14A read with Rule 8D under normal provisions as well as in computing book profit u/s 115JB of the Act. Ld. CIT (A) deleted the addition by relying upon the order passed in the assessee's own case for preceding years.

8. Ld. Counsel of the assessee submitted that the similar issue has been decided by the ITAT in favour of the assessee in assessee's own case in the preceding assessment years in the following cases :-

(i) AY 2008-09 bearing ITA No.1402/Del/2012, order dated 17.10.2014

(ii) AY 2009-10 bearing ITA No.424/De1/2013, order dated 26.08.2015

(iii) AY 2010-11 bearing ITA No.3650 & 3738/Del/2015 order dated 08.05.2019

(iv) AY 2011-12 bearing ITA No. 466 & 297/De1/2016, order dated 26.07.2019

(v) AY 2012-13 bearing ITA No.2786 & 3121/Del/2016, order 20.03.2020

(vi) AY 2013-14 bearing ITA No.5211 & 5106/Del/2016, order dated 17.02.2021

He prayed that in view of the above mentioned judgments in assessee's own case, CIT (A) has rightly deleted the disallowance made by the AO and therefore, his order should be upheld.

9. We have heard both the parties and perused the records. We find that the issue is covered in favour of the assessee by series of Tribunal orders. We may gainfully refer to Tribunal order dated 17.02.2021 in assessee's own case in AY 2013-14 in ITA No.5211 & 5106/Del/2016 as under :-

> " We have heard rival submissions and perused the materials available on record. The issue in the present ground is with respect to the disallowance u/s 14A. We find that identical issue arose for A.Y. 2012-13 and the Co-ordinate Bench of Tribunal held that AO was not justified in disallowing the expenditure by invoking the provision of Section 14A r.w.r 8D of the Act. The relevant observations of the Tribunal are as under:
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> > "8. Though the Ld. DR placed reliance on the assessment order there is no denial of the fact that the assessee submitted before the assessing officer that the investments were made even out of assessee's own funds or out of interest free funds provided by the government and no part of the borrowed funds were utilised for investment. Further it could be seen from the assessment order, on a perusal of the computation of income, learned Assessing Officer noticed that no disallowance was made by the assessee under the provisions of section 14A of the Act read with Rule 8D of the Rules and without having regard to the accounts of the assessee, learned Assessing Officer straightaway proceeded under section

14A of the Act read with Rule 8D of the Rules, without recording any reason for not agreeing with the assessee not making any disallowance in this regard.

9. When the assessee received tax-free investment income on bonds/LTA which was in lieu of long overdue is receivable on account of sales made to the parties and pursuant to the drive-by trade agreement between the assessee, state electricity boards and reserve bank of India the assessee acquired the bonds to ensure timely payment of the warrant use and the investment in NHDC a subsidiary of the assessee, for out of the equity capital and internal accruals/equity/reserves the investment was made, it was necessary for the learned Assessing Officer to record as to why he reached a conclusion that the assessee must have incurred some expenditure that too having regard to the accounts of the assessee. Law laid down by the Hon'ble Delhi High Court on this aspect in the decisions relied upon by the assessee is clear that is only after arriving at the dissatisfaction as to the correctness of the claim of the assessee in respect of expenditure incurred in relation to exempt income, learned Assessing Officer can resort to the provisions of section 14A of the Act read with Rule 8D of the Rules and any contravention in this regard would enure to the benefit of the assessee.

10. Furthermore, there is no denial of the fact that the investments made by the assessee were even out of its own funds or out of the interest free funds provided by the government and in view of the decisions of the Hon'ble Punjab and Haryana High Court in the case of CIT vs. Max India Ltd in ITA No. 186 of 2013 by order dated 6/9/2016 and CIT vs. winsome textile industries Ltd 319 ITR 204 and Bombay High Court in the case of CIT vs. HDFC bank Ltd in ITA No. 330 of 2012 by order dated 23/7/2014, no addition could be made by invoking Rule8D (2) (ii) of the Rules.

11. It is an admitted fact that a similar question in had arisen and was decided in favour of the assessee in assessee's own case for the assessment year 89, 2010-11 and 2011-12 in assessee's own case, as was noticed by the Ld. CIT(A) in the impugned order. Further the facts of this issue are covered by the decision of the Hon'ble Punjab and Haryana High Court in assessee's own case for the assessment year 2006-07 also.

12. In the circumstances we are of the considered opinion that the addition made by the assessing officer by invoking section 14A of the Act read with Rule 8D of the Rules cannot be sustained and the Ld. CIT(A) rightly deleted the same. No reasons to interfere with the reasoning given and conclusions reached by the Ld. CIT(A) on this aspect and therefore, the same is appended. Ground No. 1 of Revenue's appeal is, accordingly, dismissed.

> 30. Before us, no distinguishing feature in the facts of the present case as compared to assessee's own case for earlier years has been pointed out by the Revenue. Further it has also not brought on record any material to show that the decision of the Co-ordinate bench of the Tribunal in assessee's own case in earlier years has been set aside/ stayed or over ruled by the higher judicial forum. Considering the totality of the aforesaid facts and following the order of the Co-ordinate bench in the assessee's own case and for similar reasons we find no reason to interfere with the order of CIT(A). Thus the ground of the Revenue is dismissed."

Respectfully following the aforesaid decision of the Tribunal, we reject this ground of the Revenue.

10. Apropos disallowance of Rs.6,68,59,118/- made in computing book profits u/s 115JB : The AO made disallowance while computing book profits u/s 115JB on account of provisions made for gratuity, leave encashment, post retirement medical benefits, LTC, baggage allowance and matching contribution on leave encashment

11. Assessee appealed before the ld. CIT (A). Ld. CIT (A) deleted the disallowances made by the AO by relying upon the orders in assessee's own case for AYs 2010-11 to 2015-16.

12. Ld. Counsel of the assessee submitted that similar issue has been decided by the Hon'ble jurisdictional High Court in favour of the assessee in assessee's own case in the cases as under :-

(i) AY 2002-03 bearing ITA No.385 of 2009, order dated 06.07.2010

(ii) AY 2006-07 bearing ITA No.136 of 2015, order dated 28.02.2018

(iii) AY 2005-06 bearing ITA No.336, 367 & 362 of 2015, order dated 20.09.2019

Ld. Counsel of the assessee further submitted that similar issue has been decided by the ITAT in favour of the assessee in assessee's own case in the preceding assessment years in the following cases :-

(i) AY 2004-05 bearing ITA No.2449/Del/2008, order dated 20.09.2014

(ii) AY 2006-07 bearing ITA No.1956 & 1437/Del/2012, order dated 17.10.2014

(iii) AY 2008-09 bearing ITA No.1402/Del/2012, order dated 17.10.2014

(iv) AY 2009-10 bearing ITA No.424/De1/2013, order dated 26.08.2015

(v) AY 2010-11 bearing ITA No.3650 & 3738/Del/2015 order dated 08.05.2019

(vi) AY 2011-12 bearing ITA No. 466 & 297/De1/2016, order dated 26.07.2019

(vii) AY 2012-13 bearing ITA No.2786 & 3121/Del/2016, order 20.03.2020

He thus submitted that the ld. CIT (A) has rightly deleted the disallowance made by the AO by following the aforesaid decisions of ITAT and, therefore, ld CIT(A)’s order be upheld.

13. We have heard both the parties and perused the records. We find that the issue is covered in favour of the assessee by series of Tribunal orders. We may gainfully refer to Tribunal order dated 20.03.2020 in assessee’s own case in AY 2012-13 bearing ITA No.2786 & 3121/Del/2016 as under :-

> "13. Coming to the disallowance of Rs. 1 73, 03, 86, 645/-made in completing the book profit under section 115 JB of the Act on account of provision for gratuity, leave encashment, post-retirement medical benefits, LTC, baggage allowance etc., It was disallowed by the learned Assessing Officer on the ground that the said provision was not ascertained. Ld. CIT(A) while following the addition of the Hon'ble Punjab and Haryana High Court for the Assessment Year:2002-03 and also his own orders for the Assessment Year: 2010-11 and 2011-12 deleted the same.
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> 14. It is argued before us that the provision towards meeting definite liability to be discharged on a future date in respect of the present employees and the quantification of such liability on the basis of actuarial valuation and basing on the report is ascertained liability and not covered under explanation 1 (c) of second proviso to section 115 JB of the Act is further submitted that this issue has been covered by the addition of the Hon'ble Punjab and Haryana High Court for the Assessment Year 2002-03 in assessee's own case which has been followed consistently both by the Tribunal and the Ld. CIT(A) all through these years.
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> 15. There is no dispute that the decision of the Hon'ble Punjab and Haryana High Court for the Assessment Year: 2002-03 in assessee's own case covers this issue and such view of the Hon'ble High Court has consistently been followed by the Tribunal and the Ld. CIT(A). Unless and until there is change of circumstances, is not possible to take a different view on an issue covered by the decision of the Hon'ble High Court and also the Tribunal for earlier years. 9 ITA Nos.2786 & 3121/Del/2016 Asst. Year: 2012-13 Respectfully following the same we uphold the finding of the Ld. CIT(A) on this aspect and dismiss ground No. 2."

Respectfully following the aforesaid decision of ITAT, we dismiss this ground of Revenue's appeal.

14. Apropos disallowance of Rs.9,03,93,108/- made in computing book profits u/s 115JB of the Act : AO made the disallowance in computing book profits u/s 115JB of the Act on account of depreciation claimed on amortization of land.

15. Assessee appealed before the ld. CIT (A). Ld. CIT (A) deleted the disallowances made by the AO by relying upon the orders in assessee's own case for AYs 2010-11 to 2015-16.

16. Ld. Counsel of the assessee submitted that similar issue has been decided by the Hon'ble jurisdictional High Court in favour of the assessee in assessee's own case in the cases as under :-

(i) AY 2006-07 bearing ITA No.136 of 2015, order dated 28.02.2018

(ii) AY 2005-06 bearing ITA No.336, 367 & 362 of 2015, order dated 20.09.2019

Ld. Counsel of the assessee further submitted that similar issue has been decided by the ITAT in favour of the assessee in assessee's own case in the preceding assessment years in the following cases :-

(i) AY 2004-05 bearing ITA No.2449/Del/2008, order dated 20.09.2014

(ii) AY 2006-07 bearing ITA No.1956 & 1437/Del/2012, order dated 17.10.2014

(iii) AY 2008-09 bearing ITA No.1402/Del/2012, order dated 17.10.2014

(iv) AY 2009-10 bearing ITA No.424/De1/2013, order dated 26.08.2015

(v) AY 2010-11 bearing ITA No.3650 & 3738/Del/2015 order dated 08.05.2019

(vi) AY 2011-12 bearing ITA No. 466 & 297/De1/2016, order dated 26.07.2019

(vii) AY 2012-13 bearing ITA No.2786 & 3121/Del/2016, order 20.03.2020

(viii) AY 2013-14 bearing ITA No.5211 & 5106/Del/2016, order dated 17.02.2021

He thus submitted that the ld. CIT (A) has rightly deleted the disallowance made by the AO by following the aforesaid decisions of ITAT and, therefore, ld CIT(A)'s order be upheld.

17. After careful consideration of the submissions of the parties and going through the records, we find that the issue is covered in favour of the assessee by series of Tribunal orders. We may gainfully refer to Tribunal order dated 17.02.2021 in assessee's own case in AY 2013-14 in ITA No.5211 & 5106/Del/2016 as under :-

> "36. We have heard rival submissions and perused the materials available on record. The issue in the present ground is with respect to the addition of Rs.4.07 crores while computing the book profits u/s 115JB of the Act. We find that identical issue arose in assessee's own case in A.Y. 2012-13 before the Coordinate Bench of Tribunal. The Tribunal by following the order in assessee's own case for A.Y. 2006-07 upheld the order of CIT(A) by observing as under:
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> > "16. Now coming to the last ground of Revenue's appeal, in respect of the disallowance of Rs.3,32,81,500/- made in computing book profits under section 115 JB of the Act on account of amortisation of leasehold land, learned Assessing Officer disallowed the same stating that no rate of depreciation was prescribed either in the companies act or in the Income Tax Act, 1961 (for short "the Act") in respect of land, and the claim of the assessee is not in accordance with law and therefore it is liable to be disallowed. Ld. CIT(A) deleted the same by relying upon his own orders for the Assessment Years: 2010-11 and 2011-12.
> >
> > 17. It is the submission of the Ld. AR before us that the amortisation of leasehold land was made as per their accounting standard 10 of ICAI amortisation of leasehold land classified as per accounting standards 6 of ICAI and the same has been done to meet the requirement of Companies Act and as such amortisation is permissible under section 115 JB of the Act as the same is in accordance with the provisions of Companies Act. Further it is submitted that this issue has been covered by the addition of the Hon'ble Punjab and Haryana High Court in assessee's own case for the Assessment Year: 2006-07 and followed by the Tribunal in assessee's own case for the earlier and subsequent years.

> 18. We have gone through the record in the light of the submissions made on either side. The submissions made before us could not be contradicted by the Revenue and more particularly the fact that this issue has been covered by the addition of the Hon'ble Punjab and Haryana High Court in assessee's own case for the Assessment Year: 2006-07 in ITA No. 136/2015 by order dated 28/02/2018. Further it is also not in dispute that a view in consonance with the decision of the Hon'ble High Court has been taken by the Tribunal for the Assessment Years: 2004-05 to 2011-12. In the circumstances since it is an issue covered by the decision of the Hon'ble High Court and also the Tribunal for earlier years, respectfully following the same we uphold the finding of the Ld. CIT(A) on this aspect and dismiss ground No. 3."

> 37. Before us, no distinguishing feature in the facts of the present case as compared to assessee's own case in earlier years has been pointed out by the Revenue. Further it has also not brought on record any material to show that the decision of the Co-ordinate bench of the Tribunal in assessee's own case in earlier years has been set aside/ stayed or over ruled by the higher judicial forum. Considering the totality of the aforesaid facts and following the order of the Co-ordinate bench in the assessee's own case for earlier years and for similar reasons, we find no reason to interfere with the order of CIT(A) on this aspect. Thus the ground of the Revenue is dismissed."

Respectfully following the aforesaid decision of ITAT, we dismiss this ground of Revenue's appeal.

18. In the result, the appeal filed by the Revenue is dismissed.

ITA No.4915/Del/2019 (Assessee's appeal)

19. The only grievance of the assessee in this appeal is against the addition of Rs.8,74,67,641/- on disallowance of deduction u/s 80IA of the Act.

20. The AO made the disallowance holding that assessee is eligible for deduction u/s 80IA only in respect of profit obtained from generation & distribution of power and not from income earned and shown under the broad head 'other income' in the profit & loss account.

21. Assessee appealed before the ld. CIT (A). Ld. CIT (A) confirmed the disallowance made by the AO by relying upon the orders in assessee's own case for AYs 2010-11 to 2015-16.

22. Ld. Counsel of the assessee further submitted that similar issue has been decided by the ITAT in favour of the assessee in assessee's own case in the preceding assessment years in the following cases :-

(i) AY 2010-11 bearing ITA No.3650 & 3738/Del/2015 order dated 08.05.2019

(ii) AY 2011-12 bearing ITA No. 466 & 297/De1/2016, order dated 26.07.2019

(iii) AY 2012-13 bearing ITA No.2786 & 3121/Del/2016, order 20.03.2020

(iv) AY 2013-14 bearing ITA No.5211 & 5106/Del/2016, order dated 17.02.2021

(v) AY 2014-15 bearing ITA No.1803/Del/2018, order dated 15.02.2022

(vi) AY 2015-16 bearing ITA No.1804/Del/2018, order dated 18.10.2022

He submitted that in view of the submissions and judicial pronouncement, the issue involved is squarely covered by the decisions in the assessee's own case and prayed to delete the disallowance.

23. We have heard both the parties and perused the records. We find that the issue is covered in favour of the assessee by series of Tribunal orders. We may gainfully refer to Tribunal order dated 17.02.2021 in

assessee's own case in AY 2013-14 in ITA No.5211 & 5106/Del/2016 as under :-

> "14. We have heard the rival submissions and perused the materials on record. The issue in the present ground is with respect to denial of claim of deduction u/s 80-IA of the Act. The claim of deduction was disallowed by the AO as he was of the view that the other income shown by the assessee was not eligible for deduction u/s 80IA. We find that identical issue arose in A.Y. 2011-12 before the Co-ordinate Bench of Tribunal. The Coordinate Bench of Tribunal by following the order in assessee's own case for A.Y. 2010-11 decided the issue in favour of the assessee by observing as under:
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> > "15. Coordinate Bench of the Tribunal in assessee's own case for AY 2010-11 (supra) decided the identical issue in favour of the assessee by returning following findings :-
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> > "47. We find that the AAR in the case of National Fertilizers Limited 193 CTR 498(AAR) held that the expenses incurred to earn these other incomes should be excluded from the debit side of the profit and loss account for computing the deduction u/s 80-I of the Act. The relevant extract of the judgment is as below:
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> > "(2)question No. 2 in AAR/532/2001 that the expenses of Rs.2,76,03,364 and Rs.12,12,74,426 (it is stated that the correct figure is Rs.11,02,56,561) allocated by marketing office and corporate office and interest expenditure of Rs.71,65,99,045 allocated by the corporate office and on question No. 2 in AAR/533/2001 that expenses of Rs.2,56,44,186 and of Rs.12,94,59,292 allocated by corporate office and marketing office and interest expenditure of Rs.8,49,30,952 allocated by corporate office should be excluded from the debit side of the profit and loss account of the industrial undertaking for the purpose of deduction under section 80-I of the Income-tax Act, 1961; the fact that the allocated interest income from corporate office Rs.5,22,94,939 and Rs.3,97,44,811 credited to profit and loss account of Vijaipur unit in the assessment years 1995-96 and 1996-97 is of no consequence as both interest income and interest expenditure are liable to be excluded for the purpose of deduction under section 80-I of the Act."
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> > 48. Further, the Hon'ble Delhi High Court in the case of Pr. CIT vs. Bharat Sanchar Nigam Limited reported in 388 ITR 371 explaining the meaning derived from while computing the deduction u/s 80-IA of the Act, has held as under:
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> > "8. The question arose in the context of the Assessee being asked to explain why certain specific items categorized as 'other

income' and 'extraordinary item' in the Profit and Loss Account in assessment year 2004-05 should not be excluded from the profit and gains of the Assessee. According to the Revenue, these items could not be considered as profits and gains 'derived from' the eligible business for the purpose of deduction under Section 80 IA. The said six items were:

(i) Extra Ordinary Items
(ii) Refund from Universal Service Fund
(iii) Interest from others
(iv) Liquidated Damages
(iv) Excess provision written back
(vi) Others including sale of directories, publications, form, waster paper, etc.

9. The AO held that the six items of income could not be said to be derived from the business of the Assessee and added the income therefrom to the returned income of the Assessee. In the appeal by the Assessee, the Commissioner of Income Tax (Appeals) ["CIT (A)"] agreed with the AO that three of the above items, viz. Extraordinary Items, Refund from Universal Service Fund and Interest from Others, did not form part of the profit derived from eligible business. However, the Assessee's plea regarding the other three items as being derived from the business was accepted by the CIT (A).

10. The Assessee filed appeals and the Revenue filed cross-appeals before the ITAT. The ITAT in the impugned orders concluded that with sub-section (2A) beginning with a non-obstante clause, the legislative intention of making available to an undertaking, providing telecommunication services, the benefit of deduction of 100% of the profits and gains "of the eligible business" was explicit. Indeed, the legislature appears to have made a conscious departure in adopting for sub-section (2A) a wording different from that appearing in sub section (1). Under Section 801A (1), what is available for deduction are profits and gains "derived by an undertaking or an enterprise from any business referred to in sub-section (4)" whereas in Section 80-IA (2A) what is available for deduction is "hundred percent of the profits and gains of the eligible business". The following conclusion reached by the ITAT in para 13.11 of the impugned order correctly encapsulates the legal position as far as the interpretation of Section 801A (2A) is concerned.

"13.11 Thus, we find that the legislature being alive to providing tax deductions to business enterprises and undertakings, it wanted to curtail the time line during which deduction can be claimed and also addressing the extent upto which it can be claimed has consciously carved out an exception to specified undertakings/enterprises whose needs and priorities differ has

taken care to expand the time line for claiming deductions. It has consciously enabled those undertakings/enterprise 'who fall under subsection (2A) to claim 100% deduction of profits and gains of eligible business for the first five years and upto 30% for the remaining five years in the ten consecutive assessment years out of the fifteen years starting from the time the enterprise started its operation. The legislature having ousted applicability of sub-section (1) and (2) in the opening sentence brought in for the purposes of time line sub-section (2) into play but made no efforts whatsoever to put the assessee under sub-section (2A) to meet the stringent requirements that the profits so contemplated were to be "derived from". The requirements of the first degree nexus of the profits from the eligible business has not been brought into play."

11. As a result, the orders of both the AO and the CIT (A) to the extent they deny the Assessee, which in this case is in the business of providing telecommunication services, deduction in respect of the above items in terms of Section 80IA(2A) are unsustainable in law and have rightly been reversed by the IT AT."

49. Further, the Hon'ble Gujarat High Court in the case of Nirma Industries Ltd. Vs DCIT (2006) 283 ITR 402 has held as under:

"27. Insofar as question No. 2 is concerned, according to the Tribunal s. 80-I of the Act uses the phrase 'derived from' and hence the interest received by the assessee from its trade debtors cannot be taken into consideration for the purpose of computing profits derived from an industrial undertaking. The Tribunal has failed to appreciate that it is not the case of the AO that the interest income is not assessable under the head 'Profits and gains of business'. It is only while computing relief under s. 80-I of the Act that the Revenue changes its stand. When one reads the opening portion of s. 80-I of the Act it is clear that words used are: "gross total income of an assessee includes any profits and gains derived from an industrial undertaking". Once this is the position then, in computing the total income of the assessee, a deduction from such profits and gains of an amount equal to the prescribed percentage is to be allowed. That, in fact, the gross total income of the assessee included profits and gains from such business, and this is apparent on a plain glance at the computation in the assessment order. Both in relation to Vatva Unit and Mandali Unit the computation commences by taking profit as per statement of income filed along with return of income. Therefore, the same item of receipt cannot be treated differently: once while computing the gross total income, and secondly at the time of computing deduction under s. 80-I of the Act. Therefore, on this limited count alone, the order of the Tribunal suffers from a basic fallacy resulting in an error in law and on facts. The Tribunal instead of recording findings on facts proceeded to discuss law. This

litigation could have been avoided if the parties had invited attention to basic facts.

28. Neither the approach nor the reasons advanced by the Tribunal deserve acceptance. It is an incorrect proposition to state that interest paid by the debtors for late payment of the sale proceeds would not form part of the eligible income for the purpose of computing relief under s. 80-I of the Act. The reliance on the general meaning of the term interest as well as drawing distinction between the source of sale proceeds and the source of interest is erroneous in law in the case of CIT vs. Govinda Choudhury & Sons (supra) the apex Court was called upon to decide as to the nature of interest received by the assessee therein. In the case before the apex Court the assessee who was executing Government contracts found itself involved in disputes with the State Government with regard to the payments due under the contracts and upon reference to arbitrators, the award included the principal sum as well as the interest for delay in payment of the principal sum. The assessee claimed that the interest was of the same nature as other trading receipts, but it was held by the Tribunal that the same was 'Income from other sources'. The apex Court laid down:

"The assessee is a contractor. His business is to enter into contracts. In the course of the execution of these contracts, he has also to face disputes with the State Government and he has also to reckon with delays in payment of amounts that are due to him. If the amounts are not paid at the proper time and interest is awarded or paid for such delay, such interest is only an accretion to the assessee's receipts from the contracts. It is obviously attributable and incidental to the business carried on by him. It would not be correct, as the Tribunal has held, to say that this interest is totally de hors the contract business carried on by the assessee. It is well settled that interest can be assessed under the head 'Income from other sources' only if it cannot be brought within one or the other of the specific heads of charge. We find it difficult to comprehend how the interest receipts by the assessee can be treated as receipts which flow to him de hors the business which is carried on by him. In our view, the interest payable to him certainly partakes of the same character as the receipts for the payment of which he was otherwise entitled under the contract and which payment has been delayed as a result of certain disputes between the parties. It cannot be separated from the other amounts granted to the assessee under the awards and treated as 'Income from other sources'".

50. In view of the above quoted decisions, we are of the considered view that the disallowance made of Rs.4,46,54,883/- while computing the deduction allowable u/s 80-IA of the Act is not justified. Hence, we set aside the orders of the lower authorities and direct the Assessing Officer to recompute the deduction

allowable to the assessee u/s 80-IA of the Act without excluding Rs.4,46,54,883/-. Thus, this ground of appeal of the assessee is allowed."

16. Following the decision rendered by the coordinate Bench of the Tribunal on the issue in controversy discussed above, the arguments addressed by the ld. DR and the case laws relied upon are not applicable to the facts and circumstances of the case, thus we are of the considered view that making disallowance by the AO and confirmed by the ld. CIT (A) to the tune of Rs.2,99,54,875/- while computing the deduction allowable u/s 80IA is not sustainable and all the items of income qua which deduction has been sought by the assessee u/s 80IA are allowable deduction and order passed by the AO and ld. CIT (A) is not sustainable. So, the order passed by the lower authorities is set side directing the AO to recompute the deduction allowable to the assessee u/s 80IA without excluding amount of Rs.2,99,54,875/- disallowed by the AO. Consequently, ground no.2 is determined in favour of the assessee."

15. Before us, Revenue has not pointed to any contrary binding decision in its support nor has placed any material on record to demonstrate that the aforesaid decision of Delhi Tribunal for A.Y. 2010-11 & 2011-12 in assessee's own case has been set aside, stayed or overruled by higher judicial forum. In view of these facts and following the order of the Co-ordinate Bench of Tribunal and for similar reasons, we allow the ground of appeal of the assessee."

24. Respectfully following the aforesaid order, we allow this ground of the assessee's appeal.

25. To sum up : the Revenue's appeal is dismissed and the appeal of the assessee is allowed.

Order pronounced in the open court on this 14th day of September, 2023.

Sd/-	**sd/-**
(ASTHA CHANDRA)	**(SHAMIM YAHYA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated the 14th day of September, 2023
TS

Copy forwarded to:

1.Appellant
2.Respondent
3.CIT
4.DRP
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.