आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 201/RPR/2022

निर्धारण वर्ष / Assessment Years : 2012-13

The Assistant Commissioner of Income Tax,
Circle-1(1), Raipur.

.....अपीलार्थी / Appellant

बनाम / V/s.

Shri Bajrang Power and Ispat Limited,
00, Vill. Borjhara, Urla Guma Road,
Raipur-493221.

PAN : AACCB2944D

.....प्रत्यर्थी / Respondent

Assessee by : Shri Amit M. Jain, Adv.
Revenue by : Dr. Simran Bhullar, CIT-DR

सुनवाई की तारीख / Date of Hearing : 18.07.2023
घोषणा की तारीख / Date of Pronouncement : 16.10.2023

आदेश / ORDER

PER RAVISH SOOD, JM:

The present appeal filed by the revenue is directed against the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 31.08.2022, which in turn arises from the order passed by the A.O. u/s. 143(3) of the Income-tax Act, 1961 (for short 'Act') dated 11.08.2014 for A.Y. 2013-13. The revenue has assailed the impugned order on the following grounds of appeal before us:

> "1. Whether in the facts and circumstances of the case and in law, the ld. CIT(A), NFAC was justified in deleting the addition of Rs. 3,09,58,737/- made by the AO by treating Sales Tax Subsidy.
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> 2. Whether in the facts and circumstances of the case and in law, the ld. CIT(A), NFAC was justified in deleting the disallowance of Rs. 2,65,16,038/- put of claim of deduction of Rs. 33,47,08,041/- u/s 80IA of the I.T. Act, 1961.
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> 3. Whether in the facts and circumstances of the case and in law, the ld. CIT(A), NFAC was justified in deleting the disallowance of Rs. 35,18,577/- made by the AO u/s 14A of the I.T. Act, 1961 read with Rule 8D of the I.T Rules, 1961.
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> 4. Any other ground that may be adduced at the time of hearing."

2. Succinctly stated, the assessee company, which is engaged in the business of manufacturing sponge iron, billets, blooms, ferro alloys etc. and generation of power, had e-filed its return of income for A.Y.2012-13 on 29.09.2012, declaring an income of Rs.5,00,45,390/- and book profit u/s.115JB of the Act of Rs.30,15,17,400/-. The case of the assessee company was, thereafter, selected for scrutiny u/s.143(2) of the Act.

3. The A.O vide his order passed u/s.143(3) dated 11.08.2014 assessed the income of the assessee company at Rs.11,11,19,238/- after making the following additions/disallowances:

Sr. No.	Particulars	Amount
1.	Recharacterization of the sales tax subsidy that was claimed by the assessee as a capital subsidy and treated by the A.O as a revenue subsidy	Rs.3,09,58,737/-
2.	Disallowance u/s. 14A r.w.r.8D	Rs.35,18,577/-
3.	Disallowance of the assessee's claim for deduction in respect of income from generation of power u/s.80IA of the Act (out of eligible claim of deduction of Rs.33,47,08,041/-)	Rs.2,65,16,038/-

4. Aggrieved with the order passed by the A.O. u/s.143(3) of the Act, dated 11.08.2014, the assessee carried the matter in appeal before the CIT(Appeals) who found favor with its contentions and allowed the appeal.

5. The revenue being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us. As additions/disallowances made by the A.O in the present appeal hinge around three issues, we shall herein deal with the same as under:

(A) Recharacterization of the subsidy received by the assessee and claimed as a capital subsidy as revenue subsidy by the A.O: Rs.3,09,58,737/- :

6. During the course of the assessment proceedings, it was observed by the A.O that the assessee company, as per the investment policy of the Government of Chhattisgarh for the years 2004 to 2009, was entitled to receive infrastructure development/capital investment subsidy to the extent of 25% of the infrastructure cost for establishing industries outside industrial areas, subject to a maximum amount equivalent to the amount of Commercial Tax/Central Sales Tax paid by it in the State during the five year period. The A.O observed that the District Industry Centre (DIC), vide its letter dated 20.03.2009, had sanctioned infrastructure development /capital investment subsidy to the extent of Rs.12,81,44,310/- subject to a maximum amount equivalent to the amount of Commercial Tax/Sales Tax paid in the state in a five-year period. The A.O. observed that the assessee company had, during the year, paid an amount of Rs.3,09,58,737/- and claimed the equivalent amount as capital subsidy. On being called upon to substantiate its aforesaid characterization of the amount received as capital subsidy, the assessee submitted as under:

> "The Government of Chhattisgarh by its "Industrial Policy 2004-09" with following objectives had introduced many incentives plan under which the assessee company was entitled for the capital subsidy. Highlights of the policy are as under:
>
> • To create additional employment opportunities by accelerating the process of industrialization in the state.

• To create enabling environment for ensuring maximum value addition to the abundant, locally available mineral and forest based resources.

• To insure balanced regional development by attracting industries in the economically backward areas of the state.

• To insure participation of scheduled casts, scheduled tribes and other weaker sections in the development process.

• To mike industrial investments in the state competitive vis-à-vis other states in the country.

• To promote private sector participation for creation of industrial infrastructure in the state.

• To crate an enabling environment for increasing industrial production, productivity and quality up gradation to face the challenge of competition emerging from economic liberalization.

Keeping in view, the above policy, the government of Chhattisgarh had introduced Directed incentives, which will be provided for industrial investment in the State in the form of infrastructure development / capital investment. Eligible amount of subsidy is required to be determined on the basis of 25% of the infrastructure cost for establishing industry outside industrial areas subject to maximum amount equivalent to the amount of commercial tax/central sales tax paid in the state in 5 year period. The purposes of providing infrastructure development/capital investment subsidy is to achieve rapid industrialization by ensuring balanced regional development by attracting industries in the economically backward areas of the state and also to make industrial investments in the state competitive vis-à-vis other states in the country. Thus the subsidy, has been granted to setup its business or to complete a project and therefore the subsidy received is for capital purposes and therefore the subsidy so received is capital in nature not liable to tax. In case of Sahney Steel and Press works Ltd. & Ors. Vs. CIT 228 ITR 253, Hon'ble Supreme Court has held that the character of the subsidy in the hands of the recipient whether revenue or capital — will have to be determined having regard to the purpose for which the subsidy is given. The source of the fund is quite immaterial. However, if the purpose is to help the assessee to setup its business or complete a project the monies must be treated as having been received for capital purposes.

> The eligibility and release of subsidy are two different aspect of the scheme. The subsidy is required to be measured in terms of 25% of eligible assets created for infrastructure development subject to maximum of Sales Tax paid by the company within 5 years. The release of subsidy is determined on the basis bf sales tax payment made by the company. Merely the release of subsidy is linked with payment of Sales Tax; it cannot be termed as revenue receipt. As per principal laid down by Hon'ble Supreme court (supra) the purpose of subsidy is a deciding factor whether revenue or capital and not its method of release. In view of above facts, the assessee company has rightly treated the subsidy as capital receipt.
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> The assessee also relied upon the following case laws:
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> - CIT vs. Ponni Sugars & Chemicals Ltd. & Ors.(2008) 306 ITR 392(SC)
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> - CIT vs. Rasoi Ltd. & Ors. (2011) 335 ITR 438 (Calcutta)
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> - CIT Vs. Ponni Sugars & Chemicals Ltd. & Ors. (2oo8) 306 ITR 392(SC)
>
> -Shree Balaji Alls & Ors. vs. CH & Ors.(2011) 333 ITR 335 (J & K)
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> - CIT & ANR vs. Udupi Builders (P) Ltd. (2009) 319 ITR 44o (Karnataka)
> - Sasisri Extraction Ltd. vs. ACIT 119 TTJ (Visakha) 976
>
> -DCIT vs. Reliance Industries ltd. (2004) 82 TET (Mumbai) (SB) 765"

However, the A.O. did not find favor with the aforesaid claim of the assessee company. The A.O observed that the subsidy given by the State Government of Chhattisgarh was neither for any specific purpose like the purchase of any capital asset nor was it for reimbursement of any specific or definite capital expenditure incurred by the assessee company and was payable only when the eligible plant/industry commenced its production. On the basis of

the aforesaid observation, the A.O held a conviction that the subsidy received by the assessee company could not be held as anything but an operational subsidy which was given to encourage the setting up of industries in the State of Chhattisgarh by making the business of production and sale of goods in the state more profitable. The A.O. was of the view that subsidy of the aforesaid nature could only be held as an assistance given for the purpose of carrying on the business of the assessee company and, thus, was of a revenue character. Relying upon the judgment of the Hon'ble Supreme Court in the case of Sahney Steel & Press Works Ltd. & Ors Vs. CIT (2002) 228 ITR 253 (SC), the A.O. was of the view that subsidy received by the assessee company in the garb of assistance for the purpose of carrying on its trade was in the nature of a revenue receipt. Accordingly, the A.O., backed by his aforesaid conviction, made an addition of an amount of Rs.3,09,58,737/- to the returned income of the assessee company.

7. On appeal, it was observed by the CIT(Appeals) that the assessee company was eligible for subsidy on account of investment in the backward areas notified by the Government of Chhattisgarh to the extent of 25% of the cost of infrastructure development. Referring to the letter of District Industries Centre (DIC) wherein approval of Rs.12,81,44,310/- as eligible cost of infrastructure developed by the assessee company was given, the

CIT(Appeals) observed that the modality of disbursement of subsidy was specified in terms of amount equivalent to payment of sales tax for 5 years in the State. It was observed by the CIT(Appeals) that the main purpose of granting a subsidy to the assessee company was for the development of infrastructure in the targeted areas, and the same had rightly been claimed as a capital subsidy by the assessee company in accordance with the judgment of the Hon'ble Supreme Court in the case of Sahney Steel & Press Works Ltd. & Ors Vs. CIT (supra) and Ponni Sugars & Chemicals Ltd. 306 ITR 392 (SC).

8. Rebutting the view taken by the A.O., it was observed by the CIT(Appeals) that he had incorrectly interpreted the subsidy disbursement in terms of sales tax payment as the main purpose and infrastructure cost as a mere yardstick to pay the quantum of subsidy. The CIT(Appeals) further observed that the terms of the subsidy payment were guided by the cost of infrastructure development, and only disbursement was linked to the commencement of production and in terms of sales tax payment in the five-year period. Backed by his aforesaid observations, the CIT(Appeals) was of the view that the main purpose of government subsidy received by the assessee company was for development of infrastructure in the targeted areas and was not in the nature of production incentives as was interpreted by the A.O. The CIT(Appeals) fortified his aforesaid conviction by drawing

support from the order of the ITAT, Raipur in the assessee's own case for A.Y.2009-10 wherein subsidy received by the assessee for the said year was held as capital subsidy. Accordingly, the CIT(Appeals), on the basis of his aforesaid deliberations, vacated the addition of Rs.3,09,58,737/- that was made by the A.O by recharacterizing the subsidy received by the assessee as a revenue subsidy.

9. We have thoughtfully considered the aforesaid issue and find that the same is squarely covered by the order passed by the Tribunal in the assessee's own case for A.Y.2010-11 in **DCIT-2(1), Raipur Vs. M/s. Bajrang Power and Ispat Ltd., ITA No.172/RPR/2016**, Page 45-48 of APB, wherein following its earlier order for the immediately preceding year i.e. A.Y.2009-10 in ITA No.57/BLPR/2012 dated 13.10.2015, the Tribunal had approved the order of the CIT(Appeals) who had vacated the addition that was made by the A.O by recharacterizing the capital subsidy received by the assessee company as a revenue receipt. For the sake of clarity, the relevant observations of the Tribunal are culled out as follows:

> "3. Facts of the case, in brief, are that the assessee is a company engaged in the business of manufacturing of Sponge Iron, Billets, Blooms, Ferro Alloys and Generation of Power. It filed its return of income on 05.10.2010 declaring Nil income under the regular provisions and Rs.28,73,59,903/- as book profit for MAT u/s 115JB of the I.T. Act, 1961. Subsequently, the return was revised on 19.11.2012 declaring total income of Rs.3,70,84,210/- u/s 115JB of the I.T. Act. During the course of assessment proceedings, the Assessing Officer noted that the assessee has shown to have received an amount of Rs.3,41,28,862/- as subsidy and claimed the same as capital receipt. On being questioned by the Assessing Officer to justify the claim, it was submitted that as per investment policy of Government of Chhattisgarh for 2004 to 2009, the assessee is entitled to receive infrastructure

development/ capital investment subsidy to the extent of 25% of infrastructure cost for establishing industries in industrial area, subject to maximum amount equivalent to the amount of Commercial Tax/ Central Sales Tax paid in the State in five year period. The District Industry Centre vide letter dated 20.03.2009 has sanctioned infrastructure development/ capital investment subsidy to the extent of Rs.12,81,44,310/- subject to maximum amount equivalent to the amount of Commercial Tax/ Sales Tax paid in the State in five year period. During the year, the assessee has paid the above amount of Rs.3,41,28,862/-, therefore, the same was claimed as capital subsidy.

4. It was further submitted that the addition made in the past was deleted by the ld. CIT(A).

5. However, the Assessing Officer was not satisfied with the explanation given by the assessee. He noted that the subsidy was received after commencement of production and, therefore, it is the nature of revenue subsidy because it was given to the assessee after commencement of production to enable it to run the business more profitably and it is an operation subsidy. He further noted that the order of the ld. CIT(A) was not accepted by the Department and appeal has been filed before ITAT. He accordingly made addition of Rs.3,41,28,862/- to the total income of the assessee.

6. In appeal, the ld. CIT(A), following the order of his predecessor for assessment year 2009-10 which has been confirmed by the Tribunal, deleted the addition made by the Assessing Officer.

7. Aggrieved with such order of the ld. CIT(A), the Revenue is in appeal before the Tribunal.

8. After hearing both the sides, we find identical issue had come up before the Tribunal in assessee's own case in the immediately preceding assessment year and the Tribunal in ITA No.57/BLPR/2012 order dated 13.10.2015 has upheld the order of the ld. CIT(A) deleting the addition. While doing so, the Tribunal has followed the decision of the Mumbai Special Bench of the Tribunal in the case of DCIT vs. Reliance Industries Ltd. Reported in 82 TTJ (Mumbai) (SB) 765. Since the issue raised by the Revenue in the impugned appeal has already been decided by the Tribunal in assessee's own case in the immediately preceding assessment year, therefore, in absence of any contrary material brought to our notice, we do not find any infirmity in the order of the ld. CIT(A) deleting the addition made by the Assessing Officer. The ground raised by the Revenue is accordingly dismissed.

9. In the result, the appeal filed by the Revenue is dismissed."

10. As the issue involved in the present appeal as regards aforesaid issue remains the same as it was before us in ITA No.172/RPR/2016 for A.Y. 2010-11, we respectfully follow the same. Accordingly, finding no infirmity in the view taken by the CIT(Appeals), who had rightly vacated the addition of Rs.3,09,58,737/- made by the A.O. by treating the subsidy as a production incentive and not a capital subsidy, we uphold the same. Thus, **Ground of appeal No.1** raised by the revenue is dismissed in terms of our aforesaid observations.

(B) Disallowance of the assessee's claim for deduction u/s.80IA of the Act : Rs.2,65,16,038/- (out of Rs.33,47,08,041/-)

11. During the course of the assessment proceedings, it was observed by the A.O. that the power generation unit of the assessee company had sold electricity to outside parties as well as transferred the electricity to its other divisions for captive consumption. The A.O. further observed that the assessee had raised a claim for deduction u/s. 80IA of the Act of RS. 33,47,08,041/- during the year under consideration, i.e., the 7th year of claim of deduction. On a perusal of the records, it was observed by the A.O that the assessee company had transferred 110965469 units of electricity to its Sponge Iron Division, Steel Melting Shop Division, Rolling Mill Division, and Wire Rod Division at an average rate of 3.17/- per unit. Referring to the fact that the assessee company had a substantially higher

profit margin of 35% (approx.) with respect to its power generation unit as in comparison to profitability of Chhattisgarh Power Generation Company Ltd. (CGPGCL) which was in the range of 4% (approx.), the A.O, in light of the high pitched profit declared by the assessee company with respect to its eligible units that were claiming deduction u/s.80IA, triggered the provisions of sub-section (8) of Section 80IA of the Act. The A.O considering the rate of Rs. 2.93/- per unit, which was the average purchase rate of electricity by CGPGCL in Chhattisgarh, adopted the deemed sale value of electricity transferred to the captive division at Rs.2.93/- per unit as against Rs.3.17/- per unit as taken by the assessee company. Resultantly, the A.O restricted the assessees claim for deduction u/s.80IA of the Act to Rs.30,81,92,003/-. Backed by his aforesaid calculation, the A.O worked out disallowance u/s. 80IA to Rs.2,65,16,038/- [Rs.33,47,08,041/- (-) Rs.30,81,92,003/-].

12. On appeal, it was the claim of the assessee company that the provisions of Section 80IA of the Act referred to the price of the commodity prevailing in the market for comparing goods and services transferred by the eligible business to any other business carried on by the same assessee. Elaborating on its aforesaid contention, it was averred by the assessee company that as the tariff of sale of electricity by generating companies to CGPDCL is determined on the basis of various parameters laid down in

Section 43A of the Electricity (Supply) Act, 1948, therefore, as such determination of tariff was not made in a competitive environment or in the ordinary course of trade and business, hence, the same could not be equated with the market value. It was, thus, the claim of the assessee company that the price determined according to the Electricity Supply Act, 1948 could not be equated with a situation where the price is determined in the normal course of trade and competition. Also, it was the claim of the assessee company that the rate of Rs.3.17/- per unit that was charged by it for inter-unit transfer of the electricity was lower than the actual cost at which CGPDCL would have supplied electricity. As such, the assessee company, based on its aforesaid submissions, sought for vacating of the part disallowance of its claim for deduction u/s.80IA of the Act made by the A.O.

13. The CIT(Appeals), on the basis of his aforesaid exhaustive deliberations on the issue in hand in the backdrop of the contentions advanced by the assessee company, found favor with the same. He observed that the issue involved in the present appeal, i.e., disallowance of the assessee's claim for deduction u/s. 80IA by triggering sub-section (8) of Section 80IA of the Act was based on fallacious premises. Elaborating on his aforesaid view, the CIT(Appeals) observed that the A.O had committed an illegality in computing the market value of electricity by taking into account the rate charged to a supplier, i.e., the average purchase rate of electricity

by CGPDCL from power generators as against referring to the market value of power supplied to a consumer. Apart from that, it was observed by the CIT(Appeals) that the average rate of Rs.3.17/- per unit at which the assessee company had transferred electricity to its captive division was even lower than the sale rate of CGPDCL. The CIT(Appeals) observed that the issue involved in the present appeal was squarely covered by the order of the Tribunal in the assessee's own case for A.Y.2008-09. Also, the CIT(Appeals) had drawn support from the judgment of the **Hon'ble High Court of Chhattisgarh** in the case of **CIT Vs. Godavari Power & Ispat Ltd., (2014) 223 Taxman 234 (C.G.)** wherein involving identical facts, the Hon'ble High Court had held that the market rate of power will be the rate of power available in the open market, namely the price charged by the Board. For the sake of clarity, the relevant observations of the Hon'ble High Court are culled out as follows:

> "15. Considering the statement of the Department, these appeals are formally admitted on the aforesaid substantial question and with consent of the parties, are being decided.
>
> THE DECISION: MARKET VALUE IS SAME AS SALE PRICE OF BOARD
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> 16. Section 80-IA of the Act is titled as 'Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc'. The CPP of the Assessee has claimed deductions under this section.
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> 17. Clause (iv) of sub-section (4) of 80-IA (80-IA (4) (iv)) (See Appendix-1) of the Act provides that an undertaking involved in generation or distribution of power is entitled to claim deduction under section 80-IA of the Act.

18. It is admitted case that the CPP of the Assessee qualifies for claiming deductions under this sub-section 80-IA (4) (iv) of the Act.
19. Sub-section (8) of section 80-IA (80-IA (8)) (See Appendix-1) of the Act provides that for the purposes of deduction under this section profits and gains of eligible business are to be computed as if the transfer was done on the market value on that date.

20. The proviso to **section 80-IA (8)** of the Act requires the AO to compute the profits and gains in the manner already proved. And in case the manner presents exceptional difficulties then the AO is empowered to compute profits and gains on such reasonable basis as he may deem fit.

21. Explanation to **section 80-IA (8)** of the Act provides 'market value' to mean the price that such goods would ordinarily fetch on sale in the open market.

22. The Assessee had sold power to the Steel-Division at the rate of Rs. 3.30/- per unit for AY 2004-05 and Rs. 3.75/- per unit for AYs 2005-06 and 2006-07.

23. The AO computed the market value of power under **section 80-IA (8)** read with its proviso and the explanation. He considered the rate charged by the Chhattisgarh Electricity Company Limited, Raipur (the Chhattisgarh-Company) for supply of electricity to the Board and held the market value of the power to be Rs. 2.25/- per unit for the AY 2004-05 and 2005-06; and Rs. 2.32/- per unit for the AY 2006-07.

24. The market value computed by the AO was less than the value claimed by the Assessee, he (the AO) dis-allowed the difference and added it in the income of the Assessee.

25. In Chhattisgarh, a consumer can utilise the power produce by its own captive power generating unit or it can buy power from the Board. No other entity can supply power to any consumer in the State: a consumer cannot purchase electricity from any other person.

26. The Board was charging @ Rs. 3.30/- per unit in the AY 2004-05 and @ Rs. 3.75/- per unit in the AYs 2005-06 and 2006-07 from industrial units. The CPP of the Assessee also charged the same amount from its Steel-Division. As both were same, the CIT-A held this is to be the market value. The Tribunal has upheld this finding.

27. The counsel for the Department submits that:

• The Chhattisgarh-Company is situate in the same area and the price for which it sold power to the Board was relevant;
• The AO rightly compared it for calculating the market value of the power supplied to the Steel-Division;

• The rate charged by the Board cannot be taken into account as it includes wheeling and transmission charges.

28. The Chhattisgarh-Company is a company which is generating power. It is neither consumer of the electricity, nor it is supplying power to a consumer. It also cannot sell power to any consumer directly: it has to compulsorily sell it to the Board.

29. The power sold by the Chhattisgarh-Company to the Board is a sale to a company which itself supplies power to the consumers. It is not sale of power to the consumer.

30. The Steel-Division of the Assessee is a consumer. The CPP of the Assessee supplies electricity to the Steel-Division. Had the Steel-Division not taken power from the CPP then it had to purchase power from the Board. The CPP has charged the same rate from the Steel-Division that the Steel-Division had to pay to the Board if the power was purchased from the Board.

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.

33. It is admitted by the Department that in Chhattisgarh the power was supplied to the industrial consumers at the rate of Rs. 3.20/- per unit for the AY 2004-05 and Rs. 3.75/- per unit for the AYs 2005-06 and 2006-07. It was this rate that was to be considered while computing the market value of the power.

34. The CIT-A and the Tribunal had rightly computed the market value of the power after considering it with the rate of power available in the open market namely the price charged by the Board. There is no illegality in their orders.

> 35. In view of above, the question is decided against the Department and in favour of the Assessee. The tax appeals have no merit. They are dismissed."

14. Also, we find that the Tribunal had taken a similar view in the case of **DCIT Vs. M/s. Mahendra Sponge & Power Pvt. Ltd., ITA No.196/RPR/2019 & CO No.24/RPR/2019 dated 05.08.2022** for A.Y.2014-15. As the issue involved in the present appeal before us remains the same as was there in the aforementioned judgment/order, therefore, finding no infirmity in the view taken by the CIT(Appeals) who had rightly vacated the disallowance of the assessee's claim for deduction u/s.80IA of Rs.2,65,16,038/-, we uphold the same. Thus, the **Ground of appeal No.2** raised by the revenue is dismissed in terms of our aforesaid observations.

(C). <u>Disallowance u/s.14A r.w.r 8D : Rs.35,18,577/-</u> :

15. As is discernible from the orders of the lower authorities, it transpires that the A.O. had worked out disallowance u/s.14A r.w.r 8D at Rs.35,18,577/-. Although the assessee company had earned exempt income of Rs.1678/- only from its total investment in the listed shares, but the A.O. had worked out the disallowance u/s.14A on the basis of the mechanism provided under Rule 8D.

16. On appeal, it was observed by the CIT(Appeals) that the A.O had worked out disallowance u/s.14A without recording any dissatisfaction as regards the claim of the assessee that no part of the expenditure claimed by

it as deduction was incurred in relation to the exempt income and had mechanically proceeded with and computed disallowance u/s.14A r.w. Rule 8D(2)(iii) of the Act. For the sake of clarity, the relevant observations of the CIT(Appeals) on this issue are culled out as follows:

> "After going through the findings of the assessment order and appellant's submission, I find that the AO has not mentioned about his satisfaction regarding any Claim of expenditure in relation to exempt income as required by the provision of section 14A(2) of the Act and mechanically proceeded to compute disallowance u/s 14A r.w.r. 8D(2)(iii) of the Rules. On this ground itself, the disallowance of Rs.35,18,577/- is not sustainable. Even though the AO took the pretext of Circular no.5/2014, the AO gets the legal jurisdiction to compute disallowance u/s 14A(2) only when he is satisfied about the non-genuineness of appellant's claim regarding no expenses incurred on the investment in assets from which exempt income will arise. Thus, there is no automatic jurisdiction to proceed with the disallowance u/s 14A. Further, even court decisions to the level of Apex Court held that the disallowance can be made only against any expenditure in relation to exempt income included in the total income. In the current case, no exempt income was included in the total income of current A.Y. Hence, there was no basis to compute expenditure on investments from which there was no exempt income earned. As regards the amendment to section 14A brought in by the Finance Act, 2022 whereby the requirement of actual earning of exempt income has been done away with for computing disallowance u/s 14A r.w.r. 8D, the decision of Hon'ble Delhi High Court in the case of PCIT Vs Era Infrastructure (I) Ltd. (ITA No. 204/2022) is relevant wherein it was held that the changes u/s 14A will be applicable from 01.04.2022 onwards. In this judgment of Hon'ble Delhi High Court, reference to the decision of CIT Vs Podar Cement Pvt. Ltd. (SC) 5 SCC 482 was made whereby the Hon'ble Apex Court had held that if clarificatory amendment changes the law, it is not presumed to be retrospective, irrespective of the fact that the phrases used are "it is declared" or "for the removal of doubts". Hon'ble Delhi High Court in Era Infrastructure (I) Ltd. held that the amendment in section 14A vide Finance Act 2022 seeks to change the law as existing before and hence, retrospective in nature. In view of these facts and legal discussion, the disallowance of Rs.35,18,577/- u/s.14A r.w.r. 8D(2)(iii) is not sustainable for the current AY and hereby deleted."

17. Having thoughtfully considered the aforesaid issue in hand, we concur with the view taken by the CIT(Appeals) that in the absence of any dissatisfaction having been recorded by the A.O as regards the claim of the assessee that no part of expenditure claimed as deduction was incurred in relation to earning of exempt income, no disallowance u/s. 14A could have been validly made in its hands. In our considered view, the A.O. had not recorded any satisfaction as to why the assessee's claim that no part of the expenditure pertaining to its investment could be attributed to earning of the exempt dividend income by the assessee. The issue as to whether it is obligatory on the part of the A.O to record his satisfaction as to why the claim of the assessee in respect of the expenses incurred for earning the exempt dividend income, if any, was not to be accepted is no more *res-integra* and has been settled by the **Hon'ble Supreme Court** in the case of **Godrej & Boyce Manufacturing Company Ltd. Vs. DCIT & Anr. (2017) 394 ITR 449 (SC).** The Hon'ble Apex Court, in its aforesaid order, had observed that it is obligatory for the A.O to record his satisfaction that having regard to the accounts of the assessee, as placed before him, it was not possible to generate reasonable satisfaction with regard to the correctness of the claim of the assessee. The Hon'ble Apex Court had observed that it was only after the A.O had recorded his dissatisfaction as regards the correctness of the claim of the assessee that the provisions of Sec.14A(2) and (3) r.w Rule 8D could be invoked. It was observed by the Hon'ble Apex Court as under:

> "37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-sections (2) and (3) of Section 14A of the Act read with Rule SD of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable."

Also, a similar view was taken by the **Hon'ble Supreme Court** in the case of **Maxopp Investment Ltd. Vs. Commissioner of Income Tax (2018) 101 CCH 0092 (SC).**

18. Apropos the amendment in 14A vide the Finance Act, 2022, we concur with the view taken by the CIT(Appeals) who, after relying upon the judgment of the **Hon'ble High Court Delhi** in the case of **Pr. CIT Vs. Era Infrastructure (I) Ltd. (ITA No.204/2022)** had observed that the said amendment whereby the requirement of actual earning of exempt income had been dispensed with for computing disallowance u/s.14A r.w.s. 8D was applicable prospectively w.e.f. 01.04.2022 onwards, and thus, would not have any bearing in the case of the present assessee before us.

19. We, thus, in terms of our aforesaid observations, find no infirmity in the view taken by the CIT(Appeals), who had rightly vacated the disallowance

of Rs.35,18,577/- made by the A.O u/s.14A r.w.r. 8D, and uphold the same. Thus, the **Ground of appeal No.3** raised by the revenue is dismissed in terms of our aforesaid observations.

20. **Ground of appeal No.4,** being general in nature, is dismissed as not pressed.

21. As a result, the appeal of the revenue is dismissed in terms of our aforesaid observations.

Order pronounced in open court on 16th day of October, 2023.

Sd/-	Sd/-
ARUN KHODPIA	**RAVISH SOOD**
(ACCOUNTANT MEMBER)	**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 16th October, 2023
***SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (A)-1, Raipur (C.G.)
4. The Pr. CIT-1, Raipur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.