

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
MS ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.427/PUN/2024
Assessment Year : 2015-16**

M/s. Giriraj Enterprises 1 Modi Baug, Building A, Shivaji Nagar, Ganesh Khind Road, Pune – 411016	Vs.	DCIT, Central Circle – 1(1), Pune
PAN: AACFG1563G		
(Appellant)		(Respondent)

**IT(SS)A Nos.23 to 25/PUN/2024
Assessment Years : 2017-18 to 2019-20**

DCIT, Central Circle – 1(1), Pune	Vs.	M/s. Giriraj Enterprises 1 Modi Baug, Building A, Shivaji Nagar, Ganesh Khind Road, Pune – 411016
		PAN: AACFG1563G
(Appellant)		(Respondent)

Assessee by : Shri Nikhil S Pathak
Department by : Shri Amol Khairnar, CIT-DR
Date of hearing : 23-09-2024
Date of pronouncement : 17-10-2024

ORDER

PER R.K. PANDA, VP :

ITA No.427/PUN/2024 filed by the assessee is directed against the order dated 30.01.2024 of the CIT(A), Pune-11 relating to assessment year 2015-16.

IT(SS)A Nos.23.PUN/2024 to 25/PUN/2024 filed by the Revenue are directed against the separate orders dated 30.01.2024 of the CIT(A), Pune-11 relating to assessment years 2017-18 to 2019-20, respectively. Since identical grounds have been raised in these appeals, therefore, for the sake of convenience, these appeals were heard together and are being disposed of by this common order.

2. First, we take up ITA No.427/PUN/2024. Facts of the case in brief, are that the assessee is engaged in the business of dealership in various FMCG products, power generation business through windmills and solar plants. A search and seizure action u/s 132 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was conducted in the Malpani Group of cases of Sangamner on 17.02.2021 by the Investigation Wing, Pune. The case of the assessee was also covered during the search. The assessee filed its original return of income on 23.11.2015 declaring total loss of Rs.77,57,79,930/-. The return was processed u/s 143(1) of the Act on 09.11.2016. In response to the notice issued u/s 153A of the Act dated 25.10.2021, the assessee submitted its return of income on 17.11.2021 declaring the loss of Rs.77,57,79,930/-. Statutory notices u/s 143(2) and 142(1) of the Act were issued and served on the assessee, in response to which the AR of the assessee filed the requisite details from time to time.

3. The Assessing Officer noted that a Survey action u/s 133A of the Act was conducted in the case of M/s. JM Financial Asset Management Limited ("JM Financial") situated at 7th & 8th Floor, Appa Saheb Marathe Marg, Cynergy,

Prabhadevi, Mumbai, during which it was found that JM Balanced Fund – Dividend Option Regular scheme by JM Financial had manipulated accounting methodology so as to artificially inflate the distributable surplus. In the process, the SEBI guidelines have been flouted by the J M Mutual Fund by classifying a portion of capital as distributable surplus and thereafter artificial payout to the investors in the form of dividend. According to the Assessing Officer, although dividend received by the unit holders from the equity based mutual fund is exempt from taxation u/s 10(35) of the Act, however, these provisions cannot be applied to sham transactions. He was of the opinion that the dividend received was not on account of appreciation of the investment but is return of a part of the capital itself, as such, it cannot qualify as dividend. Therefore, such dividend needs to be reduced from the cost of investment and accordingly, the capital loss would also be reduced. In view of the above, the Assessing Officer called for the necessary details in respect of the transactions with JM Financial. The Assessing Officer also asked the assessee to explain as to why certain capital loss should not be disallowed and the dividend income should not be taxed accordingly.

4. The assessee in response to the same filed a detailed reply which has been incorporated by the Assessing Officer in the body of the assessment order and which reads as under:

“4.3 In response to the same, assessee filed reply on 27.03.2022 which is reproduced for ready reference as under:

"Assessee is in the business of FMCG Trading and various other business activities as already given along with business of shares and securities

trading. During the year Assessee has purchased the units of the JM Balanced fund - Dividend option of Rs. 10 crore on 16th and 17th of the October 2014. The all units purchased of Rs. 10 crore has been redeemed on 29th January 2015 for Rs. 8,99,93,198/-. The dividend is declared by the fund of Rs.5.20 per unit on record date 28/01/2015. Assessee has received the dividend of Rs.2,06,68,835/-29th January 2015. As Assessee is dealing in the business of shares and securities the purchases and sales are recorded in the financial statement as purchase and sales.

There is no any short term loss in this transaction as it is trading activity. The business loss arises from this transaction was of Rs.1,00,06,802/-arises in this transaction.

It is to be noted that Dividend received against the same is exempted u/s 10(35) of the Income tax. The Said fund is require to pay dividend distribution tax u/s 115R of the IT Act 1961

In order to establish the authenticity and genuineness of the said transaction it is respectfully submitted as under:

1. That the assessee has applied for the allotment of units to JM Balanced Funds Dividend option Mutual fund by making a application and making the payment towards purchase of units via Cheque amounting to Rs.5,00,00,000/- on 16/10/2014 and Rs.5,00,00,000/- on 17/10/2014

2. The copy of the bank statement is filed and placed on record as per attachment. The Mutual fund allotted 39,74,776 units to the assessee in physical form.

3. The assessee sold these units on 29-01-2015,

4. All the payments towards sale consideration are received through account payee cheques and duly reflected in the bank account of the assessee and copies of corresponding bank statements are being filed and placed on record.

1. STT was duly charged by the fund which is reflected in the statement received and copies of the same are being submitted and placed on record.

1. The Assessee has received the dividend @ Rs. 5.20 per unit as declared the by fund on 28/01/2015 in his bank account

The assessee is a genuine and regular trader in this business and has purchased and sold the units through banking channel There is no evidence that the purchaser was related to the assessee or even in know of the assessee.

Therefore, from the above stated factual propositions, it is crystal clear and duly evident that all the above stated transactions of purchase and sale of units of JM balanced funds divided option has been fully and duly accounted for in the Books of Account, Audited Financial Statements and ITR by the assessee, and all the transactions are fully and duly reflected in the bank statements of the assessee.

Therefore, there is no lawful basis, whatsoever, to consider the said genuine and authentic transaction of the assessee, as a fictitious transaction and the statutory onus, as casted upon the assessee, by numerous binding judicial pronouncements of the Hon'ble ITATS and High Courts, regarding the establishment of authenticity and genuineness of the said transaction and the resultant loss had been fully and completely discharged by the assessee.

It is beyond the control of the assessee to verify how the dividend is paid by the fund. These mutual funds are controlled by the SEBI. The transaction carried by the assessee is genuine and transparent. Hence no disallowance of any claim can be made.

The Hon'ble Supreme Court in the case of Omar Salav Mohamed Sait reported in (1950) [37 ITR 151] (SC) had held that no addition can be made on the basis of surmises, suspicion and conjectures in the case of CIT (Central) Kolkata vs Daulat Ram Rawatmull reported in [87 ITR 349], the Hon'ble Supreme Court held that, the onus to prove that the apparent is not the real is on the party who claims it to be so. The burden of proving a transaction to be bogus has to be strictly discharged by adducing legal evidences which would directly prove the fact of bogusness or establish circumstance unerringly and reasonably raising an interference to that effect. The Hon'ble Supreme Court in the case of Umacharan Shah & Bros Vs CIT (37 ITR 271) held that suspicion however strong, cannot take the place of evidence.

Since the transaction from the assessee is genuine no addition or disallowance can be made on this account.”

5. However, the Assessing Officer was not satisfied with the arguments of the assessee. According to him, the conduct of the assessee proves without doubt that it was well aware of the nuances of the scheme and knowingly and purposefully indulged in the sham scheme just to avail fictitious loss and exemptible dividend. The Assessing Officer referred to the SEBI Circular No.SEBI/IMD/CIR

No.18/198647/2010 dated 15th March, 2010, according to which Unit Premium Reserve shall be treated at par with Unit Capital and cannot be utilized to declare dividends and the mutual fund houses cannot distribute dividends from Unit Premium Reserve. It can distribute only from the surplus generated by realizing the gains on investments or dividends received from equity markets which it had invested. That means, it has to invest and make a profit to distribute. However, the said direction of the SEBI has not been followed by the mutual fund, as first it has artificially rigged the distributable surplus and then applied said ratio to future allotted units (before the planned dividend distribution date). The Assessing Officer referred to the chronology of receipt of funds and distributable surplus in the scheme, the statements of key persons responsible for the management of mutual fund and concluded that by deploying unfair and manipulative methods, the mutual fund house has rigged up the distributable surplus, in a planned manner. While accounting the breakup of NAV on the date of investments, the fund house credits the IER (Income Equalization Reserve) account instead of UPR (Unit Premium Reserve), which is strictly against the guidelines specified by SEBI. In view of the above, the Assessing Officer brought to tax the amount of Rs.1,06,62,033/- and did not allow the capital loss to be adjusted from the business income by observing as under:

“4.4 The submission of the assessee has duly been considered. It is seen that assessee has purchased units of JM Balanced Fund of Rs. 10 crore on 16th 17th October, 2014. The units have been redeemed on 29.01.2015 for Rs.8,99,93,198/-. In the process assessee also received the dividend of Rs.2,06,68,835/- on 29-01-2015 and incurred business loss of Rs.1,00,00,802/-. A survey action was conducted u/s 133A of the IT Act, 1961 in the case of M/s. JM Financial Asset Management Limited (JM Financial). In the course of survey, it was found that JM

Balanced Fund- Dividend Option Regular scheme (the "Scheme") of JM Financial had manipulated accounting methodology so as to artificially inflate the distributable surplus. In the process, the SEBI guidelines have been flouted by the J M Mutual Fund by classifying a portion of capital as distributable surplus and thereafter artificial payout to the Investor in the form of dividend. The conduct of assessee proves without doubt that it was well aware of the nuances of the scheme and knowingly and purposefully indulged in the sham scheme just to avail fictitious loss and exemptible dividend.

Sham nature of dividend declared:

4.5 The SEBI vide its circular No. SEBI/IMD/CIR No 18/198647 /2010 dated March 15, 2010, has instructed fund houses as below.

“3. Non availability of Unit Premium Reserve for dividend distribution

i. The Ninth and Eleventh Schedule of SEBI (Mutual Funds) Regulations provide the accounting policies to be followed for determining distributable surplus and accounting the sale and repurchase of units in the books of the Mutual Fund. In this regard the format for Scheme Balance Sheet (including Abridged) provides for disclosure of Unit Premium Reserve.

ii. It is clear from the above regulatory requirements that the Unit Premium Reserve, which is part of the sales price of units that is not attributable to realized gains, cannot be used to pay dividend. However, it is observed that some Mutual Funds are using Unit Premium Reserve for distribution of dividend. It is therefore reiterated that:

1. When units of an open-ended scheme are sold, and sale price is higher than face value of the unit, part of sale proceeds that represents unrealized gains shall be credited to a separate account (Unit Premium Reserve) and shall be treated at par with unit capital and the same shall not be utilized for the determination of distributable surplus.

2. When units of an open-ended scheme are sold, and sale price is less than face value of the unit, the difference between the sale price and face value shall be debited to distributable reserves and the dividend can be declared only when distributable reserves become positive after adjusting the amount debited to reserves as per para 2(a) (ix) of Eleventh Schedule of SEBI (Mutual Funds) Regulations."

4.6 Thus, SEBI clearly says that Unit Premium Reserve shall be treated at par with Unit Capital and cannot be utilized to declare dividends and the mutual fund houses cannot distribute dividends from Unit Premium Reserve. It can distribute only from surplus generated by realising the gains on investments or dividends received from equity markets which it had invested. That means it has to invest and make a profit to distribute. However, said direction of the SEBI has not been

followed by the mutual fund, as first it has artificially rigged the distributable surplus and then applied said ratio to future allotted units (before the planned dividend distribution date).

Chronology of receipt of funds and distributable surplus in the scheme

4.7 The scheme started in April 1995 with AUM of Rs.10,000/-

As on 30.09.2014 the AUM was only Rs.3.30 Crores. Within a short span of 2 months (01.08.2014 to 30.09.2014), taking the advantage of low AUM, the distributable surplus has been increased from Rs.7.82/- to Rs.16.13/- per unit by realizing profitable open positions. Needless to mention that said investments have been made long back, resulting in to substantial appreciation. It is to be noted that it won't be easy, if fund's AUM is large.

During the period 01.10.2014 to 31.10.2014, mutual fund received an inflow of Rs. 1,310 crores, i.e. in a span of just 14 days. The closing AUM as on 31.10.2014 stood at Rs.1,364 crores.

The scheme received another trench of inflow of Rs.427 crores in between 11.12.2014 to 25.12.2014 i.e. in a span of just 11 days. The closing AUM as on 25.12.2014 stood at Rs.1,776.84 crores.

The scheme received another inflow of Rs.1517.31 Crores between 10.03.2015 to 25.03.2015 i.e. in a span of just 16 days. In fact, the scheme received an inflow of Rs.1,087.25 crores on 25.03.2015 i.e. on the date of dividend distribution. The AUM reached its peak of Rs.3,021.68 crores on that date.

On 25.03.2015, the mutual fund declared dividend of Rs.8.87/- per unit i.e. nearly 40% of the unit value. Total dividend payout works out to Rs.1221.44 Crores.

After the payout of dividend, the unit value decreases from Rs.22.02/- to Rs. 13.07/-.

4.8 In the process, the SEBI guidelines regarding crediting portion of capital into unit premium reserve has been violated.

4.9 Further, during the course of survey action, statement of the key persons responsible for the management of the mutual fund was recorded. They in their statements have categorically admitted that due process as mandated by the SEBI has not been followed by them. Summary of their statements recorded is as under:

4.10 Shri Sanjay Chhabaria, fund manager, admitted that there has been no application of mind in managing the fund and as per the advice of Shri Bhanu Katoch, CEO, he has increased the distributable surplus. He further stated that the due process of dividend distribution, as mandated by the SEBI guidelines were

not followed in letter and spirit. Merely chain of documents was created so as to impress upon that the guidelines were being followed.

4.11 Shri Suvendu Rakshith, the head of sales team, stated that the sales team had been passing on the hints to the distributors about the prospective dividend distribution, much in advance, to lure the prospective clients. This violated SEBI dividend declaration policy that there should not be any type of communication regarding probable date and amount of dividend by the mutual fund before the decision taken by the trustee company.

4.12 Shri Deepan Doshi, Institutional Sales Head stated that he has never been part of any committee for deciding the dividend amount and has no role in any dividend declaration.

4.13 Mrs. Diana D'sa, the Compliance Head, JM AMC who is responsible for overseeing all the compliance as per SEBI Guidelines admitted that SOP has not been followed and documents are created to show that the SEBI guidelines are followed.

4.14 In view of the above, it can be safely deduced that by deploying unfair and manipulative methods, the mutual fund house has rigged up the distributable surplus, in a planned manner. While accounting the breakup of NAV on the date of investments, the fund house credits the IER (Income Equalization Reserve) account instead of UPR (Unit Premium Reserve), which is strictly against the guidelines specified by SEBI. Immediately after the dividend is declared, since there is not enough money to distribute, the capital amount introduced by the clients is distributed back to them in the form of tax-free dividend. Balance amount is redeemed at a loss, since the NAV falls and the investors book a short-term capital loss which looks genuine but is an actually fictitious and preplanned loss.

4.15 The assessee, in order to reduce its tax liability, entered into these sham transactions and received dividend and Short-Term Capital Loss which has been claimed as business loss. As a result, the dividend is not eligible for deduction u/s 10(35) of the IT Act and short-term loss is also not eligible for adjustment with business/capital gains, being generated on account of sham transaction.

5. The amount of capital loss has been adjusted by the assessee against business income. Assessee is one of the beneficiaries of this arranged Sham Transactions and its claim of dividend income and business loss is required to be disallowed / taxed accordingly as per computation as under:

<i>Particulars</i>	<i>Amount (in Rs.)</i>
<i>Redeemed Value of MF on 29.01.2015</i>	<i>8,99,93,198/-</i>
<i>Add:</i>	
<i>Dividend Received</i>	<i>2,06,68,835/-</i>
<i>Business Loss claimed</i>	<i>1,00,06,802/-</i>

Total Receipts	12,06,68,835/-
Less:	
Initial Investment Cost	10,00,00,000/-
Income earned	2,06,68,835/-

6 As seen above in table, the assessee has earned business income of Rs.1,06,62,033/- which needs to be brought to the tax accordingly. Hence, the amount of Rs.1,06,62,033/- is hereby added to the total income. Penal proceedings u/s 271(1)(c) of the Act are initiated.

[Rs.2,06,68,835/-]”

6. In appeal, the CIT(A) upheld the action of the Assessing Officer. While doing so, he relied on the decision of the Hon'ble Calcutta High Court in the case of PCIT vs. Swati Bajaj reported in 446 ITR 56 (Calcutta). So far as the arguments made by the Ld. Counsel for the assessee that the assessee was not given the benefit of cross-examination of the employees of JM Financial whose statements were relied on by the Assessing Officer are concerned, he held that the assessee has not submitted any document or letter suggesting that any request for cross examination was made before the Assessing Officer. Relying on various decisions, he held that after foregoing the right of cross examination at the stage of assessment proceedings the assessee cannot take this plea at appellate stage. He accordingly dismissed the appeal filed by the assessee.

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

8. The Ld. Counsel for the assessee strongly challenged the order of the CIT(A) in confirming the action of the Assessing Officer. He submitted that the

assessee had invested an amount of Rs.10 crores in JM Balanced Fund – Dividend Option Regular Scheme. He submitted that an amount of Rs.5 crores was invested on 16.10.2014 and another amount of Rs.5 crores was invested on 17.10.2014. Accordingly, 39,74,776 units were allotted by J M Mutual Fund. The assessee received dividend of Rs.2,06,68,835/- which was claimed as exempt u/s 10(35) of the Act. The assessee sold all the units on 29.01.2015 for a consideration of Rs.8,99,93,198/- and the difference amount i.e. cost (-) sale price amounting to Rs.1,00,06,802/- was claimed as the business loss. He submitted that the Assessing Officer made the addition purely on the basis of presumptions and surmises.

9. So far as the reliance of the Assessing Officer on the statements of some of the employees of J M Mutual Fund recorded during the course of survey action are concerned, he submitted that the Assessing Officer without giving copies of the said statements to the assessee and without affording any opportunity of cross examination, made the addition. Referring to copy of the notice issued u/s 142(1) of the Act, copy of which is placed at pages 98 to 100 of the paper book, he submitted that there is no such reference to any of the statements of the employees of J M Mutual Fund. Since the Assessing Officer in the assessment order had made the addition by relying upon the statements of some of the employees directly, the assessee was not in a position to request for cross examination. Referring to the decision of the Hon'ble upreme Court in the case of Andaman

Timber Industries vs. CCE vide Civil Appeal No.4228 of 2006, order dated 02.09.2015, he submitted that the addition was made on the basis of the statements of third party without giving any opportunity to cross examine is not sustainable in law. He accordingly submitted that the addition made by the Assessing Officer should be deleted.

10. In his second plank of argument, he submitted that the assessee invested in the units of J M Mutual fund in a regular manner. Assuming without admitting that the allegations made against J M Mutual Fund are correct, he submits that the assessee has invested in the said units without any knowledge of the alleged manipulation by J M Mutual Fund. He submitted that there is no evidence with the Assessing Officer that the assessee was party to the alleged manipulation carried out by J M Mutual Fund. He submitted that the assessee had made the investments on 16.10.2014 and 17.10.2014. The investments were made through proper banking channel. Subsequently, dividend was declared and thereafter the assessee sold the said units. Further, the assessee had invested total amount of Rs.108 crores in various mutual funds and it is not a case that the assessee has invested only in J M Mutual Fund. He submitted that the transaction of receipt of dividend and subsequent sale is not covered by the provisions of section 94(7) of the Act. He finally submitted that since there is no evidence brought on record by the Assessing Officer to prove that the assessee was hand in glove with J M Mutual Fund, the addition is not justified.

11. Referring to the decision of the Hon'ble Bombay High Court in the case of Karan Maheshwari vs. ACIT & Anr. vide Writ Petition (L) No.37211 of 2022, order dated 08.03.2024, he submitted that the assessee in this case had also invested in J M Balance Fund. The assessee received dividend and thereafter the units were sold which resulted in loss. The loss was allowed and the addition was deleted.

12. Referring to the decision of the Mumbai 'G' Bench of the Tribunal in the case of Goldiam International Ltd. vs. DCIT vide ITA Nos.3218 & 3219/Mum/2023, order dated 05.04.2024 for assessment year 2016-17, he submitted that in this case also the assessee had invested in J M Balance Fund. The assessee earned dividend and thereafter, on sale of the same, loss was claimed. Similar allegations were made in that case also. The Tribunal held on merits that the addition has not been justified and accordingly the addition was deleted.

13. Referring to the decision of the Jaipur Bench of the Tribunal in the case of Agencies Rajasthan Pvt. Ltd. reported in 109 taxmann.com 139, he submitted that in this case also the assessee had invested in J M Mutual Fund and had received dividend. Subsequently, the units were sold at a loss. The Assessing Officer held that it was a colourable device. The Tribunal held that there was no evidence to prove the connivance of the assessee with J M Mutual Fund and accordingly the addition was deleted. He accordingly submitted that the addition made by the

Assessing Officer and sustained by the CIT(A) is not in accordance with law and therefore, the same should be deleted.

14. So far as the reliance on the decision of the Hon'ble Calcutta High Court in the case of PCIT vs. Swati Bajaj (supra) is concerned, he submitted that in this case, the assessee had earned long term capital gain on sale of penny stock. There was evidence that the transactions were rigged. Accordingly, the claim was rejected. Similarly, in the case of Abhishek Ashok Lohade vs. ITO, vide ITA No.816/PUN/2018, order dated 22.11.2022, the Pune Bench of the Tribunal was dealing with penny stock wherein there was clear evidence of fraud, manipulation and deceptive dealings to generate bonus long term capital gain. He accordingly, submitted that the above two decisions are not applicable to the facts of the present case.

15. The Ld. DR on the other hand heavily relied on the orders of the Assessing Officer and the CIT(A).

16. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and the Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case on the basis of information with him that J M Financial had artificially manipulated accounting methodology

so as to artificially inflate the distributable surplus and on the basis of violation of SEBI guidelines and on the basis of statements of some of the employees came to the conclusion that the said mutual fund has rigged up the Balance Sheet to declare higher dividend. The transactions have been arranged and therefore, the dividend is not eligible for exemption and the loss claimed is a sham transaction. We find in appeal, the CIT(A) relying on the decision of the Hon'ble Calcutta High Court in the case of PCIT vs. Swati Bajaj (supra) and the decision of the Pune Bench of the Tribunal in the case of Abhishek Ashok Lohade vs. ITO (supra) sustained the addition made by the Assessing Officer. It is the submission of the Ld. Counsel for the assessee that the addition made by the Assessing Officer relying on the statements of some of the employees of J M Mutual Fund which were not provided to the assessee and where the opportunity of cross examination was not given, is not justified. It is also his argument that the assessee has invested in the said units without any knowledge of the alleged manipulation by J M Mutual Fund and in absence of any evidence with the Assessing Officer that the assessee was a party to the alleged manipulation carried out by J M Mutual Fund, no addition can be made.

17. We find some force in the above arguments of the Ld. Counsel for the assessee. It is an admitted fact that the assessee had made investment of Rs.5 crores on 16.10.2014 and another sum of Rs.5 crores on 17.10.2014 in J M Balance Mutual Fund Dividend Option Scheme. Thereafter, the assessee received dividend

of Rs.2,06,68,835/- on 29.01.2015 and thereafter, sold all the units on 29.01.2015 for a consideration of Rs.8,99,93,198/- and the loss of Rs.1,00,06,802/- was claimed as the business loss by the assessee.

18. We find an identical issue had come up before the Hon'ble Bombay High Court in the case of Karan Maheshwari vs. ACIT (supra). In this case also, the assessee had invested in J M Balance Fund and received dividend and thereafter units were sold which resulted in a loss. The case of the assessee was reopened u/s 148 of the Act. When the assessee challenged the validity of reopening of assessment, the Hon'ble Bombay High Court held that the assessee was a small fry in the larger scheme of things and in fact, a victim of the alleged fraud by J M Financial. It was further held that the statements of the key management personnel of the Mutual Fund were recorded and there is nothing to indicate that the assessee was a party to the alleged sham mutual fund. The Hon'ble High Court further held that the allegation of the Assessing Officer that J M Balance Fund had manipulated the accounting methodology so as to artificially inflate the distributable surplus were against J M Mutual fund and not against the assessee. Accordingly the reopening of assessment was held to be invalid. The relevant observations of the Hon'ble High Court read as under:

“19 In the notice issued under Section 148A(b) of the Act, the Assessing Officer alleges that JM Financial had manipulated accounting methodology so as to artificially inflate the distributable surplus and the investors, in order to reduce their tax liability, entered into these sham transactions and received dividend and short term capital loss. These are allegations against JM Financial and do not implicate petitioner in any manner. There is nothing to indicate that petitioner had

participated knowingly in a sham transaction to reduce his tax liability or to earn Gauri Gaekwad 16/17 907.WPL-37211-2022.doc dividend or book short term capital loss. Infact in the notice, in the first paragraph, it says "..... In the course of survey, it was found that JM Balanced Fund-Annual Dividend Option Regular Scheme (the Plan) of JM Financial had manipulated accounting methodology so as to artificially inflate the distributable surplus"

In the next paragraph, it says "..... investors, in order to reduce their tax liability, entered into these sham transactions and received dividend and short term capital loss The assessee is one the persons who claimed fictitious short term capital loss"

In the next paragraph, it says " the assessee is one of the beneficiaries, who have received dividend and claimed fictitious losses in equity / derivative trading in JM Equity Hybrid Fund-Quarterly Dividend of JM Financial Asset Management Limited, to the tune of Rs.3,41,12,651/- during the F.Y. 2015-16 relevant to the A.Y. 2016-17"

Therefore, the Assessing Officer is also not clear whether the assessee had booked loss or claimed dividend in the JM Balanced Fund - Annual Dividend Option Regular scheme or JM Equity Hybrid Fund- Quarterly Dividend. This also indicates non application of mind by the Assessing Officer."

19. We find the Mumbai 'G' Bench of the Tribunal in the case of Goldiam International Ltd. vs. DCIT (supra) under identical circumstances has deleted the addition by observing as under:

"017. Even on the merits of the case, the facts clearly shows that assessee purchased JM balanced fund mutual fund on 17/6/2015 and the record date of dividend was 18/6/2015 as per the notice dated 13 June 2015 that a dividend of ₹ 4.75 per unit is to be declared. The assessee purchased mutual fund of ₹ 300 lakhs (11,36,316.29 units). The assessee earned dividend on 18/6/2015 of ₹ 5,397,502/-. Further on December 21, 2015, and notice was issued by the mutual fund for declaration of dividend of Rs. 4 per unit. The record date was fixed on 26 December 2015. In both the notices issued by mutual fund clearly state that "after payment of dividend, the power unit NAV of the dividend options of the scheme will fall to the extent of the payout and statutory levies (if applicable)." Therefore, naturally if anybody is selling after the dividend earned by the unitholder the redemption value will fall. Assessee sold all those mutual funds on 28/3/2016 at redemption amount of ₹ 19,434,337/-, which resulted into a short-term capital loss. Thus, the assessee acted on a publicly available notice issued by the mutual fund, both the notices are placed before us, it

cannot be said that transaction entered into by the assessee is fictitious or sham. With respect to the applicability of provisions of section 94 (7) of the act, the lower authorities have also accepted that the assessee fulfils the condition by which the transaction insecurities cannot be considered for avoidance of tax. Assessee purchased such securities and 17/6/2015 when the record date was 18 June 2015 and securities were sold on 28/3/2016. The lower authorities have denied the exemption of dividend income and allowability of capital loss despite transaction is not falling under section 94 (7) of the act holding it to be sham and fictitious transaction is devoid of any merit. Accordingly on the merits also, orders of the lower authorities are reversed and ground number 4 – 7 of the appeal are allowed.”

20. We find Jaipur Bench of the Tribunal in the case of Agencies Rajasthan Pvt. Ltd. vs. ITO (supra) under identical circumstances has also deleted the addition on account of loss from sale of units of JM Mutual Fund. We further find merit in the arguments of the Ld. Counsel for the assessee that there was no mention of any of the statements, which is the basis for the addition, in the notice issued u/s 142(1) of the Act. Therefore, there was no occasion on the part of the assessee to request for cross examination.

21. We find the Hon'ble Supreme Court in the case of Andaman Timber Industries vs. CCE (supra) has held that the addition made by placing reliance on the statement of third party without giving any opportunity to cross examine, is not sustainable in law. In the present case, the addition was made by the Assessing Officer on the basis of statements of some of the employees of JM Mutual Fund which were never brought to the notice of the assessee. Therefore, addition made by placing reliance on these statements are against the principles of natural justice.

22. So far as the various decisions relied upon by the CIT(A) are concerned, those are all relate to the issue of penny stock and therefore, those decisions which are based on the facts in those particular cases, are distinguishable and not applicable to the facts of the present case.

23. In view of the above discussion, we are of the considered opinion that the Ld. CIT(A) was not justified in upholding the action of the Assessing Officer in denying set off of the business loss of Rs.1,00,06,802/- and confirming the addition of Rs.2,06,68,835/-. The grounds raised by the assessee are accordingly allowed.

IT(SS)A Nos.23/PUN/2024 to 25/PUN/2024 (AYs 2017-18 to 2019-20)

(Revenue)

24. The grounds raised by the Revenue in the instant appeals are identical. We, therefore, take up IT(SS)A No.23/PUN/2024 for assessment year 2017-18 as the lead case.

25. Facts of the case in brief, are that the assessee had filed its original return of income on 31.10.2017 declaring total income of Rs.25,99,290/- after claiming the deduction of Rs.119,64,11,350/- u/s 80IA(4) of the Act. The assessment was completed u/s 143(3) of the Act on 28.12.2019 by accepting the returned income. In response to the notice u/s 153A of the Act, the assessee filed its return of income

on 17.11.2021 declaring total income of Rs.25,99,290/-. Statutory notices u/s 143(2) and 142(1) of the Act were issued and served on the assessee, in response to which the assessee filed the requisite details from time to time.

26. During the course of assessment proceedings the Assessing Officer noted that the assessee has claimed deduction of Rs.119,64,11,350/- u/s 80IA(4)(iv)(a) of the Act towards profit earned from the wind power generation of its windmills and also from solar division. The Assessing Officer asked the assessee to explain as to why the said deduction u/s 80IA of the Act should not be disallowed in view of the provisions of section 80IA(5) of the Act. The assessee in response to the same filed a detailed reply justifying the claim of deduction u/s 80IA(4) of the Act. It was submitted that an identical issue has already been decided in the case of ACIT vs. Damodar Jagannath Malpani by the Pune Bench of the Tribunal wherein it has been held that the deduction u/s 80IA(4) of the Act is available to each undertaking separately and the entire power generation business cannot be treated as one undertaking. Relying on various decisions it was submitted that the issue has been decided in favour of the assessee.

27. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee and disallowed the claim of the deduction u/s 80IA(4) of the Act by observing as under:

“4.5.2 As regards claim of the assessee in respect of treatment of each windmill project as separate undertaking and to allow deduction u/s 80IA(4)(iv) of the Act, it is pertinent to note here that, there is no mandate u/s 80IA to treat each

windmill project as 'separate undertaking' of the assessee. Section 80IA envisages only two classification of the business of the assessee viz. eligible business' (as per explicit wording of section 80IA(5) and non eligible business. Regarding assessee's claim on merits treating each of the unit as separate undertaking and not entire power generation business as one undertaking, assessee has also relied on various case laws. However, it is seen that this issue has also not attained finality and Hon'ble Supreme Court has not yet decided the issue on merits. Further, the department in the case of M/s D J Malpani for AY 2013-14 is in appeal before Hon'ble Bombay High Court on similar issue and issue has not been finally adjudicated and still alive. As such, request of assessee to treat each windmill project as separate undertaking and thereby to allow the claim of deduction thereupon u/s 80IA(4) is untenable and accordingly claim of deduction u/s 80IA is required to be disallowed.

4.5.3 As per section 80IA(5) profits and gains from Eligible Business for the purpose of determining the quantum of deduction is required to be computed as if such eligible business were the only source of income of the assessee during the year. During the year assessee from Eligible Business' of Power Generation / Renewable Energy, has gross income which is a Loss of Rs. (-) 105,18,64,000/-. The deduction can be allowed only when there is positive income. Hence, question of allowing deduction u/s 80IA(4) of the Act does not arise. Therefore claim of deduction made u/s 80IA(4) of Rs.119,64,11,350/- is not allowable. In view of the above discussion, entire claim of assessee u/s 80IA(4) of the Act amounting to Rs.119,64,11,350/- is disallowed and is added back to the total income of the assessee. Penalty proceedings u/s 270A(1) of the Act are initiated separately for under reporting of income.”

28. In appeal, the CIT(A) allowed the claim of deduction u/s 80IA(4) of the Act made by the assessee by observing as under:

“23. In brief, as per the assessing officer, there is no mandate u/s. 80IA to treat each wind mill project as 'separate undertaking' of the Assessee and that the Section envisages only two classifications of business i.e. 'eligible business' and 'non-eligible business'. The Assessing Officer therefore, held that the request of the Assessee to treat each Wind Mill project as 'separate undertaking and thereby allow the claim of deduction u/s. 80IA(4) of the I.T. Act, is untenable. As per assessing officer, the deduction u/s. 80IA(4) has to be necessarily computed by considering all Wind Mills/Solar power plants of the Assessee as a 'single unified project which constitutes 'eligible business'. The Assessing Officer observed that there was an overall loss in Power Generation Business, and he therefore, rejected the claim of the Assessee for deduction u/s. 80IA(4) of the I. T. Act.

24. On the other hand, the appellant has claimed that all the undertakings have been set up at different locations and they function independently from each other. It is also submitted that independent power purchase agreements in respect of

each undertaking have been entered into with the various State Electricity Boards. Further, it is submitted that the assessee has maintained separate books of accounts for these undertakings and it has furnished separate audit report in Form No. 10CCB along with separate profit and loss accounts and balance sheet in respect of these undertakings. The appellant has further submitted that the word 'an' used in section 80IA (4) refers to a singular and without anything contrary in the Act, the clear language used by the statute cannot be construed to mean anything else. The appellant has further submitted that the term 'eligible business' referred to in sub-section (5) of section 80IA refers to the 'eligible business' mentioned in sub-section (1) of 80IA and there is nothing in the section which prohibits the assessee from claiming the deduction in respect of individual undertakings.

25. The appellant has further submitted that an identical issue was involved in appellant's sister concern case namely M/s DJ Malpani for earlier assessment years wherein the Hon'ble ITAT, Pune Bench has decided the issue in assessee's favour. The appellant has also relied on various other decisions of different High Courts and ITAT, as mentioned in its written submission.

26. During the appellate proceedings, the appellant was asked to furnish the unit-wise Profit & loss and claim of deduction u/s 80IA for each unit which have been submitted by the appellant, and are tabulated as under.-

Sr. No.	Address of the site / Undertaking	Year of Installation (FY)	Initial year of claim of deduction u/s 80IA(4) (AY)	Income from operation claim of deduction u/s 80IA(4)	
1	Dhule (MS) 3MW	2010-11	2013-14	3,94,21,866	Wind
2	Maloshi (MS) 2.50 MW	2010-11	2013-14	2,20,83,372	Wind
3	Tejuva I (RJ) 6.30 MW	2010-11	2014-15	2,88,29,842	Wind
4	Tejuva II (RJ) 2.10 MW	2010-11	2014-15	96,53,452	Wind
5	Mahuriya (MP) 15MW	2011-12	2014-15	9,00,33,567	Wind
6	Sidenur I (KT) 4.20 MW	2011-12	2014-15	4,55,86,565	Wind
7	Bestur (KT) 10.50 MW	2012-13	2014-15	6,18,36,665	Wind
8	Ranebenuur (KT) 10.50 MW	2012-13	2014-15	7,01,18,775	Wind
9	Vaspeth I (MS) 10MW	2011-12	2014-15	7,49,25,347	Wind
10	Bhendewadi II (MS) 10 MW	2014-15	2017-18	2,71,79,414	Wind
11	GS Wadi I (MS) 14 MW	2014-15	2017-18	98,76,883	Wind
12	Kukru (MP) 28 MW	2014-15	2017-18	19,55,13,674	Wind
13	Sandla (MP) 29.40 MW	2014-15	2017-18	23,65,12,419	Solar
14	MH-Mandrup 6.65 MW	2012-13	2017-18	1,24,40,960	Solar
15	Chennai (TN) 40 MW	2015-16	2017-18	26,46,05,712	Solar
16	MH-CSIA 0.65 MW	2014-15	2017-18	77,92,836	Solar
	Total			119,64,11,350/-	
17	Vaspeth II (MS) 10 MW	2015-16	2018-19	No 80IA deduction claimed from the year. There was a loss of Rs.12,91,11,752/- during the year	Wind
18	Vaspeth III (MS) 4 MW	2015-16	2018-19	No 80IA deduction claimed from the year. There was a loss of Rs.4,98,15,389/- during the year	Wind

19	GS Wadi II (MS) 16.80 MW	2014-15	2018-19	No 80IA deduction claimed from the year.	Wind
20	Hatuniya (MP) 30 MW	2014-15	2018-19	No 80IA deduction claimed from the year.	Wind
21	Ameni (MH) 6 MW	2016-17	2018-19	No 80IA deduction claimed from the year. There was a loss of Rs.6,78,42,893/- during the year	Wind
22	Dhar (MP) 21 MW	2015-16	-	No 80IA deduction claimed from the year. There was a loss of Rs.67,26,42,893/- during the year	Wind
23	Tonk Khurd (MP) 22.50 MW	2016-17	2018-19	No 80IA deduction claimed from the year. There was a loss of Rs.136,59,47,946/- during the year	Wind
24	Vejalpur Morbi I (GJ) 10.50 MW	2016-17	2019-20	No 80IA deduction claimed from the year. There was a loss of Rs.33,58,05,859/- during the year	Wind
25	RJ-BAP 33 MW	2012-13	2018-19	No 80IA deduction claimed from the year.	Solar
26	MH CSIA-II 0.4121 MW	2016-17	2018-19	No 80IA deduction claimed from the year. There was a loss of Rs.2,37,74,030/- during the year	Solar
27	MH Club & Resort-I (0.0816 MW)	2016-17	2018-19	No 80IA deduction claimed from the year. There was a loss of Rs.41,96,829/- during the year	Solar
28	MH Dhruv Academy	2016-17	2018-19	No 80IA deduction claimed from the year. There was a loss of Rs.52,34,720/- during the year	Solar
29	MH Malpani House	2016-17	2018-19	No 80IA deduction claimed from the year. There was a loss of Rs.14,34,044/- during the year	Solar
30	MH-Club & Resort-II	2016-17	2019-20	No 80IA deduction claimed from the year. There was a loss of Rs.7,26,966/- during the year	Solar
31	MH-M Food Estate	2016-17	2019-20	No 80IA deduction claimed from the year. There was a loss of Rs.23,05,267/- during the year	Solar

27. It is further seen that the assessing officer has accepted that the above-mentioned wind-mills as well as solar plants are otherwise eligible for deduction u/s 80IA(4) of the Act. The only reason for disallowing the claim is that as per

assessing officer, all the above-mentioned units should be aggregated and considered as a single eligible business. The issue as to whether each windmill is required to be treated as 'separate undertaking' or all the windmills should be aggregated, has been examined by the Hon'ble ITAT Pune on various occasions. Some of these decisions are as under.

27.1 In the case of M/s J-Sons Foundry Pvt Ltd in ITA No. 1600/PUN/2011 for AY 2008-09, the Hon'ble Tribunal held that each windmill should be considered as separate undertaking eligible for deduction u/s 80IA and the deduction should be computed independently for each unit and not on consolidated basis. The relevant portion of this decision is as under:-

15. Against the decision of the Ld. CIT(A), the Revenue is in appeal before us. We have heard the rival submissions of the parties and perused the record. Admittedly, the assessee is power general through the wind mills at 3 different locations i.e. in Tamilnadu, Panchgani and Satara. The wind mills are commissioned and erected in different assessment years as noted by the authorities below. Assessee is maintaining separate books of accounts in respect of 3 wind mills and working out the profit or losses. Though the first wind mill was erected and commissioned in the A.Y. 2002-03, there were consistent losses up to the A.Y. 2007-08 and assessee did not opt for claiming the deduction u/s 80IA(2) of the Act. So far as A. Y. 2008-09 is concerned, assessee opted for claiming the deduction u/s 80IA(2) treating the said assessment year (A. Y.) as an initial assessment year as there was the profit in Satara wind mill but losses in the Tamil Nadu wind mill and Panchgani wind mill. If we look at the scheme of the section 80IA(2), it speaks about the "undertaking" or "enterprise" and not the business of the assessee. Admittedly, three wind mills at the 3 locations are independently operated and the financial results are separately worked out. As per sub-sec (5) of section 80IA, for computing the deduction u/s 80IA(2), the eligible business is to be treated as the only source of income. Sub- sec (5) of section 80IA has been explained by the Hon'ble High Court and Kerala in the case of CIT Vs. Accel Transmatic Systems Ltd. 230 CTR 206 (Ker) which has been followed by the Ld. CIT(A). The term "business used in sub-sec.(5) section 80IA in our humble opinion is confined to the independent undertaking and cannot get merged with the other businesses. In Sec. 80IA(2), for claiming deduction "undertaking" or "Enterprise" as such is to be considered. Sec. 80IA(2) is charging sections for determining basic eligibility and there is no mention of word "business". Sub-sec (5) of Sec. 80IA speaks of business but same is to be construed as business of "undertaking" or "Enterprise" as referred to in Sub sec. (2) of Sec 80IA. It is well settled principle of interpretation of statutory provision that they are to be interpreted harmoniously to make workable to give intended results. Hence, as rightly held by Ld. CIT(A) term "business" used in sec.80IA(5) is to be construed and understood to mean "business" or "undertaking or enterprise". In our opinion, the Ld. CIT(A) in his well-reasoned order has rightly held that every unit constitute a separate undertaking engaged in the eligible business and losses from one unit cannot be set off against the

profits. Another unit engaged in the same business for the purpose of computing the deduction u/s 80IA. We find no reason to interfere with the findings of the Ld. CIT(A) on this issue. Accordingly, the same are confirmed and grounds taken by the revenue are dismissed.

27.2 An identical issue was involved in the case of appellant's sister concern namely D.J. Malpani vs ACIT in ITA Nos 1151 to 1154/PN/2013 for Ays. 2007-08 to 2010-11 wherein following the decision in the case of J-Sons Foundry (supra), the Hon'ble Tribunal held that the deduction should be computed independently for each unit and not on consolidated basis. The relevant portion of this decision for AY 2007-08, is as under-

57. After hearing both the sides, we find the Coordinate Bench of the Tribunal in the case of J-Sons Foundry Pvt. Ltd. (Supra) while dismissing the grounds raised by the Revenue on this issue has observed as under

"15. Against the decision of the Ld. CIT(A), the Revenue is in appeal before us. We have heard the rival submissions of the parties and perused the record. Admittedly, the assessee is power general through the wind mills at 3 different locations ie. In Tamilnadu, Panchgani and Satara. The wind mills are commissioned and erected in different assessment years as noted by the authorities below. Assessee is maintaining separate books of accounts in respect of 3 wind mills and working out the profit or losses. Though the first wind mill was erected and commissioned in the A.Y. 2002- 03, there were consistent losses up to the A.Y. 2007-08 and assessee did not opt for claiming the deduction u/s 80IA(2) of the Act. So far as A.Y. 2008-09 is concerned, assessee opted for claiming the deduction u/s 80IA(2) treating the said assessment year (A. Y.) as an initial assessment year as there was the profit in Satara wind mill but losses in the Tamil Nadu wind mill and Panchgani wind mill. If we look at the scheme of the section 80IA(2), it speaks about the "undertaking" or "enterprise" and not the business of the assessee. Admittedly, three wind mills at the 3 locations are independently operated and the financial results are separately worked out. As per sub-sec. (5) of section 80IA, for computing the deduction u/s 80IA(2), the eligible business is to be treated as the only source of income. Sub-sec. (5) of section 80IA has been explained by the Hon'ble High Court and Kerala in the case of CIT Vs. Accel Transmatic Systems Ltd. 230 CTR 206 (Ker) which has been followed by the Ld. CIT(A). The term "business" used in sub-sec. (5) section 80IA in our humble opinion is confined to the independent undertaking and cannot get merged with the other businesses. In Sec. 80IA(2), for claiming deduction "undertaking" or "Enterprise" as such is to be considered. Sec. 80IA(2) is charging sections for determining basic eligibility and there is no mention of word "business". Sub-sec. (5) of Sec. 80IA speaks of business but same is

to be construed as business of "undertaking" or "Enterprise" as referred to in Sub-sec. (2) of Sec.80IA. It is well settled principle of interpretation of statutory provision that they are to be interpreted harmoniously to make workable to give intended results. Hence, as rightly held by Ld. CIT(A) term "business" used in sec. 80IA(5) is to be construed and understood to mean "business" or "undertaking or enterprise. In our opinion, the Ld.CIT(A) in his well reasoned order has rightly held that every unit constitute a separate undertaking engaged in the eligible business and losses from one unit cannot be set off against the profits. Another unit engaged in the same business for the purpose of computing the deduction u/s 80IA We find no reason to interfere with the findings of the Ld.CIT(A) on this issue. Accordingly, the same are confirmed and grounds taken by the Revenue are dismissed."

58. Respectfully following the decision of the Coordinate Bench of the Tribunal cited (Supra) and in absence of any contrary material brought to our notice we hold that each phase of windmill has to be considered as separate undertaking eligible for deduction u/s 80IA and therefore deduction u/s.80IA(4) should have been computed independently for each phase and not on consolidated basis. The grounds raised by the assessee on this issue is accordingly allowed.

(emphasis supplied)

27.3 The above decision has been followed by the Hon'ble ITAT, Pune while deciding appeals in the case of M/s D.J. Malpani for subsequent assessment years ie. AYs 2011-12 & 2012-13 in ITA No. 1467 & 1468/PUN/2015 dated 16.10.2017 and for AY 2013-14 in ITA No. 1374/PUN/2017 dated 01/08/2019. Thus, in the case of appellant's sister concern, the issue stands decided in appellant's favour for A.Ys. 2007-08 to 2013-14.

27.4 In the case of M/s LB Kunjir for A.Ys. 2012-13 to 2014-15 in ITA No. 76/PUN/2019, ITA No. 2614/PUN/2017 and ITA No. 07/PUN/2018, the Hon'ble ITAT, Pune Bench has allowed the claim, by observing as under.-

7. The assessee has claimed deduction u/s. 80IA(4) separately for each unit of windmill. It is an undisputed fact that the date of commencement of operation of each windmill is different. The stand of the Revenue is that instead of claiming deduction u/s. 80IA(4) on each windmill as separate unit, the assessee should have computed deduction on all the windmills as single undertaking.

We find that the issue whether deduction u/s. 80IA(4) is to be computed on each windmill unit separately or on consolidated basis was considered by the Co-ordinate Bench in the case of M/s. D.J. Malpani Vs. ACIT (supra). The Tribunal after considering the earlier decision rendered in the case of Dy Commissioner of Income Tax Vs. J-Sons Foundry Pvt. Ltd. (supra) concluded as under:

58. *Respectfully following the decision of the Coordinate Bench of the Tribunal cited (Supra) and in absence of any contrary material brought to our notice we hold that each phase of windmill has to be considered as separate undertaking eligible for deduction u/s 80IA and therefore deduction u/s. 80IA(4) should have been computed independently for each phase and not on consolidated basis. The grounds raised by the assessee on this issue is accordingly allowed."*

8. *Since, the issue has already been considered by the Tribunal and has held that each unit of windmill has to be considered separately for computing deduction u/s. 80IA(4), we see no reason to deviate from the view already taken. No contrary judgment has been placed on record before us by the Revenue. The Id. DR has pointed that the Department has filed appeal against the Tribunal's decision in the case of M/s. D.J. Malpani Vs. ACIT (supra), however, no order by the Hon'ble High Court either staying or reversing the aforesaid decision of Tribunal has been furnished by the Id. DR.*

9. We do not find any infirmity in the order of Commissioner of Income Tax (Appeals) in allowing assessee's claim of deduction u/s. 80IA(4) considering each windmill as separate unit for allowing deduction u/s, 80IA(4) of the Act. Hence, the impugned order is upheld and the appeal of Revenue is dismissed.

(emphasis supplied)

27.5 *Thus, the jurisdictional Tribunal has consistently held that the deduction u/s 80IA should be computed independently for each unit and not on consolidated basis.*

28.1 *The Hon'ble Karnataka High Court in the case of CIT vs Karnataka Power Corporation Limited 127 taxmann.com 282 (Karnataka) held that the assessee is entitled to deduction u/s 80IA without setting-off of loss of loss-making units, against income of its profit-making units.*

28.2 *The same principle has been laid down by Hon'ble Bombay High Court in the case of CIT vs Maharashtra Hybrid Seeds Co Ltd [2021] 133 taxmann.com 43 (Bombay) wherein the jurisdictional High Court held that deduction under section 80-IA has to be computed unit-wise and not for business as a whole; therefore, assessee-company was to be allowed deduction under section 80-IA in respect of its two eligible units even if it had claimed loss under head of its total business income. The relevant portion of this judgement is as under:-*

"Where the gross total income of an assessee includes any profits and gains derived from any business of an industrial undertaking, there shall be allowed, in computing the total income of the assessee, a deduction from "such profits and gains" of an amount equal to the percentage specified in sub-section (5) and for such number of assessment years specified in sub-

*section (6). Therefore, it provides for a deduction from "such profits and gains from any business of an industrial undertaking where the gross total income of an assessee includes any profits and gains derived from any business of an industrial undertaking **It is quite clear that each industry must be or each unit must be considered on its own working only when adjudging its entitlement to the deduction under section 80-IA. It cannot be allowed to suffer because it keeps company with some other industry or unit in the hands of the assessee.** In the application of section 80-IA, the profits and gains earned by an industry mentioned in that section cannot be reduced by the loss suffered by any other industry or industries owned by the assessee. This view is confirmed by clause (i) (a) of sub-section (5) of section 80- IA.*

(emphasis supplied)

28.3 Hon'ble Madras High Court in the case of CIT vs Bannari Amman Sugars Limited[2019] 104 taxmann.com 1 (Madras) held that for the purposes of grant of deduction under section 80IA of the Act, each unit has to be seen independently as separate and distinct from each other.

28.4 Similar view was taken by Hon'ble Delhi High Court in the case of CIT vs Dewan Kraft System Pvt Ltd (2007) 160 Taxman 343 (Del), where the Hon'ble Delhi High Court, after considering relevant provisions of the Act, held that for the purpose of deduction u/s 80IA, each unit shall be treated as independent unit and same has to be treated as only source of income of the assessee for the purpose of computing deduction u/s 80IA of the Act. The relevant findings of the Hon'ble Court are as under:-

13. Perusal of the above provision shows that it is a distinct and separate deeming provision which lays down the special method of computing the profits and gains entitled to deduction under section 80-IA of the Act. Moreover, this provision is of overriding nature providing specifically that during each of the assessment years in the tax holiday, period in which the assessee is entitled to deduction under section 80-IA of the Act, this provision will be applied as if the industrial unit is an independent unit and is the one and only source of income possessed by the

14. It is clear that while computing deduction under section 80-IA of the Income-tax Act, 1961, the profits and gains of Kalamb unit for the purpose of determining the quantum of deduction under section 80-IA(5) of the Act is to be computed if such eligible business of the said unit is the only source of income of the assessee. The Assessing Officer mixed the profits of the Kalamb unit with the profits of units at Delhi and NOIDA and, thus, he erroneously restricted the deduction to the extent of business income and this was done by him in total disregard of the provisions of sub-section (7) of section 80-IA of the Act as mentioned above.

15. Thus, the Kalamb unit being the only unit of the assessee eligible for deduction under section 80-IA of the Act is to be treated as an independent

unit and the same is to be treated as the only source of income for assessee for the purpose of computing deduction under section 80IA of the Act. The deduction claimed by the assessee under section 80-1A of the Act, thus, is in accordance with the said provisions and as such we find that there is no infirmity in the impugned order passed by the Income-tax Appellate Tribunal.

29. An identical issue arose in the case of *Marudhar Fashions* ITA No. 6967, 6968 & 6969/MUM/2017 wherein the Hon'ble Mumbai Tribunal held that the deduction u/s 80IA should be computed independently for each unit and not on consolidated basis. The relevant portion of this decision is as under:-

8. We have heard both the parties, perused the materials available on record and gone through the orders of authorities below. There is no dispute with regard to the fact that the assessee is eligible for deduction u/s 80IA in respect of five windmills. The only dispute is with regard to whether each windmill constitute a separate undertaking and the profit or loss of that undertaking alone will be considered for the purpose of deduction u/s 80IA or the sum of profit or loss of all five undertakings together is eligible for deduction u/s 80IA. The co-ordinate bench of ITAT, Mumbai Bench "C" in the case of *Punit Construction Co vs JCIT* (supra) has considered an identical issue in light of number of windmills and after considering relevant provisions of the Act, including sub section (5) of section 80IA, held that deduction has to be given unit-wise without considering profit or loss of other eligible units. The relevant observations of the Tribunal are as under:-

"10. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. We have also carefully considered provisions of section 80IA and case laws relied upon by both parties. The facts with regard to eligibility for claiming deduction under section 80IA has not been disputed by the lower authorities. The lower authorities had admitted that the assessee is eligible for claiming deduction under section 80IA in respect of power generation business though setting off of windmills. The only dispute is with regard to computation of quantum of deduction. Whether the profits and gains of the eligible business as per the words of section 80IA(5) have to be considered unit-wise or as a total eligible business comprising of profits of all units. The provisions of section 80IA(5) provided mechanism for determination of quantum of deduction from eligible business and as per which the eligible business shall be considered as if the only source of income of the assessee during the initial year and every subsequent AYs. Therefore, one has to see what eligible business is whether it is the total business as a whole or each unit or undertaking. No doubt the provision of section 80IA speaks about profit and gains from industrial undertakings or enterprises engaged in infrastructure development, etc. Sub-section (5) speaks about eligible business.

Now the controversy to be resolved is whether the power generation segment of the assessee is an eligible business or each windmill is a separate unit eligible for deduction without considering profit or loss of other windmill. The assessee claims that each windmill shall be considered as an eligible unit for the purpose of determination of deduction. The assessee also cited certain judicial precedents in support of its arguments.

11. To understand the eligibility for deduction under section 80IA of the Act, the questions that need to be addresses are whether the gross total income of the assessee is positive, whether the assessee has an eligible business and whether different units in such eligible business are to be taken as one eligible business. To ascertain gross total income, the first step would be to compute income under each head of income separately. In this case admittedly, the assessee does not have any other head of income except income from Business or Profession. The assessee has only two segment of business income le construction business and power generation business. Admittedly, construction business is not eligible business for claiming deduction under section 80IA, therefore, there is controversy about consolidation of profit from construction business activity. The assessee is having power generation segment through windmills. The assessee has set up five windmills. All the five units are part of power generation segment. Now the question is whether deduction provided under section 80IA shall be given on profits and gains derived from power segment business as the only eligible business or profits and gains derived from each windmills as an eligible business without considering profit or loss of other windmills. There is no dispute with regard to deduction to be given under chapter VIA against gross total income computed from all source of income. Even various decisions of the Hon'ble Supreme Court, including in the case of CIT vs. Liberty India (supra) have clearly held that special deduction under chapter VIA has to be computed on the gross total income and such gross total income has to be computed segment wise business after allowing all the deduction allowable under section 32 to 43D. The Hon'ble Bombay High Court in the case of Plastiblends India Ltd. Vs. ACIT (2009) 185 Taxman 187 after considering the ratio of Hon'ble Supreme Court in the case of Liberty India (supra) held that there has to be profit in the eligible business and such eligible business can be any of the business as referred to in sub-section 3(ii) to 11(a) of section 80IA of the Act

12. In this case, admittedly the assessee is having two segments of business ie one is power generation through five windmills which is eligible business and another is construction segment. The assessee has generated profit from two windmills and incurred losses from three windmills. The assessee also derived profit from construction business. The gross total income computed from two segment of

business is positive. If you consider each segment of business stand alone, then there is a loss from the power generation segment, if profit or losses of all five windmills are consolidated. The assessee has considered each wind Mill as a separate unit eligible for deduction under section 80IA, without considering profit or loss of other windmills and accordingly claimed deduction towards profit generated from two windmills. If one considered power generation business as one eligible business, certainly the assessee is not eligible for deduction under section 80IA, as from power generation business the assessee has incurred losses. If you strictly apply the provisions of section 80IA(5), the words used therein are clearly states that each eligible business shall be considered as the only source of income of the assessee for the purpose of determination of deduction. If, one goes by the words used in sub section (5), of section 80IA, then there is logic in the unit wise deduction claimed by the assessee, for the reason that deductions under chapter VIA is a incentive based deduction and period specific The provisions provides for deduction of profits and gains of eligible business for a certain period starting from the period of initial claim. To understand the issue in a better manner, let us take an example. The assessee is in to the business of manufacturing products from different units located at different places. Meantime, the Govt. has announced incentives for setting up units in some places and within such period. The assessee has set up one eligible unit and starts claiming deduction under that provision. Next year, the assessee has set up one more eligible unit at different place and starts claiming deduction from that year and so on. Now both units are eligible units. The period of deduction specified under the act is 10 years for eligible units. Unit one is claiming deduction from initial assessment year and it may end up in some period. Unit two is claiming deduction from next year and it may end up in different year. If one takes initial assessment year from which unit one claims deduction for ten years, the assessee may loose benefit of deduction for one year for unit two, because it has commenced deduction from next year. If you take initial year of claim from the date on which unit two starts claiming deduction, then the assessee may get the benefit for more than 10 years for unit one, if you consider both units as one eligible business and profit or loss of both units is consolidated. This may not be the true intention of the legislature and for that reason the legislature consciously used the word undertaking or unit so as to give a deduction towards eligible units, in a situation where, the assessee is having more than one units in different locations, out of which one unit may be an eligible unit and another unit may not be eligible unit and also one unit may get deduction for different period and another unit may get deduction for different period. This is why the courts and tribunals has consistently held that deduction provided u/s 80IA has to be given unit wise without considering profit or loss of other units. This legal proposition is strengthened by

the decision of ITAT, Ahmadabad, special bench in the case of CIT vs. Goldmine Shares and Finance Pvt. Ltd."

9. A similar issue has been considered by Hon'ble Delhi High Court in the case of *CIT vs Dewan Kraft System Pvt Ltd (2007) 160 Taxman 343 (Del)*, where the Hon'ble Delhi High Court, after considering relevant provisions of the Act, held that for the purpose of deduction u/s 80IA, each unit shall be treated as independent unit and same has to be treated as only source of income of the assessee for the purpose of computing deduction u/s 80IA of the Act. The relevant findings of the Hon'ble Court are as under.-

"Section 80-IA(7) shows that it is a distinct and separate deeming provision which lays down the special method of computing (the profits and gains entitled to deduction under section 80-IA. Moreover, this provision is of overriding nature providing specifically that during each of the assessment years in the tax holiday, period in which the assessee is entitled to deduction under section 80-IA, this provision will be applied as if the industrial unit is an independent unit and is the one and only source of income possessed by the assessee (Para 13] It is clear that while computing deduction under section 80-IA, the profits and gains of Kalamb unit for the purpose of determining the quantum of deduction under section 80-IA(5) were to be computed as if such eligible business of the said unit was the only source of income of the assessee. The Assessing Officer mixed (the profits of the Kalamb unit with the profits of units at Delhi and NOIDA and, thus, he erroneously restricted the deduction to the extent of business income and that was done by him in total disregard of the provisions of subsection (7) of section 80-IA. (Para 14] Thus, the Kalamb unit, being the only unit of the assessee eligible for deduction under section 80-IA, was to be treated as an independent unit and the same was to be treated as the only source of income for the assessee for the purpose of computing deduction under section 80- IA. The deduction claimed by the assessee under section 80-IA, thus, was in accordance with said provisions and as such there was no

10. In this view of the matter and being consistent with the view taken by the co-ordinate bench, which is further supported by the decision of Hon'ble Delhi High Court in the case of CIT vs Dewan Kraft Systems Pvt Ltd (supra), we are of the considered view that the Ld. CIT(A) was right in allowing the benefit of deduction u/s 80IA in respect of each unit without setting off of loss incurred by other eligible units. Hence, we are inclined to uphold the findings of L.d. CIT(A) and dismiss appeal filed by the revenue.

(emphasis supplied)

30. It is further seen that for A.Y. 2013-14 and A.Y. 2014-15 in appellant's own case, the assessing officer has accepted the methodology adopted by the appellant

and allowed the claim of deduction u/s 80IA(4) while completing the assessment u/s 143(3) of the Act on 30.03.2016 and 20.12.2017 respectively. It has also been submitted by the appellant that while completing original assessment u/s 143(3) for A.Y. 2017-18 on 28/12/2019 in appellant's own case, the assessing officer allowed the claim of deduction u/s 80IA(4) on similar facts and no disallowance was made.

31. The above discussion suggests that Hon'ble Courts as well as Hon'ble Tribunal on various occasions have held that each unit should be considered as separate undertaking eligible for deduction u/s 80IA and the deduction should be computed independently for each unit and not on consolidated basis, as done by the assessing officer. Further, as discussed above, in the case of appellant's sister concern for A.Ys. 2007-08 to 2013-14, the Hon'ble Tribunal has decided the issue under consideration, in favour of appellant. It is incumbent upon me to follow the decision of Hon'ble ITAT in the case of appellant's sister concern for earlier years. Following the decision of Hon'ble Tribunal in the case of DJ Malpani (supra), it is held that each wind-mill/solar plant should be considered as separate undertaking eligible for deduction u/s 80IA and the deduction should be computed independently for each unit and not on consolidated basis. Accordingly, the addition of Rs.119,64,11,350/- made by the assessing officer is directed to be deleted. The grounds no.1, 3, 4, 5, 6 & 7 raised by the appellant are ALLOWED."

29. Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds:

1. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting addition of Rs.119,64,11,350/ on account of disallowance of deduction u/s 80IA(4) of the Act without appreciating the fact that during the year gross income of the assessee from 'Eligible Business' of Power Generation/Renewable Energy was a loss of Rs. (-) 105,18,64,000/- and the deduction can be allowed only when there is positive income.*
2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that the combined reading of section 80IA(4) & 80IA(5) of the Act makes it amply clear that the deduction is with reference to the profits derived from eligible business of the assessee and not with reference to the profits derived from every unit engaged in the eligible business.*
3. *On the facts and circumstances of the case and in law, the Ld. CIT(A) decided the appeal in favour of assessee without appreciating the facts that there is no mandate u/s 80IA to treat each windmill project as 'separate undertaking of the assessee and Section 80IA envisages only two*

classification of the business of the assessee viz. 'eligible business (as per explicit wording of section 80IA(5)) and non-eligible business.

4. *The appellant craves leave to add, amend, modify or alter any of the grounds.*

30. The Ld. DR heavily relied on the order of the Assessing Officer and submitted that the matter is pending before the Hon'ble High Court and the order of the CIT(A) deleting the addition is not justified.

31. The Ld. Counsel for the assessee on the other hand while relying on the order of the CIT(A) submitted that similar disallowance was made by the Assessing Officer in assessment years 2013-14 and 2014-15 which has been deleted by the Tribunal in assessee's own case as well as in the case of sister concern D J Malpani. Therefore, merely because the Revenue's appeal is pending before the Hon'ble High Court, the same cannot be the basis to deny the claim of deduction u/s 80IA(4) of the Act especially when such order has not been reversed and no adverse decision has been brought on record by the Ld. DR. Further, the Co-ordinate Bench of the Tribunal in the case of M/s. L.B. Kunjir vs. DCIT vide ITA No.1255/PUN/2023, order dated 26.03.2024 for assessment year 2020-21 under identical circumstances has dismissed the appeal filed by the Revenue challenging the order of the CIT(A) in deleting the disallowance made u/s 80IA(4) of the Act.

32. So far as the applicability of provisions of section 80IA(5) of the Act are concerned, he submitted that the Assessing Officer has considered the year of installation as initial assessment year while the assessee has claimed that the initial assessment year is the year in which the deduction is claimed by the assessee. He submitted that the unabsorbed losses and depreciation of each windmill has already been set off against the other business income of the assessee.

33. We have considered the rival arguments made by both the sides and perused the record. We find an identical issue had come up before the Tribunal in the case of sister concern of the assessee namely Damodar Jagannath Malpani. We find the Tribunal in the case of ACIT vs. Damodar Jagannath Malpani vide ITA Nos.26 to 31/PUN/2024, order dated 27.09.2024 for assessment years 2015-16 to 2020-21 under identical circumstances has dismissed the appeals filed by the Revenue by observing as under:

“12. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and the Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case denied the claim of deduction u/s 80IA(4) of the Act on the ground that there is no mandate u/s 80IA(4) of the Act to treat each windmill as separate undertaking of the assessee. According to him, although the Tribunal has decided the issue in favour of the assessee, however, the issue has not attained finality and the Hon'ble Supreme Court has not yet decided the issue on merit. Further, the Department in assessee's own case for assessment year 2013-14 is in appeal before the Hon'ble Bombay High Court and the matter is still pending. He, therefore, rejected the claim of the assessee to treat each windmill project as a separate undertaking and disallowed the claim of deduction u/s 80IA(4) of the Act. The Assessing Officer further held that as per provisions of section 80IA(5) of the Act, profits and gains from eligible business for the purpose of determining the quantum of deduction is required to be computed as if such eligible business is only the source of income of the assessee during the year. Since, during the year under consideration, the income from eligible business of power generation / renewal energy has gross income which is

an amount of Rs.32,43,79,000/-, the deduction can be allowed only when there is positive income. He, therefore, held that the question of allowing the deduction u/s 80IA(4) does not arise.

13. *We find the CIT(A) allowed the claim of the assessee, the reasons of which have already been reproduced in the preceding paragraphs. We do not find any infirmity in the order of the CIT(A) on this issue. Admittedly, the issue has already been decided by the Tribunal in assessee's own case for various assessment years. We find the Tribunal vide ITA No.1374/PUN/2017, order dated 01.08.2019 for assessment year 2013-14 while allowing the claim of deduction u/s 80IA(4) of the Act has observed as under:*

"6. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to denial of claim of deduction u/s 80IA(4) of the Act. The claim of deduction was denied by AO but when the matter was carried before Ld.CIT(A), she following the order of her predecessor in assessee's own case for A.Ys. 2011-12 and 2012-13 allowed the claim of assessee. We find that identical issue arose in the case of assessee in A.Ys. 2011-12 and 2012-13 before ITAT in ITA Nos. 1382 & 1383/PUN/2015 vide order dt. 16.10.2017 (supra) and the issue was decided by the Co-ordinate Bench of the Tribunal in assessee's favour by observing as under:

6. We perused the facts of the case as well as legal proposition emanating from the order of Tribunal in assessee's own case (supra.) and are found relevant and we proceed to extract the same as under:

54. Ground of appeal No. 7 relates to methodology of computation of deduction u/s 80IA (4) as adopted by the AO by considering difference phases of windmills as separate undertaking. The Ld. CIT(A) following his order for A.Y.2005-06 held that in a fresh claim made by the assessee unless it is supported by some incriminating material found during the course of search the claim cannot be entertained during proceedings u/s.153A. He accordingly dismissed the above ground raised by the assessee.

55. The Id. Counsel for the assessee referring to the decision of the Pune Bench of the Tribunal in the case of J. Sons Foundry Pvt. Ltd. Vs. DCIT and vice versa vide consolidated order dated 30.01.2013 for A.Y.2007-08 and 2008-09 he submitted that the Tribunal in the said decision held that each windmill is to be considerate as a separate undertaking.

56. The Ld. Departmental Representative on the other hand heavily relied on the order of the CIT(A).

57. After hearing both the sides, we find the Coordinate Bench of the Tribunal in the case of J. Sons Foundry Pvt. Ltd. (supra) while dismissing the grounds raised by the Revenue on this issue has observed as under:

"15. Against the decision of the Ld. CIT(A), the Revenue is in appeal before us. We have heard the rival submissions of the parties and perused the record. Admittedly, the assessee is power general through the wind mills at 3 different locations ie in Tamilnadu, Panchgani and Satara. The wind mills are commissioned and erected in different assessment years as noted by the authorities below. Assessee is maintaining separate books of accounts in respect of 3 wind mills and working out the profit or losses. Though the first wind mill was erected and commissioned in the A.Y. 2002-03, there were consistent losses up to the A.Y. 2007-08 and assessee did not opt for claiming the deduction u/s 80IA(2) of the Act. So far as A.Y. 2008-09 is concerned, assessee opted for claiming the deduction u/s 80IA(2) treating the said assessment year (A.Y.) as an initial assessment year as there was the profit in Satara wind mill but losses in the Tamil Nadu wind mill and Panchgani wind mill. If we look at the scheme of the section 80IA(2), it speaks about the "undertaking or "enterprise and not the business of the assessee. Admittedly, three wind mills at the 3 locations are independently operated and the financial results are separately worked out. As per sub-sec. (5) of section 80IA, for computing the deduction u/s 80IA(2), the eligible business is to be treated as the only source of income. Sub-sec.(5) of section 80IA has been explained by the Hon'ble High Court and Kerala in the case of CIT Vs. Accel Transmatic Systems Ltd. 230 CTR 206 (Ker) which has been followed by the Ld. CIT(A). The term "business" used in sub-sec.(5) section 80IA in our humble opinion is confined to the independent undertaking and cannot get merged with the other businesses. In Sec. 80IA(2), for claiming deduction undertaking" or "Enterprise" as such is to be considered. Sec 80LAC) is charging sections for determining basic eligibility and there is no mention of word business Sub-sec (5) of Sec. 80IA speaks of business but same is to be construed as business of undertaking or Enterprise as referred to in Sub- sec (2) of See 80IA. It is well settled principle of interpretation of slutory provision that they are to be interpreted Harmoniously to make workable to give intended results. Hence, as rightly held by Ld. CIT(A) term "business" used its sec. 80IA(5) is to be construed and understood to mean "Business" or ITA No. 815, 891, 1494 & 1600/PN/2011 Ms. J. Sans Foundry Pvt. Ltd., Sangli 'undertaking or enterprise de our opinion, the Ld. CITIA) in his well reasoned order has rightly held that every unit constitute a separate undertaking engaged in the eligible business and losses from one unit cannot be set off against the profit of another unit engaged in the same business for the purpose of computing the deduction u/s 80IA. We find no

reason to interfere with the findings of the Ld. CIT(A) on this issue. Accordingly, the same are confirmed and grounds taken by the revenue are dismissed.

58. Respectfully following the decision of the Coordinate Bench of the Tribunal cited (supra.) and in absence of any contrary material brought to our notice we hold that each phase of windmill has to be considered as separate undertaking eligible for deduction u/s.801A and therefore deduction u/s.801A(4) should have been computed independently for each phase and not on consolidated basis. The ground raised by the assessee on this issue is accordingly allowed"

7. Considering the above facts, it is evident that the Tribunal relied on the decision of Coordinate Bench of the Tribunal in the case of J-Sons Foundry Pvt. Ltd Vs. DCIT (supra) for A.Yrs. 2007-08 and 2008-09 order dated 30.01.2013 while granting relief to the assessee in appeal for the A.Ys. 2007-08 to 2010-11. It is now a settled legal proposition that "every unit constitute a separate undertaking engaged in the eligible business and losses from one unit cannot be set off against the profit of another unit engaged in the same business for the purpose of computing the deduction u/s 801A Therefore, we are of the opinion that order of the CIT(A) on this issue is fair and reasonable and it does not call for any interference. Accordingly, ground No. 2 raised by the Revenue is dismissed.

8. The other issue raised in the Ground No. 3 by the Revenue relates to initial assessment year. Regarding this issue, Ld. Counsel submitted that the same issue also stands covered by the order of the Tribunal in the assessee's own case (supra) for A. Yrs 2007-08 to 2010-11 (supra.) Bringing our attention to para 59 to 65 of the order of Tribunal, which is placed at page No. 16 and 18 of the paper book, Ld. Counsel submitted that the Tribunal held the issue in favour of the assessee. As such, the assessee has option to choose the initial assessment year.

9. We have heard both parties and perused the said order of the Tribunal and relevant portion is extracted as under:

"64. After hearing both the sides, we find the issue as to whether initial assessment year u/s.801A (3) means year of installation of windmill or year in which the claim of deduction u/s.801A is first made has been decided in favour of the assessee by the decision of the Pune Bench of the Tribunal in the case of Poonawalla Estate Stud & Agro Farm Pvt. Ltd. following the decision of Hon'ble Madras High Court in the case of Velayudhaswamy Spinning Mills Pvt. Ltd. has observed as under:

*13.....
.....
.....*

65. *Respectfully following the decision of the Coordinate Bench of the Tribunal cited (supra) and in absence of any contrary material brought to our notice we hold that the provisions of section 80IA(5) are applicable only from the initial assessment year, i.e. the assessment year in which deduction u/s.80IA was first claimed by the assessee after exercising his option as per the provisions of section 80IA(2) of the Act, The grounds raised by the assessee are accordingly allowed."*

10. *Considering the above, it is evident that the initial assessment year for the assessee for claiming deduction u/s.80IA (4) r.w.s (5) is the issue adjudicated by the Tribunal in favour of the assessee. While granting relief in para 65 of the Tribunal order, the Tribunal relied on the decision of Coordinate Bench of the Tribunal in the case of Poonawala Estate Stud & Agro Farm Pvt. Ltd. reported in 136 TTJ (Pune) 236 and also following the judgment of Hon'ble Madras High Court in the case of Velayudhaswamy Spinning Mills Pvt. Ltd reported in 340 ITR 477. As such, Ld. DR could not bring any contrary decision on the issue under consideration. Thus, the initial assessment year constitutes the assessment year in which the deduction u/s.80IA of the Act is first claimed by the assessee after exercising his option as per the provisions of Section 80IA(2) of the Act. Therefore, we are of the opinion that the relief granted by the CIT(A) on this issue does not require any interference. Accordingly, ground No.3 raised by the Revenue is dismissed.*

7. *Before us, Revenue has not pointed out any distinguishing feature in the facts of the present case and that of assessee's own case in A.Ys. 2011-12 and 2012-13 in ITA Nos. 1382 & 1383/PUN/2015 order dt. 16.10.2017 (supra) nor has placed any material on record to demonstrate that the decision of Pune Tribunal in assessee's own case in A.Ys. 2011-12 and 2012-13 which has been relied upon by Ld.CIT(A) has been set aside / overturned or stayed by the Higher Judicial Forum. In view of the aforesaid facts, we find no reason to interfere with the order of Ld.CIT(A) and thus the grounds of Revenue are dismissed."*

14. *Similar view has been taken by the Co-ordinate Bench of the Tribunal in the cases of M/s. J-Sons Foundry Pvt. Ltd. vs. DCIT (supra) and m/s. L.B. Kunjir vs. DCIT (supra) and various other decisions. Since the issue has already been decided in favour of the assessee by the decisions of the Co-ordinate Benches of the Tribunal in assessee's own case as well as various other decisions, therefore, merely because the Revenue has not accepted the decision of the Tribunal and has challenged the decision before the Hon'ble High Court which is pending, cannot be the basis for taking a contrary view than the view already taken by the Tribunal in the case of the assessee. We, therefore, uphold the order of the CIT(A) and dismiss the grounds raised by the Revenue."*

34. Since the facts in the instant case are identical to the facts of the case already decided by the Tribunal in the case of sister concern of the assessee (to which both of us are parties), therefore, respectfully following the reasonings given therein and in absence of any contrary material brought to our notice, we do not find any infirmity in the order of the CIT(A) deleting the disallowance made by the Assessing Officer. The order of the CIT(A) is accordingly upheld and the grounds raised by the Revenue are dismissed.

35. Identical grounds have been raised by the Revenue in IT(SS)A Nos.24/PUN/2024 & 25/PUN/2024. We have already decided the issue and the grounds raised by the Revenue in IT(SS)A No.23/PUN/2024 have been dismissed. Following similar reasonings, the grounds raised in IT(SS)A Nos.24/PUN/2024 & 25/PUN/2024 are also dismissed. All the three appeals filed by the Revenue are accordingly dismissed.

36. In the result, the appeal filed by the assessee is allowed and the appeals filed by the Revenue are dismissed.

Order pronounced in the open Court on 17th October, 2024.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 17th October, 2024
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	09.10.2024		Sr. PS/PS
2	Draft placed before author	10.10.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			