

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B' CHANDIGARH

BEFORE: SHRI A.D.JAIN, VICE PRESIDENT AND
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos. 689 & 690/CHD/2022

निर्धारण वर्ष / A.Y. : 2012-13 & 2013-14

The ITO, Ward - 1, Yamuna Nagar.	बनाम VS	M/s Jamna Auto Industries Ltd., Jai Spring Road, Industrial Area, Yamuna Nagar.
स्थायी लेखा सं./PAN /TAN No: AAACJ3929N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

राजस्व की ओर से/ Revenue by : Shri Rohit Sharma, CIT- DR

निर्धारिती की ओर से/Assessee by : Shri Sandeep Sapra, Advocate

तारीख/Date of Hearing : 26.10.2023

उदघोषणा की तारीख/Date of Pronouncement : 23.01.2024

आदेश/ORDER

PER A.D.JAIN, VICE PRESIDENT

These are Department's appeals for assessment years 2012-13 and 2013-14 against the orders of the CIT(A) NFAC Delhi dated 20.09.2022 and 27.09.2022, respectively. As the issues, facts and circumstances are identical in both the appeals, therefore, these were heard together and are being disposed of by a common order.

ITA 689/CHD/2022

2. The Department has raised the following grounds of appeal :

1. *Whether the Commissioner of Income Tax(Appeals) is right in deleting the disallowance of interest made by the Assessing Officer under section 36(1)(iii) of the Act,1961 without brushing aside the factual findings recorded by the Assessing Officer in the assessment order and remand report.*

2. *Whether the order passed by the Commissioner of Income Tax(Appeals) is legally sustainable in the wake of decision of the Hon'ble Jurisdictional High Court in the case of Commissioner of Income Tax-1 Vs. Abhishek Industries Limited, reported as [2006] 286ITR 1(P&H) ?*

3. *Whether the Commissioner of Income Tax (Appeals) is right in concluding that the Assessee has successfully explained the fall in GP rate while ignoring the material aspect that the Assessee devised a colorful mechanism to divert its profit to subsidiary entity for claiming a higher deduction under section 80IC of the Income tax Act, 1961?*

4. *Whether the Commissioner of Income Tax (Appeals) is right in recoding a finding that the Assessing Officer has neither controverted nor disproved the contentions of the Assessee in the remand report, whereas the Assessing Officer disputed the stance of the Assessee with cogent reasons and material?*

5. *Whether on the facts and in the circumstances of the case, the Commissioner of Income Tax(Appeals) misdirected itself in misconstruing the provisions of the Income Tax Act, 1961 resulting into delivering a perverse order contrary to the scheme of the statute and material on record?*

3. The assessee company is engaged in the business of manufacturing and marketing of leaf springs and parabolic springs.

4. Apropos Ground Nos. 1 and 2, the AO observed that an amount of Rs.90,00,000/- had been given to Smt.Poonam Gupta but no interest was charged from her although the company was paying interest on its loans taken from various financial institutions and parties. The assessee was,

therefore, asked vide order sheet entry dated 09.12.2014 about business expediency of the said advance and reasons for not charging interest on the said advance. The assessee vide its letter dated 24.12.2014 submitted as under :

"The company had given advance to the said party in the financial year 2008-09 relevant to the Assessment Year 2009-10 for the purchase of property at Vasant Kunj, New Delhi. The address of the property which was proposed to be purchased is as under:

*1-B, Bhawani Kunj,
Opposite Pocket D-1,
Vasant Kunj, New
Delhi*

The agreement to sell was entered on 2nd Sept, 2008 for the above said property admeasuring 10 Biswas, Mustatil no. 73, Kila No. 5/2 & 6/1 of village mehrauli, Tehsil Hauz Khas, New Delhi 110 070. The sale consideration was fixed at Rs. 4,55,00,000/- and an advance of Rs 90,00,000/- was paid on 2/9/2008 & 12/9/2008 for Rs. 10,00,000/- and Rs. 80,00,000/- respectively. The balance amount was to be paid by 30.11.2008. Unfortunately, the company had faced acute shortage of funds during the 2nd half of the financial year 2008-09 due to recession faced by automobile sector in India and the company had got almost half of its orders cancelled from TATA and Ashok Leyland during that period. In view of this, the company could not honour its commitment to pay the balance amount of Rs. 3,65,00,000/- due by 30-11-2008 i.e. the scheduled date of payment. In the meantime, the owner had given extended time till 30th June, 2009 for making final payment to the company but the company could not make the said payment due to which the owner had given the notice for forfeiture of Rs. 90,00,000/- given as advance.

However, as the company was also in possession of the property on lease basis on the date of agreement and has continued to occupy the same till date, has not vacated the property, which is scheduled to be in its occupation till Dec, 2014 as per lease deed dated 4th April, 2012. In this regard, we are enclosing herewith copy of the "Agreement to Sell". Copy of the correspondence exchanged with the owner of the property is also attached for your kind consideration alongwith the lease deed dated 4th April 12, which clearly suggest that the advance was given only for the Business Purpose of the assessee company. Further, it may be noted from the correspondence enclosed that the owner of the premises was also claiming interest @ 18% PA on the unpaid amount of

the Rs. 3,65,00,000/- for 7 months, which on request was waived off by the owner of the premises.

However, during the financial year 2013-14, the company had served notice on the said party for recovery of the said amount of Rs.90,00,000/-subsequent to which it was agreed by the said party to refund, the said amount of advance given for purchase of land and accordingly, cancellation agreement was entered into between the parties which stated that the said party Mrs. Poonam Gupta, shall return the advance for purchase of property by monthly Installments of Rs.2,50,000/- which was revised to Rs.3,00,000/- pm w.e.f. March 14. Copy of the cancellation agreement is enclosed for your kind consideration. The copy of account of the party as on 11-12-2014 is also enclosed herewith evidencing recovery of amount every month from her. The outstanding balance as on 11-12-2014 is Rs.29,50,000/-. As the above transaction with the owner of the property is for the purpose of Business of the Assessee Company, no adverse inference may be drawn."

4.1 The Assessing Officer did not accept the reply of the assessee. The AO held that the assessee's contention that the said advance was given for the purchase of property and the deal regarding purchase of property could not be finalized due to shortage of funds being faced by the company, was not based on facts. The AO observed that on the one hand, the assessee company had invested approximately Rs.34 crores in addition of fixed assets, i.e., in factory building and plant & machinery, etc., during the year under consideration and on the other, it had stated that it could not arrange Rs.3.65 crores for payment of balance amount of the purchase deal of the said property. The AO observed that no person would want to lose its hard-earned

amount of Rs.90 Lacs just because of lack of availability of funds even if it has to arrange the balance funds by taking loans; and that the priority of the person would be to first guarantee the custody of the advance already given and then invest its balance money in other projects/for other purposes. It was mentioned that assessee had earned an income of Rs.42,84,12,922/- during the year and it was not difficult to spare an amount of Rs.3.65 Crores to purchase the property.

4.2 The Assessing Officer did not accept another justification of the assessee, which was that due to recession faced by the Automobile sector in India, it had got almost one half of its orders cancelled by Tata and Ashok Leyland. The AO rejected this contention as based on facts. The AO observed that though the assessee company had tried to justify its position, but it could not produce any documentary evidence to support its claim; and that though the assessee had claimed that half of its orders were cancelled during the year but the accounts of the assessee told another story, as the assessee's total turnover during the year had increased by over 45% as compared to the turnover of the earlier previous year. The Assessing Officer

concluded that the assessee had failed to prove that the abovesaid advance was made for purchase of property for business purpose. It was observed that the assessee had further failed to prove that it did not have the resources to get the deal of the property registered within the time allowed. Hence, the Assessing Officer held that the advance of Rs.90,00,000/- given to Smt. Poonam Gupta was not for business purpose. The Assessing Officer held that the assessee had taken interest-bearing loans from various financial institutions and from other parties and was paying interest on them, and on the other hand, it had made interest-free advances to Smt. Poonam Gupta, which was not for business purpose. Therefore, the payment of interest by the assessee company on its secured & unsecured loans, attributable to the amount advanced interest free to Poonam Gupta was disallowed, treating the same to be not incidental to the business purpose of the assessee company. The Assessing Officer placed reliance on the judgment dated 04.08.2006, of the Hon'ble Punjab & Haryana High Court in the case of 'CIT Vs Abhishek Industries Limited, Ludhiana', wherein, it was held that once it is borne out from the record that the assessee had borrowed certain funds on which, there was a liability to pay interest, whereas, on the other

hand, certain amounts had been advanced to sister concerns or others without carrying any interest and without any business purpose, the interest to the extent the advance had been made without carrying any interest is to be disallowed under section 36(1)(iii) of the Income Tax Act, 1961; that such borrowings, to that extent cannot possibly be held to be for the purpose of business but are for supplementing the cash diverted, without deriving any benefit out of it; and that accordingly, the assessee will not be entitled to claim deduction of the interest on the borrowings to the extent those are diverted to sister concerns or other persons without interest. The advance of Rs.90,00,000/- in the opinion of the AO, was given to Smt. Poonam Gupta for a purpose other than a business purpose. Accordingly, the AO made an addition of Rs. 10,80,000/-.

5. The CIT(A), by virtue of the impugned order, has deleted the addition, giving rise to Ground Nos. 1 and 2.

6. Challenging the impugned order, the ld. DR has contended that the Commissioner of Income Tax(Appeals) was not right in deleting the disallowance of interest made by the Assessing Officer under section 36(1)(iii) of the Act,1961, without brushing aside the factual findings

recorded by the Assessing Officer in the assessment order and the remand report; and that the order passed by the Commissioner of Income Tax(Appeals) is not legally sustainable in the wake of the decision of the Hon'ble Jurisdictional High Court in the case of 'Commissioner of Income Tax-1 Vs. Abhishek Industries Limited', reported as [2006] 286 ITR 1(P&H).

7. On the other hand, the ld. Counsel for the assessee has placed strong reliance on the impugned order.

8. Heard. The question is as to whether as contended on behalf of the Department, the ld. CIT(A) has gone wrong in deleting the disallowance made by the AO u/s 36(1)(iii) of the Income Tax Act. It is seen that the ld. CIT(A) has followed the CIT(A)'s order dated 01.09.2021, for assessment year 2014-15, in the assessee's own case, for deleting the disallowance. A copy of the said order of the ld. CIT(A) has been placed before us by the assessee at APB pages 89-101. As available from the said order, the assessee company had, vide Lease Deed dated 08.01.2007 (from 15.01.2007 to 31.05.2008), taken the premises situated at 1-B, Bhawani Kunj, Opposite Pocket D-1, Vasant Kunj, New Delhi on lease from Smt. Poonam Gupta, for its Corporate Office. The said

Lease Agreement was renewed from time to time, upto 26.11.2015 (for the period from 01.12.2015 to 31.10.2016). The said premises was, thus, used by the assessee company as its corporate office from January,2007 till 30.06.2017. The lease rent paid by the assessee for the said premises was always allowed by the AO, right from Financial Year 2006-07. The assessee company stated that it had insisted to purchase the said leased premises, for which, it entered into an agreement to sell with Smt. Poonam Gupta, for a total consideration of Rs.4,55,00,000/-. It paid advance of Rs. 10 lacs on 02.09.2008 and Rs.80 lacs on 12.09.2008, aggregating to Rs.90 lacs. The balance amount of Rs.3,65,00,000/- was to be paid by 30.11.2008. However, it could not be so paid, as there was a sudden worldwide recession in 2008, which adversely affected the automobile sector in India also, because of which, Tata Motors and Ashok Leyland, the main customers of the assessee company, cancelled their orders with the assessee. Due to the adverse market conditions, the production and sales of the assessee company were badly affected in the second half of Financial Year 2008-09, relevant to assessment year 2009-10, whereas the production in assessment year 2008-09, at 839 MT, had come down to 68.012 MT in assessment year 2009-10. The

sales turnover decreased to Rs.452.45 Cr in assessment year 2009-10, from that of Rs.467.03 Cr in assessment year 2008-09. Thereby, the assessee company incurred a loss of Rs.23.46 Cr in assessment year 2009-10, as compared to a profit of Rs.15.60 Cr in assessment year 2008-09. Before the ld. CIT(A), as available from the ld. CIT(A)'s order dated 01.09.2021, for assessment year 2014-15 (APB 89-101), the assessee furnished a copy of the aforesaid Agreement to Sell, dated 02.09.2008, and the relevant extract of the balance sheet/Profit & Loss Account for assessment year 2009-10, which also shows the figures for assessment year 2008-09. In the first half of assessment year 2009-10, the production was of 46,849 MT and the sales were of 45,726 MT. In the second half, there was production of 21,163 MT and sales of 22,118 MT. Thus, there was a total production of 68,012 MT and total sales of 67,844 MT, in assessment year 2009-10. Since the assessee was facing an acute shortage of funds in the second half of assessment year 2009-10, it could not honour its commitment to pay the balance amount of Rs.3,65,00,000/- to Smt. Poonam Gupta by 30.11.2008, the due date. As such, the assessee corresponded from time to time with Smt. Poonam Gupta for extension of time to make the said balance payment to her and the time was extended

to 30.06.2009, subject to payment of interest @ 18% per annum for such extended period, vide letter dated 09.04.2009. The assessee placed a copy of the said letter before the ld. CIT(A). The assessee, however, could not make payment to Smt. Poonam Gupta even till 30.06.2009. Thereafter, Smt. Poonam Gupta, vide notice dated 11.07.2009, a copy whereof was also furnished by the assessee before the ld. CIT(A), terminated the Agreement to Sell dated 02.09.2008 by forfeiting the advance amount of Rs.90 lacs. However, the assessee company remained to be in possession of the leased premises and continued to pay its lease rent to Smt. Poonam Gupta, as per the Lease Agreement as renewed from time to time. Subsequently, the assessee company served Smt. Poonam Gupta with a legal notice dated 01.05.2013, for recovery of the advance amount of Rs.90 lacs. A copy of this notice was placed before the ld. CIT(A). Smt. Poonam Gupta, in response to the notice, vide Cancellation Agreement dated 16.05.2013, a copy whereof was also furnished by the assessee before the ld. CIT(A), agreed to refund to the assessee the amount of Rs.90 lacs, by making upfront payment of Rs.10.50,000/- and, thereafter, paying monthly instalments, of Rs.2.30 lacs, subject to no interest being payable by her. The said

monthly instalments were subsequently revised to Rs.3 lacs per month, w.e.f. March, 2014 and to Rs.3,30,000/- per month w.e.f. February,2015. The amount of Rs.90 lacs stood fully recovered from Smt. Poonam Gupta by the assessee, as on 10.10.2015. In this regard, a copy of the Ledger Account of Smt. Poonam Gupta, for the period from 01.04.2008 to 31.10.2015, was also placed by the assessee before the Id. CIT(A).

9. For assessment year 2014-15, the Assessing Officer made disallowance of a sum of Rs.8,81,501/- u/s 36(1)(ii) of the Act, on account of interest payable/paid, attributable to the interest free advance of Rs.59,50,000/- to Smt. Poonam Gupta, for non business purposes. The AO observed that the assessee's Schedule of Loans and Advances showed that an amount of Rs.90 lacs had been given to Smt. Poonam Gupta, but no interest had been charged from her, although the assessee company was paying interest on loans taken from various financial institutions and parties; that on query regarding the business expediency of the said advance and the reasons for non-charging of interest thereon, the assessee had filed reply, which was not acceptable; that the assessee's contention that the said advance was given for the

purchase of property and the deal regarding purchase of property could not be finalized due to shortage of funds being faced by the company, was not based on facts; that the said advance was given in September, 2008 and was not received back till 30.06.2013, i.e., almost five years had elapsed and the assessee did not make effort to recover the advance; that though the assessee had a turnover of thousands of crores of rupees, the amount of Rs.90 lacs was not a petty amount which was left in the lurch for no consideration at all, whereas the assessee had been incurring huge amounts on the interest costs to the banks; that from the argument of the assessee, that it had incurred losses in assessment year 2009-10, was a factor which might have prompted the assessee to search for funds all around and, under these circumstances, such huge amounts could not have been left with anybody; that the contention of the assessee that it could not arrange Rs. 3.65 Cr for payment of the balance amount for the purchase of the property, was not acceptable; that no person would want to lose its hard earned amount of Rs.90 lacs just because of lack of availability of funds, even if it has to arrange the balance funds by taking loans; that the priority of the person would be to first guarantee the custody of the advance already

given and to then invest its balance money in other projects/for other purposes; that the assessee had earned an income of Rs.33.52 Cr during the year and of Rs.42.84 Cr during the earlier year and it was not difficult for the assessee to spare an amount of Rs.3.65 Cr to purchase the property; that it is a matter of common parlance that huge interest cost is incurred in such big projects as that of the assessee, where banks charge interest on a monthly basis and, at times, even on a daily basis; that under these circumstances, the assessee could not have taken the luxury of divesting the company of its huge funds towards a project that did not materialize even after five years and finally got wound up; that no such justification had been brought on record; that thus, it appeared that the alleged transaction was not related to the actual intention of purchase of land and it was evident from the facts that finally, the alleged Agreement stood cancelled on 16.05.2013, and the instalments were being received w.e.f. 30.06.2013; that it appeared that the amount had been given as a certain kind of security against use/rental of the property to the assessee company and no interest whatsoever was charged on the basis of an un-written understanding between the two parties; that it could not be denied that Smt. Poonam Gupta

had used the funds of Rs.90 lacs for five years, without incurring any cost whatsoever. The AO placed reliance on the decision of the Hon'ble Punjab & Haryana High Court in the case of 'CIT Vs Abhishek Industries' 286 ITR 1 (P&H), observing that the advance of Rs.90 lacs had been given by the assessee company to Smt. Poonam Gupta for purposes other than a business purpose. The proportionate disallowance on interest @ 12% was worked out by the AO at Rs.8,81,507/-, of which, addition was made.

10. The ld. CIT(A) found that for assessment years 2010-11 and 2011-12, an identical issue of disallowance of interest on the same grounds had been decided by the ld. CIT(A) in favour of the assessee. The relevant portion of the ld. CIT(A)'s order dated 05.12.2017, for assessment year 2010-11 was extracted by the ld. CIT(A) while following the said order in deleting the disallowance. It is seen that in the said order for assessment year 2010-11, the ld. CIT(A) observed that he found that the AO's contention that the assessee company never had any intention to purchase the premises and that the Sale Agreement was executed merely as a tool to divert interest-free funds to Smt. Poonam Gupta, was based merely on presumptions and surmises; that Smt.

Poonam Gupta was not related to the Directors of the company, or their relatives; that in fact, the assessee was a lessee of the premises, which the assessee company had hired for use as office premises; that thus, there was a pre-existing business relationship between the assessee and Smt. Poonam Gupta; that the business purpose for seeking to acquire the said property, which was held for use on lease rent basis, also could not be doubted, particularly when a written agreement had been entered into between the assessee and Smt. Poonam Gupta for the purpose, advance amount as per the agreement had been paid through bank cheques, and the bonafides of the purchaser's and the seller's intention also stood established by the fact that the required No Objection Certificate had duly been obtained from the Government Authorities; that thus, he [the CIT(A)] found that there was a nexus between the advance made and the business purpose of acquiring a property for the office of the assessee company in Delhi; that suspicion, however strong could not take the place of evidence or proof; that the addition had been made by the AO on the presumption that the advance was extended for the personal use of Smt. Poonam Gupta, which presumption did not stand borne out by the entirety of the facts, or by any material placed on

record by the AO; that thus, the business expediency of the advance given and the intention of the assessee to purchase the premises could not be doubted in view of the facts on record; that the adverse inference drawn by the AO on account of the assessee having made investments in other fixed assets to improve its manufacturing operations, and, on account of the assessee allegedly showing lack of urgency to get the Sale Deed registered, was also misplaced, because the Revenue cannot assume the role of the Board of Directors of the company and decide as to how the business decisions are to be taken; that thus, in the facts and circumstances of the case, the business purpose of the advance made stood satisfactorily established by the assessee and the reliance of the AO on the judgement of the Hon'ble Punjab & Haryana High Court in the case of Abhishek Industries, 286 ITR 1 (P&H), was misplaced; and that therefore, no disallowance u/s 36(1)(iii) of the Act was called for on the account of the advance of Rs.90 lacs made against the intended purchase of property for corporate office of the assessee company.

11. The department has remained unable to persuade us to differ from the view taken on the issue by the ld. CIT(A) for

the earlier years as well as the subsequent years, i.e., assessment years 2010-11, 2011-12 and 2014-15, respectively. (copies at APB 39-101). There is no rebuttal to the finding of the ld. CIT(A) that the business expediency for making advance by the assessee in favour of Smt. Poonam Gupta stood duly and adequately proved. Moreover, the AO's doubt stands allayed amply by the fact that ultimately, after long five years, the advance got returned to the assessee, even though by the long-wound legal process. Accordingly, finding no force in the grievance of the Department in this regard for the year under consideration also, Ground Nos. 1 and 2 are rejected and the action of the ld. CIT(A) in deleting the disallowance made by the AO is upheld.

12. Apropos Ground Numbers 3 and 4, the ld. DR has contended that the ld. CIT (A) went wrong in concluding that the assessee had successfully explained the fall in GP rate, over-looking the aspect that the assessee devised a colorable mechanism to divert its profit to its subsidiary entity for claiming a higher deduction under Section 80IC of the IT Act; and that the ld. CIT (A) went wrong in holding that the AO, in his remand report, neither controverted, nor disproved the contentions of the assessee, whereas the AO

had disputed the stance of the assessee with cogent reasons and material.

13. The ld. Counsel for the assessee, on the other hand, again placed strong reliance on the impugned order. Further, the ld. Counsel for the assessee has contended on this issue that for assessment year 2009-10, the appeal filed by the assessee against the ld. CIT(A)'s order dated 06.03.2017, was allowed by the ITAT in ITA No. 836/CHD/2017; that the Department preferred an appeal against the said Tribunal order, through ITA No. 8531 of 2018 before the Hon'ble High Court, which has been dismissed by the Hon'ble High Court vide order dated 13.10.2023. A copy of the said High Court order has been placed on record. Therein, the Hon'ble High Court has dismissed the appeal filed by the Revenue, holding as follows :

“2. The instant appeal (ITA No.8531 of 2018), under Section 260A of the Income Tax Act, 1961, has been filed against the order dated 19.06.2018 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh, in ITA No.836/CHD/2017, in respect of the assessment year 2009-10, whereby appeal filed by the respondent-assessee against the order dated 06.03.2017 passed by the Commission of Income Tax (Appeal), Karnal, has been allowed and the appeal filed by the revenue has been dismissed.

3. The respondent-assessee (Jamna Auto Industries Ltd.) is engaged in the business of manufacturing and marketing of Spring and Spring Leaves. The Assessing Officer, during the course of the assessment proceedings, made an addition of Rs.25,60,84,653/- on account of the fact that 4000.806 MTs of finished goods were the product of excess scrap. For

the purpose of calculating the percentage (%) of scrap generated during the year, the assessment worked out to 7.2% and not 6.8% as had been worked out by the assessee. The average scrap generated during the earlier three years worked out to 6.8%. The assessee had produced 0.4% more scrap during the year under assessment. The excess scrap was utilized for production of 4000.806 MTs of finished goods. The average sale prices is taken as Rs.64,008.26 per M.T. the working of the sale price of Rs.25,60,84,653/- is detailed as under:-

<i>“Total sale consideration declared in the printed booklet exclusive of excise duty 45245.30000 less sales to the subsidiary company SFG</i>	<i>171224220</i>
<i>Sale of finished goods</i>	<i>4353305780</i>
<i>Quantity of finished goods</i>	<i>68011.619</i>
<i>Average sale price</i>	<i>64008.26 per MT”</i>

4. The Assessing Officer observed that the finished goods were produced out of the books and in this backdrop, whole of the sale value of Rs.25,60,84,653/- was deemed to be the income. Before the CIT (Appeals), the main ground taken by the assessee was that the assessee company was a reputed company with all statutory books of account and supporting documents. It was also stated that the Assessing Officer has neither rejected the books of accounts nor pointed out any discrepancies in any of the books of accounts or registers relating to manufacturing, stock registers, scrap registers or bills and vouchers. The CIT (Appeals) had accepted the arguments raised on behalf of the assessee that the sale of semi finished goods made during the year was well documented and there was no excess scrap at all. Hence, the appeal filed by the assessee was allowed and the Assessing Officer was directed to delete the addition.

5. Aggrieved by the said order, the Revenue filed an appeal before the Tribunal. The Tribunal examined the issue and held that no reason was given by the Assessing Officer, as to why the value of semi finished goods sold to its sister concern should not be considered in the total production of the year for the purpose of determining the percentage of scrap generated. The Assessing Officer has neither rejected books of account nor brought out any evidences to support the suspicion that there was unaccounted manufacturing and sale of finished goods nor has AO made out any case that there were unaccounted sales. The additions were made merely on suspicion. Finally, the order passed by the CIT (Appeals) was upheld and the appeal filed by the revenue was dismissed.

6. Vide order dated 03.05.2023, learned counsel for the parties were directed to place on record assessment order passed after 2010 with respect to the semi finished goods. Pursuant to the said order, learned counsel for the respondent-assessee, has placed on record documents (Annexure R-I to R-11). Annexure R-I is the comparative chart of the additions made on account of the finished goods manufactured and sold outside the books of

accounts for the assessment years 2009-2010 to 2014-2015, relevant portion thereof is reproduced as under:-

<i>Assessment Year</i>	<i>Semi Finished Goods sold by Assessee Co. to Jai Suspension Systems in Metric Ton</i>	<i>Addition made by the AO</i>	<i>Treatment by CIT (A)</i>	<i>Treatment by IT AT</i>
2009-10	3,434 MT	Rs.25,20,84,653	Addition of Rs.25,20,84,653 deleted	Revenue's appeal dismissed.
2010-11	11,448 MT	Nil vide assessment order u/s 143 (3) dated 28.01.2013	NA	NA
2011-12	15,495 MT	Nil vide assessment order u/s 143 (3) dated 28.04.2014	NA	NA
2012-13	23,067 MT	Nil vide assessment order u/s 143 (3) dated 25.03.2015	NA	NA
2013-14	33,424 MT	Nil vide assessment order u/s 143 (3) dated 29.02.2016	NA	NA
2014-15	29,513 MT	Nil vide assessment order u/s 143 (3) dated 3(5.12.2017 and also vide TPO order u.s 92CA (3) dated 12.10.2017	NA	NA

7. A perusal of the above chart shows that the assessee has been selling semi-finished goods to its subsidiary entity namely M/s Jai Suspension System since the assessment year 2009-2010 till 2014-2015. The addition of Rs.25,20,84,653/- was made by the Assessing Officer for the assessment year 2009-2010 and this was set aside by the CIT (Appeals). However, for the assessment years 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015, no addition was made qua the semi finished goods manufactured and sold outside the books of accounts. As per the above stated chart, in all the subsequent years, assessment orders have been passed under Section 143 (3) of the Act. A perusal of the assessment orders (Annexures R-2 to R-II) shows that consistently the sales of semi finished goods made by the appellant to M/s Jai Suspension Systems as a sister concern have been accepted and account books to this extent have also been accepted by the Assessing Officer.

8. Learned counsel for the appellant-revenue has not been able to dispute the correctness of the aforesaid orders (Annexures R-2 to R-II) passed under Section 143 (3) of the Income Tax Act, 1961. After 2009-2010, no

addition has been made in the income of the appellant towards the sales of semi finished goods to M/s Jai Suspension Systems.

9. Keeping in view the above discussion, no ground is made out to interfere the impugned order as the same has been passed after appreciating the evidence in the right perspective. No substantial question of law arises for consideration.

10. Resultantly, finding no merits, present appeals i.e. ITA No.8531 of 2018 and ITA No.8532 of 2018 are dismissed.”

13.1 From the aforesaid elaborate self-speaking order, it is evident and not disputed that for assessment years 2010-11 to 2014-15, no addition was made qua the semi-finished goods manufactured by the assessee and sold outside the books of account to its subsidiary. It is worth mentioning here that the said High Court order records the presence of counsel on behalf of the Department, i.e., the appellant before the Hon'ble High Court.

14. It is seen that the AO made addition of Rs. 10,95,77,393/- by estimating GP rate at 11.63% as against that of 10.50% declared by the assessee, on account of diversion of profit to its subsidiary entity, M/s Jai Suspension Systems LLP.

14.1 The AO observed that on this issue, the contention of the assessee was not acceptable; that the assessee company was India's largest and the world's third largest manufacturer of leaf springs and parabolic springs for

automobiles for the last forty years; that it had a very old association with the major predominantly original equipment manufacturers (OEMs), to whom it supplied its products, whereas its subsidiary entity, M/s Jai Suspension Systems LLP had come into existence only on 21.10.2010; that the customer base of M/s Jai Suspension Systems was merely because of the goodwill and the market standing of the assessee company for the last forty years; that during the year under consideration, the assessee had sold its semifinished products, amounting to Rs. 153 crore, to M/s Jai Suspension Systems, apart from doing job-work for it, for Rs. 16 crore; that after purchasing the semi finished products, the subsidiary entity further processed the same to convert them into its finished products and sold them to its customers; that the gross profit declared by the assessee company was lesser than that of its subsidiary entity; that for the year under consideration, the assessee company had shown gross profit of Rs.101.55 crore (GP rate 10.50%), whereas in the earlier year, i.e., A.Y. 2011-12, the assessee had shown gross profit of Rs. 94.44 crore (GP rate 11.52%) and gross profit of Rs. 65.72 crore (GP rate 11.57%) had been shown in A.Y. 2010-11 also; that during the year under consideration, there had been a fall of 1.02% in the GP rate

of the assessee, as compared to the earlier years; that it appeared that the assessee company was diverting the major part of its profits to its subsidiary entity M/s Jay Suspension Systems LLP, which claimed deduction under section 80IC to reduce its tax liability; that Jai Suspension Systems LLP, in its return for AY 2012-13, had shown a total income of Rs. 27,52,459/- after claiming of deduction under Chapter VI-A of the IT Act, of Rs.26,43,23,769/-; that the assessee company had charged a profit margin of 10% from its subsidiary entity, whereas in the earlier years, the assessee had declared GP rates of 11.52% and 11.57% in AYS 2011-12 and 2010-11, respectively; that therefore, there was no justification in charging a 10% margin from the subsidiary entity, particularly in view of the fact that the subsidiary entity was utilizing the goodwill of the assessee for making sales to the OEM with whom the assessee company had an association of 40 years; that this was, in fact, the main reason for the decline in the GP of the assessee company in the year under consideration, as compared to the previous years; and that in view of all these facts, the explanation given by the assessee company regarding the margin of profit shown by the assessee on the lower side in comparison to the margin of profit shown by its

subsidiary entity, M/s Jai Suspension Systems LLP, was not acceptable. The AO observed that the assessee had been asked to furnish a comparative chart of gross profit rate or net profit rate of the previous three years with reason for shortfall, if any; that in compliance, the assessee had filed a comparative chart of gross profit rate and net profit rate; that from this chart, it was noticed that there was a shortfall in GP rate by 1% in comparison to the GP rate of the previous assessment year; that when asked to explain the reason for the shortfall in GP rate, the assessee, vide written reply filed on 9.12.2014, submitted that during the year, the assessee had taken or repaid loans only from and to the Bank, and details of secured and unsecured loans along with ledger accounts were being enclosed, a comparative chart of gross profit for the last three years was being enclosed, the GP rate during the year was slightly less as compared to the last year, since the rates of power and fuel had increased substantially, which had had its impact on the profit during the year; that the submission of the assessee was not acceptable; that the assessee itself had not shown GP rate less than 11.52% in the last two years, that is, AYs 2010-11 and 2011-12, where as in the year under consideration, a GP rate of 10.50% only had been shown; that the reason given

for the decline in GP rate was that the rates of power and fuel had increased substantially, which had had its impact on the profit of the assessee during the year; that however, the assessee could not substantiate its claim with documentary evidence; that in fact, the main reason for the decline in the GP rate of the assessee company was the supply of the products made by the assessee company to its subsidiary entity at a lower profit margin, for the purpose of diverting its profit to its subsidiary entity, which was claiming deduction under section 80 IC of the IT Act; that keeping in view all the facts, it was fair and reasonable to apply the average GP rate of the last two assessment years, at 11.63%, especially with regard to the low rate of GP shown by the assessee company; and that accordingly, the GP rate of 11.63% was being applied on the total sales of Rs. 9,67,43,37,000/-. In this manner, the AO arrived at a gross profit of Rs. 11,251,25,393/-. The assessee had shown a GP of Rs.1,01,55,48,000/-. The difference of profit came to Rs. 10,95,77,393/- and this difference was added to the total income of the assessee.

15. Before the ld. CIT (A), the assessee contended that the addition as made in the hands of the assessee company for

the alleged transfer or diversion of profit to M/s Jai Spring Systems LLP, which was claiming deduction under Section 80 IC of the IT Act, was illegal, since addition, if at all, could only be made in the hands of M/s Jai Spring Systems LLP, which was the entity claiming deduction under Section 80 IC of the IT Act, as there is a specific provision in the Act for making such an addition in the hands of an entity which is eligible for deduction under Section 80 IC of the IT Act, that is, Section 80 IC (7) read with Section 80 IA (10). The assessee contended that from a plain reading of Section 80 IA (10) of the Act, it was evident that there is a close connection between the assessee carrying on eligible business, i.e., M/s Jai Suspension Systems LLP, the subsidiary entity, to which this section applies, and any other person, i.e., the assessee company, Jamna Auto Industries Limited, the holding entity and if there is any business transacted between them, which produces more than ordinary profit to the eligible business, in this case, allegedly to M/s Jai Suspension Systems LLP, while computing the profits and losses of M/s Jai Suspension Systems LLP can only make adjustment to the deductions claimed by Jai Suspension Systems LLP under Section 80 IC of the IT Act and not in the hands of the other company, that

is, the assessee company; that therefore, the addition as made in the hands of the assessee company was illegal, since the Act empowers only the AO of the entity carrying on the eligible business to adjust the deduction claimed under section 80 IC; and that the assessment in the case of the subsidiary entity, M/s Jai Suspension Systems LLP had been completed under section 143 (3) of the IT Act, vide order dated 31.3.2015, where no such addition had been made. A copy of the said assessment order dated 31.3.2015 was filed. It was contended that as such, it was evident that there was no diversion of profit by the assessee company to its subsidiary entity, M/s Jai Spring Systems LLP; and that moreover, the slight fall in GP rate having been substantiated, the addition of Rs. 10,95,77,393/- by estimating GP rate at 11.63% as against 10.50%, as declared, deserved to be deleted.

16. The ld. CIT(A) held that the provisions of the Income Tax Act expressly provide that if the AO was of the opinion that there was some diversion of profit by the assessee to its subsidiary M/s Jai Suspension Systems LLP, which is claiming deduction u/s 80IC of the Act, action should have been taken u/s 80IC(7) read with Section 80IA(10) of the Act

and corresponding addition should have been made in the hands of the subsidiary company, and that however, no such addition had been made in the hands of the subsidiary company by the AO, in the scrutiny assessment order dated 31.03.2015. It was on this legal basis itself, that the addition made by the AO was deleted by the ld. CIT(A). Further, the ld. CIT(A) took note of the assessee's contentions on the merits of the issue, as submitted before the ld. CIT(A) vide letter dated 12.04.2018. These contentions stand reproduced in para 6.1, at pages 11 to 21 of the ld. CIT(A)'s order. The additional evidence filed by the assessee, alongwith such submissions, were sent by the ld. CIT(A) to the AO, for his comments. The AO furnished Remand Report dated 19.09.2018. This Remand Report stands reproduced in para 6.2, at pages 21 to 25 of the impugned order. The assessee submitted Rejoinder dated 23.10.2018 to the AO's said Remand Report. This Rejoinder of the assessee has been reproduced by the ld. CIT(A) in the order, in para 6.3, at pages 25 to 46 thereof.

16.1 After considering the above pleadings and additional evidences, the ld. CIT(A) deleted the addition of Rs.10.95 Cr. While doing so, it was observed that the disallowance of

Rs.10.95 Cr had been made by the AO on the ground of low GP rate, for which, the AO had opined that the assessee had not been able to substantiate its claim of the decline in GP rate being due to the increase in the rates of power and fuel, and that the assessee had sold products to its subsidiary, M/s Jai Suspension Systems LLP, at the lower profit margin for the purpose of providing its profit to its subsidiary, which was claiming deduction u/s 80IC of the Act. The ld. CIT(A) observed that contrary to such findings of the AO, the assessee had submitted all necessary documents and evidences, such as fuel invoices and Ledger Accounts of power and fuel, etc., to substantiate its claim that the increase in the rates of power and fuel had contributed to the fall in GP, amounting to 1%; that the assessee had submitted that if the rates of power and fuel had remained constant and had not increased as a percentage of sales from 6.95% to 8.23%, the GP rate of the assessee for the year under consideration would have worked out to 11.78%, which would have been better than that of 11.52% for assessment year 2011-12 and that of 11.75% for assessment year 2010-11, which the AO had taken as a benchmark; and that the comparative charts showing as to how the increase in the rates of power and fuel had negatively impacted the

GP rate, as furnished by the assessee, clearly proved the assessee's contention to be correct. The ld. CIT(A) noted that the AO had neither controverted, nor disproved these contentions of the assessee, in his Remand Report. The ld. CIT(A) observed that in his Remand Report, the AO had raised the questions as to how the assessee's subsidiary company was declaring higher GP/NP rates compared to the assessee company, when both were basically in the same business; that however, vide its reply dated 05.07.2022 (reproduced in para 6.6 at pages 39 to 41 of the impugned order), explaining as to why the profit margins of M/s Jai Suspension Systems LLP were better than those of the assessee company stated that the two companies were operating in different market segments, that whereas the sales of the assessee company constituted 7% high profit and 93% low profit margin products, M/s Jai Suspension Systems LLP had 55% high profit and 45% low profit margin products, that in such a scenario, naturally, M/s Jai Suspension Systems LLP was showing better GP/NP rates than those of the assessee company, and that since both the companies were dealing with different product markets and were operating in different market segments inter-se, their GP/NP rates were not comparable.

16.2 The ld. CIT(A) further took note of the assessee's contention that the low GP rate of the assessee was on account of the fact that it had received non-compete fees of Rs.5Cr +10Cr =Rs.15 Cr in assessment years 2009-10 and 2010-11 from M/s Jai Suspension Systems LLP, which prevented the assessee from selling its products to the principal customers of M/s Jai Suspension Systems LLP, namely, Tata Motors Ltd. and Ashok Leyland Ltd., at Rudrapur, and the replacement market all over the country, except Haryana. The assessee's contention in this regard stands reproduced by the ld. CIT(A) in para 6.8, at pages 42-43 of the impugned order. The ld. CIT(A) observed that the assessee's contention was that if the non compete fees were to be taken into account, the assessee's GP rate would work out to be substantially better, which fact had not been taken into account at all by the AO while making the addition, despite the fact that due income tax stood already paid by the assessee on the non compete fees received by it in the earlier assessment years. The ld. CIT(A) also observed that it had been contended on behalf of the assessee (para 6.10, at pages 43 to 54 of the impugned order), that since the very first year of its commencement of operations, i.e., from assessment year 2009-10, the assessee had always been

selling products to M/s Jai Suspension Systems LLP at a cost plus 10% margin, which fact stood duly accepted by the Department, after scrutiny, in all the earlier assessment years, and that there had been no change whatsoever in the facts and circumstances of the case for the year under consideration.

17. Before us, the Department has not been able to successfully rebut the categorical findings of fact recorded by the ld. CIT(A) while deleting the addition, either on the legal issue, or on merits. The ld. DR has contended that the ld. CIT(A) is not right in concluding that the assessee has successfully explained the fall in GP rate of the assessee; that while doing so, the ld. CIT(A) has ignored the aspect of the assessee having devised a colorable mechanism to divert its profit to its subsidiary entity for claiming a higher deduction under the provisions of Section 80IC of the Act. The ld. DR has contended that the ld. CIT(A) is not correct in holding that the AO had neither controverted nor disproved the contentions of the assessee in the Remand Report, whereas, on the other hand, the AO had disputed the stand taken by the assessee with cogent reasons and material.

17.1 The Id. Counsel for the assessee, on the other hand, has placed strong reliance on the impugned order.

17.1.1 Apropos the legal issue, Section 80IA(10) of the Act provides that where it appears to the AO that owing to the close connection between the assessee carrying on the eligible business to which this Section applies and any other person (the subsidiary of the assessee, M/s Jai Suspension Systems LLP, in the present case), or for any other reason, the course of business to them is so arranged that the business transacted to them produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business, the AO shall, in computing the profits and gains of such eligible business for the purposes of the deduction under this Section, take the amount of profits as may be reasonably deemed to have been derived therefrom. It is not disputed that the provisions of Section 80IA(10) apply. M/s Jai Suspension Systems LLP is claiming deduction u/s 80IC of the Act. The operative expression in Section 80IA(10) is "*shall*". Therefore, there is a statutory mandate contained in the Section, as per which, all other requirements of the provisions of the Section remaining constant, the AO shall, in computing the profits and gains of

the eligible business, for the purpose of deduction under the Section, take the amount of profits as may be reasonably deemed to have been derived therefrom. Meaning thereby, that addition, if any, needs must have been made in the hands of the other person, i.e., M/s Jai Suspension Systems LLP and not in the hands of the assessee company. Such statutory mandate of the provisions of Section 80IA(10) having undisputedly not been carried out in the present case, the addition made in the hands of the assessee company is unsustainable for this reason alone and the ld. CIT(A) correctly deleted the disallowance on this score itself.

17.2 Then, the AO had made the disallowance of Rs.10.95 Cr by holding that the assessee had not been able to prove that there had been a decline in its GP rate due to the increase in the rates of power and fuel, and that the assessee had sold its products to its subsidiary at a lower profit margin in order to divert its profits to its subsidiary, which was claiming deduction u/s 80IC of the Act. The assessee, on the other hand, had filed material documentary evidences like Fuel Invoices and Ledger Accounts of power and fuel etc., in support of its contention that the increase

in the rates of power and fuel was the reason for the fall of GP by 1%.

17.3 In the assessment proceedings, the assessee had been asked to submit the details of transactions entered into by it with its subsidiary entity, M/s Jai Suspension Systems LLP. The AO had further questioned the assessee as to why the margin of profit of the assessee company was less as compared to that of its subsidiary. In response, the assessee had explained before the AO in detail with regard to the fall in GP rate and also the reason for the lower GP rate of the assessee company, as compared to that of its subsidiary. Vide letter dated 09.12.2014, the assessee had placed a comparative chart of sales turnover, gross profit, GP rate, net profit and NP rate for assessment years 2010-11 to 2012-13. No further question was asked by the AO of the assessee. However, the addition was made, without confronting the assessee to show cause as to why the assessee had supplied its products to its subsidiary at a lower profit margin, if not for the purpose of diverting its profit to its subsidiary entity, which entity, it was, that was claiming deduction u/s 80IC. The AO was factually incorrect in observing that the assessee could not substantiate its

claim of decline in its GP rate for the reason of increase in the rates of power and fuel substantially, impacting the profit during the year and that the main reason for decline in the GP rate was the supply of its products by the assessee to its subsidiary company at a lower profit margin for the purpose of diverting its profit to its subsidiary entity, which was claiming deduction u/s 80IC. Vide the aforesaid letter dated 09.12.2014, the assessee had submitted a comparative chart of sales turnover, gross profit, GP rate, net profit and NP rate for assessment years 2010-11 to 2012-13. It had been submitted that during the year, the GP rate was slightly less as compared to the earlier year, since there had been a substantial increase in the rates of power and fuel, impacting the profits of the assessee during the year. Vide letter dated 18.03.2015, the assessee had filed a Note on the increase in power and fuel cost which had had its impact on the assessee's GP rate. In this Note (pages 15 to 17 of the impugned order), the assessee had contended that the main ingredient of the cost of production in the assessee's business is raw material and power and fuel cost, which accounts for approximately 78% of the sales; and that during the year under consideration, the power and fuel cost had sharply increased from Rs.56.67 Cr to Rs.79.83 Cr, i.e., from

6.95% of the sales to 8.23% thereof, meaning an increase of 18% over the immediately preceding assessment year, i.e. assessment year 2011-12.

17.4 It was also submitted that the fuel utilized in the Malanpur Plant of the assessee was mainly gas supplied by GAIL, which Plant carries out almost 50% of the total production of the assessee; that the fuel rate had risen from Rs.15/- per unit in April,2010 to Rs.32/- per unit in December,2011 and had settled at Rs.27/- per unit in March,2012; that the average increase in the rate per unit for assessment year 2011-12 was Rs.19/- and that for assessment year 2012-13 was Rs.26/-, giving an increase of 37%. It was further stated that power rate had also increased substantially during the year; that it had been Rs.4.15 per unit at the start of assessment year 2011-12 and had ended at Rs.5.46 per unit; that for assessment year 2011-12, the average rate per unit of power was Rs.4.60 and that of Rs.5.27 for assessment year 2012-13, thereby giving an increase of 15%. It had been submitted that since all the ingredients of the power and fuel cost had increased, the consumption figure for the year under consideration had also risen substantially; that the rate of the major fuels, i.e., gas

and furnace oil had risen by approximately 37%, which had had an impact on the overall power and fuel cost, which had risen, as a percentage of the sales, from 6.95% to 8.23%. The rise in cost of power and fuel, the assessee pointed out, worked out to approximately 18% in the year under consideration, as compared to assessment year 2011-12, and it was therefore, that the GP rate had fallen by approximately 1% as compared to the immediately preceding assessment year, i.e., assessment year 2012-13. The assessee submitted that all the other variables in the GP ratio submitted were comparable to the immediately preceding assessment year and there had been no major shift in percentage terms. It was pleaded that since the rates of power and fuel were not under the control of the assessee, the fall of GP by 1% stood fully justified.

18. These submissions made on the basis of relevant documentary evidence furnished by the assessee before the AO, were illegally ignored by the AO. No communication has been shown to exist on record, after the assessee had filed its said letter dated 18.03.2015, raising any query, thereby evincing the satisfaction of the AO with the explanation

offered by the assessee. However, still, the addition was made. Such documentary evidences are as follows :

- (i) Breakup of power & fuel for the AY 2012-13.*
- (ii) Copies of ledger A/c of power of fuel for the AY 2012-13*
- (iii) Breakup of power & fuel for the AY 2011-12*
- (iv) Copies of ledger A/c of power of fuel for the AY 2011-12*
- (v) Comparative chart showing %age of increase in power & fuel for the assessment year 2012-13 in comparison to assessment year 2011-12*
- (vi) Comparative chart of rates per unit of power & fuel i.e. electricity, HSD, furnace oil and Gas etc. for the assessment year 2011-12 and 2012-13*
- (vii) Specimen copies of bills of electricity, HSD, furnace oil and Gas for each month for the assessment years 2011-12 and 2012-13.*

19. All these evidences, it is not disputed, were furnished by the assessee before the Id. CIT(A) as additional evidence, though, in our considered opinion, these documents having been furnished before the AO, could well have been read in evidence as such only.

19.1 Further, the comparative charts filed by the assessee before the AO amply substantiated the stand of the assessee that the assessee and its subsidiary were operating substantially in different segments.

19.2 Further, still the assessee had contended that it had received non compete fees of Rs.5 Cr in assessment year 2009-10, vide Non Compete Agreement dated 05.03.2009, and of Rs.10 Cr in assessment year 2010-11, vide Agreement dated 05.02.2010, from its subsidiary. The relevant portions of these Agreements were reproduced by the assessee in its submissions. It was contended that in effect, the assessee company had not been allowed to sell its products to the main clients of its subsidiary, i.e., M/s Tata Motors Ltd. and M/s Ashok Leyland Ltd. at Rudrapur and in the replacement market all over India, except Haryana; and that due tax stood paid by the assessee on the non compete fees received. In support, the assessee had furnished the Non Compete Fee Agreements, Income Tax Return and Computation for assessment year 2009-10, extracts of the balance sheet, Profit & Loss Account and Other Income for assessment year 2009-10, Income Tax Return and Computation in assessment year 2010-11 and extracts of the Balance Sheet, Profit & Loss Account and Other Income, for assessment year 2010-11. The AO, however, did not bring anything on record to buttress his conclusion that the assessee company had diverted its profits to its subsidiary, which was claimed in deduction u/s 80IC.

19.3 The assessee further placed on record scrutiny assessment orders of both the entities for the earlier years to show that the assessee and its subsidiary had been engaged in the same business during the year under consideration as in those years, wherein no similar addition on account of alleged diversion of profit had been made. The assessee specifically contended that the assessee had not changed its method of charging margin from its subsidiary, such method being cost plus 10% margin. Such stand taken by the assessee was nowhere repelled by the AO, rendering the basis of the addition to be merely surmises and conjectures.

19.4 The ld. CIT(A) remitted the matter to the AO, seeking a Remand Report on the elaborate submissions made and the evidences furnished by the assessee company. The AO filed Remand Report dated 19.09.2018, to which, the assessee furnished Rejoinder dated 23.10.2018. The AO observed in the Remand Report that the assessee's contention that the addition had been made by the AO without providing reasonable and adequate opportunity to the assessee, was unbelievable, since the assessee had itself mentioned the queries raised by the AO and the replies furnished by it. The assessee, on the other hand, stated that in so observing, the

AO had been factually incorrect and misleading, since the AO had neither stated that he was not satisfied with the reply furnished by the assessee concerning the lesser margin of profit of the assessee company as compared to that of its subsidiary, nor had the AO confronted the assessee with regard to the alleged diversion of profit by the assessee to its subsidiary, nor even was the quantum of addition proposed confronted to the assessee.

19.5 The ld. CIT(A) found, and correctly so, merit in the contention raised by the assessee. Nowhere has the AO been shown to have enquired these matters of the assessee and the addition has been made without confronting the assessee in this regard. Therefore, the conclusion of the ld. CIT(A) in this regard is found to be justified and not requiring any interference at our hands.

20. On merits, in the Remand Report, the AO merely brushed aside lightly the submissions made by the assessee, wherein, the assessee had contended that it had been submitted before the AO and reiterated later, that the fall in GP rate was on account of increase in the rates of power and fuel substantially. The AO neither controverted nor disproved such contention of the assessee, which was duly

supported by documentary evidence. The AO merely stated that the mere furnishing of detail of sale of leaf springs and parabolic leaf springs as had been furnished during the assessment proceedings did not make any difference, since the fall in GP rate could not be justified. The AO also stated that the assessee had not given any justification regarding low profit as compared to the subsidiary. In juxtaposition to these observations in the Remand Report, it does not stand disputed that no query had been put to the assessee by the AO after he had submitted his afore-discussed detailed reply dated 18.03.2015, nor did the AO ask the assessee to furnish evidence to prove the increase in the rates of power and fuel, due to which, the GP rate had fallen during the year. On the other hand, the assessee had furnished the following documentary evidences to support its claim that it was the increase in rates of power and fuel during the year, which had led to the minor fall in GP during the year :

- (i) *Breakup of power & fuel for the AY 2012-13*
- (ii) *Copies of ledger A/c of power of fuel for the AY 2012-13*
- (iii) *Breakup of power & fuel for the AY 2011-12*
- (iv) *Copies of ledger A/c of power of fuel for the AY 2011-12*
- (v) *Comparative chart showing %age of increase in power & fuel for the assessment year 2012-13 in comparison to assessment year 2011-12*

- (vi) *Comparative chart of rates per unit of power & fuel i.e. electricity, HSD, furnace oil and Gas etc. for the assessment year 2011-12 and 2012-13 placed at page 561.*
- (vii) *Specimen copies of bills of electricity, HSD, furnace oil and Gas for each month for the assessment years 2011-12 and 2012-13 placed at pages 562-826.*

20.1 These evidences had also been furnished before the ld. CIT(A) and on remand, the AO was not able to controvert the same, due to which it was, that the AO merely stated, and wrongly so, that it did not make any difference that the assessee had furnished the sale details.

21. The assessee had contended that it had taken one time non compete fees of Rs.15 Cr from M/s Jai Suspension Systems LLP. In the Remand Report, the AO observed that there was no justification for determining the amount of Rs.15 Cr only for such a high business deal in the form of assuring of goodwill and supply of goods to the existing buyers; that no prudent businessman would enter into such deal with such a small consideration, knowing that the other party will give 100% deduction of income u/s 80IC of the Income Tax Act; that this had been done by the assessee company for its subsidiary entity just to divert the profit to claim higher deduction u/s 80IC in the subsidiary entity, which was amply clear from the net profit rates shown by

both the entities and that thus, it was a clear cut case of diversion of profit from a non-eligible unit to an eligible one, for claim of deduction u/s 80IC. As stated by the assessee in its Rejoinder, it remains unrebutted that the submissions made by the assessee with regard to the non compete fees of Rs.15 Cr charged by the assessee company from its subsidiary, i.e., M/s Jai Suspension Systems LLP, in assessment years 2009-10 and 2010-11, were not controverted or disproved by the AO. The assessee had filed the following evidences in this regard :

1. *Non Compete Fee agreements*
2. *Income Tax Return & Computation for the AY 2009-10*
3. *Extracts of the Balance Sheet, Profit & Loss A/c and Other Income for the FY 2008-09 (AY 2009-10)*
4. *Income Tax Return & Computation for the AY 2010-11*
5. *Extracts of the Balance Sheet, Profit & Loss A/c and Other Income for the FY 2009-10 (AY 2010-11)*
6. *Copy of Assessment order passed u/s 143(3) for the AY 2009-10 and AY 2010-11*

22. Even before us, the Department has not put up any case that the aforesaid documentary evidence filed by the assessee was either non-existent, or false.

22.1 Further, it also remains unrebutted that the said receipt of non compete fee by the assessee from its subsidiary was the factor which prevented the assessee to

sell its products to the principal customers of M/s Jai Suspension Systems LLP, i.e., Tata Motors and Ashok Leyland at Rudrapur and the replacement market all over the country, except Haryana. The Non Compete Agreement for both the years make the position amply clear and therefrom, it is evident that it was agreed between the assessee and its subsidiary that the subsidiary would pay a one time non compete fee to the assessee and the assessee agreed that it would not supply or sell tapered leaf or parabolic springs to TML's Pant Nagar, Uttrakhand Unit and will also not set up any manufacturing unit in Uttrakhand. Evidently, the non compete fee of Rs.15 Cr was received in assessment years 2009-10, and 2010-11, for five years. Thus, the assessee received, at an average, Rs.3 Cr per year as non compete fee. This, as rightly contended by the assessee and as also rightly taken into consideration by the ld. CIT(A) while deleting the addition, if added to the margin of 10% charged from M/s Jai Suspension Systems LLP by the assessee, would result in an additional margin of around 1.78%, i.e. 11.78%, rather than 10%. The GP rate would, thus, work out to be substantially better. The AO erred in not taking into account this aspect of the matter, despite the fact that

due Income Tax stood already paid on the non compete fee received by the assessee.

22.2 The assessee had submitted that no addition on account of GP rate could be made by comparing the GP rates of the assessee and its subsidiary entity, as both the entities were operating in substantially different segments, as per the details filed. Again, such assertions on behalf of the assessee remained uncontroverted. It was not disputed that the assessee and its subsidiary were operating in substantially different segments. This being so, again, as rightly contended, the GP rates of the assessee and its subsidiary entity were not comparable and, therefore, no addition on account of GP rate could have been legally made by comparing such GP rates.

22.3 Too, the assessee's contention to the effect that it was always selling products to M/s Jai Suspension Systems LLP at a cost + 10% margin, which process had been duly accepted by the Department in scrutiny assessment proceedings in the earlier years, as above, has not been brought to challenge. As stated before the authorities below by the assessee and reiterated before us, the assessee has been selling semi-finished products to M/s Jai Suspension

Systems LLP on a margin of 10% above cost consistently since 2009-10. In fact, as per the Excise Rules, which are applicable to the assessee, since it is registered under the Excise Act, the cost plus 10% margin method is the prescribed method of valuation for transfer of semi-finished goods to a related party. The assessee had also placed before the authorities below, the Guidance Note of the Institute of Cost & Work Accountants of India, at CAS-4. In this Guidance Note, it has been stated that Rule 9 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 deals with sales of a related person; that “related person” has been defined in Section 4(3)(b) of the Excise Act; that if a manufacturer sells goods to any related person, it will be treated as goods sold to a related person; that Rule 9 specifies that the goods can be sold to a related person for two purposes, one for onward sales when the related person is a dealer/distributor of the assessee and, second, where the related person buys goods from the assessee for consumption in the production or manufacture of the articles, the value shall be determined in the manner specified in Rule 8, i.e., assessable value to be 110% cost of production as per the proviso to Rule 9. Further, it was also brought on record that the assessee company has been

obtaining certificates from the qualified Cost Accountants regularly/periodically for valuation as per the Excise Rules, for fixing the rates to be charged on the cost plus 10% margin method for semi-finished goods sold to M/s Jai Suspension Systems LLP. Copies of such certificates were also placed on record before the AO vide Note alongwith letter dated 03.03.2015.

22.4 The adopting of the aforesaid method by the assessee stands duly accepted by the Department consistently over the years, under scrutiny assessment and no addition with reference thereto has been made. The documentary evidence furnished by the assessee in this regard stands tabulated in the written submissions filed by the assessee before the Id. CIT(A), as reproduced at pages 44 and 45 of the impugned order.

23. It is also not the case of the Department that there has been any change in the facts and circumstances of the case for the year under consideration vis-à-vis the said earlier assessment years. It being so, there was no occasion for the AO for taking a divergent view from that taken by the Department in the earlier years in not making any deduction in this regard.

24. The ld. CIT(A), it is seen, has duly taken into consideration all the above factors and has recorded elaborate findings of fact with regard thereto, and it is on the basis of thereof that the ld. CIT(A) has, and, in our considered opinion, rightly so, deleted the addition made by the AO wrongly. It is, therefore, that we find that the deletion ordered by the ld. CIT(A) requires no interference at our hands.

24.1 Then, the order of the Tribunal on this issue, for A.Y. 2009-10, under exactly similar facts and circumstances as present for the year under consideration, stands confirmed by the Hon'ble High Court, vide its order (supra) dated 13.10.2023, passed during the pendency of the present appeal before us. The said order of the Hon'ble High Court has not been shown to have been reversed, or even stayed, on appeal, or otherwise.

25. In view of the above discussion, finding no merit therein, Ground Nos. 3 and 4 raised by the Department are rejected.

26. Although it is a general ground, Ground No.5 contains an allegation that the order passed by the ld. CIT(A) is a perverse order. As to how it is so, has not been made out by

the Department before us. Accordingly, this Ground is also rejected.

27. In the result, the appeal is dismissed.

28. As the facts, circumstances and issues are identical in ITA No. 690/CHD/2022 to those of ITA No. 689/CHD/2022, our findings given in ITA No. 689/CHD/2022 would apply, mutatis-mutandis, to ITA No. 690/CHD/2022 also.

29. In the result, the appeals of the Revenue are dismissed.

Order pronounced on 23rd January, 2024.

Sd/-

**(VIKRAM SINGH YADAV)
ACCOUNTANTMEMBER**

Sd/-

**(A.D.JAIN)
VICE PRESIDENT**

“Poonam”

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar