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

HEARING THROUGH: HYBRID MODE

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री कृणवन्त सहाय, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. SHRI. KRINWANT SAHAY, AM

आयकर अपील सं./ ITA NO.486/Chd/2019
निर्धारण वर्ष / Assessment Year : 2013-14

Vardhman Textiles Limited Vardhman Premises, Chandigarh Road, Ludhiana	बनाम	The Asst. CIT Circle-I, Ludhiana
स्थायी लेखा सं./PAN NO: AABCM4692E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO.187/Chd/2019
निर्धारण वर्ष / Assessment Year : 2014-15

Vardhman Textiles Limited Vardhman Premises, Chandigarh Road, Ludhiana	बनाम	The DCIT Circle-I, Ludhiana
स्थायी लेखा सं./PAN NO: AABCM4692E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO.260/Chd/2019
निर्धारण वर्ष / Assessment Year : 2014-15

The DCIT Circle-I, Ludhiana	बनाम	Vardhman Textiles Limited Vardhman Premises, Chandigarh Road, Ludhiana
स्थायी लेखा सं./PAN NO: AABCM4692E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO.61/Chd/2020
निर्धारण वर्ष / Assessment Year : 2015-16

Vardhman Textiles Limited Vardhman Premises, Chandigarh Road, Ludhiana	बनाम	The Asst. CIT Circle-I, Ludhiana
स्थायी लेखा सं./PAN NO: AABCM4692E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA NO. 117/Chd/2020
निर्धारण वर्ष / Assessment Year : 2015-16

The ACIT Circle-I, Ludhiana	बनाम	Vardhman Textiles Limited Vardhman Premises, Chandigarh Road, Ludhiana
स्थायी लेखा सं./PAN NO: AABCM4692E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Tejmohan Singh, Advocate and Shri Pankaj Gupta, Advocate
राजस्व की ओर से/ Revenue by : Smt. Kusum Bansal, CIT, DR

सुनवाई की तारीख/Date of Hearing : 28/08/2024
उदघोषणा की तारीख/Date of Pronouncement : 14/10/2024

आदेश/Order

PER BENCH :

All the above appeals by the Assessee and the Department are directed against the separate orders of Ld. Commissioners of Income Tax (Appeal) as per following details:

Sl.No.	Appeal No.	Name of Case	CIT(Appeal / s)	Order dt.	A.Y.
1.	ITA NO.486/Chd/2019	Vardhman Textiles Limited	CIT(A)-1, Ludhiana	01/02/2019	2013-14
2.	ITA NO.187/Chd/2019	Vardhman Textiles Limited	CIT(A)-1, Ludhiana	17/12/2018	2014-15
3.	ITA NO.260/Chd/2019	Vardhman Textiles Limited	CIT(A)-1, Ludhiana	17/12/2018	2014-15
4.	ITA NO.61/Chd/2020	Vardhman Textiles Limited	CIT(A)-1, Ludhiana	28/11/2019	2015-16
5.	ITA NO. 117/Chd/2020	Vardhman Textiles Limited	CIT(A)-1, Ludhiana	28/11/2019	2015-16

2. Since all the above appeals were heard together, they are being disposed of by this consolidated order for the sake of convenience.

3. **Firstly we shall deal with the appeal of the Assessee in ITA No. 486/Chd/2019 for the A.Y. 2013-14.**

4. Vide order dt. 28/05/2020, the Tribunal had decided Ground No. 4.

4.1 As per this ground, the Ld. CIT(A) has erred in confirming the action of the AO in reducing rental income of Rs. 1,56,47,787/- and miscellaneous receipts of Rs. 61,52,573/-, from the profit of units eligible for deduction under section 80IC/80IA of the Income Tax Act, 1961. The Tribunal held that this ground was identical with ground no. 5 of the assessee's appeal for A.Y. 2008-09. However, the assessee, in M.A. No. 2 of 2021, contended that in its order, the Tribunal had missed the fact that there were certain other additional receipts, which were part of the miscellaneous receipts and which were not there for A.Y. 2008-09. The Tribunal, finding this assertion of the assessee to be correct, vide order dt. 15/04/2024, recalled the decision of the Tribunal on ground no. 4, for the limited purpose of adjudication the eligibility of the assessee for additional / miscellaneous receipt of Rs. 61,52,573/-, for deduction under section 80IA/80IC.

4.2 This is how, that this issue is again before us.

4.3. The AO disallowed deduction under section 80IC on miscellaneous income of Rs. 61,52,573/- alongwith some other income, considering that these incomes were not derived from eligible business / industrial undertaking. The Ld CIT(A) disallowed the deduction on certain other incomes and miscellaneous income except commission / brokerage received from shipping company. The miscellaneous receipt of Rs. 61,52,573/- comprises of Rebate & Discount of rs. 13,92,451/-, Service Tax and VAT Refund of Rs. 79,431/-, Power Cess Refund of

Rs. 20,55,420/-, Forex Gain of Rs. 23,57,431/-, Recovery from Contractors of rs. 2,23,824/- and Commission from Shipping Company of Rs. 42,517/-. Of these, Commission from Shipping Company amounting to Rs. 42,517/- was deleted by the Ld. CIT(A).

4.4 Apropos the Rebate and Discount of Rs. 13,92,451/ , the stand of the assessee all through has been that this receipt comprises of "Turnover discount received from supplier", which relates to business transaction on account of material purchases. The contention of the assessee has been and remains that this receipt relates to business transaction on account of material purchased and that, therefore, it is eligible for deduction. The Ld. Counsel for the assessee has sought to place reliance on the decision of the Hon'ble Punjab & Haryana High Court in the case of " CIT Vs. Metalman Auto P. Ltd.", (2011) 336 ITR 434 (P&H). Reliance has further been sought to be placed on the Tribunal decision dt. 18/08/2022 in the assessee's associate company, in the case of "Vardhman Yarns & Threads Ltd. Vs. DCIT", for A.Y. 2014-15, in ITA No. 536/2019.

4.5 We find that the receipt of Rebate and Discount is undisputedly turnover discount received from suppliers, which relates to purchase of material. Undoubtedly, it is a business transaction. Neither of the authorities below have refuted this.

4.6 In "Metalman Auto P. Ltd." (supra), the Hon'ble High Court has held that the discount received is not to be excluded for the purpose of calculation of deduction under section 80IB of the Act. Further, in the case of the assessee's associate company, i.e, Vardhman Yarns & Threads Ltd., for A.Y. 2014-15, vide order dt. 18/08/2022, deduction under section 80IC of the Act has been held to be allowable on turnover discount.

4.7 The next item is Service Tax and VAT Refund of Rs. 79,431/-. This comprises of Service Tax, VAT and Power Cess Refund. These items, again, undoubtedly relate to the business activity of the assessee. The refund comprises of taxes, duties, and cess paid. As per the assessee, since such refund has a direct nexus with business of he assessee, deduction under section 80IC is available here also.

4.8 Reliance in this regard has rightly been placed on the decision of the Chandigarh ITAT, for A.Y. 2011-12, in the assessee's associate company, Vardhman Yarns & Threads Ltd., in ITA No. 253/Chd/2017, vide order dt. 27/11/2019. Therein, deduction under section 80IC of the Act has been held to be allowable on excise duty refund. The refund qua service tax, VAT and power cess is not of any different category than the rebate and discount earlier dealt with, in the sense that this receipt also undoubtedly relates to the assessee's business. It is on the taxes / duties/ power cess paid on day to day business transactions, that the refund has come to the assessee. Such refund is having a direct nexus with the business of the assessee, so claims the assessee. Again, reliance has been placed on the order of the Chandigarh ITAT in the case of the assessee's associate company, i.e., Vardhman Yarns & Threads Ltd., for A.Y 2011-12, vide order dt. 27/11/2019, passed in ITA No. 253/Chd/2017, holding excise duty refund to be eligible for deduction under section 80IC.

4.9 In " DCIT Vs. Coromandel International Ltd." 53 TAxmann.com 111,for A.Y. 2008-09 and 2009-10, vide order dt. 11/11/2014, the Hyderabad Tribunal has held that the excise duty refund is only a refund of an amount already paid by the assessee and reduced from the sale price while computing the profit; that as such, when the assessee gets refund of such expenditure already incurred, it has to be deemed to be the profits and gains of business or profession carried on by the

assessee, in terms of section 41(1)(a) of the Act; that it is, therefore, eligible for deduction under section 80IB ; and that otherwise also, since the payment of excise duty is directly linked with the manufacturing of goods, refund of excise duty has to be treated as income derived from eligible business as provided under section 80IB.

4.10 We do not find any variance in the nature and the items under consideration, i.e., refund of service tax, VAT and power cess and that of the excise duty refund. Both are, therefore, eligible for deduction 80IB, as discussed in the above decisions, for which, no counter has been cited before us. Accordingly, the refund on service tax, VAT and power cess is also held to be eligible for deduction under section 80IC of the Act. This amount of Rs. 79,431/- (Service Tax and VAT Refund) and of Rs. 20,55,420/- (Power Cess Refund) is directed to be deleted from the reduction from the profits of the assessee's units.

4.11 The next item is Forex Gain. That comprises of exchange fluctuations relating to export sales, etc. Irrefutably, the Foreign Exchange fluctuation is a regular / routine feature of the business transaction of the assessee with foreign countries, due to fluctuation in exchange rates of currencies. The word "Forex" itself is a contraction of the terms "Foreign" and "Exchange". The question as to whether it should be included in profits eligible for deduction under section 80IB/80IC has been dealt with by the Chandigarh Tribunal in the assessee's own case for A.Ys 2008-09, 2009-10 and 2013-14 (the last year being the A.Y. under consideration presently). The Tribunal, vide order dt. 28/05/2020 (supra), in ITA No. 484 to 486/Chd/ 2019, held deduction under section 80IB/80IC to be allowable to Forex gains. Again, vide order dt. 10/08/2022, passed in ITA No. 260/Chd/2019 for A.Y 2014-15, the Tribunal, in the assessee's own case, has allowed deduction under section 80IB/80IC on Foreign Exchange Rate Fluctuations.

4.12 Accordingly, this item is also held to be eligible for deduction under section 80IB/80IC of the Act. The reduction of the amount of Rs. 23,57,431/- is held to be unsustainable and the reduction of this item from the profits of the assessee's unit is deleted.

4.13 Recovery from Contractors was with regard to expenses made on account of usage of water and bio-gas by the assessee. These expenses were reimbursed by the contractors on the basis of their usage. The assessee has contended that the expenses were actually incurred by the assessee company, as part of its regular business activity, while doing various job works. The expenses were recovered from the contractors.

4.14 Here also, the expenses which relate to usage of water and bio-gas of the assessee while doing various job works, are undoubtedly, expenses incurred assessee's regular business activity. They can, therefore, not be held to be not eligible for deduction under section 80IB/80IC. The amount of Rs. 2,23,824/- recovered from contractor by the assessee is, therefore, wrongly excluded from the income / receipt/profit of the assessee. Such exclusion is directed to be deleted.

5. In view of the above, Ground No. 4 is accepted.

6. Ground No. 6 states that the authorities below have erred in treating the interest reimbursement of Rs. 1,76,12,549/-, related to TUFS under the Madhya Pradesh Scheme – 2012 as revenue receipt instead of capital receipt.

6.1 The reason for recall the Tribunal order qua this ground is that though the said ground, taken as an additional ground by the assessee, was admitted, the same was dismissed on merits, holding that the CIT(A) had already allowed such reimbursement, leaving the assessee with no grievance left on this score, whereas

the interest subsidy allowed by the CIT(A) did not, in fact, belongs to the TUFF Scheme of the Madhya Pradesh Government, but was of the Government of India.

6.2 The assessee has submitted that the Madhya Pradesh TUFS was brought in by the Madhya Pradesh Government in the year 2012 and had entailed that project / expansions covered under the TUFS (Central Government) shall be eligible for further interest reimbursement upto 5%, subject to total reimbursement not exceeding the gross rate of interest charged by the bank. The stand of the assessee is that since the Madhya Pradesh TUFS is based on the Central Government TUFS, and the reimbursement under the Central Government TUFS is being treated as the capital receipt, the interest reimbursement under the Madhya Pradesh TUFS be also treated as a capital receipt.

There was reimbursement of interest under the Madhya Pradesh TUFS, amounting to Rs. 1,76,12,549/-, concerning, loans covered under the Madhya Pradesh TUFS. On a comparative perusal of the Central Government TUFS and the Madhya Pradesh TUFS shows that the Madhya Pradesh TUFS is based on the Central Government TUFS. In fact, the Madhya Pradesh TUFS is but an extension of the Central Government TUFS.

6.3 In the assessee's own case, for A.Y. 2002-03 to 2005-06, in ITA No. 1479/Chd/2018 to 1482/Chd/2018, vide order dt. 29/05/2019, the Chandigarh Tribunal held the interest subsidy received under the Central Government TUFS, to be a capital receipt. Likewise, for A.Y. 2014-15 also, vide order dt. 10/08/2022, passed in ITA No. 260/Chd/2019 , in the assessee's case, the Tribunal treated the interest reimbursement under the Central Government TUFS, to be a capital receipt.

6.4 For A.Y's 2008-09, 2009-10 and 2013-14 also, vide order dt. 20/08/2020, the issue was decided in favour of the assessee.

6.5 Further, in "CIT Vs. Sham Lal Bansal, vide order dt. 17/01/2011, rendered in ITA No. 472/2010, the Hon'ble jurisdictional High Court applied the purpose test and held that the scheme envisaged significant upgradation of technology by the textile industry and therefore the subsidy was in the nature of capital receipt not chargeable to tax.

6.6 It is not under challenge that the scheme is initially an extension of the Central Government TUFS. Further, undisputedly, significant upgradation of technology by the textile industry is the purpose envisaged in the scheme. Therefore, naturally, the subsidy is directed towards such purpose, brought in to boost the introduction of upgrade technology in the textile industry, which is the industry of the assessee also. The subsidy, obviously, would attract significant upgradation of the technology implied by the recipient thereof. Such being the case, in keeping with Sham Lal Bansal (supra) and the aforesaid earlier years in the assessee's own case, the reimbursement is held to be capital receipt which is not chargeable to tax. Noticeably, in the following decisions, Tribunal Benches across the country, i.e; the Delhi Tribunal, the Kolkata Tribunal, Mumbai Tribunal and the Madras Tribunal, have held such reimbursement to be a capital receipt not chargeable to tax ; in terms of 1 to 8 at page 6 & 7 of brief synopsis are as under:

1. ITA Nos. 1479 to 1482/Chd/2018 dt. 29/05/2019
2. ITA No. 260/Chd/2019 dt. 10/08/2022
3. ITA Nos. 484 to 486/Chd/2019 dt. 28/05/2020
4. CIT Vs. Sham Lal Bansal, ITA No. 472/Chd/2010 dt. 17/01/2011 (P&H)
5. DCIT Vs. Sutlej Textiles & Industries ltd., in ITA No. 5142/Del/2013 dt. 03/07/2015

6. DCIT Vs. M/s Gloster Jute Mills Ltd. in ITA No. 95/2011 dt. 01/03/2017

7. DCIT Vs. Gramin Industries Ltd., in ITA No. 84 & 356/Mum/2023 dt. 12/06/2023

8. M/s C.N.V Textiles p. Ltd. Vs. DCIT, in ITA No. 746/Mds/2014 dt. 21/11/2014

6.7 Ground No. 6 is, accordingly, accepted.

7. In the result, the appeal is partly allowed.

8. Now we shall deal with the appeal of the Assessee in ITA No. 187/Chd/2019 for the A.Y. 2014-15

8.1 Ground No. 10 states that the tax authorities have erred in treating the interest reimbursement amounting to Rs. 29,06,42,258/- relating to Madhya Pradesh TUFS as a revenue receipt rather than a capital receipt.

8.2 This issue is also before us since it was recalled vide order dt. 07/05/2024, passed in MA. No. 10/Chd/2023, for fresh adjudication on merits.

8.3 This issue stands, decided by us while dealing with A.Y 2013-14 (supra). For the reason recorded therein, respectfully following the decision in case of Sham Lal Bansal (supra) rendered by Hon'ble Jurisdictional High Court and the earlier years Tribunal decision in the case of the assessee, the interest reimbursement related to the Madhya Pradesh TUFS has held to be a capital receipt not chargeable to tax.

8.4 Ground No. 10 is, accordingly, accepted.

9. In the result, the appeal is partly allowd.

10. Now we shall deal with the appeal of the Revenue in ITA No. 260/Chd/2019 for the A.Y. 2014-15.

10.1 As per Ground No. 1, the Ld. CIT(A), according to the Revenue, has erred in treating interest from customers and suppliers, amounting to Rs. 7,18,91,518/- as business income, whereas the AO correctly treated it as income from other sources. This issue is also before us by virtue of order dt. 07/05/2024 passed by the Tribunal in M.A No. 11/Chd/2023, for re-adjudication on merits.

10.2 The matter, is correctly pointed out, stands decided in favour of the assessee by the decision of the Hon'ble Jurisdictional High Court in " Phatela Cotgin Industries P. Ltd. Vs. CIT, (2007) 303 ITR 411(P&H). Therein, it has been held that interest received on delayed payments on account of sale to customers can clearly be termed as income derived from an industrial undertaking. The being so, it is, obviously, business income of the assessee and it has wrongly been treated as income from other sources.

10.3 The Tribunal itself, in the case of this very assessee, for the earlier years, i.e; for A.Y. 2006-07 A.Y's 2006-07 to 2009-10 and 2013-14, vide order dt. 18/12/2018 (for A.Y. 2006-07 and 2007-08) and 28/05/2020, for A.Y. 2008-09, 2009-10 and 2013-14, has held the interest received from customers and suppliers to be income from business of the assessee.

10.4 Accordingly, the Department has not been able to make out as to how the Ld. CIT(A) has erred in treating this income as income from business. Accordingly, Ground No. 1 is rejected.

11. Ground No. 2 was also recall for fresh hearing. It is states that the CIT was not justified in allowing deduction on interest from customers and suppliers, brokerage from ocean freight, insurance claim and Forex Gains, under section 80IA and 80IC of the Act.

11.1 The AO held that this item were not derived from industrial undertaking. Deduction under section 80IA and 80IC was, therefore, disallowed. The Ld. CIT(A), on the other hand, allowed the deduction claimed on all these items.

11.2 It is only the interest income received from customers and suppliers, which is presently before us for adjudication.

11.3 The issue is as to whether is interest from customers and suppliers is eligible for deduction under section 80IA and 80IC of the Act. The AO disallowed the deduction, whereas the Ld. CIT(A) allowed it.

11.4 In Phatela Cotgin Industries (supra), the Hon'ble Jurisdictional High Court has held that interest received on delayed payments on account of sale to customers can clearly be termed to be income derived from an industrial undertaking, on which, deduction under section 80IA and 80HH of the Act is allowable.

11.5 The Tribunal, in the assessee's case (supra), for A.Y. 2006-07 to 2009-10 and 2013-14, held the interest received from customers / suppliers to be business income eligible for deduction under section 80IB and 80IC of the Act.

11.6 The nature of the receipt being the same for the year under consideration also, beside following jurisdictional High Court decision in Phatela Cotgin Industries P. Ltd. (supra), no case is made out for accepting the grievance sought to be raised by the Department by way of Ground No. 2. The same is accordingly, rejected.

12. In the result, the appeal is partly allowed.

13. Now we shall deal with the appeal of the Assessee in ITA No. 61/Chd/2020 for the A.Y. 2015-16

13.1 Ground No. 1 is general in nature.

14. Ground No. 2 states that the Ld. CIT(A) has erred in upholding the applicability of Section 14A of the Act r.w. Rule 8D of the Income Tax Rules and making disallowance ignoring the stand taken by the assessee. As per ground no. 3 the amended provisions of Rule 8D, effective from 02/06/2016 have been misapplied.

14.1 The AO disallowed a net amount of Rs. 17,98,15,974/- after deducting suo-moto disallowance of Rs. 11,79,624/- made by the Assessee. The Ld. CIT(A) directed the AO to apply the amended Rule 8D by taking into account only those investment which had yielded exempt income during the year. The disallowance thus calculated came to Rs. 3,14,83,443/-.

14.2 The stand of the assessee is that the amended Rule 8D was introduced w.e.f 02/06/2016 and, therefore, it is not applicable to the year under consideration, i.e; A.Y 2015-16. It has further been contended that Rule 8D(2)(ii) is not applicable since own funds of the assessee were undisputedly available, due to which, the borrowed funds of the assessee company as on 31/03/2015 were less than the aggregate of its fixed assets and current assets, showing all borrowed funds were invested in fixed assets and current assets only. Reliance has been placed on "South Indian Bank Ltd. Vs. CIt, (2021) dt. 09/09/2021, 438 ITR 1(SC). It has further been contended that out of total Portfolio Management Service (PMS) expenses, the assessee allocated amount in proportionate manner and it further made disallowance under Rule 8D (2)(iii) is related to exempt income, thereby making suomoto disallowance of Rs. 11,79,624/-. It has been further submitted that the AO has not found any fault with the disallowance made by the assessee itself; that without specifically rejecting the computation made by the assessee, the AO

could not resort to the provisions of Rule 8D; and that the disallowance made is even otherwise not justified considering the disallowance has upheld by the Tribunal in the assessee's own case.

14.3 Relying on the impugned order, the Ld. DR on the other hand, has contended that for the earlier years, against the orders of the Triubnal, Department is in appeal before Hon'ble High Court.

14.4 The amended Rule 8D was undisputedly introduced w.e.f 02/06/2016. In the assessee's own case for A.Y. 2014-15, the Tribunal has held Rule 8D to be prospective, as done by the Hon'ble Supreme Court in " Essar Tele Holdings Ltd. (2018) reported in 90 Taxmann.com 2(SC). The Tribunal followed the said Supreme Court decision. For A.Y. 2011-12 to 2014-15, the same is the fate of the assessee's case before the Tribunal and relying thereon has rightly been placed on behalf of the assessee. The factum of the Department being before the Hon'ble High Court in these cases for the years prior to 02/06/2016, the date on which the amended Rule 8D become applicable, does not detract from the fact that the view taken by the Tribunal following the Supreme Court decision in Essar Tele Holdings Ltd. (supra) in the earlier years is that the amendment to the Rule is prospective. Even this reasons, the year under consideration also, i.e; A.Y. 2015-16 also does not attract applicability the amended Rule 8D.

14.5 Further, the availability of own funds with the assesse at the relevant time has also not been called in question. The assessee had interest free own funds available exceeding the investment in tax free securities. The share capital as on 31/03/2024 was of Rs. 63.65 Crores. It remained the same on 31/03/2015. Reserves as on 31/03/2014 were of Rs. 2784.66 Crores. Then rose to Rs. 3019.73 Crores as on 31/03/2015. There were Dep. Reserves of Rs 2261.56 Crores. As on

31/03/2015 then the reserves were of Rs. 2800.43 Crores. On 31/03/2014, there was deferred tax of Rs. 266.15 Crores. Then became Rs. 198.48 Crores as on 31/03/2015. Thus, the total cash reserves including capital of Rs. 5376.02 Crores as on 31/03/2014 rose to Rs. 6082.29 Crores as on 31/03/2015. On the other hand, whereas there were investment of Rs. 712.34 Crores on 31/03/2014, such investment came to Rs. 674.17 Crores on 31/03/2015. Loan Funds which were at Rs. 2760.57 Crores on 31/03/2014, went to 1785.81 Crores on 31/03/2015. There were fixed assets including CWIP of Rs. 5120.82 Crores on 31/03/2014 . They rose to Rs. 5373.47 Crores as on 31/03/2015. Net current assets as on 31/03/2014 were of Rs. 2037.29 Crores. As on 31/03/2015 , the net current assets came to Rs. 1621.97 Crores. As such, borrowed funds of the company were of Rs. 1785.81 Crores as on 31/03/2015 as against aggregate fixed assets and current assets of Rs. 6995.44 Crores. Evidently, therefore, borrowed funds were less than the fixed assets and current assets. Thus, the conclusion is that the borrowed fund were invested in the fixed assets and current assets of the company only. In other words, the company financed its investment out of its own fund and the borrowed funds were never utilised for such investment. Otherwise also, the investment of the company during the year, as stated, amounting to Rs. 674.17 Crores and on the other hand, the accumulated balance of cash reserves / own funds of the company at the end of the year amounted to Rs. 6082.29 Crores. Now, in South Indian Bank Ltd. Vs. CIT(supra), the Hon'ble Supreme Court as held that where interest free own funds are available with the assessee and said funds exceed the investment in tax free securities, the investment would be presumed to have been made out of the assessee's own funds and no proportionate disallowance is warranted under section 14A of the Act on the ground that separate account were not maintained by the assessee for investment and other expenditure incurred for earning tax free investment.

14.6 Then, the assessee itself allocated an amount of Rs. 9,79,624/- out of total PMS expenses, is available at assessee's paper book page 53. Further, relating to exempt income, the disallowance of Rs. 2,00,000/- was suo-moto made under Rule 8D(2)(iii). The total disallowance thus made suo-moto amended to Rs. 11,79,624/-. The AO made disallowance under Rule 8D(2)(ii) amounting to Rs. 11,63,32,789/- and disallowance under Rule 8D(2)(iii) amounting to Rs. 3,46,62,809/-. The total disallowance under Clause of Rule 8D(2) was, therefore, of Rs. 15,09,95,598/-. From this, suo-moto disallowance of Rs. 11,79,624/- made by the assessee was subtracted, to arrive at final balance disallowance of Rs. 14,98,15,974/-. When the Ld. CIT(A) directed the amended provision of Rule 8D to be applied, the disallowance got to be calculated at Rs. 3,14,83,443/-. It remains undisputed that no fault with the suo-moto disallowance made by the assessee, has been found by the AO. Be that as it may seen the provision of the amended Rule 8D are prospective the same cannot be made applicable prior to 02/06/2016 and A.Y. 2015-16, i.e; the year under consideration is anterior to the said date.

14.7 For the above discussion, Ground No. 2 and 3 are accepted and the disallowance made is deleted.

15. Ground No. 4 states that the AO action for treating the amount of Rs. 25,32,75,393/-, i.e; interest received by the assessee, as income from other sources, in place of income from business and profession, as claimed by the assessee, has wrongly been confirmed by the Ld. CIT(A).

15.1 The AO treated the entire interest received of Rs. 30.09 Crores as income from other sources. The Ld. CIT(A) held interest of Rs. 4.74 Crores received from customers / suppliers and interest of Rs. 0.02 Crores, received from employees, as income from business. However, the balance interest of Rs. 25.33 Crores was

taken as income from other sources such interest was received by the assessee from banks and others.

15.2 As rightly contended, for A.Y's 2006-07, 2007-08, 2013-14 and 2014-15, in the assessee's case, netting has been allowed by the Tribunal. Further, for the year before us, undisputedly, there is no surplus interest income. The total interest income was of Rs. 3009 lacs and the total interest expenditure was of Rs. 14072/ lacs. Therefore, facts remains unchanged, mutatis mutandis, for the year under consideration also, netting is allowed, as in the earlier years. The AO to give effect. Ground No. 4 is accepted.

16. In Ground No. 5 the challenge is of the Ld. CIT(A) action in confirming reduction of rental receipts of Rs. 2,09,73,193/-, interest from banks of Rs. 98,948/- and miscellaneous receipt of Rs. 65,47,626/- from the profit of the units eligible for deduction under section 80IA and 80IC of the Act.

16.1 Deduction under section 80IC and 80IA was not allowed by the AO on interest claimed, rent received, Foreign Exchange Rate, Miscellaneous Income, interest from banks and customers / suppliers and commissioner from Ocean Freight, holding them to be not derived from an industrial undertaking. The Ld. CIT(A) allowed the deduction under section 80IC and 80 IA on insurance claim, Foreign Exchange Rate, interest from customers / suppliers, and commission from Ocean Freight. Such deduction was, however, disallowed on miscellaneous income and interest from banks.

16.2 The assessee has up against the confirmation of reduction of rent received of Rs. 2,09,73,193/-, miscellaneous income of Rs. 65,47,626/- and interest from banks of Rs. 98,948/- from the profits eligible for deduction under section 80IC.

16.3 Apropos the rental receipts, the rent is received from employees for accommodation provided to them by the assessee. It is undisputed. The rent is for recovering the cost of running and maintenance of the residential accommodation for the employees. For A.Y's 2008-09, 2009-10, 2013-14 and 2014-15, the Tribunal has held that such expenses incurred for maintenance of the accommodation for the employees, should be reduced from the rental income and thus, only the balance / net amount, if any should be disallowed. It has been shown as to how for the year under consideration, any different view should be taken. Obviously, this year also, the premises meant for the employees residential requirements required to be maintained. Therefore, the expenses incurred for such maintenance and upkeep of the residential premises of the employees of the assessee company should be reduced from the rental income and only the balance or net amount, if there is any, should be disallowed. The AO is directed accordingly.

16.4 The second issue is miscellaneous income of Rs. 65,47,626/-. Its breakup is rebate and discount of Rs. 55,97,132/-, recovery from contractor of Rs. 7,24,136/- and other miscellaneous receipts of Rs. 2,26,358/-.

16.5 Regarding the rebate and discount, this comprises of Turnover discount received from suppliers. It is undisputedly relates to material purchases, which is, obviously the business transaction. Rebate and discount, therefore, as held by the Tribunal in the earlier year, i.e; A.Y 2014-15 is eligible for deduction.

So far as regarding recovery from contractor, such recovery was, undisputed, on account of usage of water and electricity, etc., for doing various job work, which , again, were business transaction, not inviting exclusion from the business profit

and gains derived by the undertaking. Therefore, deduction under section 80IC cannot be denied on such recoveries has already held in the earlier years.

16.6 The other miscellaneous receipts have also not been challenged as not being part of the profit and gains of business derived by the assessee. This amount is also subject to deduction under section 80IC.

16.7 In sum, therefore, these amounts are directed not to be reduced from the business profits of the assessee and they are entitled for deduction under section 80IC. Ordered accordingly. Ground No. 5 is accepted.

17. Ground No. 6 states that the Ld. CIT(A) has erred in upholding the action of the AO in treating line / bay charges amounting to Rs. 82,50,000/- as capital expenditure instead of Revenue expenditure. The Ld. CIT(A), however, allowed depreciation on the same.

17.1 We find that the matter stands covered in favour of the assessee by the decision of Tribunal for A.Y. 2008-09, 2009-10 and 2011-12 and 2014-15.

17.2 Though the Department states that this issue is before the Hon'ble High Court for these years against Tribunal order, finding that there is no change in the facts and circumstances for the year under consideration, we direct the line / bay charges to be treated as Revenue expenditure and not as capital expenditure.

17.3 Ground No. 6 is accepted.

18. As per Ground No. 7 & 8, the Ld. CIT(A) has erred in upholding the action of the TPO/AO in rejecting the arms length price determined by the assessee in relation to transfer of electricity by two Captive Power Plants (CPP) of the assessee company and not holding that the CPP is transfer electricity at the rate equivalent to the rate charged by other power generator in the state of Madhya Pradesh.

18.1 The TPO/ AO did not agree with the arms length price quoted by the Assessee. The transfer value of electricity was, as such , reduced by Rs. 82.38 Crores, against Rs. 185.30 Crores and resulting in disallowance of claim under section 80IA qua both CPP of the assessee. It was further held that the rate to be applied for sale of electricity should be allowed at which electricity was sold by the Indian Energy Exchange(IEX). The Ld. CIT(A) followed the decision of the Hon'ble Calcutta High Court in case of CIT vs. ITC Ltd., directed to apply the rate at which electricity is sold by the generator of electricity to the distributor.

18.2 As correctly pointed out, for A.Y. 2014-15 in assessee's own case, vide ITA No. 187/Chd/2019, the Tribunal, vide order dt. 10/08/2022, on the question of determination of arms length price, the matter was decided in favour of the assessee and it was thus held that the market value as adopted by the assessee in accordance with the methodology or rates determined by the Grid as per Tariff Order is at arms length price. The department is stated to be before the Hon'ble High Court against the said order. The fact remains the same for the year under consideration, as for A.Y. 2014-15. Therefore, there is no reason to take any view different from that taken by the Tribunal for A.Y. 2014-15. Accordingly, Ground No. 7 & 8 are accepted.

19. Ground No. 9 states that the Ld. CIT(A) has erred in upholding the action of the TPO/AO in rejecting arms length price determined by the assessee in relation to transfer of steam by Vardhman Fabrics CPP and holding that the steam produced had NIL cost.

19.1 The TPO/AO held that steam is a by-product with NIL cost. The entire transfer value of steam, amounting to Rs. 35.37 Crores was, hence, disallowed.

This resulted into disallowance of the claim of the assessee under section 80IA. The Ld. CIT(A) confirmed this action of the AO.

19.2 The Coordinate Bench of the Tribunal in the assessee's case for A.Y 2014-15, vide order dt. 10/08/2022, has decided the issue regarding determination of arms length price in relation to steam, in the assessee's firm. The Department is stated to be before the Hon'ble High Court against the said Tribunal order. However, the facts have not been stated to be any difference for the year under consideration. The Tribunal order for A.Y 2014-15 is, therefore, directly squarely applicable, mutatis mutandis for the year under consideration also. There, in accordance there with, for the year under consideration also, the issue is decided in favour of the assessee. Ground No. 9 is, accordingly, accepted.

20. Now we shall deal with the appeal of the Revenue in ITA No. 117/Chd/2020 for the A.Y. 2015-16

20.1 In this Department's appeal for A.Y. 2015-16, first issue is with regard to Ld. CIT(A)'s action in allowing income from the assessee's business profit of its unit eligible for deduction under section 80IA/80IC of the Act. In respect of foreign fluctuations, interest from customers / suppliers and commission on Ocean Freight.

20.2 The AO disallowed deduction under section 80IC/80IA of the Act and insurance claim, rent received, Foreign Exchange Rate, miscellaneous income, interest from banks, customers / suppliers and commission from Ocean Freight, holding them to be not derived from industrial undertaking.

20.3 The Ld. CIT(A) allowed the deduction under section 80IC and 80 IA on insurance claim, Foreign Exchange Rate, interest from customers / suppliers and commission from Ocean Freight and deduction on rent receipt, miscellaneous

income and interest from banks was disallowed. Such disallowance has been challenged by the assessee in its appeal (supra), in ITA No. 61/Chd/2020, by way of Ground No. 5.

20.4 Qua the issue presently under challenge with regard to allowance made by the Ld. CIT(A), the Department has to say that these receipts are also not eligible for the purpose of deduction under section 80IA and 80IC, since they are not derived from an industrial undertaking as rightly held by the AO. The items comprises are as follows:

Foreign Exchange Gain:	Rs. 25.09 Crores
Interest from customer / supplier :	Rs. 0.73 Crores
Commission on Ocean Freight :	Rs. 0.03 Crores

20.5 The issue, it is seen, stand decided in favour of the assessee by the Tribunal, for A.Y. 2006-07 to 2009-10, 2013-14 and 2014-15, wherein, all the three items of Foreign Exchange Rate, interest from customers /suppliers and commission on Ocean Freight have been held to be entitled for deduction under section 80IB and 80IC of the Act. The facts, mutatis mutandis, remains the same for the year under consideration also, the claim of the Department in this regard is rejected. The action of the Ld. CIT(A) in allowing income from the business profits of the units of the assessee to be eligible for the purpose of deduction under section 80IA and 80IC, is confirmed. Ground No. 1 is rejected.

21. Under Ground No. 2, it has been stated that the Ld. CIT(A) has erred in treating the Sales Tax Subsidy under the Madhya Pradesh Industrial Promotion Assistance Scheme, 2004 as capital receipt without comparing the case with the analysis of the Punjab Government scheme, has made by Hon'ble Punjab & Haryana High Court in case of "Abhishek Industries Ltd. 286 ITR 1.

21.1 This issue has been decided in favour of the assessee by the Tribunal in the assessee's own case for A.Y 2013-14 and 2014-15, holding the subsidy to be a capital receipt. The Department again states that it is before the Hon'ble High Court. However, no stay is in operation against the Tribunal order. The fact that the year under consideration are not different from those present for the A.Y's 2013-14 and 2014-15. Therefore, finding no reason to defer there from, the Tribunal decision in the assessee's case for A.Y. 2013-14 and 2014-15 are respectfully followed to hold that the subsidy received is capital receipt. Accordingly Ground no. 2 is rejected.

21.2 Hence, whereas the assessee's appeal for the A.Y. 2015-16 is allowed, cross appeal of the Department is dismissed.

22. In the result, appeals of the Assessee are partly allowed whereas the Cross appeals of the Revenue are dismissed.

Order pronounced in the open Court on 14/10/2024.

Sd/-	Sd/-
कृणवन्त सहाय	**आकाश दीप जैन**
(KRINWANT SAHAY)	**(AAKASH DEEP JAIN)**
लेखा सदस्य/ ACCOUNTANT MEMBER	**उपाध्यक्ष / VICE PRESIDENT**

AG

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar