INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
BEFORE
SHRI C. N. Prasad, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, Accountant Member

ITA No. 1451/Del/2018
(Assessment Year: 2012-13)

ACIT, Circle-1(1), Gurugram (Appellant)	Vs.	DLF Cyber City Developers Ltd, 3rd Floor, B-Wing, Shopping Mall Complex, Arjun Marg, DKF City, Phase-I, Gurgaon, Haryana (Respondent)

PAN: AACCD3572H

ITA No. 3692/Del/2017
(Assessment Year: 2011-12)

DLF Cyber City Developers Ltd, 3rd Floor, B-Wing, Shopping Mall Complex, Arjun Marg, DKF City, Phase-I, Gurgaon, Haryana (Appellant)	Vs.	Addl. CIT, Range-I, Gurgaon (Respondent)

PAN: AACCD3572H

ITA No. 1399/Del/2018: AY: 2012-13
ITA No. 7407/Del/2018: AY: 2013-14
ITA No. 4864/Del/2019: AY: 2014-15
ITA No. 4865/Del/2019: AY: 2015-16

DLF Cyber City Developers Ltd, 3rd Floor, B-Wing, Shopping Mall Complex, Arjun Marg, DKF City, Phase-I, Gurgaon, Haryana (Appellant)	Vs.	DCIT, Circle-1(1), Gurugram (Respondent)

PAN: AACCD3572H

Assessee by :	Shri R. S. Singhvi, CA Shri Satyajeet Goel, CA Shri Anil Kumar, CA
Revenue by:	Shri. T. James Singson, CIT DR Shri Vivek Kumar, Upadhyay, Sr. DR
Date of Hearing	09/10/2023
Date of pronouncement	29/11/2023

O R D E R

PER M. BALAGANESH, A. M.:

1. These are the appeals filed by the assessee and the revenue for Assessment Years 2011-12 to 2015-16 arises out of the order of CIT(A)-I, Gurgaon dated 31.03.2017, 13.09.2018, 19.03.2019.

2. Identical issues are involved in all these appeals, hence, they are taken up together and disposed of by this common order for the sake of convenience.

ITA No. 3692/Del/2017 (AY 2011-12)

3. Let us take up the appeal of the assessee for AY 2011-12 in ITA No.3692/Del/2017.

4. The assessee has raised the following grounds of appeal for AY 2011-12 in ITA No. 3692/Del/2017:-

> *"1. That the impugned order passed by the Ld. CIT (A) is bad in law on facts and in the circumstances of the case.*
>
> *2. That having regard to the facts and circumstances of the case, the Ld. CIT (A) has erred in law and on facts in upholding the order of the AO that the income from eligible unit(s) in 'Industrial Park', qualifying for deduction u/s 801A(4) of the Act, is 'Profit and Gains of Business' and not 'Income from House Property', as shown and claimed by assessee, by misinterpreting various decisions relied upon by him and, at the same time, neither considering facts of the case nor distinguishing the decisions relied upon by the appellant.*
>
> *2.1 That the Ld. CIT (A) in gross violation of judicial discipline and equity has erred in not considering the ratio laid down by the Apex Court 'that where two views are possible, one favorable to assessee is to be followed.*
>
> *3. That the Ld. CIT(A) erred in law and on facts in upholding the order of the Assessing Officer in excluding Signage income amounting to ₹ 3,88,89,411 from the 'Eligible income' qualifying for deduction u/s 801A(4) of the Act.*
>
> *3.1 That the Ld CIT(A) erred in law in upholding the order of Ld. Assessing Officer in assessing Signage income under the head 'Income from Other Sources as against Income from House Property', and denying deduction u/s 24(a) of the Act.*

3.2 That the Ld CIT (A), erred in upholding the issue, without distinguishing the order of his predecessor, for the AY 2010-11, wherein signage income held to be assessable as 'Income from House Property'.

4. That the Ld. CIT(A) erred in law and on facts in upholding the income from 'Amount forfeited on Properties' (62.52,580), 'Promotional Income' (99,40,252) and 'Miscellaneous - Sale of Scrap' (46.73.191) 2,08,66,023/- as 'Income from Other Sources' as against appellant's claim regarding the same being 'Eligible income' qualifying for deduction u/s 801A (4), under the head 'Facility Management Services'.

5. That the Ld. CIT(A) erred in law in upholding Signage income' (120,12,680) and 'Amount forfeited on property' (8,60,990) aggregating 1,28,73,670/- derived from 'Non Eligible Business' of the assessee as 'Income from Other Sources' against 'Income from House Property claimed by the assessee and thereby denying deduction u/s 24(a) of the Act.

5.1 That the Ld CIT (A), erred in upholding the issue regarding 'Signage Income, to be assessed as 'Income from Other Sources', without distinguishing the order of his predecessor, for the AY 2010-11, wherein held to be assessable as 'Income from House Property'.

6. That the Ld. CIT(A) erred in law in upholding the manner of allocation of expenses to eligible and non- eligible income without any cogent reason while computing the income eligible for deduction u/s 801A(4) of the Act, at Page 62-63 of the assessment order.

7. That on the facts and in the circumstances of the case, the Ld. CIT (A) erred in law in upholding the order of Assessing Officer in bringing to tax a sum of 41,09,179 on account of 'Profit on sale of Fixed Assets' under the head 'Income from other Sources', without any cogent reason and in contravention of the provisions of Section 32(1) of the Act.

8. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law and facts in sustaining disallowance of ₹ 3,38,688 U/s 40(a) (ia) of the Income Tax Act, 1961.

9. That the appellant craves leave to add, amend, alter, change, vary, substitute or raise any additional ground of appeal if it becomes necessary to do so in the interest of justice on or before the date of hearing."

5. **Ground Nos. 1 and 9** raised by the assessee are general in nature and does not require any specific adjudication.

6. **Ground No. 7** was stated to be not pressed by the ld AR at the time of hearing. The same is reckoned as a statement made from the Bar and accordingly ground No. 7 raised by the assessee is hereby dismissed as not pressed.

7. **Ground No. 2** raised by the assessee is challenging head of income under which lease rental earned from the leasing of units in industrial park qualifying for deduction u/s 80IA(4)(iii) of the Act.

8. We have heard the rival submissions and perused the materials available on record. The assessee company was incorporated on 02.03.2006 under Part IX of the Companies Act, 1956 by converting the erstwhile firm namely DLF Cyber City Developers. As in the earlier years, the assessee company had been engaged in the business of developing, operating and maintaining real estate projects which, inter alia, included development of Special Economic Zone (SEZ) and all related infrastructure in accordance with the applicable laws and policies of the Government of India. The return for Assessment Year 2011-12 was filed by the assessee on 30.09.2011 declaring total income of Rs. 23,23,65,400/- after claiming deduction u/s 80IA of Rs. 377,32,99,956/- and deduction 80IA of Rs. 202,88,73,784/-. This return was later revised on 29.03.2012 declared total income of Rs. 23,38,41,220/- after claiming deduction u/s 80IAB at Rs. 377,32,99,956/- and deduction u/s 80IA of Rs. 202,88,73,784/-. The assessee company had ownership, leasehold rights and was in possession of land admeasuring 26.50 acres situated at Sector 24 & 25A. DLF Cyber City, DLF City, Gurgaon - Haryana. The assessee intended to develop a SEZ Project on the said land and hence it approached the Govt. of India for approval of the same. The assessee company has been granted approval as Developer by the Department of Commerce (EPZ Section), Ministry of Commerce & Industry, Government of India vide Approval Letter F 2/126/2006-EPZ dated 25.10.2006 for setting up an IT/ITES Special Economic Zone in Sector 24 & 25A, DLF Cyber City, Gurgaon, Haryana. The land was notified in the Gazette of India vide Notification No. 5.O. 580(E) dated 13.04.2007 wherein it was stated that the Central Government is satisfied that the requirements under sub-section (8) of section 3 of the Special Economic Zones Act, 2005 and other related requirements are fulfilled and the approval is granted for development and operation of the sector specific Special Economic Zone for Information

Technology (IT) and Information Technology Enabled Services (ITES) at the said place in Gurgaon in the State of Haryana. In the notification, land admeasuring 10.73 hectares was notified giving the details of Khasra Nos. etc. The authorized operations in respect of IT and ITES Special Economic Zone proposed to be developed by the assessee were approved by the Government of India, Ministry of Commerce & Industry, Department of Commerce (SEZ Section), Udyog Bhawan, New Delhi vide its letter dated 01.05.2007 which, inter alia, included office space, shopping arcades & retail space, service apartments in the processing area, business and/or convention centres, parking, rain water harvesting plant, landscaping, clinic & medical centres, wi-fi and/or wi-Max services etc. in the processing area of SEZ. The assessee company had entered into a Memorandum of Understanding (MOU) along with its addendum for Appointment of Co-Developer Agreement dated 29.01.2007 with M/s DLF Assets Pvt. Ltd. for developing, operating and maintaining the SEZ as a Co-Developer by transferring & handing over specified bare shell buildings located within the project. This MOU of Co-Developer Agreement was approved by the SEZ authorities vide their approval letter bearing Ref. No. F.2/126/2005-EPZ dated 01.05.2007. The clauses of the Addendum to the MOU for appointment of Co- Developer Agreement, inter alia, included that the assessee, being a Developer shall hand over the bare shell buildings to the Co-Developer with the time schedule and the Co-Developer shall pay the development charges to the assessee at the price fixed mutually between the assessee and the Co-Developer. The operations of the co-developer were also approved vide letter dated 19.06.2007 issued by the Govt. of India approving the development of office space as an authorised operation of the co-developer. To consolidate the understanding of Memorandum of Understanding with the Co-Developer along with its addendums, the assessee company entered into a Co-Developer Agreement dated 20.03.2008 with the Co- Developer M/s DLF Assets Pvt. Ltd. vide Co-Developer Agreement dated 20.03.2008 which also received approval from the Government of India, Ministry of Commerce & Industry. Department of

Commerce (SEZ Section), Udyog Bhawan, New Delhi vide its letter dated 01.06.2009. The Co-Developer carried out conversion of bare shell / cold shell buildings into warm shell buildings by developing / constructing / installation of various equipment's for electrification, air conditioning and interior fit-outs for plug and play facility. All the above are the authorized operations approved under the SEZ Act by the Board of Approvals, Govt. of India, Ministry of Commerce and Industry. It is through such integrated working that the assessee company is able to develop IT/ITES SEZ in compliance of SEZ Act, Rules, various approvals for generating economic activity of world class office space & infrastructure for e.g. Compound Wall, Roads with Street Lighting, Water Treatment Plant, Sewage Lines, Storm Water Drains, Water Supply Lines. Affluent treatment plant and pipelines and other infrastructure for affluent treatment, Horticulture, Green Bells, Land Scaping to units.

9. During the course of assessment proceedings, pursuant to the queries raised by the Ld. AO, the assessee also sought clarification from the Board of Approvals. The Board of Approvals have again clarified that the sale of bare shell buildings by the developer to the co-developer and lease of land is as per SEZ Act. These clarifications were also filed during the course of assessment proceedings. As per the accounting policy consistently followed by the assessee has recognized revenue from SEZ Project at ₹ 441.40 Crores and after considering the cost at ₹ 64.25 Crores, the resulting profit worked out to 377.15 Crores for the year under consideration. The assessee has accordingly claimed the deduction u/s 801AB of the Income Tax Act with respect to profit from SEZ Project, in respect of the development income relating to development of SEZ at Gurgaon. This is the fourth year of claim of deduction. The deduction has been claimed as computed by the Chartered Accountants in Audit Report in Form 10CCB.

10. There is no dispute with regard to eligibility of claim of deduction u/s 80IA(4)(iii) of the Act. It is not in dispute that the assessee has been

notified as undertaking of the Central Govt vide notification dated 28.07.2010 running an approved industrial park in terms of section 80IA(4)(iii) of the Act. It is not in dispute that the assessee has exercised its option to claim deduction u/s 80IA of the Act for AY 2011-12 by treating the same as ' initial assessment year'. The assessee earned rental income from leased building on the basis of lease agreement and offered the same to tax under the head 'income from house property' in the return of income. This was sought to be shifted to a different head by taxing it as "income from business and profession" by the lower authorities. The assessee had claimed deduction u/s 80IA of the Act for the aforesaid lease rental income even though the same is offered for tax under the head 'income from house property'. The assessee had developed office building at Sector 24,25 and 25A, DLF City, Gurgaon and some of the buildings were notified as industrial park under Industrial park Scheme, 2008 vide notification dated 28.07.2010. The said office buildings were leased out to tenants in preceding years on the basis of relevant lease agreement. The assessee earned lease rental income and maintenance income from such buildings notified as industrial park and claimed deduction u/s 80IA of the Act in respect of both income derived from notified industrial park. The assessee pleaded in accordance with the past history and in line with principle of consistency, the lease rental income has been declared under the head "income from House property" and maintenance and service income was offered to tax under the head "profit or gain from business and profession". It is worth highlighting that the buildings which were notified as Industrial park were pre-existing buildings on the date of notification and the assessee was earning lease income from these buildings right from AY 2006-07 onwards. The ld. AO has accepted the taxation of lease rental under the head 'Income from House Property' in the preceding years. Further, in the year under consideration also, the lease income from non-notified buildings was considered under the head 'Income from House property'. The factual position to this effect has duly been acknowledged by the ld. AO at Page 47 Para 8.4 of his assessment order.

11. The ld. AO classified the rental income and treated the rental income from notified buildings under the head "Profits or gains from business and profession' as against "income from house property" thereby resulting in adjustment of claim of deduction u/s 80IA of the Act. The ld AR submitted that the ld AO had accepted the taxation of lease income earned from non-SEZ buildings under the head "income from house property" and dispute is only with reference to lease income from SEZ buildings as notified u/s 80IA of the Act. The ld AR submitted that the identity, nature and character of SEZ as well as non-SEZ buildings are same and that the lease agreements in respect of these buildings are continuing from preceding years. Due deduction of tax at source was made u/s 194I of the Act and reflected in Form 26AS of the assessee. The ld. AR submitted that nature and character of lease rental income or terms of the lease agreements have not been disputed by the ld. AO and the adjustment made by the ld. AO is merely on the technical ground that deduction u/s 80IA of the Act is only available in respect of income taxable under the head "profit or gain of business and profession" and as such the lease rental income earned by the assessee is required to be taxed under the head. The ld. AR submitted that the reasoning of the ld. AO is wholly misconceived and against the scheme of the Act. It may be appreciated that the income earned by the assessee is first required to be assessed under the defined heads of income in terms of section 14 of the Act and only thereafter, the benefit of deduction as specified under Chapter VI-A of the Act is to be allowed. Moreover, the rental income from the very same buildings having been assessed and accepted under the head 'Income from House Property' in the past, the mere fact that in the year under consideration, the assessee has claimed deduction u/s 80IA of the Act in respect of notified buildings, there is absolutely no justification or basis for changing the head of income and same is self-contradictory and inconsistent. It is worthwhile to clarify that the observation of the ld. AO that the usage of terms 'profits and gains derived from such business' in section 80IA(1) means that eligible income must be assessable under the 'Profits or gains of Business and Profession'

is irrational and misconceived as deduction is in respect of income from notified project and not head specific. It may be appreciated that that the benefit of deduction u/s 801A of the Act is available in respect of income derived from industrial park which may be assessable under any head of income and as such the interpretation of the ld. AO is highly restrictive and contrary to the purpose and spirit of incentive provision. In fact, the bare language of the section 80IA of the Act does not even talk about any specific head of income and the entire emphasis is that the income must be derived from development, operation or maintenance of industrial park.

12. In any case, we find that the very same issue of claiming deduction u/s 80IA of the Act for the lease rental income assessable under the head "income from house property" came up for adjudication before the coordinate bench of this Tribunal in the group concern of the assessee in ACIT vs DLF Assets Ltd in ITA No. 8524, 8525, 8526/Del/2019 for AYs 2013-14, 2014-15, 2015-16 dated 05.05.2022. The relevant operative portion of the said order is reproduced as under:-

> *"11. We have heard the rival contentions, gone through the impugned orders and the material available on record. We find that only dispute in appeal is, whether the assessment of lease income from commercial space in SEZ, should be taxed under the head "Income from house property or as "business income". In so far as the same is liable for deduction u/s 80IAB is not a dispute as admittedly it is an approved activity under SEZ Act and also approved SEZ project. The only dispute which has been raised by the AO is that the lease income should be considered under the head "profits & gains from business & profession" and not as "Income from House Property". It is also not in dispute that this is the second year and in first year, this issue had come up for consideration in AY 2012-13 (supra) where the Tribunal has accepted the claim of the assessee. Not only that, even the Department in AYs 2017-18 & 2018-19 vide assessment order passed u/s 143(3) of the Act dated 12.05.2021 & 02.11.2021 has accepted the claim of the assessee. In the light of these background and facts, we are unable to appreciate the request of the Id. CIT DR. When the matter had come up for hearing on 09.03.2022, we have specifically asked the Id. CIT DR to go through the order whether there is any material change and the facts or law than the earlier years or there is any different in the present assessment order. However, even on the next date of hearing, no material fact or changes have been brought to our notice instead of stating as above. We do not find that there is any requirement for case record to see what were the documents submitted under SEZ Rules and SEZ Act, because it is neither the case of AO nor the case of ld. CIT (A) that assessee is not eligible or its activities are not falling under the SEZ Act. In fact, the AO has accepted this fact that activity*

of the assessee squarely falls within the activities approved by the competent authority and Board of Approval under the SEZ Act which has overriding effect in any other Act or even in Income-tax Act. Therefore, in the open court itself, we had rejected the contentions of the ld. CIT DR and we have decided to proceed the issue on merits, as we find, there is no material change at all from the earlier which is discernible from the assessment order or ld. CIT (A) order because AO has held repeatedly had mentioned the same reasoning given in the assessment order for AY 2012-13 and ld. CIT (A) has followed the order of his predecessor for AY 2012-13 which has now been followed and upheld by the Tribunal which we are bound by.

12. Now let us examine the issue as raised in grounds of appeal. First of all, the provisions of u/s 80IA (b) reads as under:-

> *"80-IAB. (1) Where the gross total income of an assessee, being a Developer, includes any profits and gains derived by an undertaking or an enterprise from any business of developing a Special Economic Zone, notified on or after the 1st day of April, 2005 under the Special Economic Zones Act, 2005, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to one hundred per cent of the profits and gains derived from such business for ten consecutive assessment years:*

13. Thus, the said provision provides deduction in respect of profits & gains derived from an undertaking from any business of SEZ. Here, phrase "includes where the gross total income of assessee being a developer includes any profits & gains derived by any undertaking or an enterprise from any business of developing a Special Economic Zone.....", has to be seen in the context, whether the income which has been derived is from the approved activities under the SEZ Act. The term "business of development economic zone" has to be understood in the context of authorized operation as approved by Board of Approval under the SEZ Act keeping in mind the overriding effect of SEZ Act on Income Tax Act as per section 51 of that Act. In such a situation, what is relevant is the claim of deduction and not the head of income, because the only requirement is that income must be derived from business of developing of SEZ which may fall under any head of income.

15. In this regard, we have to see earning of lease rentals from such activities otherwise fall under the head "Income from House Property" For that, we will refer to certain legal principles as laid down by Hon'ble Supreme Court (as taken from head notes) as under :-

> *a. Raj Dadarkar & Associates v. ACIT [2017] 394 ITR 592(SC)*
>
> *Section 22, read with sections 27 and 28(i) of the Income-tax Act, 1961-Income from house property - Chargeable as (Letting of shops)- Assessee acquired leasehold rights in a property from MCGB - It constructed various shops and stalls on said property and gave same to various persons on sub-licensing basis - Income generated from sub-licensing was claimed as business income Assessing Officer took a view that since assessee had acquired leasehold right in land for more than 12 years, it was to be regarded as 'deemed owner of*

premises by virtue of section 27(iiib) - Accordingly, income earned from letting out shops and stalls was taxed under head 'income from house property'- Tribunal as well as High Court upheld order of Assessing Officer Whether since assessee had not established that it was engaged in any systematic or organized activity of providing service to occupiers of shops/s ails, ere act a object clause of partnership deed mentioned that business of assessee was to take premises on rent and to sub-let same, was not sufficient to conclude that income in question was taxable as business income Held, yes Whether, therefore, impugned order passed by authorities below was to be confirmed-Held, yes.

b. Shambhu Investment (P.) ltd. v. CIT [2003] 263 ITR 143 (SC)

Section 22, read with section 263, of the Income-tax Act, 1961 Income from house property Chargeable as - Assessment treating income derived by assessee-company from letting out office premises along with certain facilities and services to various persons as business income, was held by Commissioner under section 263 as erroneous and prejudicial to interests of revenue and was set aside with direction to Assessing Officer to assess said income as property income - Prime object of assessee under said agreement was to let out portion of said property to various occupants by giving them additional right of using furniture and fixtures and other common facilities for which rent was being paid month by month in addition to security free advance covering entire cost of said immovable property - Whether it would be wrong to say that assessee was exploiting property for its commercial business activities and such business activities were primary motto and letting out property was secondary one-Held, yes - Whether from agreement between two parties, it was clear that primary object was to let out portion of said property with additional right of using furniture and fixtures and other common facilities for which rent was being charged from month to month and, therefore, income derived from said property was income from property which should be assessed as such - Held, yes

c. East India Housing and Land Development Trust ltd. v. CIT [1961] 42 ITR 49 (SC)

Section 22 of the Income-tax Act, 1961 [corresponding to section 9 of the Indian Income-tax Act, 1922] Income from house property :- Chargeable as - Assessment year 1953-54 - Whether income derived by assessee company from tenants of shops and stalls was income received from property falling under section 9 of 1922 Act and character of that income could not be altered merely because assessee company had been formed with object of setting up and developing landed properties and markets - Held, yes.

15. Thus, income earned from lease rentals for renting out a property per se, ostensibly falls under the head 'income from house property', unless it is shown that there was some systematic activity falling into the nature of business. Whence, the lease rental income of the assessee has been accepted to be assessed under the head 'income from house property' in AY

2012-13 and again in AYs 2017-18 & 2018-19, then we do not find any reason as to why the income from the same activity is not to be classified under the head 'income from house property' in these years.

16. Hon'ble Supreme Court in the case of CIT-I vs. Reliance Energy Ltd. reported in (2022) 441 ITR 346 in the context of section 801A, held that the scope of section 801A (5) is limited to determine the quantum of deduction under sub-section (1) of section 801A by treating eligible business for 'only source of income' and same cannot be pressed into service for reading a limitation of deduction under subsection (1) only to 'business income'. The relevant extract of the judgment of Hon'ble Apex Court reads as under :-

> *"9. The controversy in this case pertains to the deduction under Section 80-IA of the Act being allowed to the extent of 'business income' only. The claim of the Assessee that deduction under Section 80-IA should be allowed to the extent of 'gross total income' was rejected by the Assessing Officer.*
>
> *.....A plain reading of Section 80AB of the Act shows that the provision pertains to determination of the quantum of deductible income in the 'gross total income. Section 80AB cannot be read to be curtailing the width of Section 80-IA. It is relevant to take note of Section 80A(1) which stipulates that in computation of the total income' of an assessee, deductions specified in Section 80C to Section 80U of the Act shall be allowed from his 'gross total income'. Sub- section (2) of Section 80A of the Act provides that the aggregate amount of the deductions under Chapter VI-A shall not exceed the 'gross total income' of the Assessee. We are in agreement with the Appellate Authority that Section 80AB of the Act which deals with determination of deductions under Part C of Chapter VI-A is with respect only to computation of deduction on the basis of 'net income'.*
>
> *12. The import of Section 80-1A is that the total income' of an assessee is computed by taking into account the allowable deduction of the profits and gains derived from the 'eligible business'. With respect to the facts of this Appeal, there is no dispute that the deduction quantified under Section 80-IA is Rs.492,78,60,973/-. To make it clear, the said amount represents the net profit made by the Assessee from the 'eligible business' covered under sub-section (4), i.e., from the Assessee's business unit involved in generation of power. The claim of the Assessee is that in computing its 'total income', deductions available to it have to be set-off against the 'gross total income', while the Revenue contends that it is only the 'business income' which has to be taken into account for the purpose of setting- off the deductions under Sections 80-IA and 80-IB of the Act. To illustrate, the 'gross total income' of the Assessee for the assessment year 2002-03 is less than the quantum of deduction determined under Section 80- IA of the Act. The Assessee contends that income from all other heads including 'income from other sources', in addition to 'business income', have to be taken into account for the purpose of allowing the deductions available to the Assessee, subject to the ceiling of 'gross total income'. The Appellate Authority was of the view that there is no limitation on*

deduction admissible under Section 80-IA of the Act to income under the head 'business' only, with which we agree.

13. The other contention of the Revenue is that sub-section (5) of Section refers to computation of quantum of deduction being limited from 'eligible business' by taking it as the only source of income. It is contended that the language of sub-section (5) makes it clear that deduction contemplated in sub-section (1) is only with respect to the income from 'eligible business' which indicates that there is a cap in sub-section (1) that the deduction cannot exceed the 'business income'. On the other hand, it is the case of the Assessee that sub-section (5) pertains only to determination of the quantum of deduction under sub-section (1) by treating the 'eligible business' as the only source of income. It was submitted by Mr. Vohra, learned Senior Counsel, that the final computation of deduction under Section 80-IA for the assessment year 2002-03 as accepted by the Assessing Officer, was arrived at by taking into account the profits from the 'eligible business' as the 'only source of income'. He submitted that, however, sub-section (5) is a step antecedent to the treatment to be given to the deduction under subsection (1) and is not concerned with the extent to which the computed deduction be allowed. To explain the interplay between sub-section (5) and sub-section (1) of Section 80-IA, it will be useful to refer to the facts of this Appeal. The amount of deduction from the 'eligible business' computed under Section 80-IA for the assessment year 2002-03 is Rs. 492,78,60,973/-. There is no dispute that the said amount represents income from the 'eligible business' under Section 80-IA and is the only source of income for the purposes of computing deduction under Section 80-IA. The question that arises further with reference to allowing the deduction so computed to arrive at the total income' of the Assessee cannot be determined by resorting to interpretation of sub- section (5).

15. In the case before us, there is no discussion about Section 80-1A(5) by the Appellate Authority, nor the Tribunal and the High Court. However, we have considered the submissions on behalf of the Revenue as it has a bearing on the interpretation of sub-section (1) of Section 80-IA of the Act. We hold that the scope of subsection (5) of Section 80- IA of the Act is limited to determination of quantum of deduction under sub-section (1) of Section 80-IA of the Act by treating 'eligible business' as the 'only source of income. Sub-section (5) cannot be pressed into service for reading a limitation of the deduction under sub-section (1) only to 'business income'. An attempt was made by the learned Senior Counsel for the Revenue to rely on the phrase 'derived... from' in Section 80-1A (1) of the Act in respect of his submission that the intention of the legislature was to give the narrowest possible construction to deduction admissible under this sub-section. It is not necessary for us to deal with this submission in view of the findings recorded above. For the aforementioned reasons, the Appeal is dismissed qua the issue of the extent of deduction under Section 80-IA of the Act."

17. Thus, the ratio and principle of Hon'ble Supreme Court is that, while computing the deduction, what is required to be seen is that the only source

of income derived from eligible business, is eligible for deduction and same cannot be limited to only business income. Here in this case also, there is no dispute that the income which has been derived by the assessee is derived from approved activity under SEZ which is the only source of income for which the deduction u/s 80IA(b) is to be allowed. It is immaterial that whether the income derived has been shown from house property or business income or any other head. Thus, we hold that income derived from approved activity from the SEZ is liable to be allowed as deduction u/s 801A.

18. Otherwise, this issue is covered by the order of earlier year of the Tribunal. The relevant observation of the Tribunal in AY 2012-13 is reproduced as under :-

> *"13. In our understanding, the scheme of SEZ is governed by the provision of law contained under the SEZ 2005. Section 51 of the SEZ Act 2005 provides that the SEZ Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. In our considered opinion developing SEZ by itself is the business contemplated u/s. 80 IAB of the Act and the SEZ itself provides that the lease rental income generated in the hands of a developer engaged in setting up of the SEZ, is the profits and gains derived from the business of developing a SEZ*

19. In addition, the assessee case is fully supported from the decision of Bench of ITAT in case of ACIT vs. Lulu Tech Park P. Ltd. (ITA No.593/Mds/16 dated 01.05.2017) and the relevant observations are reproduced as under :-

> *"The assessee claims that irrespective of the head of income, the (house property) lease rental income shall continue to be eligible for deduction under section 80-IAB. The said section, in its relevant part, reads as under:....*
>
> *The assessee is without doubt a Developer of a SEZ, having been in fact allowed deduction u/s.80-IAB on it's other income/s, as from service agreements, chargeable u/s.2B. That the said income is assessable as business income, and only rightly so, inasmuch as the source thereof is the commercial activity of providing a range of services, is besides the point. We have in fact found the said services as only enabling services, i.e., enabling the enjoyment and the user of the house property, developed by the assessee as a developer thereof a term defined under SEZ Act, 2005. By letting the built-up space, the assessee is only turning into account it's investment in the house property, being a building and land appurtenant thereto. It is, in fact, this the construction of a building suitable for the firms operating in the IT sector, that qualifies it as a developer of an Info-park, approved as a SEZ. That the said activity, i.e. developing real estate and leasing it, which is, broadly speaking, and in common parlance, only a business, is not regarded as so for the purpose of assessment of income there-from, being derived from a house property, a defined source of income for which a specific head of income is provided under the Act, is another matter. This is so even where it is carried in an*

organized manner, ie., as a business, as in the present case. It shall, however, not cease, for that reason, to be profits and gains derived from the activity of developing a SEZ. The word 'business' - even otherwise a word of wide and indefinite import, as occurring in section 80-IAB(1), is to be, accordingly, construed in a broad rather than a strict sense, as conveying the gamut of activities, including activities subservient and incidental to developing a SEZ and turning it into account. Now, surely, leasing of house property, inasmuch as the lessees (who are to be, or presumably so, in infotech business) would be able to undertake their businesses only on the developed property being made available to them, could not therefore but be regarded as the principal activity yielding income from the development of a SEZ. In fact, even the income (to the assessee) from providing ancillary and maintenance services to these businesses arises or stands to arise only on account of, or by virtue of, their being lessees. The lease rental income, on the lease of the house property thereto, would thus, in our view, notwithstanding the use of the words 'profits and gains' and 'business' in section 80-IAB(1), qualify to be eligible for deduction there-under. That is, the lease rental is within the contemplation of the profits derived by a developer of a SEZ from the 'business' of developing it, eligible for deduction u/s. 80-IAB. It is in fact this that forms the basis of the decisions in Coimbatore Hitech Infrastructure (P.) Ltd. (supra) and Global Tech Park Pvt. Ltd. (supra). The head of income under which the said income is assessable, which is on the basis of the source from amongst the specified sources under the Act, most appropriate for the said income, so that it is not assessable as business income but as income from house property, would not be a limiting or debilitating factor. We decide accordingly, and the assessee succeeds qua it's alternate ground, i.e., in principle."

20. Once similar facts are permeating in this year, we do not find any reason to deviate from this finding and moreover the lease rental incomes received by the assessee are otherwise liable to be taxed under the head 'income from house property'. The statute or the provisions contained u/s 80IAB does not make any distinction that if the income has been derived from approved activities in SEZ, the same has to be classified under a particular head and then only deduction would be allowed, albeit it only says that where the gross total income of the assessee, being a developer, includes any profits and gains derived by an undertaking from any business of developing a SEZ, therefore, income has been derived from any activities in the SEZ duly approved by the Board of Approval under the SEZ Act is allowable for deduction u/s 80IAB. Accordingly, the order of the Id. CIT (A) is confirmed and the Revenue's appeal for AY 2013- 14 is dismissed."

13. It is not in dispute that the assessee had furnished the Chartered Accountant Certificates in Form 10CCB for claiming deduction u/s 80IA of the Act and that these certificates are enclosed together with detailed workings thereon in pages 66 to 76 of the paper book. It is also pertinent to note that the similar stand taken by the assessee in AY 2017-18 was

accepted by the ld. AO u/s 143(3) r.w.s. 143(3A) & 143(3B) of the Act dated 30.03.2021. In fact similar query was raised by the ld AO during the course of assessment proceedings for AY 2017-18 and assessee gave a detailed reply and after considering the said replies, the ld AO had accepted the stand of the assessee. The evidence in this regard is enclosed in pages 99 to 127 of the paper book. Similarly, the claim of the assessee for AYs 2018-19 and 2020-21 were accepted by the ld AO in the scrutiny proceedings u/s 143(3) of the Act. For AY 2019-20, the case of the assessee was not selected for scrutiny. Hence, respectfully following the aforesaid decision of this tribunal and also the subsequent stand of the ld AO in the case of the assessee and also the decision of the ld AO in the immediately preceding year i.e. 2010-11, the ground No. 2 raised by the assessee is hereby allowed.

14. **Ground No. 3** is challenging the action of the ld CIT(A) for excluding signage income amounting to Rs. 3,88,89,411/- from the eligible income qualifying for deduction u/s 80IA of the Act.

15. We have heard the rival submissions and perused the materials available on record. The assessee has derived income from the tenants occupying the notified industrial park and the same duly forms part of the income taxable under the head "Income from House property". The ld AO sought to treat the said signage income to be in the nature of "income from other sources" and as such not eligible for claim of deduction u/s 80IA of the Act, which action was upheld by the ld CIT(A). The signage income is derived from tenants occupying the notified industrial park and thereby partake the same character of the lease rental income so as to make it taxable under the head 'Income from house property'. We find that this issue is squarely covered by the decision of this tribunal in assessee's own case for AY 2010-11 in ITA No. 4742/Del/2015 dated 02.01.2019, wherein, it was held as under:-

"10. AO treated the signage income received by the assessee company from tenants as 'income from other sources' rather than 'income from house property' and thereby made disallowance of deduction u/s 24(a) of the Act to the tune of Rs. 1,13,71,259/-. It is the case of the assessee that signage income of Rs.3,79,04,198/- has been received from tenants to whom the buildings have been given on rent and not to any outside parties. The lessee was allowed to put signage on the location where their offices are situated which are not advertisement hoardings and the assessee company has not received signage income from any outside party other than the tenants for putting the signage in the company's buildings. Assessee company also relied upon Memorandum of Understanding dated 21.05.2007 entered into between the assessee company and one of the tenants, M/s. Global Space Pvt. Ltd.. The ld. CIT (A) extracted the relevant portion of MoU in the impugned order and the same is reproduced for ready perusal as under :-

> *"Subject to all local laws applicable, Lessor shall through its architect identify the locations and provide space for signage at the atrium/floor occupied by the LESSEE, as approved by the architect and the LESSEE will the allowed to put signage on such location. All taxes including service tax, duties, rates, cesses, costs and charges relating to the signage payable to the concerned authorities shall be borne and paid by LESSEE."*

11. The ld. CIT (A) also relied upon the decision rendered by the Delhi Bench of the Tribunal in case cited as Manpreet Singh vs. ITO (2015) 53 taxmann.com 244 (ITAT Delhi) wherein it was held that, "the income earned by the assessee for renting of terrace for installation of mobile antenna was taxable as 'income from house property' and as such deduction w/s 24(a) @ 30% of the annual value was allowable."

12. Keeping in view the aforesaid facts and circumstances of the case, we are of the considered view that when it is not in dispute that the assessee company has derived the signage income from the tenants from the space owned by the assessee company and not from the outsiders as it allowed tenants to use the space at the atrium/ different floors for putting signage, the signage income has to be treated as 'income from house property' and as such is eligible for deduction u/s 24(a) of the Act @ 30% of such income. So, finding no illegality or perversity in the findings returned by ld. CIT (A) on this issue, this ground is determined against the Revenue."

16. It is not in dispute that the signage income is derived from the tenants occupying the building forming part of the notified industrial park. Hence, the same becomes inextricable connected with building connected with the notified industrial park and partakes the same character of lease rental income derived from the tenants thereon. In view of the aforesaid

observations and respectfully following the judicial precedent relied upon herein above, the ground no. 3 raised by the assessee is hereby allowed.

17. **Ground No. 4** raised by the assessee is challenging the action of the ld CIT(A) in denying the claim of deduction u/s 80IA of the Act in respect of

a. amount forfeited on properties- Rs. 62,52,580/-

b. promotion income Rs. 99,40,252/-

c. Miscellaneous-sale of scrap- Rs. 46,73,191/-

by treating the aforesaid income as 'Income from other sources' as against the assessee's claim being eligible income eligible for deduction u/s 80IA of the Act under the head "facilities management services".

18. We have heard the rival submissions and perused the materials available on record. The ld AR submitted before us that the aforesaid incomes are directly related to and derived from notified industrial park. For the purpose of ascertaining whether the said income are directly related to and derived from industrial park, it would be relevant to understand the nature of receipts in respect of each of the aforesaid items as under:-

"a. Amount forfeited on properties -

It represents the amount received from lessees in terms of the Memorandum of Understanding, whereby the lessee have failed to execute the Lease Deeds / incidental formalities within the stipulated period in terms of the Memorandum of Understanding executed between the parties prior to letting out of premises or the premise(s) is/are vacated before the end of the agreed lease period. Accordingly, a sum of Rs. 62,52,580 has been shown as amount forfeited for any of the two above mentioned reasons. Since, the amount forfeited on property is directly related to and connected with leasing of the properties, i.e. rental income, the same is squarely covered and would qualify for. deduction u/s 801A (4) (iii) of the Act. In this context, the bonafide of the appellant needs to be appreciated from the fact that the total income on account of "amount forfeited on properties" aggregates to Rs. 71,13,570 but the appellant has only claimed deduction w/s 801A to the extent of Rs. 62,52,580 as the balance amount Rs. 8,60,990 has been included in the other income not qualifying for deduction u/s 801A of the Act.

b. Promotional Income *-*

The company permits entities, other than leased Industrial and Commercial Units to promote products/services etc. in the common facility area and charges them for the same. In other words, it is indirectly rental income charged for using the common facility area, ie, part of 15% residual area, referred to above. In this context, it needs to be noted and appreciated that of the total income earned Rs. 1,15,20,787, only income amounting to Rs. 99,40,252, has been considered attributable to Facility Management Services income qualifying for deduction w/s 801A and the balance amount Rs. 15,80,535 has been shown as Other Business Income. Therefore, in terms of the Industrial Park Scheme, the income is nothing else but being derived from the eligible activity qualifying for deduction u/s 801A (4) (iii) of the I.T. Act, 1961.

c. Miscellaneous Income Sale of Scrap *-*

A sum of Rs. 46,73,191 has been shown as sale of scrap under the head Facility Management and Services Income. In this connection, it is submitted that the total income on account of sale of scrap aggregates to Rs. 99,69,217 comprising attributable to business income qualifying for deduction u/s 801A of the Act Rs. 46,73,191 and other business income Rs. 52,96,026. While carrying out maintenance activity, various materials in the shape of wire, hardware items, sanitary items, etc. are replaced and / or repaired and in the process the wear and tear or the unusable items removed are sold as scrap and income generated there from has been offered to tax as allocable / attributable to the activities referred to herein above. Accordingly, the income generated is derived from the maintenance activities carried out at the buildings i.e. both eligible units qualifying for deduction u/s 801A of the Act and other buildings."

19. In our considered opinion, the aforesaid incomes have direct nexus with leasing and maintenance of the industrial park and must be construed as income derived from business and developing, operating or maintaining the industrial park which is notified by the Central Govt. We find that the lower authorities had sought to exclude the same on technical ground that such income are taxable under the head "Income from other sources" and as such not eligible for deduction u/s 80IA of the Act. This aspect has already been addressed vide ground No. 2 (supra) wherein, it has been held that for the purpose of claim of deduction u/s 80IA of the Act, the income must be derived from such notified industrial park irrespective of head of income under which it had been taxed. Accordingly, we have no hesitation in directing the ld AO to grant deduction u/s 80IA of

the Act in respect of the aforesaid three items totaling to Rs. 2,08,66,023/-. Accordingly, ground No. 4 raised by the assessee is allowed.

20. **Ground No. 5** raised by the assessee is challenging the action of the ld CIT(A) in upholding the signage income of Rs. 1,20,12,680/- and amount forfeited on property Rs. 8,60,990/- aggregating Rs. 1,28,73,670/- derived from non eligible business of the assessee as "Income from other sources" as against 'Income from house property' claimed by the assessee and thereby denying deduction u/s 24(a) of the Act.

21. We have heard the rival submissions and perused the materials available on record. We find that this issue is no longer res intgra in view of the decision of this tribunal in assessee's own case for AY 2009-10 in ITA No. 6124/Del/2016 dated 21.06.2019, wherein, it was held as under:-

> *"5.0 We have considered the rival submissions and gone through the material placed on record. The limited issue in hand is regarding head of income under which the signage income is taxable. We find that identical issue has been decided by the Co- ordinate bench of ITAT in ITA No. 4742/D/15 vide order dated 02.01.2019 in asessee's own case relating to AY 2010-11 wherein it was held that signage derived by the assessee is assessable under the head 'Income from House Property'. The relevant finding is as under:*
>
> > *"10. AO treated the signage income received by the assessee company from tenants income from other sources' rather than income from house property and thereby made disallowance of deduction u/s 24(a) of the Act to the tune of Rs.1,13,71,259/-. It is the case of the assessee that signage income of Rs. 3,79,04,198/- has been received from tenants to whom the buildings have been given on rent and not to any outside parties. The lessee was allowed to put signage on the location where their offices are situated which are not advertisement hoardings and the assessee company has not received signage income from any outside party other than the tenants for putting the signage in the company's buildings. Assessee company also relied upon Memorandum of Understanding dated 21.05.2007 entered into between the assessee company and one of the tenants, M/s. Global Space Pvt. Ltd.. The Id. CIT (A) extracted the relevant portion of MoU in the impugned order and the same is reproduced for ready perusal as under :-*
> >
> > > *"Subject to all local laws applicable, Lessor shall through its architect identify the locations and provide space for signage at*

> *the atrium/floor occupied by the LESSEE, as approved by the architect and the LESSEE will the allowed to put signage on such location. All taxes including service tax, duties, rates, cesses, costs and charges relating to the signage to the concerned authorities shall be borne and paid by LESSEE."*
>
> *11. The ld. CIT (A) also relied upon the decision rendered by the Delhi Bench of Tribunal in case cited as Manpreet Singh us. ITO (2015) 53 taxmann.com 244 (ITAT Delhi) wherein it was held that, "the income earned by the assessee for renting of terrace for installation of mobile antenna was taxable as 'income from house property' and as such deduction u/s 24(a) @ 30% of the annual value was allowable."*
>
> *12. Keeping in view the aforesaid facts and circumstances of the case, we are of the considered view that when it is not in dispute that the assessee company has derived the signage income from the tenants from the space owned by the assessee and not from the outsiders as it allowed tenants to use the space at the atrium/ different floors for putting signage, the signage income has to be treated as income from house property' and as such is eligible for deduction u/s /s 24(a) of the Act @ 30% of such income. So, finding no illegality or perversity in the findings returned by ld. CIT (A) on this issue, this ground is determined against the Revenue."*
>
> *5.1 We find ourselves in agreement with the finding recorded by ITAT in AY 2010-11 and respectfully following the same, we hereby accept the claim of the assessee and direct the assessing officer to allow the benefit of statutory deduction of Rs. 4,50,000/- u/s 24 in confirmation with order of ITAT for AY 2010-11. Accordingly, this Ground of appeal is allowed."*

22. Similarly, in AY 2010-11 this Tribunal in ITA No. 4742/Del/2015 dated 02.01.2019 had taken identical view. Respectfully following the same, we allow ground No. 5 raised by the assessee.

23. **Ground No. 6** raised by the assessee is challenging the action of the ld. AO in allocation of expenses to eligible and non-eligible income without any cogent reason while computing the income eligible for deduction u/s 80IA of the Act.

24. We have heard the rival submissions and perused the materials available on record. It is not in dispute that the assessee has placed on record the audit certificate in Form 10CCB for supporting the claim of deduction u/s 80IA of the Act together with the detailed workings thereon.

The direct expenses incurred have been allocated between the eligible and non eligible units on actual basis and indirect expenses have been apportioned between these units in the ratio of turnover. The ld AO in his order had not given any rational basis for re-allocating the expenses and simply proceeded to reduce the claim of deduction u/s 80IA of the Act thereon. This action of the ld AO was also upheld by the ld CIT(A) without any basis and by ignoring the fact that the audit certificate containing the detailed workings of claim of deduction u/s 80IA of the Act have already been filed by the assessee before the ld AO. In any case, we find that the issue would be consequential in nature pursuant to the decision given by us in the aforesaid grounds. Accordingly, we direct the ld AO to accept the basis of allocation and apportionment of expenses as given by the assessee. Accordingly, ground No. 6 raised by the assessee is allowed.

25. **Ground No. 8** raised by the assessee is challenging the disallowance of Rs. 3,38,688/- u/s 40(a)(i) of the Act.

26. We have heard the rival submissions and perused the materials available on record. The ld AO observed that the assessee had made foreign remittance without deducting tax at source u/s 195 of the Act tabulated as under:-

Particulars	Country	Amount	TDS deducted
Renewal of Fee	USA	Rs. 22,168/-	No
Payment towards corenet	USA	Rs. 316,470/-	No
Total		Rs. 3,38,638/-	

27. The contention of the assessee is that the said payments were made towards sponsorship renewal fee to Coronet Global Inc (USA Based company) and that the said party does not have Permanent Establishment in India. Accordingly, as per Article 7 of India-US treaty, the payment made

by the assessee would be construed only as business profits in the hands of the recipient and in the absence of existence of any PE in India, the same would not be taxable in India. The lower authorities without considering this submission and without countering this fact stated by the assessee had summarily rejected the plea and proceeded to make disallowance u/s 40(a)(i) of the Act. We find that the assessee had duly placed on record the audit certificate in Form 15CB together with the invoices raised by the payee in pages 210 to 217 of the paper book from where it has been categorically stated by the auditor that the payments made by the assessee constitutes business profits in terms of Article 7 of the Indo-US DTAA and in view of the fact that the payee does not have a PE in India, the assessee is not bound to deduct tax at source while making the said payment. Further, we find that the sponsorship fee paid by the assessee is related to the events carried out outside India. Further, the payment of membership fee to overseas organization and the sponsorship fee cannot be said to accrue or earned in India in the absence of business connection with PE in India. This fact has not been controverted by the revenue before us with cogent evidences. Accordingly, we hold that the payments made by the assessee are not liable for deduction of tax at source and consequentially, the disallowance made u/s 40(a)(i) of the Act is hereby directed to be deleted.

28. **In the result, the appeal of the assessee in ITA No. 3692/Del/2017 for AY 2011-12 is partly allowed.**

ITA No. 1451/Del/2018 AY 2012-13 (Revenue's appeal)

29. The revenue has raised the following grounds of appeal in ITA No. 1451/Del/2018 for AY 2012-13:-

> *"1. Ld. CIT(A) erred by holding that the AO had taken incorrect figures for estimating the budgeted cost of construction of the project whereas the figures taken by the Assessing Officer are correct with regard to POCM method applied by the assessee."*

30. The only issue to be decided in this appeal is with regard to workings of budgeted cost of construction on estimation basis for the construction project under Percentage Of Completion Method (POCM).

31. We have heard the rival submissions and perused the materials available on record. The assessee recognized the revenue from the SEZ project by adopting the Percentage Of Completion Method (POCM) upto the end of the previous year. The total square feet area that has been constructed and handed over to DAL, the revenue has been recognized by the assessee by showing total budgeted development income from the entire project from the sale of 36.49 lakhs square feet area for Rs. 4053.31 crores and total budgeted cost has been reflected at Rs. 620.38 crores for the entire project as on 31.03.2011 including the construction cost, project management consultancy and budgeted interest with over heads. The assessee has taken average cost to Rs. 1635.77 square feet. The budgeted cost has been further revised to Rs. 725.49 crores as on 31.03.2012. In the revised budgeted cost, the assessee has revised average cost of construction including project management consultancy to Rs 1895.36 per square feet which translates into total project cost of Rs. 724.90 crores. Therefore, the assessee has revised the cost of construction in Financial Year 2011-12 from Rs. 1635.77 per square feet to Rs. 1895.36 per square feet in respect of total area including the area of 14.56 lakh square feet which has been sold/ transferred and possession given to DAL. The assessee has incurred total project expenses of Rs. 454.90 crores as on 31.03.2011 as compared to Rs. 50.59 crores has been incurred in Financial year 2011-12 on the remaining uncompleted blocks. On this basis, the assessee has reduced its percentage of completion from 73.33 % as on 31.03.2011 to 70.34% as on 31.03.2012. Accordingly, the assessee has computed the revenue of the project for Rs. 2912.17 crores as on 31.03.2011 and revenue of Rs. 3968.63 crores as on 31.03.2012 (70.34% of Rs. 4053.31 crores). On this basis, it has claimed de-recognition of

revenue of Rs. 121.14 crores for FY 2011-12 from development of SEZ activities as it has stated that it has shown excess revenue of Rs. 4118.20 crores whereas it should have been Rs. 3968.63 till 31.03.2012. The assessee filed comparative POCM chart from FYs 2008-09 to 2013-14 which is tabulated at pages 38-39 of the order of ld CIT(A). The ld AO computed margin for the year at Rs. 101 crores after reworking recognition of revenue together with the budgeted cost thereon in a separate chart tabulated at pages 40 to 41 of the order of the ld CIT(A). Since, the assessee had derecognized revenue of Rs. 175.83 crores, the ld AO disallowed the excess claim of Rs. 74.83 crores in the assessment.

32. The assessee contended before the ld CIT(A) that computation of percentage of completion and revenue recognition done by the ld AO is based on incorrect figures taken in the assessment order. The assessee pointed out the incorrect figures taken by the ld AO before the ld CIT(A) which was accepted by the ld CIT(A). This factual finding given by the ld CIT(A) is not controverted by the revenue before us. The various factual mistakes committed by the ld AO are listed out at pages 45-46 of the order of the ld CIT(A). Pursuant to the same, the ld CIT(A) concluded that the estimated budgeted cost of construction arrived by the ld AO is incorrect. The ld CIT(A) also observed that the assessee further revised budgeted cost of construction including project management consultancy and interest as on 31.03.2013 of Rs. 780.41 crores and as on 31.03.2014 to Rs. 784.64 crores which had been duly accepted by the ld AO and no disallowance on account of revised budgeted cost of construction has been made in those years. With these observations , the ld CIT(A) deleted the addition made by the ld AO for the year under consideration. The factual findings given by the ld CIT(A) as stated herein above were not controverted by the revenue before us. Hence, we do not find any infirmity in the order of the ld CIT(A) granting relief to the assessee. Accordingly, the ground raised by the revenue is dismissed.

33. **In the result, the appeal of the revenue in ITA No. 1451/Del/2018 for AY 2012-13 is dismissed.**

ITA No. 1399/Del/2018 AY 2012-13

34. The assessee has raised the following grounds of appeal for AY ITA No. 1399/Del/2018 for AY 2012-13:-

"1. That the impugned order passed by the Ld. CIT (A) is bad in law on facts and in the circumstances of the case.

2. That having regard to the facts and circumstances of the case, the Ld. CIT (A) has erred in law and on facts in upholding the order of the AO that the income from eligible unit(s) in 'Industrial Park, qualifying for deduction u/s 801A(4) of the Act, is 'Profit and Gains of Business and not 'Income from House Property', as shown and claimed by assessee, by misinterpreting various decisions relied upon by him and, at the same time, neither considering facts of the case nor distinguishing the decisions relied upon by the appellant.

2.1 That the Ld. CIT (A) in gross violation of judicial discipline and equity has erred in not considering the ratio laid down by the Apex Court 'that where two views are possible, one favorable to assessee is to be followed.'

2.2 That the Ld. CIT(A), there being no change in facts in comparison to the immediately preceding Assessment Year 2011-12, without any cogent reason, at page 30 para II(i) of the order, has upheld the action of the Assessing Officer in excluding income on account of costing recovery. while computing deduction u/s 80 IA (4), whereas, in Assessment Year 2011-12, on this issue, the Ld. CIT(A), has directed the Assessing Officer to verify the facts and allow the claim accordingly.

2.3 That the Ld. CIT(A), has given the findings, without considering the submissions of the appellant, in as much as, the exclusion of the income on account of "Costing Recovery", is contrary to his own findings of restoring the income excluded by the Assessing Officer.

3. That the Ld. CIT(A) erred in law and on facts in upholding the order of the Assessing Officer in excluding Signage income amounting to ₹ 3,51,85,482 from the 'Eligible Income' qualifying for deduction u/s 801A(4) of the Act.

3.1 That the Ld. CIT(A) erred in law in upholding the order of Ld. Assessing Officer in assessing Signage income under the head 'Income from Other Sources as against 'Income from House Property, and denying deduction u/s 24(a) of the Act.

3.2 That the Ld. CIT (A), erred in upholding the issue, without distinguishing the order of his predecessor, for the AY 2010-11, wherein signage income held to be assessable as 'Income from House Property'.

4. That the Ld. CIT(A) erred in law and on facts in upholding the income from 'Amount forfeited on Properties' [12,47,694), as 'Income from Other Sources' as against appellant's claim regarding the same being 'Eligible income'

qualifying for deduction u/s 801A(4), under the head 'Income from House Property'.

That the Ld. CIT(A) erred in law in upholding the order of Ld. Assessing Officer in assessing 'Amount forfeited on Properties', under the head 'Income from Other Sources' as against 'Income from House Property', and denying deduction u/s 24(a) of the Act.

5. That the Ld. CIT(A) erred in law in upholding 'Signage income' (64,44,019) and 'Amount forfeited on property' (1,51,74,561) aggregating 2,16,18,580/- derived from 'Non Eligible Business' of the assessee as 'Income from Other Sources' against 'Income from House Property' claimed by the assessee and thereby denying deduction u/s 24(a) of the Act.

5.1 That the Ld. CIT (A), erred in upholding the issue regarding 'Signage Income', to be assessed as 'Income from Other Sources', without distinguishing the order of his predecessor, for the AY 2010-11, wherein 'Signage Income', held to be assessable as 'Income from House Property'.

6. That the Ld. CIT(A) erred in law in upholding the order of Ld. Assessing Officer in disallowing the claim of the appellant of interest expenses amounting to 37,09,00,000 pertaining to non SEZ unit of Caraf Builders and Constructions Pvt. Ltd., amalgamated with the appellant.

7. That the appellant craves leave to add, amend, alter, change, vary, substitute or raise any additional ground of appeal if it becomes necessary to do so in the interest of justice on or before the date of hearing."

35. **Ground Nos. 1 and 7** raised by the assessee are general in nature and does not require any specific adjudication.

36. **Ground Nos. 2 and 2.1** raised by the assessee for AY 2012-13 are identical to **ground Nos. 2 and 2.1** raised for AY 2011-12. Hence, the decision rendered in AY 2011-12 shall apply *mutatis mutandis* for AY 2012-13 also qua ground Nos. 2 and 2.1, except with variance in figures.

37. **Ground Nos. 2.2 and 2.3** raised by the assessee are with regard to adjustment of deduction u/s 80IA of the Act by reducing the income in the form of 'costing recovery' under the head 'Income from house property'.

38. We have heard the rival contentions and perused the materials available on record. The ld AO had denied relief u/s 80IA of the Act in the income in the form of 'costing recovery'. It was submitted by the ld AR before us that the ld AO had accepted the very same claim for AY 2011-12 while passing appeal effect order dated 23.02.2018. It is not in dispute that

the assessee had categorized the income in nature of 'costing recovery' as 'facility management services'. We have already held that the income in the form of 'facility management service' would be liable for deduction u/s 80IA of the Act irrespective of head of income in which it is offered to tax by the assessee. In simple terms, the income in the nature of 'costing recovery' is nothing but recovery of charges towards maintenance and allied services which could be ascertained only at the end of the year and hence, they form intrinsic part of the 'facility management services'. Accordingly, ground Nos. 2.2 and 2.3 raised by the assessee are allowed.

39. **Ground Nos. 3 to 5.1** raised by the assessee for AY 2012-13 are identical with those raised for AY 2011-12 and hence, the decision rendered by us hereinabove for AY 2011-12 qua the ground Nos. 3. to 5.1 shall apply *mutatis mutandis* for AY 2012-13 also, except with variance in figures.

40. The assessee had also filed additional grounds before us as under:-

> *"8(i) That the Ld. CIT(A) has erred in law and on facts in upholding the action of the assessing officer in denying the benefit of deduction u/s 80- IA(4) by treating promotional income of Rs. 98,87,052/- and other operating income (sale of scrap) of Rs. 40,42,153/- as 'Income from other Sources' as against appellant's claim of 'Income under head Business and Profession'.*
>
> *(ii) That in any case, the promotional income and other operating income having been earned and derived from eligible units, the same are eligible income for the purpose of claim of deduction u/s 801A of the Income Tax Act, 1961 irrespective of head of income."*

41. It is pertinent to note that these grounds were raised by the assessee before the ld CIT(A) and decided against the assessee and inadvertently the same were omitted to be raised by the assessee before us in the original grounds of appeal. Since the facts relatable to these grounds are already on record, the same are hereby admitted and taken up for adjudication.

42. We have heard the rival submissions and perused the materials available on record. We find that the issues raised by the assessee in the additional grounds for AY 2012-13 are identical with ground No. 4 raised by the assessee in AY 2011-12. Hence, the decision rendered by us hereinabove in AY 2011-12 qua ground No. 4 shall apply *mutatis mutandis* for AY 2012-13 also except with variance in figures.

43. **Ground No. 6** raised by the assessee is challenging the disallowance of interest expenses pertaining to non SEZ unit of M/s. Caraf Builders and Construction Pvt. Ltd amalgamated with the assessee.

44. We have heard the rival submissions and perused the materials available on record. The ld AO noted that with the consent of Hon'ble Delhi High Court and Hon'ble Punjab and Haryana High Court, non-SEZ undertaking of M/s. Caraf Builders and Construction Pvt. Ltd got demerged and amalgamated with the assessee with an appointed date on 01.04.2011. As a result of this, all the assets and liabilities of non-SEZ undertaking of M/s. Caraf Builders and Construction Pvt. Ltd were vested with the assessee w.e.f. 01.04.2011. The assessee submitted revised computation and revised financial statements for AY 2012-13. As per the revised statement, the assessee reduced its gross total income from Rs. 153.23 crores to Rs. 80.95 cores. The ld AO asked the assessee to correlate the borrowed funds of non SEZ unit of M/s. Caraf Builders and Construction Pvt. Ltd with the investment made. The assessee filed the requisite details thereon. Pursuant to the merger, the value of assets, corresponding borrowings and consequential interest in the hands of the merged non SEZ unit of M/s. Caraf Builders and Construction Pvt. Ltd were accounted for, by the assessee company. It is not in dispute that non-SEZ unit of M/s. Caraf Builders and Construction Pvt. Ltd made borrowings for the purpose of purchase of building in order to earn rental income from the said building. The total interest expenditure on such borrowings was Rs. 72.27 crores. However, post merger, the net effective claim of interest expenditure pertained to the unit was only Rs. 66.11

crores, out of which, the assessee bifurcated and claimed Rs. 29.02 crores against rental income assessed under the head 'Income from house property' and balance amount of Rs. 37.09 crores was claimed as deduction against the business income. The ld AO allowed the interest expenditure claimed by the assessee in the sum of Rs. 29.02 crores while computing the income under the head 'Income from house property'. However, the ld AO disallowed the interest claimed in the sum of Rs. 37.09 crores under the head business income. Since, there was no rental income in the case of non SEZ unit of M/s. Caraf Builders and Construction Pvt. Ltd, the ld AO disallowed the interest in the sum of Rs. 37.09 crores under the head 'Income from business'. This action of the ld AO was upheld by the ld CIT(A).

45. It is not in dispute that borrowings reflected in the erstwhile balance-sheet of non SEZ unit of M/s. Caraf Builders and Construction Pvt. Ltd were utilized for the purpose of investment in property which had yielded rental income to the assessee. The nexus of borrowed funds and the investment in property are established beyond doubt and not disputed by the revenue before us, hence the interest expenditure paid on lease borrowings would become squarely allowable as deduction in full while computing the 'Income from house property' as the assessee had duly offered rental income from the said property under the head 'income from house property' and taxed as such by the ld AO. Merely because the assessee itself had bifurcated the net interest component of Rs. 66.11 crores partly under house property and partly under the head income from business, the legal position for allowability of interest cannot be compromised. Since the borrowings have been utilized for investment in property; that the said property had yielded rental income to the assessee which had been offered to tax as income from house property and assessed as such by the ld AO, the interest paid on the aforesaid borrowings becomes fully allowable under the head 'income from house property' itself. Hence, we direct the ld AO to allow the entire interest expenditure of Rs. 66.11 crores under the head 'income from house property' and recompute

the income accordingly. Hence, ground No. 6 raised by the assessee is allowed.

46. **In the result, the appeal of the assessee is partly allowed for AY 2012-13 in ITA No. 1399/Del/2018.**

ITA No. 7407/Del/2018 (AY 2013-14)

47. The assessee has raised the following grounds of appeal for AY 2013-14 ITA No. 7407/Del/2018 for AY 2013-14:-

"1. That the impugned order passed by the Ld. CIT (A) is bad in law on facts and in the circumstances of the case.

2. That on facts and in the circumstances of the case, the Ld. CIT (A) has erred in law, in upholding the order of the AO, that the income from eligible unit(s) in 'Industrial Park', qualifying for deduction u/s 801A(4) of the Act, is 'Profit and Gains of Business' and not 'Income from House Properly, as shown and claimed by assessee, by misinterpreting various decisions relied upon by him and, at the same time, neither considering facts of the case nor distinguishing the decisions relied upon by the appellant.

2.1 That the Ld. CIT (A) in gross violation of judicial discipline and equity has erred in not considering the ratio laid down by the Apex Court 'that where two views are possible, one favorable to assessee is to be followed.

3. That the Ld. CIT(A) erred in law and on facts in upholding the order of the Assessing Officer in excluding Signage income amounting to Rs. 3.73,49.515 from the 'Eligible income' qualitying for deduction u/s 801A(4) of the Act.

3.1 That the Ld. CIT(A) erred in law in upholding the order of Ld. Assessing. Officer in assessing Signage income under the head 'Income from Other Sources as against Income from House Property', and denying deduction u/s 24(a) of the Act.

3.2 That the Ld. CIT (A), erred in upholding the issue, without distinguishing the order of his predecessor, for the AY 2010-11, wherein signage income held to be assessable as 'Income from House Property'.

4. That the Ld. CIT(A) erred in law and on facts in upholding the income from Amount forfeited on Properties (Rs. 18,49,555), 'Promotional Income (Rs.78.19.603) and 'Sale of scrap/others' (Rs.14,57.888) aggregating Rs. 1.11.27,046 as 'Income from Other Sources' as against appellant's claim regarding the same being 'Eligible income' qualifying for deduction u/s 801A(4), under the head Profit and Gains of Business'.

5 That the Ld. CIT(A) erred in law in upholding 'Signage income 1,08,25,466 derived from 'Non-Eligible Business of the assessee as Income from Other Sources against 'Income from House Property claimed by the assessee and thereby denying deduction u/s 24(a) of the Act.

5.1 That the Ld. CIT (A), erred in upholding the issue regarding 'Signage Income, to be assessed as 'Income from Other Sources, without distinguishing the order of his predecessor, for the AY 2010-11, wherein 'Signage Income, held to be assessable as 'Income from House Property'.

6. That the Ld. CIT(A) erred in law and on facts in upholding the income derived from Non-eligible Business' of the assessee as 'Amount forfeited on Properties' (Rs. 47,78.657). 'Promotional Income (Rs. 38.82,900) and 'Sale of scrap/others (Rs. 1.20,69,408) aggregating Rs. 2.07.30.965 as 'Income from Other Sources' as against appellant's claim under the head 'Profit and Gains of Business'.

7. That the Ld. CIT(A) erred in law in upholding the order of Ld. Assessing Officer in disallowing the claim of the appellant of interest expenses amounting to 4.29.26.793 pertaining to non SEZ unit of Caraf Builders and Constructions Pvt. Ltd., amalgamated with the appellant.

8. That the appellant craves leave to add, amend, alter, change, vary, substitute or raise any additional ground of appeal if it becomes necessary to do so in the interest of justice on or before the date of hearing."

48. **Ground Nos. 1 and 8** raised by the assessee are general in nature and does not require any specific adjudication.

49. **Ground Nos. 2 to 5.1** raised by the assessee for AY 2013-14 are identical to ground Nos. 2 to 5.1 raised for AY 2011-12. Hence, the decision rendered by us herein above for AY 2011-12 qua ground No. 2 to 5.1 shall apply *mutatis mutandis* for AY 2013-14 also, except with variance in figures.

50. **Ground No. 6** raised by the assessee for AY 2013-14 was stated to be not pressed by the ld AR at the time of hearing. The same is reckoned as a statement made from the Bar and accordingly ground No. 6 raised by the assessee is hereby dismissed as not pressed.

51. **Ground No. 7** raised by the assessee for AY 2013-14 is identical with ground No. 6 raised by the assessee for AY 2012-13. Hence, the decision

rendered by us hereinabove for AY 2012-13 qua ground No. 6 shall apply *mutatis mutandis* for AY 2013-14 also, except with variance in figures.

52. **In the result, the appeal of the assessee in ITA No. 7407/Del/2018 for AY 2013-14 is partly allowed.**

ITA No. 4864/Del/2015 (AY 2014-15)

53. The assessee has raised the following grounds of appeal for AY ITA No. 4864/Del/2019 for AY 2014-15:-

"1. That on facts and in the circumstances of the case, the impugned order passed by the Ld. CIT (A) is bad in law

2. That on facts and in the circumstances of the case, the Ld. CIT (A) has erred in law, in upholding the order of the AO, that the Income from eligible unit(s) in 'Industrial Park', qualifying for deduction u/s 801A(4) of the Act, is 'Profit and Gains of Business and not income from House Property', as shown and claimed by appellant, by misinterpreting various decisions relied upon by AO and, at the same time, neither considering facts of the case nor distinguishing the decisions relied upon by the appellant.

2.1 That the Ld. CIT (A) in gross violation of judicial discipline and equity has erred in not considering the ratio laid down by the Apex Court 'that where two views are possible, one favorable to assessee is to be followed.

3. That the Ld. CIT(A) erred in law and on facts in upholding the order of the Assessing Officer in excluding Signage income amounting to Rs. 3,89,30,708 (net of deduction u/s 24(a) Rs 2,72,51,496), from the 'Eligible income' qualifying for deduction u/s 801A(4) of the Act.

3.1 That the Ld. CIT(A) erred in law in upholding the order of Ld. Assessing Officer in assessing Signage income under the head 'Income from Other Sources as against 'Income from House Property, and denying deduction u/s 24 (a) of the Act (Rs 1,16,79,212).

3.2 That the Ld. CIT (A), erred in upholding 'Signage Income', to be assessed as 'Income from Other Sources', without distinguishing the order of his predecessor, for AY 2010-2011 and appreciating that ITAT Delhi Bench, New Delhi has upheld the order of CIT(A), dismissing the departmental appeal for AY 2010-11, wherein 'Signage Income', held to be assessed as 'Income from House Property'.

4. That the Ld. CIT(A) erred in law and on facts in upholding the income from 'Promotional Income (Rs.96.26,000) and 'Sale of scrap/others' (Rs.28.93.000) aggregating Rs. 1,25,19,000 as 'Income from Other Sources' as against

appellant's claim regarding the same being 'Eligible income qualifying for deduction u/s 801A(4), under the head 'Profit and Gains of Business'.

5 That the Ld. CIT(A) erred in law In upholding Signage income" Rs.1,02,65,499 derived from 'Non-Eligible Business of the assessee as 'Income from Other Sources' against income from House Property' claimed by the assessee and thereby denying deduction u/s 24(a) of the Act (Rs 30,79,650).

5.1 That the Ld. CIT (A), erred in upholding 'Signage Income', to be assessed as 'Income from Other Sources', without distinguishing the order of his predecessor, for AY 2010-2011 and appreciating that ITAT Delhi Bench. New Delhi has upheld the order of CIT(A), dismissing the departmental appeal for AY 2010-11, wherein 'Signage Income, held to be assessed as 'Income from House Property'.

6. That the Ld. CIT(A) erred in law and on facts in upholding the income derived from Non-eligible Business' of the assessee as 'Promotional Income (Rs. 5,19,375) and 'Sale of scrap/others' (Rs. 3,60,40,978) aggregating Rs. 3.65.60.353 as 'Income from Other Sources' as against appellant's claim under the head 'Profit and Gains of Business'.

7. That the Ld. CIT(A) erred in law in upholding the order of Ld. Assessing Officer in disallowing the claim of the appellant of interest expenses amounting to Rs. 4,63,59,935 pertaining to non SEZ unit of Caraf Builders and Constructions Pvt. Ltd., amalgamated with the appellant.

8. That the appellant craves leave to add, amend, alter, change, vary, substitute or raise any additional ground of appeal if it becomes necessary to do so in the interest of justice on or before the date of hearing.

54. All the grounds raised by the assessee for AY 2014-15 are identical with grounds raised by the assessee for AY 2013-14 and hence, the decision rendered by us hereinabove for AY 2013-14 shall apply *mutatis mutandis* for AY 2014-15 also, except with variance in figures.

55. **In the result, the appeal of the assessee is partly allowed.**

ITA No. 4865/Del/2019 (AY 2015-16)

56. The assessee has raised the following grounds of appeal for AY ITA No. 4865/Del/2019 for AY 2015-16:-

"1 That an facts and in the circumstances of the case, the impugned order passed by the Ld. CIT (A) is bad in law

2. That on facts and in the circumstances of the case, the Ld. CIT (A) has erred in law, in upholding the order of the AO, that the income from eligible unit(s) in 'Industrial Park', qualifying for deduction u/s 801A(4) of the Act, is

'Profit and Gains of Business and not "Income from House Property', as shown and claimed by assessee, by misinterpreting various decisions relied upon by him and, at the same time, neither considering facts of the case nor distinguishing the decisions relied upon by the appellant.

2.1 That the Ld. CIT (A) in gross violation of judicial discipline and equity has erred in not considering the ratio laid down by the Apex Court 'that where two views are possible, one favorable to assessee is to be followed.

3. That the Ld. CIT(A) erred in law and on facts in upholding the order of the Assessing Officer in excluding Signage income amounting to Rs. 2.96,36,902 (net of deduction u/s 24(a) Rs 2.07,45.831), from the 'Eligible Income' qualifying for deduction u/s 801A(4) of the Act.

3.1 That the Ld. CIT(A) erred in law in upholding the order of Ld. Assessing Officer in assessing Signage income under the head 'Income from Other Sources as against 'Income from House Property', and denying deduction u/s 24(a) of the Act (Rs 88,91,071).

3.2 That the Ld. CIT (A), erred in upholding 'Signage Income", to be assessed as 'Income from Other Sources', without distinguishing the order of his predecessor, for AY 2010-2011 and appreciating that ITAT Delhi Bench, New Delhi has upheld the order of CIT(A), dismissing the departmental appeal for AY 2010-11, wherein 'Signage Income', held to be assessed as 'Income from House Property'.

4 That the Ld. CIT(A) erred in law in upholding 'Signage Income Rs.1.69.98.912 derived from 'Non-Eligible Business of the assessee as 'Income from Other Sources' against 'Income from House Property' claimed by the assessee and thereby denying deduction u/s 24(a) of the Act (Rs 50,99,674),

4.1 That the Ld. CIT (A), erred in upholding 'Signage Income', to be assessed as 'Income from Other Sources', without distinguishing the order of his predecessor, for AY 2010-2011 and appreciating that ITAT Delhi Bench. New Delhi has upheld the order of CIT(A). dismissing the departmental appeal for AY 2010-11, wherein 'Signage Income, held to be assessed as 'Income from House Property'.

5. That the Ld. CIT(A) erred in law in upholding the order of Ld. Assessing Officer in disallowing the claim of the appellant of interest expenses amounting to Rs. 4,63,61,000 pertaining to non SEZ unit of Caraf Builders and Constructions Pvt. Ltd., amalgamated with the appellant.

6. That the appellant craves leave to add, amend, alter, change, vary. substitute or raise any additional ground of appeal if it becomes necessary to do so in the interest of justice on or before the date of hearing."

57. All the grounds raised by the assessee for AY 2015-16 are identical with grounds raised by the assessee for AY 2014-15 and hence, the

decision rendered by us hereinabove for AY 2014-15 shall apply *mutatis mutandis* for AY 2015-16 also, except with variance in figures.

58. **In the result, the appeal of the assessee is partly allowed.**

59. **To sum up all the appeals of the assessee are partly allowed and appeal of the revenue for AY 2012-13 is dismissed.**

Order pronounced in the open court on 29/11/2023.

-Sd/-	-Sd/-
(C. N. PRASAD)	**(M. BALAGANESH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 29/11/2023
PKK

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi