**IN THE INCOME TAX APPELLATE TRIBUNAL**
**"K" BENCH, MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JM &**
**MS PADMAVATHY S, AM**

**I.T.A. No. 5848/Mum/2017**
(Assessment Year: 2012-13)

| | | |
|---|---|---|
| **Aditya Birla Nuvo Limited (since amalgamated with Grasim Industries Ltd.),** Corporate Finance Division, A2, Aditya Birla Centre, A Wing, 2nd Floor, S.K. Ahire Marg, Worli, Mumbai-400030.<br>**PAN : AAACI1747H** | Vs. | **The ACIT- LTU-1,** World Trade Centre, 29th Floor, Centre-1, Cuffe Parade, Mumbai-400005. |
| | | |
| **Appellant)** | : | **Respondent)** |

**I.T.A. No. 5935/Mum/2017**
(Assessment Year: 2012-13)

| | | |
|---|---|---|
| **The DCIT- LTU-1,** World Trade Centre, 29th Floor, Centre-1, Cuffe Parade, Mumbai-400005. | Vs. | **Aditya Birla Nuvo Limited (since amalgamated with Grasim Industries Ltd.),** Corporate Finance Division, A2, Aditya Birla Centre, A Wing, 2nd Floor, S.K. Ahire Marg, Worli, Mumbai-400030.<br>**PAN : AAACI1747H** |
| | | |
| **Appellant)** | : | **Respondent)** |

| | | |
|---|---|---|
| **Appellant/Assessee by** | : | Shri Ronak Doshi / Riken Shah, AR |
| **Revenue/Respondent by** | : | Shri Ashish Kumar Agrawal, Sr. DR. |

**Date of Hearing** : 25.06.2024
**Date of Pronouncement** : 01.07.2024

**O R D E R**

**Per Padmavathy S, AM:**

These Cross Appeals by the assessee and the Revenue are against the order of the Commissioner of Income Tax (Appeals)-55, Mumbai dated 27.06.2017 for Assessment Year (AY) 2012-13. The assessee and the Revenue raised various grounds pertaining to the following issues as tabulated below:

**Assessee**

| Ground No. | Issues |
|---|---|
| 1 | Disallowance u/s 14A of the Act |
| 2 | Upholding the action of AO in adding the disallowance u/s 14A of the Act to book profits u/s 115JB of the Act. |
| 3 | Reduction in deduction u/s 80IA of the Act by increasing the input cost by including the component of excise duty / service tax / VAT claimed as CENVAT credit. |
| 4 | Upholding the action of the AO in treating corporate advertisement as capital expenditure of Rs. 2,94,84,009/- |
| 5 | Upholding the action of the AO of treating lease equalisation charges as notional expense and disallowing the same u/s 37 amounting to Rs. 1,47,06,437/- |
| 6 | Upholding the action of the AO of treating interest liability on Electricity Tax of Rs. 25,90,428/- is covered u/s 43B of the Act and is to be allowed on payment basis. |
| 7 | Upholding the action of the TPO of treating corporate guarantee given to subsidiaries as international transaction and partly confirming the additions made by the TPO. |
| Additional Ground No.1 | Claim of Education and Secondary and Higher Education Cess as an allowable expenditure |
| Additional Ground No.2 | Re-computation of Dividend Distribution Tax ("DDT") liability on dividends paid to non-resident shareholders at beneficial rates as per applicable Double Taxation Avoidance Agreements and claim of refund for excess taxes paid |
| Additional Ground No.3 | Treating incentives under Market Linked Focus Product Scheme as a capital receipt and therefore not charging it to tax under the normal provisions of the Income-tax Act, 1961 ("the Act") and excluding it while computing book profits u/s 115JB of the Act |

| | |
|---|---|
| Additional Ground No.4 | Treating fertilizer subsidy as a capital receipt and therefore not charging it to tax under normal provisions of the Act and excluding it while computing book profits u/s 115JB of the Act. |
| Additional Ground No.5 | Treating freight subsidy as a capital receipt and therefore not charging it to tax under normal provisions of the Act and excluding it while computing book profits u/s 115JB of the Act |
| Additional Ground No.6 | Treating sales tax subsidy as a capital receipt and therefore not charging it to tax under normal provisions of the Act and excluding it while computing book profits u/s 115JB of the Act. |

**Revenue**

| **Ground No.** | **Issues** |
|---|---|
| 1 | Disallowance u/s 14A of the Act |
| 2 | Disallowance u/s 40(a)(ia) on year end provisions |
| 3 | Deleting the addition on account of CENVAT Credit on valuation of stock |
| 4 | Erred in allowing the of provisions made for leave salary / compensated absence |
| 5 | Erred in holding that the HO expenses cannot be allocated to profits derived from 100% EOU falling u/s. 10B and directing to reduce interest income (Department ground is wrongly worded, allocation of HO expenses were to 80IA Unit) |
| 6 | Allowing additional depreciation u/s 32(1)(iia) in the succeeding assessment year where the assets were put to use for less than 180 days in relevant previous year |
| 7 | Deletion of addition made on account of ESOP expenses |
| 8 | Erred in allowing the claim of assessee of depreciation of goodwill |
| 9 | Erred in allowing the claim of the assessee of sale of certified emission receipt |
| 10 | Erred in directing to treat interest subsidy from TUF as capital in nature |
| 11 | Erred in restricting the ALP of guarantee fees in respect of corporate guarantee given to AE to 0.5% as against 2.42% as held by AO/TPO |
| 12 | Erred in restricting ALP of performance guarantee fees to 0.5% as against 1.74% as held by AO/TPO. |
| 13 & 14 | General |

2. The assessee is part of Aditya Birla Group and is engaged in various businesses like Viscose Filament Yarn, Carbon Black, Insulators, telecom, fashion and life style, fertilizers, etc. The assessee filed the return of income for

AY 2012-13 declaring income of Rs. 347,63,02,349/- as per normal provisions of the Act and book profit of Rs. 403,71,63,629/- as per provisions of section 115JB of the Income Tax Act, 1961, (the Act) on 29.09.2012. The assessee subsequently filed revised return on 27.03.2014 revising the income under the normal provisions of the Act to Rs. 343,33,03,740/-. The case was selected for scrutiny under CASS and the statutory notices were duly served on the assessee. A reference was made to the Transfer Pricing Officer (TPO) to determine the Arms Length Price (ALP) of the International Transaction the assessee is having with its Associated Enterprises (AE). The TPO passed an under section 92CA of the Act dated 29.01.2016 computing a TP Adjustment towards financial and performance guarantee totalling to Rs. 10,00,84,210/-. The AO passed an assessment order under section 143(3) r.w.s. 144C of the Act by incorporating the TP Adjustments. The AO besides the TP Adjustment also made various additions/disallowances to arrive at the assessed income of the assessee under normal provisions at Rs. 424,67,28,014/-. The AO also recomputed the book profit under section 115JB at Rs. 430,23,05,337/-.

3. Aggrieved the assessee filed the appeal before the Ld. CIT(A). The CIT(A) partly allowed the appeal filed by the assessee. The assessee and the Revenue are in appeal before the Tribunal against the order of the CIT(A).

**ITA No. 5848/Mum/2017-Assessee's appeal.**

**Disallowance under section 14A of the Act and adding the disallowance to book profits under section 115JB of the Act. – Ground No. 1 & 2.**

4. During the year under consideration the assessee has received an amount of Rs. 77,89,81,486/- as dividend income. The assessee has made a *suo-moto* disallowance of Rs. 7,17,17,809 in the return of income which consisted of

Rs.5,99,75,725 towards interest cost attributable to investment activities and Rs.1,17,42,084 in connection with expenses attributable to exempt investments. The AO accepted the suo-moto disallowance made towards interest cost but made a disallowance towards indirect expenses of Rs. 26,51,41,708 under section 14A r.w.r. 8D(2)(iii). Before the CIT(A) the assessee raised a fresh plea that disallowance towards interest on borrowings which are suo-moto made by the assessee to the tune of Rs. 5,99,75,725 should not be made for the reason that these investments are strategic in nature for the purpose of gaining controlling interest in those companies and not for the purpose of earning dividend income. With regard to the additional disallowance made under Rule 8D(2)(iii) the assessee submitted the break up of indirect expenses to the tune of Rs.22,39,05,880 to pray that the same should be considered proportionately for the purpose of disallowance towards indirect expenses. The assessee also submitted that the AO is not correct in applying 0.5% of the investments without basis since the investments majorly include those made in subsidiaries for strategic purposes. The CIT(A) accepted the contention of the assessee and allowed the deduction of Rs. Rs.5,99,75,725 but confirmed the disallowance of Rs. Rs.22,39,05,880 towards indirect expenses. With regard to the contention of the assessee that disallowance under section 14A should not be added to the book profits under section 115JB, the CIT(A) upheld the decision of the AO.

5. The ld. AR submitted that in the disallowance made towards indirect expenses the CIT(A) has erroneously considered the entire amount which was submitted as breakup of indirect expenses instead of proportionate expenses. The ld. AR further submitted that the issue is considered by the decision of Co-ordinate Bench in assessee's own case for AY 2011-12 (ITA No. 1065 & 1248/Mum/2015 dated 28.12.2023 and MA 56/Mum/2024 dated 26.03.2024) The

ld AR drew our attention to the findings of the Tribunal where the Tribunal has remitted the issue back to the AO with a direction to consider only those investments which are earning tax free incomes by placing reliance on ACIT Vs. Vireet Investments Pvt. Ltd. (2017) 165 ITD 27 (Del. Trib.(SB). The ld AR for the year under consideration presented the alternate argument that the AO did not record any satisfaction while rejecting the suo-moto disallowance made by the assessee towards indirect expenses. The ld AR in this regard placed reliance on CIT vs M/s.Asian Paints Ltd (ITA No.1564/Mum/2016) and Ultra Tech Cement ltd (ITA No.1401 of 2014). Therefore the ld AR argued that the AO should not have made any disallowance under section 14A r.w.r. 8D(2)(iii) without recording satisfaction and accordingly prayed that the disallowance towards indirect expenses should be restricted to the suo-moto disallowance already made by the assessee.

6. The ld. DR on the other hand, relied on the order of the lower authorities.

7. We have heard the parties and perused the material on record. With regard to the alternate argument of the ld AR with regard to disallowance under section 14A r.w.r. 8D(2)(iii), it is relevant to first look at the provisions of the said section and the Rule before proceeding further which read as under -

> "Expenditure incurred in relation to income not includible in total income.
>
> 14A. (1) For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.
>
> (2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not

satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act :]

Provided that nothing contained in this section shall empower the Assessing Officer either to reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year beginning on or before the 1st day of April, 2001.]

**Rule 8D.** (1) Where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with—

(a) the correctness of the claim of expenditure made by the assessee; or

(b) the claim made by the assessee that no expenditure has been incurred,

in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).

(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:—

(i) the amount of expenditure directly relating to income which does not form part of total income; and

(ii) an amount equal to half per cent of the annual average of the monthly average of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income :

**Provided** that the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee."

8. From the combined reading of the above provisions, it is clear that for the purpose of application of section 14 r.w.r 8D(2)(iii) the AO has to record reasons as to why he is not satisfied with the correctness of the claim of expenditure by the assessee. In order to understand whether the AO has recorded satisfaction for the year under consideration in assessee's case, we need to look at AO's relevant findings which are extracted below –

"3.2 From examination of the return, It was observed that the assessee has received an amount of Rs. 77,89,81,486/- as dividend during the year which has been claimed as exempt u/s 10 of the I.T. Act, 1961. Since the assessee has not apportioned any expenses as having been incurred for earning this exempt income, I am not satisfied with regard to correctness of the claim of expenditure made by the assessee and provisions of Rule 80 of Income Tax Rules are being invoked. Therefore, vide questionnaire dated 04.12.2015, the assessee was asked to furnish details of dividend income earned and expenses incurred as per provisions of section 14A and Rule 8D on earning this income.

*"3.3. ……..*

*3.4 The above submissions of the assessee is considered but the contention of the assessee is not acceptable for the following reasons:*

*(i) to (iii). ……..*

*iv) It is known fact that investment is a most scientific and research-oriented activity, it requires expertise and deep knowledge of not only company where investments are made, but also various other factors, like future prospect of a particular sector and industry, political scenario-domestic as well as international, Government policies, the competition from similar other products and services, and competition from other companies etc., and various other factors. Therefore, for keeping a track of all these aspects and activities, not only highly professionally qualified, trained and experienced staff are required but also highly technological infrastructure is also required to keep them abreast with the day to day developments at not only national level but also globally. Since the investments or purchase and sale of shares are of high quantum value, for taking such decisions regarding the timely purchase, sale or investments, it needs razor sharp decision, for which only trusted and highly trained decision makers are required. To feed them, a well equipped research department with back office is a must, to which most of the indirect expenses are related. The assessee cannot say that its indirect expenses are entirely for some other purposes, and not related to dividend income.*

*v) It may further be added that earning dividend is extremely important criteria in making a decision of investment or purchase of shares & securities. In other words, while purchasing shares & securities, one cannot ignore the dividend paying capacity of particular company. Hence a part of indirect expenses also allocable towards the expenses incurred for earning exempt dividend income. In the absence of any submission on the part of the assessee, related to the expenses, which has been reasonably incurred for earning the dividend income, it is difficult to allocate the amount that assessee would have spent in order to earn tax-free income, mare se from the nature of business carried on by the assessee. In order to estimate the amount spent for earning dividend, it is essential to identify the various types of expenses that assessee would have incurred directly as well as indirectly. It is also essential to understand that dividend is one of essential criteria in an investment decision.*

*vi ) Considering the difficulty in arriving at the expenditure attributable to the earning of exempted income, the legislature in his wisdom has introduced an amendment to Section 14A(2). This amendment has prescribed the methodology for determining the expenditure attributable to earning of exempted income. By insertion of this amendment the powers vested with the A.O, are not left to his discretion rather this power of determining expenditure as per his will and whims has been diluted. This has also helped in overcoming the difficulties faced by both tax payer and tax administrators, Further it is a uniform method prescribed by the statute, which is binding in nature, the A.Q came to conclusion that some part of the expenditure is attributable to exempt income."*

9. From the perusal of the above we notice that the AO has not brought anything on record to factually state that the computation of disallowance made by the assessee towards indirect expenses is not correct. We further notice that the AO has proceeded on the basis of incorrect understanding that the assessee has not made any suo-moto disallowance and the observations justifying the disallowance towards indirect expenses are general in nature. We also notice that the AO has not called for any details from the assessee or analysed the workings of the suo-moto disallowance. In this regard we notice that the Hon'ble Supreme Court in the case of *Maxopp Investment Ltd. v. CIT [2018] 91 taxmann.com 154 (SC)* has held as follows:-

> *"41. Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO."*

10. In view of the above Hon'ble Apex Court judgment, it is clear that no disallowance can be made u/s 14A of the Act read with Rule 8D(2)(iii), where the A.O. failed to record dissatisfaction of correctness of the claim of the assessee. Accordingly we hold that the disallowance towards indirect expenses should be restricted to Rs.1,17,42,084/- as computed by the assessee suo-moto.

11. With regard to disallowance under section 14A being added to the book profits under section 115JB of the Act, We notice that this issue has also been considered by the decision of Co-ordinate Bench in assessee's own case for AY 2011-12 (supra) where it has been held that –

> *"9. With regard to disallowance under section 14A being added to the book profits under section 115JB of the Act, the ld. AR submitted that this issue has also been considered by the decision of Co-ordinate Bench in assessee's own case for AY 20110-11 (supra) where it has been held that –*
>
> > *7. We find merit in the contentions of the ld. Authorized Representative for the assessee. For the purpose of computation of book profits under section115JB, disallowance made under section 14A r.w.r. 8D cannot be added. The Hon'ble Jurisdictional High Court in the case of CIT vs. Bengal Finance & Investment Pvt. Ltd.(supra) while answering the substantial question of law on this issue affirming findings of Tribunal observed :*
> >
> > *"4. So far as Question (b) is concerned, the impugned order of the Tribunal followed its decision in M/s Essar Teleholdings Ltd. v/s.*

*DCIT in ITA No. 3850/Mum/2010 to held that an amount disallowed under Section 14-A of the Act cannot be added to arrive at book profit for purposes of Section 115JB of the Act. The Revenue's Appeal against the order of the Tribunal in M/s. Essar Teleholdings (supra) was dismissed by this Court in Income Tax Appeal No. 438 of 2012 rendered on 7th August, 2014. In view of the above, question (b) does not raise any substantial question of law".*

*The Special Bench of the Tribunal in the case of Vireet Investments Pvt. Ltd.(supra) reiterated the view by holding that computation under clause (f) of Explanation 1 to Section 115JB(2), is to be made without resorting to the computation as contemplated under section 14A r.w.r. 8D. Thus, in the light of the above decisions, ground No.2 of the appeal by the assessee is allowed.*

*10. We heard the DR. The facts for year under consideration being similar, in our considered view the issue is covered by the above decision of the coordinate bench. Accordingly we direct the AO to delete the adjustment made to book profits under section 115JB towards disallowance under section 14A"*

12. Respectfully following the above decision of the coordinate bench we direct the AO to delete the adjustment made to book profits under section 115JB towards disallowance under section 14A.

13. The ld. AR submitted that the issues contended in Ground 3 onwards including additional grounds are similar to AY 2011-12 and since the facts for the year under consideration are identical, the decision of the coordinate bench would be applicable for the year under consideration also. The ld DR on the other hand submitted that the decision of the Tribunal has not reached finality and therefore the ld DR supported the orders of the lower authorities.

**Deduction under section 80IA of the Act – Ground No.3**

14. The assessee has claimed deduction under section 80IA of the Act towards its power plants located in Veraval and Chennai. The AO noticed that the

assessee has not allocated the Head Office expenses to the units and worked out on prorate basis a sum of Rs. 41,46,206/- to be reduced from the profits eligible for deduction under section 80IA. The AO further noticed that the assessee has shown the expenses without including the component of excise / CENVAT / service tax, etc and called on the assessee to submit the details of the tax component on the expenses on consumption of raw-materials and other services in relation to these power plants. Based on the details furnished by the assessee, the AO computed an amount of Rs. 6,98,57,541/- to be deducted from the profits computed for the purpose of claiming deduction under section 80IA. On further appeal, the CIT(A) confirmed the deductions made by the AO from the profits eligible for section 80IA of the Act. The CIT(A) with regard to the deduction made towards excise / CENVAT / VAT directed the AO to rework the deduction based on actual expenditure and restrict the disallowance accordingly. Aggrieved the assessee is in appeal before the Tribunal.

15. We have heard the parties and perused the material on record. We noticed that on identical issues the co-ordinate bench in assessee's own case for AYs 2008-09 to 2010-11 (ITA No. 7640 to 7642/Mum/2019) has held that

> *"3.10. Even on merits, we find that the main grievance of the Revenue is that the assessee had not debited certain expenses in the eligible unit i.e. 80IA units and thereby had claimed excess deduction u/s.80IA of the Act in the return of income. We find that this aspect has been addressed elaborately by the ld.CIT(A) and the ld. CIT(A) had deleted the said disallowances by placing reliance on various decisions of Tribunals, High Courts and Supreme Court and granted relief to the assessee. Relevant observation of the ld. CIT(A) are as under:-*
>
> > *6.3 I have carefully perused the facts of the case and arguments advanced by the AR The AO has observed that the appellant is booking the expenses in its P&L account net of CENVAT which is shown separately in balance sheet under CENVAT receivable account. The AO held that 80-IA unit has to be looked upon viewed*

*as standalone unit and in computing all the business expenses including duties and taxes has to be taken into account to arrive at correct and true profits of the 80-1A units Accordingly, AO reduced the deduction u/s 801A of Rs 2,17 27,798/- and added back to the total income of the appellant.*

*6.4 During appellate proceeding, the appellant submitted that if stand of the AO is accepted i.e. VAT component on expenditure incurred by the 801A eligible unit is to be considered as an expenditure actually incurred by the 801A eligible units, then such VAT credit allowable to main plant should also be treated as income of the eligible unit as the Appellant while determining the revenue of 801A eligible unit has adopted rate charged by State Electricity Board to manufacturing plant as market price of electricity generated by the power plant and has made no adjustment on account of VAT credit allowable to main plant on account of electricity purchased by main plant from 801A eligible unit. Accordingly, there will be no impact in the deduction u/s 801A claimed by the Appellant as one side expenditure of eligible unit will be increased and on other side income of the eligible unit will be increased. The appellant also submitted that the cenvat credits are in the nature of reimbursements and bear a direct nexus to the business of the eligible unit and therefore would qualify for the deduction w/s 801A of IT Act, 1961.*

*6.5 I find that the issue had been settled by Hon'ble Apex court and High Courts in favour of the appellant. The Hon'ble Apex Court in the case of CIT vs. Meghalaya Steels Ltd reported in 383 ITR 217 had decided that the subsidies reimbursed to the assessee for element of cost relating to manufacture or sale of their products bear a direct nexus between profits of assessee's business and reimbursement of such subsidies and therefore such subsidies are eligible for deduction u/s 8018 rws. 801C of IT. Act, 1961. The relevant finding of Hon'ble Apex Court is as under :-*

> *"Assistance by way of subsidies which are reimbursed on the incurring of costs relatable to a business, do not fall under the head "income from other sources", which is a residuary head of income that can be availed only if income does not fall under any of the other four heads of income. Section 28(iiib) specifically states that income from cash assistance, by whatever name called, received or receivable by any person against exports under any scheme of the Government of India, will be income chargeable to income tax under the head "profits and gains of business or profession" If cash assistance received or receivable against exports schemes are*

> *included as being income under the head "profits and gains of business or profession", it is obvious that subsidies which go to reimbursement of cost in the production of goods of a particular business would also have to be included under the head "profits and gains of business or profession", and not under the head "income from other sources"*

*The Hon'ble Delhi High Court in the case of CIT vs. Dharam Pal Prem Chand Ltd reported in 317 ITR 353 had decided that:*

> *"The finding of the authorities below was that the refund of excise duty was pivoted on the manufacturing activity carried on by the assessee. Once such a finding of fact had been returned, there was no need to go further and to examine the immediate and proximate source of refund of excise duty. As a matter of fact, in the questions proposed by the revenue, there was no specific question that the said finding of the authorities below was perverse. There was of course a very broad-based and general question that the order passed by the Tribunal was perverse, in law, and on facts. Such a question was vague. [Para 5]*
>
> *Further, the language appearing in section 80-1B is 'profit and gains derived from any business'. Therefore, the test of proximity, i.e., direct nexus with the industrial activity is not necessary while claiming a deduction under section 80-1B. [Para 5.2] In the circumstances, the judgment of the Tribunal deserved to be sustained."*

*The Hon'ble Madhya Pradesh High Court in the case of CIT vs. Siddharth Tubes Ltd reported in 296 ITR 221 had decided that :-*

> *"Held that from the facts placed on record one was not able to say that any refund had been diverted for the purpose other then the business of the industrial undertaking and, therefore, there was no hesitation in holding that the amount refunded had the result of inflating the profits and gains of the industrial undertaking. As the duty of excise had the effect of increasing the profits and gains of the industrial undertaking within the parameters of sections 80HH and 80-1, the relief could be given.*

*Therefore, refund of excise duty was includible in its profits computed for the purpose of deductions under sections 80HH and 80-I.*

*The Hon'ble Gujarat High Court in the case of CIT vs. Shah Alloys Ltd reported in 396 ITR 711 had decided that*

> *"Whether interest received on margin money placed for business purpose cannot be treated as income from other sources and, therefore, eligible for deduction under section 80-IA being incidental to business of assessee-Held, yes."*

*The Hon'ble Meghalaya High Court in the case of Pr. CIT vs. Shree Mahabir Foods Ltd reported in 282 CTR 112 had decided that*

> *"Deduction under section 80-18 would be allowed on the transport subsidy recen from the Government when it was not the case of revenue that the transport subsidy had no bearing on the cost of production of the industrial undertaking of the assessee."*

*The Hon'ble Delhi ITAT in the case of JK. Aluminium Co. vs. ITO reported in 292 CTR 112 had decided that*

> *"As we have observed from the papers in the paper book, the exempt amount has been paid as is evident from the orders granting the refund which are placed. The Supreme Court after examining the affidavits passed on 11.01.2010 in the case of CIT vs. Dharam Pal Prom Chand Ltd. and after hearing both the parties, eventually dismissed the appeal of the Department against order of Delhi High Court on 22.02.2010. As is clear, the Notification dated 14.11.2002 exempts the amount of paid ensure proper control over the transactions, the Notification only requires the manufacturers to first deposit the excise duty and then claim the refund of the same next month. Thus the refund is assessee's own money itself in a way security deposit which is being refunded on submission of the evidence depositing the same. Therefore, in our view this is not an income at all. Therefore, the A.O, in our view, was not justified in making a separate addition of income and thereby denying the relief eligible u/s 80.IB of the Act on that amount."*

*Thus, respectfully following the judicial decisions cited supra and considering the facts of the case, hold that the appellant is eligible to claim the deduction u/s 80IA of I.T. Act. 1961, I direct the AO to delete the disallowance of deduction u/s 80IA of Rs.2.17.27.798/- made in the assessment order. Accordingly, Ground No 2 is hereby Allowed.*

*3.11. We further find that the similar issue had arose before this Tribunal in the case of Ambuja Cements Ltd vs. Addl. CIT in ITA No.2384 & 3475/Mum/2019 and 1241/Mum/2018 for A.Y. 2010-11, 2011-12 and 2012-13 and ITA Nos. 2958 and 3843/Mum/2019 and 1889/Mum/2018 for A.Yrs. 2010-11, 2011-12 and 2012-13 vide consolidated order dated 07/11/2022 wherein this Tribunal had held as under:-*

> *99. In ground no. 6, the assessee has raised the following grievances: On the facts and in the circumstances of the case and in law, the Ld. CIT(A) was not justified and grossly erred in confirming the action of the AO in treating CENVAT credit availed on inputs and capital goods used in the undertakings eligible for deduction u/s 801A as cost of the eligible undertakings.*
>
> *100. So far as this grievance of the assessee is concerned, only a few material facts need to be taken note of. During the course of the assessment proceedings, the Assessing Officer noted that while computing the deduction under section 80IA in respect of captive power plants, ports and rail systems, the assessee had debited the expenses directly attributable to the eligible units, net of CENVAT credit availed, wherever applicable, on the expenditure incurred. These CENVAT credits are available under the excise provisions and adjusted against the excise duty liability on goods produced by the related cement manufacturing units. In effect, the component of expenses of statutory duties/ taxes is credited directly to „CENVAT receivable account" without routing it through the profit and loss account. The Assessing Officer was of the view that Section 80A(IA) provides for exemption in respect of „profit derived by an eligible undertaking" for the specified purposes, but the critical words are "derived from" and, therefore, "it is only the expenditure, which had a direct and proximate (immediate) nexus with the earning of profit from eligible undertaking that could be taken into consideration for determining such profits". It was also noted that the eligible unit is to be viewed as an independent unit on the standalone basis, as Section 80IA(5) requires such an eligible unit to be treated "as if such eligible business were the only source of income of the assessee during the previous year relevant to the assessment year". Accordingly, the Assessing Officer reduced the eligible deductions under section 80IA, by the amount of CENVAT credits attributable to eligible units, as the expenses were not booked through the profit and loss account, and, to that extent, the profits stood distorted/ inflated. These allocations were done on the basis of turnover "in the absence of any item wise details". Aggrieved, inter-*

*alia, by these adjustments on account of CENVAT credit, assessee carried the matter in appeal before the CIT(A) but without success. The assessee is not satisfied and is in further appeal before us.*

*101. We have heard the rival contentions, perused the material on record and duly considered the fact of the case in the light of the applicable legal position.*

*102. We find that Section 80IA(5), which has been heavily relied upon by the assessee, provides that " notwithstanding anything contained in any other provision of this Act, the profits and gains of an eligible business to which the provisions of sub-section (1) apply shall, for the purposes of determining the quantum of deduction under that sub-section for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to the initial assessment year and to every subsequent assessment year up to and including the assessment year for which the determination is to be made". All that this provision does is that it provides for the profits of the eligible unit being treated on a standalone basis, but then in case the Assessing Officer makes an adjustment for the payment which has earned the CENVAT credit, he must also make an adjustment for the corresponding CENVAT credit availed by any other unit of the assessee – other than the eligible unit. If the captive power unit makes a payment of X amount, and in turn, it generates a CENVAT credit of X amount, which is availed by another unit, say Ropar Cement Manufacturing Unit, the hypothetical independence embedded in the profit computation on a standalone basis requires that the Ropar Cement Manufacturing Unit must reimburse the captive power unit for such a CENVAT credit. It cannot be open to the assessee to provide for the expenses which have earned the CENVAT credits, but not to account for the CENVAT credits and the benefits accruing form the same. In any event, the fiction envisages under section 80IA(5) is to enable computation of profits on a standalone basis, rather than to increase the scope of profits itself and allocate notional expenditure to the eligible units. When the eligible units are other units are treated as independent of each other, and the profit computations are on a standalone basis, the eligible unit must get the corresponding credit for the CENVAT credits availed by the other units. Viewed thus, not accounting for the CENVAT credit does not, in our considered view, vitiate the profits of the eligible undertaking, as long as all such credits are*

*fully availed by the other units as is the undisputed position anyway. What the assessee has done is that the expenses are debited net of the CENVAT credit availed. To this extent, we see no infirmity in the stand of the assessee.*

*103. In view of these discussions, as also bearing in mind the entirety of the case, we uphold the plea of the assessee, and direct the Assessing Officer to delete the impugned adjustment on account of CENVAT in the profits of the eligible units. The assessee gets the relief accordingly.*

*3.12. Even on merits, the addition made by the ld. AO deserves to be deleted in view of the aforesaid decision of this Tribunal.*

*3.13. In view of the aforesaid observations and respectfully following the various judicial precedents, the reopening made by the ld. AO for A.Y.2008-09 is bad in law and is hereby quashed. Accordingly, the appeal of the assessee is allowed. On merits, the issue is already covered in favour of the assessee by relying the decision of this Tribunal in the case of Ambuja cements referred to supra. Accordingly, the grounds raised by the Revenue are dismissed."*

16. We further notice that a similar view is held by the coordinate bench in assessee's own case for AY 2011-12 also. We also notice that the facts for the year under consideration are identical and therefore respectfully following the decisions of Co-ordinate Bench in assessee's own case, we allow the issue in favour of the assessee.

**Treating corporate advertisement as capital expenditure – Ground No.4**

17. The AO observed during the assessment proceedings that the assessee has incurred expenses on corporate advertising which were claimed as revenue and called on the assessee to explain why the same should not be treated as capital in nature. The assessee submitted before the AO that the corporate advertising expenses are incurred to generate and enhance the confidence among vendors and consumers and directly aimed at generating sales. Accordingly, the

assessee submitted that the corporate advertisement expenses cannot be treated as capital expenditure. The AO did not accept the submissions of the assessee and proceeded to hold that the assessee is deriving enduring benefits from corporate advertisement and therefore, treated the sum of Rs. 2,94,84,000/- as capital expenditure. The AO however allowed depreciation to the tune of Rs. 1,19,20,299/- on expenditure including earlier year WDV.

18. We have heard the parties and perused the material on record. We noticed the co-ordinate bench in assessee's own case for AY 2011-12 has considered the similar issue where it has been held that

> *"17. We have heard the parties and perused the material on record. We noticed the co-ordinate bench in assessee's own case for AY 2010-11 has considered the similar issue where it has been held that*
>
> > *11. We have heard the submissions made by rival sides and have examined the orders of authorities below. The expenditure incurred by assessee towards corporate advertisement was disallowed holding it to be capital in nature. We find that similar disallowance of advertisement expenditure was made in assessment year 2009-10. The Co-ordinate Bench of the Tribunal, following the decision of Hon'ble Jurisdictional High Court in the case of CIT vs. Asian Paints (India) Ltd., reported as 243 Taxman 348 (Bom) held the expenditure as revenue in nature. The ld. Departmental Representative has not been able to controvert the findings of then Co-ordinate Bench of the Tribunal in assessee's own case on the same issue. Following the same reasoning, we hold corporate advertisement expenditure as revenue expenditure. Thus, ground No.4 of the appeal of the assessee is allowed.*
>
> *18. We also noticed that a similar view has been held by the co-ordinate Bench in assessee's own case for AY 2009-10 also, the facts of the year under consideration being identical respectfully following the above decision of the co-ordinate bench, we allow the grounds raised by the assessee and delete the addition made in this regard"*

19. We notice that the above view has been consistently held by the co-ordinate Bench in assessee's own case for AY 2009-10 also. Since the facts of the year under consideration are identical we are of the considered view that the above decision of the co-ordinate bench is applicable to the year under consideration also and accordingly we delete the addition made in this regard. The ground raised by the assessee is hereby allowed.

**Disallowance of lease equalization charges – Ground No.5**

20. During the course of assessment proceedings, the assessee made a claim through notes to return of income in respect of lease equalisation charges, The assessee submitted before the AO that the assessee has debited Rs. 1,47,06,437/- as lease equalization charges to the P&L A/c as per accounting standard 19 which is mandatorily applicable to the assessee company. The assessee further submitted that the said charges being ascertained liability as per the mandatory accounting standard the same shall be allowable as an expenditure under section 37. The assessee also submitted that in the return of income out of abundant caution the said amount has been disallowed and that the same is now claimed as a deduction by relying on the decision of the Delhi High Court in the case of CIT Vs. Virtual Soft Systems Ltd. (2012) 341 ITR 593 (Del.). The AO did not accept the claim of the assessee stating that the deduction has not been claimed in the return of income and in this regard the AO placed reliance on the decision of the Hon'ble Supreme Court in the case of M/s Goetze India Ltd. Vs. CIT 284 ITR 323 (SC). The AO also considered the issue on merits and held that the amount cannot be allowed as a deduction. The CIT(A) held that the assessee is entitled to raise additional claim before the appellate Authority even if the claim was not made in the return of income. However, on merits the CIT(A) dismissed the

contentions of the assessee and upheld the disallowance made by the AO. Aggrieved the assessee is in appeal before the Tribunal.

21. We have heard the parties and perused the material on record. The coordinate bench in assessee's own case for AY 2011-12 has considered the same issue and held that –

> *"23. We have heard the parties and perused the material on record. The assessee during the year under consideration debited a sum of Rs. 19,48,66,687/- as lease equalization charges to the P&L A/c as per accounting standard 19. The same is claimed as a deduction through a note to Return of Income before the AO though the assessee had initially disallowed the same in the Return of Income. The revenue's stand is that the amount debited is a notional charge and an unascertained liability. Accordingly only the rent as per the rental agreement could only be allowed as a deduction. The assessee's argument is that the AS-19 is mandatorily applicable in assessee's case and therefore the amount debited to the P&L account is an ascertained liability that should be allowed as a deduction. In this regard we notice that the Kolkata Bench of the Tribunal has considered a similar issue in the case of Bata India Ltd (supra) where it has been held that –*
>
> > *30. We heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. The Ld Counsel submitted before us that during the financial year 2007-08 the Expert Advisory Committee of the Institute of Chartered Accountants of India had issued a clarification in respect of mandatory Accounting Standard-19 on accounting of operating lease rent expense. Pursuant to the said clarification the assessee was required to recognize in its annual audited accounts the scheduled rent increments over the lease term on a straight line basis in respect of all existing operating lease agreements remained in force on or after 2001. The assessee adopted the method prescribed in the Accounting Standard-19 for accounting of operating leases in the relevant year under consideration since the relevant clarification to AS-19 was issued by ICAI only in the relevant year. The assessee therefore had to compute the impact of such straight-lining of lease rent from 01.04.2001 up to 31.03.2007 which was determined at Rs 39,718,000/- and the same was accounted under the head "Prior Period Expenses' in the Profit &Loss account. A further sum of Rs.40,647,000/-*

*was determined as the current year's expense on account of straight-fining of lease rent which was debited to the Profit &Loss account. In the return of income filed for the A.Y. 2008-09, the assessee inadvertently added back both prior period expense of Rs.39,718,000/- and the current year's expense of Rs. 40,647,000/- while computing income under normal provisions of the Income-tax Act, 1961. In the course of assessment however the assessee claimed the deduction for the current year's expense of Rs.40,647,000/- before the Assessing Officer while assessing profits from the business. The AO however in his impugned order did not even take cognizance of the assessee's submissions and ignored the claim made by the assessee.*

*The Ld. Counsel further submits before us that assessee made a detailed submissions during the appellate proceedings about the mandatory Accounting Standard-19, issued by the Institute of Chartered Accountants of India AS AS-19 requires that the operating lease expenses be recognized on a straight-line basis unless another systematic and rational basis is more representative of the time pattern in which use benefit is derived from the leased property, in which case that basis shall be used. Paragraphs 23 and 24 relate to payments of lease rental and view the matter from the lessee's perspective. The relevant extracts of Paragraph 23of AS-19 which lays down the accounting guideline for operating lease expenses from the standpoint of the lessee' is as follows:*

> *"Lease payments under an operating lease should be recognized as an expense in the statement of profit and loss on a straight line basis over the lease term, unless another systematic basis is more representative of the time pattern of the user's benefit"*
>
> *Paragraph 2 A8-19 explains the previous paragraph 23 and states that lease rental will be accounted on a "Straightline basis", unless another systematic basis is more representative of the time pattern of the user, even if the payments are not on that basis.*

*31. We note that Hon'ble Supreme Court explained the importance of mandatory accounting standards in the case of Kris LALUON (297 ITR 776) (SC) wherein the Court held that the main object sought to be achieved by Accounting Standards which are now made mandatory is to see that accounting income is adopted as taxable income and not merely as the basis from which taxable income is to be computed. The Supreme Court explained its position by citing examples. In case of inventories, the valuation rules are laid down in the Accounting Standards which are followed in the determination of accounting income. Since the income tax law does to lay down any such rules, the tax authorities are not required to examine the*

*computation of the valuation of inventories and its effect on computation of income. However, in case of depreciation on assets, different rules accounting guidelines are laid down in the Accounting standards vis a vis Income tax Act, 1961. Accordingly, in such cases the provisions & rules laid down in LT Act, 1961 & LT. Rules, 1962 are to be followed. The Apex Court observed that under Section 211 of the Companies Act, 1955 every company is mandatorily required to prepare its accounts in accordance with the Accounting Standard, presented by the Central Government in consultation with National Advisory Committee on Accounting Standards and at present the Accounting Standards prescribed by the Institute is deemed to be the Accounting Standards which are to be complied by all the companies. The Supreme Court therefore accorded Judicial recognition to the accounting standards issued by ICAI and the profits determined in accordance with the accounting guidelines laid down by the prescribed accounting standards was held to be depicting true & fair state of affairs of a company for tax purposes. Accordingly, the Assessing Officer has to adopt the profit determined by the assessee company in consonance with the accounting standards while assessing taxable income if there is no explicit & contrary provision in the income-tax laws.*

*We note that this principle was reiterated by the Supreme Court in the case of CIT v. Woodword Governor (P) L (20091 312 ITR 254/179 Taxman 326 wherein it was held that the profits for income-tax purpose are to be computed in accordance with ordinary principles of commercial accounting unless such principles stand superseded or modified by legislative enactments concerning assessment of total income. Applying the ratio laid down by the Supreme Court in the above cited judgments, we note that the method of accounting followed by the assessee cannot be doubted unless it is contrary to the generally accepted accounting practices or if the same has been superseded or modified by a specific legislation brought about in the Income-tax Act, 1961. In the facts of the present case the assessee being a company followed mercantile basis of accounting and prepared its accounts in accordance with Section 211 of the Companies Act, 1956 and the notified accounting standards. It is by now well settled that matching principle of accounting ensures purity of Profit & loss Account and ensures true & fair ascertainment of income. Accordingly, in light of Guidance Note issued by EAC of ICAI and the accounting guidelines laid down in Paras 23 & 24 of AS-19, the assessee had changed its accounting treatment of operating leases expenses. In consonance with AS-19 the lease rent expenditure was recognized on a straight-line basis which was considered to be a more systematic and rational basis by accounting experts. On accounting of escalating rentals in the operating lease agreements, it led to creation of additional lease rental liability in the relevant year under*

*consideration which was debited to the P&L. Ale under the head "Rent Straight-Lining". This accounting treatment was in sync accounting guidelines laid down by ICAI which the assessee was required to mandatorily follow. The profits so determined after accounting for the expense towards straight-lining of lease rentals reflected a better & accurate picture of the true commercial profits of the assessee company, In light of the law down by the Apex Court since there are no contrary or specific provisions in the Income-tax Act, 1961 in respect of accounting of lease rentals, the expenditure of Rs 40,847,000/- so recognized in the Profit & Loss account is deductible 137 while computing profits of the business. We note that ld CIT(A) has rightly held that assessee is entitled to claim deduction of Rs. 40,647,000/- on account of lease rent, observing the following:*

> *"13.4 1 have considered the facts of the case. The assessee had taken several assets on operating lease basis. In certain agreements, there was clause for scheduled increase in lease rent. Earlier, the assessee was not taking into account such scheduled increase while debiting the least rent. However, ICAI issued AS-19 for accounting of operating lease and a clarification relevant to the issue was issued in the year under consideration. As a consequence, the assessee had to compute impact of straight-lining of lease rent from 01.04.2001 to 31.03.2007 which was determined at Rs. 3,97,18,000/- and the same was accounted under the head prior period expenses'. For the current year, a further sum of Rs.4,06,47,000/- was determined on such straight-lining. In his computation of return income the assessee added back prior period expenses at Rs. 3,97,18,000/- as well as current year's expense of Rs.4,06,47,000/-, Since the latter expense pertained to the year under consideration, the assessee was entitled to claim the sum in computation of taxable income. The assessee has claimed to have made such claim before the assessing officer. But the assessing officer has not discussed the same in the assessment order. As explained by the assessee, the clarification regarding AS-19 was issued by ICAI in July, 2007. Thus, the requirement of straight-lining the lease rent arose in the year under consideration. The assessee was thus justified to adopt straight-lining of lease rent during the year. The Karnataka High Court in the case of Prakash Leasing Limited. Dy. CIT (208 Taxman 464) held that as long as Central Government has not notified anything to the contrary, an assessee was well within its right to follow AS and to claim lease equalisation charges in accordance with the same. Similar view was expressed by the Hon'ble Delhi High Court in the case of CIT v. Virtuaal Soft Systems Ltd 341 ITR 593. In the assessee's case, it has followed accounting standard issued by ICAI relating to operating*

*lease. As a result of straight-lining recommended by the accounting standard, there was a requirement to make provisions for scheduled rent increase. Such provision relating to the year under consideration was of Rs. 4,06,47,000/-. The accounting standard was not in conflict with any provision of the Act or notification made by the Central Government u/s 145(2) of the Act. It is also not the case of the assessing officer that the system of accounting followed by the assessee was such that the correctness and completeness of accounts was to be doubted. Rather, the assessee has followed accounting standard issued by ICAL. The assessee had made the claim in the assessment proceedings and the assessing officer has neither allowed nor given reason for its rejection. In the remand report dated 03.01.2014, the assessing officer has objected to the assessee's claim on the ground that such claim was not made by way of filing revised return. Apparently, be intends to draw strength from the decision of the Hon'ble Supreme in the case of Goetze India Ltd. 284 ITR 323, though he has not specifically mentioned the same. However, in the said decision itself, Hon'ble Supreme Court has clarified that the bar on claiming a deduction not claimed in the return does not apply on the appellate authority. In the decisions in the case of National Thermal Power Co Ltd. (xupro) and Jute Corporation India Ltd. (supra) Hon'ble Supreme Court has held that appellate authority has power even to admit a claim not made in the proceedings before the lower authority. Power of CIT(A) to consider claim not made in the return has also been upheld in the decision of Delhi High Court in the case of CIT v. Jindal Saw Pipes Ltd. 328 ITR 338 and by Bombay High Court in the case of CIT v. Pruthvi Brokers and Shareholders P. Ltd. 349 ITR 336. It is also noted, that jurisdictional bench of tribunal, in the case of DCIT, Circle-50, Kolkata v. Ramesh Chandra Kedia ITA No. 2072/Kol/2007, has held after considering various decisions, including in the case of Goetze India Ltd. (supro) that CIT(A) has power to admit additional ground claiming relief not claimed in the return and without filing revised return, even if the same results in assessed income going below the returned income. In his report dated 3.1.2014, the assessing officer has not given any comment or adverse remark on merit of the claim and not pointed out any defect or shortcoming in the same. In the light of the facts discussed earlier, the assessee is entitled for deduction of Rs. 4,06,47,000/-, The assessing officer is directed to allow the same."*

*We do not find any infirmity in the order of ld CIT(A) in allowing the claim of the assessee in respect of lease rent of Rs.4,06,47,000/-, therefore, we decline to interfere in the order of ld CIT(A), his order on*

*this issue is hereby accepted and the ground No. 5 raised by the Revenue in ITA No.77/kol/2014, is dismissed.*

*24. We also notice that a similar view is held by the coordinate bench of the Tribunal in the case of M/s. HDFC Securities Limited vs DCIT (ITA No.3137 & 3502 /Mum/2014 dated 19.02.2016). The relevant observations of the Tribunal are extracted below –*

*6.Effective ground of appeal,raised by the AO is about deleting the addition of Rs.1.08 Croees. During the assessment proceedings,the AO found that the assessee had claimed the above mentioned amount under the head Rent being AS-19 Provisions.He called for justification for allowing the same.After considering the reply of the assessee,the AO held that the disputed amount was nothing but prepaid expenses which ought to have been claimed in the relevant financial year to which it belonged,that the amount was a balance-sheet item and not a P&L A/c.item.Finally,he treated the amount in question as prepaid expense and made a disallowance of Rs.1,08,45,878/-*

*7.Before the FAA,the assessee made elaborate arguments and produced additional evidences. He called for remand report from the AO.After considering the Report and rejoinder to the report of the AO,the FAA held that lease expenses were nothing but expenses that accrued to the assessee and were computed as per the provisions of Accounting Standard-19(AS-19),that the assessee had to follow the AS compulsorily, that AS-19 had been prescribed by the ICAI to claim lease expenses,that the expenses were claimed in accordance with accounting standard,that AO was not justified in treating the expenses as contingent/unconfirmed,that the claim made by the assessee was based on scientific method,that the assessee was following the same method in earlier years.Finally,he held that the lease payment under the operating lease should be recognised as an item of the P&L A/c on a straight line basis over the lease period.He deleted the addition made by the AO.*

*8.Before us,the DR supported the order of the AO.AR relied upon the order of the FAA and stated that the assessee followed the mandate of AS-19, that the provision was made on a scientific basis, that rent payable was allowable as per the section 30 of the Act.*

*9.We find that the AO had made the disallowance as he was of the opinion that it was a prepaid expense and that it could not be claimed during the year under appeal, that the assessee had claimed the expenditure as per the provisions of AS-19, that the agreement entered into by the assessee was in the nature of operating lease as defined in AS-19, as per the accounting standard in such cases the payments have to be considered as an item of P&L account on a straight line basis over the lease period. The FAA had given a categorical*

*finding of fact that the provision of Rs.1.08 crores was in respect of the liability that had accrued during the FY 2009-10.We are of the opinion that, by following AS-19 the assessee has complied with the provisions of the Act, that AS-19 provides that in case of operating leases, the lease rent payment has to be treated as an allowable expenditure. Therefore, in our opinion, the order of the FAA does not require any interference from our side.*

*25. Considering that the facts in assessee's case being identical, we place reliance on the above decisions, to hold that the lease rent claimed by the assessee as per AS-19 is to be allowed as a deduction and the AO is directed to delete the disallowance made in this regard.*

22. Respectfully following the above decision of the Tribunal is assessee's own case we delete the disallowance made by the AO towards lease equalisation charges. The ground raised by the assessee in this regard is allowed.

**Treatment of interest liability as part of Electricity Tax for the purpose of section 43B – Ground No.6**

23. The assessee through a note submitted before the AO claimed the interest on electricity tax to the tune of Rs. 25,90,428/- which have been disallowed under section 43B while filing the return of income should be allowed as a deduction for the reason that interest is not part of the electricity charge payable and therefore, should be allowed as deduction with respect of the status of actual payment. The ld. AO denied the claim of the assessee first on the ground that the claim is made not in the return of income by relying on the decision of Hon'ble Supreme Court in the case of Goetze India (supra). On merits, the AO did not allow the claim stating that there is direct nexus between the tax and the interest and both are very well the statutory liability which shall be allowable only on payment under section 43B of the Act. The AO in this regard relied on the decision of the Hon'ble Rajasthan High Court in the case of

Mewar Motors Vs. CIT (2003) 260 ITR 218 (Raj.). On further appeal, the CIT(A) upheld the order of the AO.

24. We have heard the parties and perused the material on record. We notice that the coordinate bench in assessee's own case for AY 2011-12 has considered the similar issue and held that -

> *29. We have heard the parties and perused the material on record. The assessee has made a provision of Rs. 2,10,36,953/- towards interest for non-payment of Electricity Tax. The AO disallowed the same under section 43B stating that the interest payable is part and parcel of the Electricity Tax. The contention of the assessee is that the interest is not part of the tax payable and is compensatory in nature that should be allowed as deduction under section 37 of the Act. Therefore the question before us for consideration is whether the interest levied on unpaid portion of Electricity Tax is part of the tax and hence to be allowed only on payment basis. In the given case, there is no dispute that the assessee has not paid the Electricity Tax and it is also not in dispute that the interest charged on the same is unpaid. The assessee placed reliance on various judicial pronouncements to contend that interest which is compensatory in nature is not part of tax and therefore provisions of section 43B are not applicable to unpaid interest. Before proceeding further we will look at the relevant provisions of section 43B of the Act and the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003, which read as under –*
>
> ***Certain deductions to be only on actual payment.***
>
> ***43B.*** *Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of—*
>
> *(a) any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, or*
>
> *(b) *****
>
> ***Recovery of Electricity Tax:***
>
> *7. Any electricity tax due under this Act which remains unpaid –*
> *(a) shall be deemed to be in arrears and thereupon interest at the rate prescribed by the Government, from time to time, shall be payable on such electricity tax; and*
> *(b) shall, together with any interest payable under clause (a) be recoverable either as an arrear of land revenue or by deduction from any amount payable by the Government to the licensee.*

*30. We notice that the Cuttack Bench of the Tribunal in the case of National Aluminium Co. Ltd vs DCIT [(2006) 153 Taxman 18 (Cuttack)] has considered a similar issue in the context of interest on Electricity Duty and held that the interest on electricity duty is compensatory in nature and has to be allowed as a general business expenditure and also that the provision of Section 43B is not applicable for such interest. The Tribunal while holding so placed reliance on the decision of Hon'ble Calcutta High Court in the case of CIT v. Orient Beverages Ltd and CIT v. E.L. Properties (P) Ltd. The relevant observations of Hon'ble High Courts as stated in the Tribunal's order are extracted below –*

> *41. We further find that Hon'ble Calcutta High Court in the case of CIT v. Orient Beverages Ltd. (supra) has held that:*
>
> *Interest payable for arrears of municipal taxes is compensatory in nature and not a penalty or tax and, therefore, unpaid amount of interest is not liable to be disallowed under Section 43B.*
>
> *42. The operative para of the said decision is as under:*
>
> *6. We have carefully examined the scope and ambit of Section 43B of the Act. In our view, this section has two parts. The first part is that whether the interest paid in addition will at all be deductible under this section and if so, then the question would arise whether the assessee would be entitled to the deduction until and unless the said amount is actually paid. So far as this case is concerned, we are not concerned with the second part. Therefore, let us concentrate ourselves on the first part of the Section 43B of the Act. The Question that is to be decided is, whether the interest paid under Section 43B(a) of the Act would be deductible under the said section. No dispute has been raised by Mr. Agarwal, learned advocate appearing for the Department, that in this particular case Section 43B(a) would be applicable. The Section 43B(a), as noted earlier, provides, notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of (a) any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force. In our view, this question has been set at rest by the decision of the Supreme Court as well as by another decision of this Court.*
>
> *7. In Mahalakshmi Sugar Mills Co. v. CIT (supra), as noted herein earlier, the Supreme Court, while considering a case under Section 3(3) of the U.P. Sugarcane Cess Act, 1956, on arrears of cess payable held that the interest payable did not fall within the scope of Section 10(2)(xv) of the Indian IT Act, 1922, because it was paid by way of penalty or infringement of the Cess Act. In that actual situation the Supreme Court held that the interest payable*

*under Section 3(3) of the Cess Act was not a penalty paid for an infringement of law and was an allowable deduction under Section 10(2)(xv) of the Act. At p. 434 of the said decision, the Supreme Court has made the following observation :*

*In truth, the interest provided under Section 3(3) is in the nature of compensation paid to the Government of delay in the payment of cess. It is not by way of penalty.*

*From the above it is clear that in this decision the Supreme Court has made it clear that the interest paid under the Cess Act is not a penalty but a compensation paid to the Government. Mr. Agarwal, learned advocate appearing on behalf of the Department, however, seeks to distinguish this decision on the footing that this decision was rendered on a different fact situation. This argument of Mr. Agarwal, we are afraid, is not acceptable because on the similar question subsequent decision was rendered by a Division Bench of this Court in Russels Properties (P) Ltd. v. CIT (supra) following the aforesaid decision of the Supreme Court in Mahalakshmi Sugar Mills Co. v. CIT (supra), in the said case, Their Lordships also came to a conclusion that interest paid under the Calcutta Municipal Act, 1951, which is also a matter for consideration by us in this case, is not for defiance of law and, therefore, this is an allowable deduction under the Act.*

*At p. 365 of the said decision, Sabyasachi Mukherjee, J. observed as follows:*

*The Supreme Court was of the view that interest payable on arrears of cess under Section 3(3) was in reality part and parcel of the liability to pay cess. It was an accretion to the cess. The arrears of cess, according to the Supreme Court, if the cess was not paid within the prescribed period, a larger sum would become payable as cess. We have not noticed the nature of Sub-section (3) of Section 236 of the Calcutta Municipal Act, which is more or less on similar terms. It is also a like expression as used in Section 3(3) of the U.P. Sugarcane Cess Act, 1956, which enjoins that 'interest shall be payable'. The Supreme Court was of the view 'that in truth the interest provided under Section 3(3) of the U.P. Sugarcane Cess Act, 1956, was in the nature of compensation paid to the Government for delay in the payment of cess. It was not by way of penalty for which provision has been separately made by Section 3(5).*

*From the above, we cannot agree with Mr. Agarwal, learned advocate for the Revenue, that since the principle laid down in the said decision of the Supreme Court cannot be applied to the facts of this case, as we find that Sabyasachi Mukherjee, J. (as His Lordship then was) in the aforesaid*

*Division Bench decision considered the Cess Act as well as the Calcutta Municipal Act, with which we are not therefore (sic), it cannot be disputed that the decision of Hindustan Motors Ltd. (supra), as rendered by Sabyasachi Mukherjee, J. (as His Lordship then was) was so rendered applying the principles laid down in the aforesaid decision of the Supreme Court and the submission of Mr. Agarwal that the decision of the Supreme Court was not applicable in this case, cannot be alleged. That apart, we are also fortified by a recent decision of this Court in the case of Hindustan Motors Ltd. v. CIT . It appears that there was a difference of opinion on the question mentioned above between the Hon'ble Chief Justice Mr. K.C. Agarwal (as His Lordship then was) and the Hon'ble Justice Mrs. Ruma Pal (while she was in this Court). The matter was referred to a Third Judge, the Hon'ble Justice Prabir Kumar Majumdar (as His Lordship then was). His Lordship by his order dt. 20th Feb., 1995, agreed with the views expressed by Ruma Pal, J. and held that he was not inclined to agree with the answer put forward by the Hon'ble Chief Justice K.C. Agarwal, but on the other hand, he accepted and agreed with the answer proposed by Ruma Pal, J. There is yet another Division Bench decision of this Court in CIT v. Padmavati Raja Cotton Mills Ltd. , which also laid down the same principle following the Division Bench decision just now referred to above in the case of Hindustan Motors Ltd. v. CIT (supra). In the case of Pratibha Processors and Ors. v. Union of India and Ors. (1966) 11 SCC 101, in para 13, the Supreme Court has observed as follows :*

*In fiscal statutes, to import of the words 'tax', 'interest', 'penalty', etc.' are well known. They are different concepts. Tax' is the amount payable as a result of the charging provision. It is a compulsory extraction of money by a public authority for public purposes, the payment of which is enforced by law. Penalty is ordinarily levied on an assessee for some contumacious conduct in character and is imposed on an assessee, who has withheld payment of any tax and when it is due and payable, the levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax in the due date. Essentially, it is compensatory and duty for penalty--which is penal in character.*

*In view of our discussion made hereinabove, it is, therefore, clear that the interest payable for arrears of principal taxes is really compensatory in nature and not a penalty/tax.*

*43. We also filed that the Hon'ble Calcutta High Court in the case of CIT v. E.L. Properties (P) Ltd. (supra) has held as under (short notes) :*

*It is settled beyond dispute that interest on late payment of municipal rates is not in the nature of a payment of penalty, and is thus clearly deductible as a general business expenses under Section 37. The requirement of Section 43B that even for assessees following the mercantile system, payments by way of tax, duty, cess, etc. cannot be claimed as deductions unless actual payment has been made in the previous year, is also not applicable in this case, because the words of the section encompass the municipal rates but interest thereon--CIT v. Padmavati Raje Cotton Mills Ltd. and Hindustan Motors Ltd. v. CIT followed.*

*Interest payable on unpaid municipal rates is not in the nature of penalty and therefore, it is clearly deductible under Section 37; Section 43B is also not attracted as it is applicable to municipal rates and not to interest thereon.*

*31. We also notice that the Hon'ble High Court of Telangana & Andhra Pradesh in the case of CIT vs Andhra Sugars Ltd ([2014] 52 taxmann.com 61 (Andhra Pradesh and Telangana)) while considering the allowability of interest on purchase duty has held a contrary view that if actual tax, duty, or cess can be deducted only on payment, interest thereon can be deducted only on making payment and that the provisions of section 43B are applicable to interest payable on purchase duty. Further the Hon'ble Rajasthan High Court in the case Shree Pipes vs DCIT ([2007] 162 Taxman 442 (Rajasthan)) had held a similar view in the context of interest on sales tax. However in the absence of decision of the jurisdictional High Court, when two contrary views are expressed by the non-jurisdictional High Courts, the view favourable to the assessee need to be followed. We place reliance in this regard on the decision of the Hon'ble Supreme Court in the matter of CIT vs. Vegetable Products Ltd. ((1972) 88 ITR 192 (SC)) where the Hon'ble Supreme Court has laid down a principle that "if two reasonable constructions of a taxing provisions are possible, that construction which favours the assessee must be adopted". Accordingly we hold that the interest on Electricity Tax which is compensatory in nature is to be allowed as a deduction under section 37 and that the interest on Electricity Tax not to be considered as part of tax for the provisions of section 43B.*

25. Considering that the facts for the year under consideration being similar, we direct the AO to delete the disallowance made, by respectfully following the above decision of the coordinate bench.

**Transfer Pricing Adjustment – Ground No.7**

26. The Transfer Pricing Officer (TPO) made a TP Adjustment of Rs. 5,26,17,801/- with respect to the corporate and performance guarantee provided by the assessee to its Associated Enterprises (AE) as per details given below –

"5.2 **Details of corporate guarantees:**

| Name of AE | Bankers from whom AE borrowed the funds | Country of borrower | Date on which the guarantee given | Guarantee Amount | Loan o/s as on 31st March 2012 (Rs. In Crs.) | Purpose |
|---|---|---|---|---|---|---|
| Aditya Birla Mina Worldwide Inc. | Bank of America | Canada | 1.4.2021 | CAD 40 Million | 207.68 | Working Capital Loan |
| Aditya Birla Minacs Worldwide Inc. | Bank of America | Canada | 12.08.2011 | CAD 15 Million | 51.92 | Working Capital Loan |
| Aditya Birla Minacs Worldwide Inc. | Bank of America | Canada | 28.11.2011 | CAD 28 Million | 129.80 | Working Capital Loan |
| Aditya Birla Minacs Worldwide Inc. | DBS Bank | Canada | 11.08.2011 | USD 55 Million | 255.78 | Term Loan |
| Minacs Group (USA) Inc. | ANZ Bank | USA | 11.08.2011 | USD 22 Million | 102.31 | Term Loan |
| | | | | | 747.50 | |

27. The TPO made a TP adjustment of Rs.894,02,002 towards Corporate Guarantee by applying 2% as guarantee fee and an adjustment of Rs.1,06,82,208 was done by applying 1.74%. The CIT(A) did not accept the submission of the assessee that providing corporate guarantee is not an international transaction. However, the CIT(A) gave relief to the assessee by restricting the rate of guarantee commission at 0.5% by relying on the decision of the Co-Ordinate Bench in the case of Everest Kanto Cylinder Ltd. (ITA No. 7073/Mum/2012 dated 25.09.2014).

28. We have heard the parties and perused the material on record. It is a settled position that the guarantees given by the assessee to its AE is an international transaction and hence we are not inclined agree with the contention

of the assessee that the it is not an international transaction. This contention of the assessee is accordingly dismissed. Further we notice that the co-ordinate Bench in assessee's own case for AY 2010-11 & AY 2011-12 has considered the similar issue and upheld the guarantee commission and @ 0.5% by relying on the decision of the Bombay High Court in the case of Everest Kanto Cylinder Ltd. (supra). The facts being identical for the year under consideration, we see no reason to interfere with the decision of the CIT(A). This, ground of the assessee is dismissed.

29. With regard to the additional grounds raised by the assessee both the parties fairly conceded that the issues contended are similar to AY 2011-12. From the perusal of the additional grounds, we are convinced that its adjudication does not require any fresh investigation of facts and involves substantial question of law. Therefore respectfully following the judgement of the Hon'ble Supreme Court in the case of National Thermal Power Company Ltd. Vs. CIT [(1998) 229 ITR 383 (SC)] we admit this additional ground for disposal on merits.

30. With regard to additional ground no.1 & 2 towards Claim of Education and Secondary and Higher Education Cess and refund of DDT as per DTAA rates, the ld AR fairly conceded that the issues are already held against the assessee in view of judicial pronouncements. The issue of allowability of Secondary and Higher Education Cess is covered against the assessee by the decision of the Hon'ble Supreme Court in the case of JCIT vs ChambalFertilisers & Chemicals Ltd ([2023] 147 taxmann.com 285 (SC)) and the Special Bench of the Mumbai Tribunal in the case of DCIT vs Total Oil India (P.) Ltd ([2023] 149 taxmann.com 332 (Mumbai - Trib.) (SB)) has held that DTAA does not get triggered at all when a domestic company pays DDT under section 115-O.

Respectfully following these decisions we dismiss these additional grounds raised by the assessee.

31. Additional ground no 3 to 6 pertain to treatment of incentives under Market Linked Focus Product Scheme, fertilizer subsidy and sales tax subsidy as capital receipt under normal provisions of the Act as well as for the purpose of book profits under section 115JB of the Act. We notice that the assessee has raised similar grounds as additional grounds for AY 2011-12 and the coordinate bench while considering the additional grounds has held that -

> *46. Additional ground no 3 to 7 pertain to treatment of incentives under Market Linked Focus Product Scheme, fertilizer subsidy and sales tax subsidy as capital receipt under normal provisions of the Act as well as for the purpose of book profits under section 115JB of the Act. The argument of the ld AR is that there have been subsequent decisions by the Hon'ble High Courts and Tribunal in which the incentives and subsidies were held to be capital receipts and therefore the assessee has raised the issue through additional ground. The ld AR further submitted that the records relied upon are already part of the records and no new materials need to be examined. The ld AR also submitted that the issue could not be raised before the lower authorities since the judicial pronouncements came in subsequent to the appellate proceedings. The ld DR on the other vehemently argued that the claim of the assessee for treating certain incentives and subsidies as capital receipts are not tenable and therefore to be dismissed. The ld DR made a without prejudice submission that since the AO did not have an opportunity to examine the issue during assessment proceedings, the issues may be set aside to the AO for fresh examination.*
>
> *47. We heard the parties with regard to additional ground no 3 to 7. We notice that the assessee has not raised these issues before the lower authorities and that the same is raised before us based on certain judicial pronouncements which happened subsequent to the appellate proceedings. At the same time we see merit in the argument of the ld DR that the treatment of subsidies and incentives are not uniform across all Schemes and that the various clauses, terms and conditions of the specific scheme need to be examined before applying the decisions of the Hon'ble High Courts and Tribunals to assessee's case. Since the AO has not scrutinized these issues and since the issues require factual verification, we are remitting the issues of treatment of incentives under Market Linked Focus Product Scheme, fertilizer subsidy and sales tax subsidy as capital*

*receipt back to the AO for a denovo examination. The AO is directed to call for necessary details and keep in mind the judicial pronouncements rendered in this regard to decide in accordance with law. Needless to say that the assessee be given an opportunity of being heard.*

32. For the year under consideration also we notice that the issues are not raised before the lower authorities. Therefore respectfully following the above decision of the coordinate bench we remand the issues contended to AO for a denovo consideration with similar directions. It is ordered accordingly

33. In the result, the appeal of assessee is partly allowed.

**ITA No. 5935/Mum/2017- Revenue's Appeal**

**Disallowance under section 14A- Ground No. 1**

34. The revenue is in appeal against the relief given by the CIT(A) with regard to the CIT(A) restricting the disallowance under section 14A r.w.r.8D to Rs.22,39,05,880. We have while considering assessee's appeal on the same issue have already held that disallowance should be restricted to Rs.1,17,42,084/- stating that the AO while making disallowance under section 14A r.w.r.8D(2)(iii) has not recorded any satisfaction with regard the suo-moto disallowance made by the assessee towards indirect expenses. Since the revenue through this ground is contending the same issue our decision in assessee's appeal is mutatis mutandis applicable to revenue's appeal also. Accordingly Ground No.1 of the revenue is dismissed.

35. The Revenue is also contending the adjustment of disallowance under section 14A to work out the book profit under section 115JB of the Act. In this regard we have already held the issue in favour of the assessee by relying on the decision of the Co-ordinate Bench in assessee's own case by holding that the

disallowance under section 14A cannot be considered for the purpose of computing book profits under section 115JB of the Act. Accordingly, this contention of the Revenue is rejected.

**Disallowance under section 40A(ia) – Ground No.2**

36. The AO from the perusal of the Audit Report under section 44AB noticed that assessee has made a provision of Rs. 66,69,802/- for the year ended 31.03.2012 on estimated basis pending receipt of bills from the parties. The AO called on the assessee to submit why disallowance under section 40(a) (ia) of the Act cannot be made. The assessee submitted that the provision is made on estimated basis towards services is utilized from vendors and that the assessee has not received the actual bills from the vendors. The assessee accordingly submitted that the assessee is not the person responsible for deducting TDS and therefore, no disallowance under section 40(a)(ia). The assessee relied on the decision of the Co-ordinate Bench in the case of Pfizer Ltd. (ITA No. 1667 and 1765/Mum/2010 & IDBI Vs. ITO 107 ITD 45 (Mumbai). The AO did not accept the submissions of the assessee and proceeded to make disallowance under section 40(a)(ia) of the entire amount of provision made by the assessee to the tune of Rs. 66,69,802/-. The CIT(A) deleted the disallowance by relying on the order of his predecessor for AY 2011-12.

37. We have heard both the parties on this issue. We noticed that the issue is covered by the decision of the Co-ordinate Bench in assessee's own case for AY 2011-12 wherein it has held that

> *"53. We have heard both the parties on this issue. We noticed that the issue is covered by the decision of the Co-ordinate Bench in assessee's own case for AY 2010-11 wherein it has held that-*

*24.1 The ground No.2 of the appeal by Revenue is with respect to disallowance under section 40(a)(ia) of the Act on the provision made at the end of the year Rs.5,84,07,299/-. The ld. Authorized Representative for the assessee pointed that identical issue was raised in the appeal by the Revenue in assessment year 2009-10, ITA No.2963/Mum/2014 decided on 20/12/2019.*

*We find that the Co-ordinate Bench of the Tribunal following the decision in assessee's own case in ITA No.3033/Mum/2012 for assessment year 2008-09 decided on 09/12/2015 deleted the disallowance made under section 40(a)(ia) of the Act. The ld. Departmental Representative has not been able to distinguish the findings of the Co-ordinate Bench of the Tribunal on this issue in immediately preceding Assessment Year in assessee's case. The CIT(A) has deleted the addition by following the order of Tribunal in assessee's case in ITA No. 8427/Mum/2010 for A.Y. 2006-07 decided on 17-09-2014. We observe that this issue is recurring and the Tribunal has been consistently deciding the issue in favour of assessee. Since, the facts in impugned A.Y. are similar, we see no reason to take a different view. We uphold the findings of the CIT(A) and dismiss ground No.2 of the appeal by Revenue in the light of Tribunal order in assessee's case for A.Y. 2009-10."*

*54. Respectfully following the above decision of the co-ordinate Bench, we uphold the decision of the CIT(A). Revenue's ground is dismissed.*

38. Considering that the facts being identical respectfully following the above decision of the co-ordinate Bench, we see no reason interfere with the decision of the CIT(A). The ground of the revenue is dismissed.

**Deleting the addition on account of CENVAT CREDIT – Ground No.3**

39. The AO during the course of assessment noticed that the assessee has not included the Cenvat Credit in valuation of closing stock of raw materials of various units. The assessee submitted before the AO that the Cenvat Credit should not be added to the closing stock by placing reliance on the decision of the Supreme Court in the case of CIT Vs. Indo-Nippon Chemical Co. Ltd. (261 ITR

272). The AO rejected the submissions of the assessee and proceeded to make an adjustment of Rs. 25,03,57,966/-. On further appeal, the CIT(A) deleted he addition by placing reliance on the decision of his predecessors who have been consistently holding the issue in favour of the assessee from AY 2005-06 to AY 2010-11.

40. We heard the parties and perused the material on record. We notice that the Co-ordinate Bench in assesee's own case for AY 2011-12 has considered a similar issues and held that

> *"56. We notice that the Co-ordinate Bench in assesee's own case for AY 2010-11 has considered a similar issue and held that*
>
> > *25.1 The Assessing Officer made addition of Rs.17,57,56,385/- on account of CENVAT credit in respect of closing stock. The CIT(A) allowed assessee's claim by following the decision of his predecessor in assessment year 2005-06 to 2008-09, wherein the CIT(A) had in turn followed the decision of the Hon'ble Apex Court in the case of CIT vs. Indo Nippon Chemical Co. Ltd., reported as 261 ITR 275(SC). The ld. Authorized Representative for the assessee further pointed that the Tribunal in assessment year 2008-09 in ITA No.3033/Mum/2012(supra) had decided this issue in favour of the assessee.*
> >
> > *We do not find any infirmity in the findings of CIT(A) in deleting the addition by following the decision of Hon'ble Apex Court. The Co-ordinate Bench of the Tribunal in assessee's own case for assessment year 2008-09 has affirmed the finding of CIT(A) in deleting the addition in the past. No material has been brought before us by the ld. Departmental Representative distinguishing facts or the findings of Tribunal on this issue in A.Y. 2008-09. We see no reason to interfere with the findings of CIT(A) on this issue. Accordingly, the same are confirmed and ground No.3 of appeal is dismissed.*
>
> *57. Respectfully following the above decision, we see no reason to interfere with the findings of the CIT(A) on this issue"*

41. The facts for the year under consideration being similar, we respectfully follow the above decision we see no infirmity in the findings of the CIT(A) on this issue.

**Deleting the disallowance made on account of provisions for leave salary / compensated absence – Ground No.4**

42. We notice that the issue is covered by the decision of the co-ordinate bench in assessee's own case for AY 2011-12 where it is held that

> *"58. Ground No.7 is with regard to the deletion of disallowance made by the AO towards provision made for leave salary / compensated absence. We notice that the issue is covered by the decision of the co-ordinate bench in assessee's own case for AY 2010-11 where it is held that*
>
> > *30. We observed that that the Co-ordinate Bench of the Tribunal while deciding the appeal of the assessee for assessment year 2008-09 decided the issue on merits in turn by placing reliance on Tribunal order for A.Y. 2008-09. The Tribunal allowed relief to the assessee by following the decision of the Hon'ble Apex Court in the case of Bharat Earth Movers vs. CIT reported as 245 ITR 428(SC). Dehors the issue of constitutional validity of clause(f) to section 43B of the Act, the Co-ordinate Bench after considering the issue on merits has deleted the addition. Taking into consideration, entirety of facts we respectfully follow the decision of Tribunal in assessee's own case for assessment year 2008-09 and confirm the findings of CIT(A) in deleting the disallowance. Consequently, ground No.4 of the appeal by the Revenue is dismissed.*
>
> *59. Considering that there is no change to the facts for the year under consideration following the above decision of the co-ordinate Bench, we dismissed the ground raised by the Revenue"*

43. Respectfully following the above decision, we see no reason to interfere with the findings of the CIT(A) on this issue. Accordingly the ground raised by the revenue in this regard is dismissed.

**Allowance of allocation of Head Office expenses for the purpose of deduction under section 80IA – Ground No.5**

44. This ground of the revenue is with regard to the decision of the CIT(A) by holding that the Head Office Expenses cannot be allocated to profits derived from 100% export oriented units falling under section 80IA of the Act and in directing to reduce interest income. We notice that this has been consistently held in favour of the assessee in assessee's own case from AY 2003-04 to 2011-12. The relevant observation of the co-ordinate bench in assessee's own case for AY 2011-12 is extracted below –

> *" 60. Ground No.8 is with regard to the decision of the CIT(A) by holding that the Head Office Expenses cannot be allocated to profits derived from 100% export oriented units falling under section 80IA of the Act and in directing to reduce interest income. We notice that this has been consistently held in favour of the assessee in assessee's own case from AY 2003-04 to 2010-11. The relevant observation of the co-ordinate bench in assessee's own case for AY 2010-11 is extracted below –*
>
> *31.1 This issue is identical to the one already adjudicated by the Tribunal in assessee's own case for assessment year 2009-10 (supra). The relevant extract of the finding of the Tribunal read as under:-*
>
> *"5. We have heard rival submissions. We find that this issue is already covered in favour of the assessee by the orders of this Tribunal from A.Yrs 2003-04 to 2008-09. We also find that for A.Y.2006-07, the revenue had carried this matter to the Hon'ble Jurisdictional High Court and the Hon'ble Jurisdictional High Court in Income Tax Appeal No.433/2015 dated 15/01/2018 had held that the question raised by the revenue does not give raise to any substantial question of law and accordingly, did not entertain the same. This goes to prove that the order passed by this Tribunal on the impugned issue had attained finality. Respectfully following the same, the ground No. 4 raised by the assessee is allowed."*
>
> *The CIT(A) has allowed relief to the assessee by following the decision of Tribunal in assessee's own case for assessment year 2003-04 to 2006-07. We find no infirmity in the impugned order. Accordingly, ground No.5 of the appeal is dismissed.*

> *61. The CIT(A) for the year under consideration also has granted relief relying on his own decision for the earlier years since the facts are identical. Accordingly respectfully following above decision of the co-ordinate Bench, we dismissed the ground raised by the Revenue"*

45. The CIT(A) for the year under consideration also has granted relief relying on his own decision for the earlier years since the facts are identical. Accordingly respectfully following above decision of the co-ordinate Bench, we dismissed the ground raised by the Revenue.

**Allowance of additional depreciation u/s 32(1)(iia) – Ground No.6**

46. The ground raised by the revenue is with regard to CIT(A) allowing additional depreciation u/s 32(1)(iia) in the succeeding assessment year where the assets were put to use for less than 180 days in relevant previous year. We notice that the AO has made a similar disallowance in the earlier years also i.e. AY 2010-11 and AY 2011-12 and that the coordinate bench has upheld the relief given by the CIT(A). For the year under consideration the revenue did not bring any new material on record and therefore we see no reason to take a different view from the view taken for the earlier years. Accordingly we uphold the decision of CIT(A) and dismiss the ground raised by the revenue.

**Allowance of ESOP expenses – Ground No.7**

47. We notice that this is a recurring issue in assessee's case and that the coordinate bench has been consistently holding the issue in favour of the assessee. The relevant observations of the coordinate bench on this issue in assessee's own case for AY 2010-11 is as follows –

> *13. We have heard the submissions made by rival sides. We find that identical issue was raised in an appeal by the assessee before the*

*Tribunal in assessment year 2009-10. The Tribunal in turn following the order of Co-ordinate Bench in assessee's own case in ITA No.3033/Mum/2012 for assessment year 2008-09 decided on 09/12/2015 allowed assessee's claim and held he expenditure in respect of ESOP as revenue in nature. No contrary decision has been placed by ld. Departmental Representative. Respectfully following the decisions of Co-ordinate Bench of the Tribunal in assessee's own case for the preceding assessment years we hold ESOP expenditure as revenue in nature. The ground No.5 of the appeal is allowed for parity of reasons.*

48. Considering that the facts for the year under consideration are identical we see no reason to take a different view on the impugned issue. Accordingly we dismissed the ground raised by the Revenue.

**Allowance of depreciation on Goodwill – Ground No.8**

49. We notice that the CIT(A) for the year under consideration has granted relief relying on his own decision for the earlier years since the facts are identical. We also notice that the coordinate bench in earlier years has upheld the decision of the CIT(A). Accordingly respectfully following decision of the co-ordinate Bench in earlier years we see no infirmity in the decision of the CIT(A) and the ground raised by the Revenue is dismissed.

**Treatment of certified emission receipt as capital receipt – Ground No.9**

50. We notice that the similar issue is being considered by the coordinate bench in assessee's own case for AY 2010-11 and AY 2011-12 and has dismissed the grounds of the revenue. The relevant observations of the coordinate bench as extracted below –

*" 70. Ground No.13 is with regard to CIT(A) allowing the claim of the assessee of sale of certified emission receipt. The ld AR submitted that this issue is also covered by the decision of the coordinate bench in assessee's*

*own case for AY 2010-11 and facts being identical, the decision is squarely applicable for the year under consideration also. The ld AR drew our attention to the relevant observations of the coordinate bench as extracted below –*

*33. Ground No.7 :*

> *7. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the proceedings from sale of certified emission reduction of Rs. 4,11,58,512/- relying upon the decision in the case of My Home Power Ltd vs. DCIT, Central Circle - 7 (2012) 27 taxmann.com.27, without appreciating the facts of the case."*

*33.1 This issue is identical to the one already adjudicated by the Tribunal in assessee's own case for assessment year 2009-10. The relevant extract of the finding of the Tribunal on this issue read as under:-*

> *"16. The ground No.3 raised by the revenue is with regard to challenging the action of the ld. CIT(A) in treating the receipt on account of sale of certified emission as capital receipt (Carbon Credit receipts). We find that the Hon'ble Andhra Pradesh High Court in the case of CIT vs. My Home Power Ltd. reported in 365 ITR 82; Hon'ble Karnataka High Court in the case of CIT vs. Subhash Kabini Power Corporation Ltd reported in 385 ITR 592; Hon'ble Allahabad High Court in the case of PCIT vs L.H. Sugar Factory Pvt. Ltd. reported in 392 ITR 568 had held that Carbon Credit receipts are to be construed as capital receipts. When this was put to the ld. DR, the ld. DR fairly conceded that this issue is covered in favour of the assessee by various High Courts, but he however, prayed for verification of these figures by the ld. AO. The ld. AR also fairly agreed that verification of the figures by the ld. AO be made. Accordingly, we deem it fit and appropriate, to set aside this issue to the file of the ld. AO, to verify the actual figures of carbon credit receipts and decide the taxability of the same in the light of the aforesaid decisions of the Hon'ble High Courts. Accordingly, the ground No.3 raised by the revenue is allowed for statistical purposes"*

*The CIT(A) in the impugned Assessment Year granted relief to the assessee by following the order of his predecessor for assessment year 2009-10, which has now been confirmed by the Tribunal. Since, there has been no change in the facts in the Assessment Year under consideration, this ground of appeal by Revenue is dismissed for similar reasons*

*71. Considering the fact that for the year under consideration CIT(A) granted relief relying on his own decision for the earlier years we dismiss the ground raised by the Revenue.*

51. Respectfully following the above decision of the coordinate bench we dismiss the ground raised by the Revenue for similar reasons.

**Treatment of interest subsidy from TUF as capital in nature – Ground No.10**

52. Both the parties conceded that the issue is covered by the decision of the coordinate bench in assessee's case for AY 2011-12 where it has been held that –

*" 72.Revenue is contending the direction of the CIT(A) to treat interest subsidy from TUF as capital in nature through Ground No.14. Both the parties conceded that the issue is covered by the decision of the coordinate bench in assessee's case for AY 2010-11 where it has been held that –*

*40. Both sides heard. The assessee has received subsidy under TUF scheme. The assessee has claimed the subsidy as capital receipt, whereas, the Department treated the subsidy as Revenue in nature. We find that the Hon'ble Rajasthan High Court in the case of PCIT vs. Nitin Spinners Ltd.(supra) examined the scheme in the light of various decisions and held the subsidy under TUF scheme as capital in nature. Similar view has been taken by the Hon'ble Calcutta High Court in the case of CIT vs.Gloster Jute Mills Ltd.(supra). Thus, in view of above judgements of Hon'ble High Courts, we see no infirmity in the findings of CIT(A). The same are upheld and ground No.11 of the appeal is dismissed.*

*73. Considering that the fact for the year under consideration being identical we see no reason to interfere with the decision of the CIT(A). Accordingly the ground raised by the Revenue is dismissed*

53. The facts for the year under consideration being identical we see no reason to interfere with the decision of the CIT(A). Accordingly the ground raised by the Revenue is dismissed.

**Restricting the ALP of guarantee fees in respect of corporate guarantee and performance given to AE – Ground No.11 & 12**

54. Through these grounds the revenue is contending the decision of the CIT(A) to restrict the ALP of guarantee fees in respect of corporate guarantee and performance given to AE to 0.5% as against 2.42% and 1.74% as held by AO/TPO. We have while considering Ground No.7 of the assessee's appeal have already upheld the decision of the CIT(A) by placing reliance on the decision of the jurisdictional High Court in the case of Everest Kanto Cylinder Ltd (supra). Therefore these grounds of the revenue are dismissed.

55. Ground no.13 and 14 are general not warranting separate adjudication.

56. In the result, appeal of the Revenue is dismissed.

57. In result, the appeal of the assessee in ITA.No.5848/Mum/2017 is partly allowed and the appeal of the revenue in ITA.No.5935/Mum/2017 is dismissed.

*Order pronounced in the open court on 01-07-2024.*

| | |
|---|---|
| ***Sd/-*** | ***Sd/-*** |
| **(PAVAN KUMAR GADALE)** | **(MS. PADMAVATHY S)** |
| **Judicial Member** | **Accountant Member** |

**SK, Sr. PS*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
**ITAT, Mumbai**