

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'DB' NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.3064/Del/2013  
Assessment Year: 2007-08  
With  
ITA No.3925/Del/2012  
Assessment Year: 2008-09  
With  
ITA No.3723/Del/2013  
Assessment Year: 2009-10

M/s, Jaiprakash Power Ventures Ltd., 113, Rajpur Road, Dehradun	<b>Vs.</b>	DCIT, Circle-2, Dehradun
<b>PAN: AAACJ5463</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

With  
ITA No.3929/Del/2012  
Assessment Year: 2008-09

DCIT, Circle-2, Dehradun	<b>Vs.</b>	M/s, Jaiprakash Power Ventures Ltd., JUIT, Complex, Wagnaghat, Post Office- Dumehar Bani, Kandaghat, Distt. Solan, Himachal Pradesh
<b>PAN: AAACJ5463</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. Anil K. Chopra, CA Sh. Sanjiv Choudhary, CA Sh. V.K. Garg, Adv.
Department by	Sh. Amar Pal Singh, Sr. DR

Date of hearing	20.03.2025
Date of pronouncement	23.05.2025

**ORDER**

**PER SATBEER SINGH GODARA, JM**

The instant batch of four cases pertains to the single assessee herein M/s. Jaiprakash Power Ventures Ltd. It has filed its first and foremost appeal ITA No. 3064/Del/2013 for AY 2007-08 against the Commissioner of Income Tax (Appeals)-1 [in short "CIT(A)"], Dehradun's order dated 28.02.2013 passed in case no. 120/DDN/2009-10. The second assessment year 2008-09 involves the assessee's and Revenue's cross appeals ITA Nos. 3925/Del/2012 and 3929/Del/2012 directed against the CIT(A)-1, Dehradun's order dated 30.03.2012 passed in case no. 75/DDN/2010-11. All this is further followed by the assessee's appeal in ITA No. 3723/Del/2013 for AY 2009-10 filed against the CIT(A)-I, Dehradun's order dated 15.03.2013 passed in case no. 237/CIT(A)-I/DDN/2011-12. Relevant proceedings in all these assessment years are under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

Heard both the parties. Case files perused.

2. We proceed assessment year-wise for the sake of convenience and brevity.

**ITA No.3064/Del/2013 for AY: 2007-08**

3. The assessee raises the following substantive grounds in the instant appeal:

1. *That the Learned Commissioner of Income Tax (Appeals) [Ld. CIT (A)] has erred in confirming the reduction of entire interest receipts of Rs. 2,43,02,346/- on bank FDRs while computing the eligible profit for deduction under section 801A.*
2. *That the Ld. CIT(A) has erred in not allowing netting off of interest expenditure of Rs. 90,42,19,404/- against interest income of Rs. 2,43,02,346/- for computing the profits and gains of business and eligible deduction u/s 801A of the appellant. As interest expenditure much exceeds the interest income, no interest amount was to be reduced in computing eligible deduction u/s 801A.*
3. *That the Ld. CIT(A) has erred in not appreciating or misinterpreting or not following the directions of the Hon'ble ITAT in its decision relating to netting off of interest expenses against interest income for computing the appellant's business income and corresponding deduction u/s 801A,*
4. *That the non-allowance of netting off of interest expenditure against interest income for computing the appellant's business income and deduction u/s 801A is based on erroneous views of facts and law including of the governing TRA Agreement and Mechanism. In view of TRA Agreement & Mechanism and the security offered there under, the entire interest expense was to be netted off against interest income and as such no interest income survives for non-allowance u/s 801A. The interest income has arisen on FDRs. which form the security of and are linked to borrowed funds and interest paid thereon, under composite cash flow.*
5. *That the said non-allowance of netting off of interest is based on erroneous views, without properly considering, appreciating or rebutting material, explanations, submissions and case law placed before him. The said addition deserves to be deleted in toto.*
6. *That the Ld. CIT (Appeals) has erred in not following decisions of the Hon'ble Apex Court and High Court in the appellant's favour regarding netting off of interest including ACG Associated Capsules (P) Ltd. v. CIT and CIT v. Bharat Rasayan Ltd. 343 ITR 89 (SC). CIT v. Pawan Kumar Jain 298 ITR 443 (Del.), CIT v. Shahi Export House 195 Taxman 163 (Del.) and CIT v. Nectar Life Science Ltd. 2011-TIOL-681-HC-DEL-IT.*
7. *That without prejudice to other grounds, otherwise too, the Ld. CIT (Appeals) has erred in not holding that the said interest income is*

*derived from the eligible business and that accordingly the same is eligible for deduction u/s 801A of the Act.*

8. *That the order of the Ld. CIT (Appeals) as appealed against is against law and facts of the case involved.*
9. *That the grounds of appeal as herein are without prejudice to each other.*
10. *That the appellant craves leave to add, alter or forego any ground(s) before or at the time of hearing.*

4. It further emerges that the assessee has pleaded the following additional ground as well in the instant “lead” appeal:

1. *That without prejudice to the other grounds of appeal, the Ld. Assessing Officer has erred in not reducing interest paid from the interest income of Rs. 2,43,02,346 while reducing the same from the profits of the eligible business for computing deduction under section 801A. Accordingly, as interest paid far exceeds interest income, as such too, no exclusion of interest income is warranted for computing deduction under Section 801A.*
2. *That without prejudice to the other grounds of appeal, the Ld. Assessing Officer has erred in not reducing interest paid from the interest income of Rs. 2,43,92,346 while taxing the same as income from other sources. The said interest paid is clearly deductible under Section 57 of the IT Act.*

5. Both the parties next invite our attention to the CIT(A)’s detailed discussion dismissing the assessee’s lower appeal thereby upholding the Assessing Officer’s action not only rejecting its claim of interest income sought to be treated under the head “business” but also further disallowing netting of the interest expenditure against the same; as under:

*“The assessee company is engaged in the business of power generation. It had receipt of Rs.2,14,15,81,598/ from sale of power. It also had receipt of Rs.2,43,02,346/ from interest. After deducting*

*various expenses, including interest of Rs.90,53,14,682/, net profit of Rs.80,86,50,956/ (before tax) was worked out). Taking this net profit as the base, profit of Rs. 52,04,10,652/ under the head 'profit and gains of business or profession' was worked out. Equivalent amount of deduction u/s 80-IA of the I.T. Act was claimed. Thus, the interest income was treated by the assessee as 'derived from' the eligible business of power generation. The AO treated the interest income as 'income from other sources' and did not allow deduction u/s 80-1A with reference to the same. The assessee preferred appeal against this action of the AO. In course of the appeal, an additional ground was raised, mentioning that, if the interest income was to be charged to tax, deduction for interest expenditure should be allowed out of the interest receipt and since the net figure would be negative, there would be no income to be taxed. The appeal was decided by the CIT(A)-1, Dehradun in A.No.120/DDN/2009-10, dated 10.06.2011. It was held that the interest income was part of the profit 'attributable to the business, not 'derived from' it. The assessee's claim that interest expenditure should be allowed against interest receipt was rejected. The assessee preferred appeal against that decision. The Hon. ITAT, Delhi restored the matter to the CIT(A) for fresh decision in accordance with law and after giving the assessee an opportunity of being heard.*

*1.1 The relevant part of the ITAT order dt. 23.03.2012 in ITA No.4349/Del/2011 is reproduced below:*

*"6.1 On due Consideration of the facts and circumstances, we find that assessee has not challenged the finding of the Ld. Commissioner of Income-tax (Appeals) recorded in paragraph no. 1.5, to this extent he treated the interest income as business income and reversed the order of the Assessing Officer. Ld. Counsel for the assessee specifically took the stand at the time of hearing that assessee is not impugning this finding of the Ld. Commissioner of Income Tax (Appeals). He also pointed out that Revenue is not in appeal on this issue. We have directed the Bench Clerk to verify from the Registry whether Revenue is in appeal against the order of the Ld. Commissioner of Income Tax (Appeals) or not? The Bench Clerk informed us that no appeal has been filed by the Revenue. In such situation, the finding of the Ld. Commissioner of Income Tax (Appeals) to this extent is upheld. On perusal of Ld. Commissioner of Income Tax (Appeals)'s finding extracted supra in paragraph nos. 1.4 & 1.5 clearly brings out that Ld. Commissioner of Income Tax (Appeals) has passed an inherently contradictory order. While on the one hand he has held that the interest income can be said to be attributable to business and despite holding so, he has held that assessee's argument that the interest expenditure should be netted for computing of its profits and gains of business is not acceptable., This in our considered opinion, is not in accordance with the Ld.*

*Commissioner of Income Tax (Appeals)'s adjudication given vide para 1.5 of his order. In para 1.4 of his order ever the Ld. Commissioner of Income Tax (Appeals) has gone on to hold that interest income was to be allocated on pro-rata basis against the business receipt and interest receipt. Having so held, in our considered opinion, Ld. Commissioner of Income-tax(Appeals) has misdirected himself by holding that assessee's argument that the interest expenditure should be netted for computing of its profits and gains of business is not acceptable. Under the facts and circumstances of the case, in our considered opinion, as regards the claim of interest expenditure should be netted for computing the profits and gains, this aspect should be remitted to the file of the Ld. Commissioner of Income Tax (Appeals) to consider the issue afresh. It is needless to say that our observation will not impair or injure the case of the Assessing Officer and it will not cause any prejudice to the defence/explanation of the assessee. Ld. Commissioner of Income Tax (Appeals) shall decide the issue in accordance with law after providing adequate opportunity of being heard to the assessee."*

*Accordingly, the issue was taken up and is being decided afresh after allowing the assessee further opportunity of being heard.*

*1.2 At the outset, it needs to be clarified that the CIT(A) never held that interest income was to be allocated on pro-rata basis against the business receipt and interest receipt. In para 1.4 of the order (reproduced by the Hon. ITAT in its order), he only observed that, even if the business receipt and interest receipt were to be considered separate sources of income and the interest expenditure were to be allocated proportionately, the interest expenditure to be allowed against the interest receipt would be only Rs. 1.01 crore and, even then, interest income of Rs. 1.43 crore would be taxable. But, it was clarified in no uncertain terms that it was a purely mathematical calculation and that such calculation was not permissible in view of the facts and circumstances of the case and the provision of law. In fact, he did not hold the business receipt and interest receipt as two separate sources of income. He held both forming part of the same source, i.e. business, even though he held that the interest receipt was 'attributable to' it not 'derived from it. That being so, there was no question of allowing any interest expenditure against the interest receipt on one-to-one basis. In para 1.4 of his order, he held that interest expenditure could not be allowed as a deduction against interest income on one-to-one basis. In para 1.5, he held that the interest income was part of the profit attributable to the business; not income from other sources. There was no contradiction between these two findings. This clarification is considered necessary in order to avoid any confusion about the decision of the CIT (A) in his appellate*

order dt. 10.06.2011. It was, of course, held that, in spite of the fact that the interest income was held to be attributable to the business, it was not permissible to do netting of interest income and interest expenditure. This part of the decision does not seem to have found favour with the Hon. ITAT which held it to be "an inherently contradictory order". The Hon. ITAT, however, did not give its own decision that such netting had to be done. It restored the matter to the CIT(A) for fresh decision. While doing so, it also mentioned that its observation would not injure the case of the assessee or the Revenue and that the CIT(A) would be free to reach a decision as he thinks fit (in accordance with law after providing adequate opportunity of being heard to the assessee). Accordingly, the assessee has been allowed to present its case again and its supplementary submission has also been considered. The only issue for determination at this stage in the appeal is whether, given the fact that the assessee's interest income has been held to be part of its profit 'attributable to its business, whether it can be netted against the interest expenditure and, consequently, only the net interest income can be assessed as its profit attributable to business.

1.3 According to the scheduler system of computation of income prescribed under the I.T. Act, an assessee's income from each source has to be computed according to the provisions applicable to computation of income under the relevant 'head of income'. In this case, the entire profit forms part of 'profits and gains' of business or profession'. Even though the assessee itself did not net the interest receipt and expenditure against each other, the expenditure (which was more than receipt) was allowed as deduction while computing the profit and gains of its business. On the other hand, the interest receipt was considered as part of the business receipt. Thus, arithmetically speaking, whether the interest receipt and expenditure were netted or whether they were considered separately made no difference. In either case, the net profit of business would be the same. Normally, once the profit of business is computed, tax would be paid on it. Hence, if the assessee had to pay tax on its profits of business in normal course, the issue of netting would have been insignificant. It has acquired significance for the sole reason that, for purposes of computing deduction u/s 80-IC, the profit of business has to be further split between (a) profit attributable to it and (b) profit derived from it. It is only the latter that qualifies for the deduction while the former needs to be subjected to tax in the normal manner. This fine point has to be kept in mind while approaching the issue at hand.

1.4 As noted above, for purposes of calculating deduction u/s 80-IC, profit 'derived from' the eligible business needs to be segregated from the profit 'attributable to it, as if the alter were a separate source of

income. That would be possible if the calculation were done in the following manner:

*Receipt attributable to the eligible business- Expenditure incurred wholly and exclusively in connection with such receipt Profit attributable to the eligible business*

With that end in view, the assessee was asked specifically to furnish details of its borrowings and explain the purpose thereof. It furnished the following breakup of the secured loans:

<b>Sl. No.</b>	<b>Detail of secured Loans</b>	<b>Name of Lender</b>	<b>Amount</b>
1.	Rupee Loan-from Bank	Punjab National Bank	37,00,00,000
2.	Rupee Loan-from Bank	ICICI bank Ltd	3,39,12,46,566
3.	Rupee Loan-from Bank	IDBI bank	2,32,00,00,000
4.	From Financial Institutions	Power Finance Corp.	1,87,77,00,000
5.	From Financial Institutions	REC	1,14,00,00,000
6.	Foreign Currency Loan	Power Finance Corp.	1,34,92,99,600
7.	Debentures	Life Insurance Corpn.	63,30,00,000
8.	Debentures	Life Insurance Corpn.	52,70,00,000
	<b>Total</b>		<b>11,60,82,46,166</b>

Copies of the sanction letters were also furnished for perusal. It is noticed that all these loans were sanctioned to the assessee for the purpose of setting up the Vishnuprayag Hydro Electric Project in Dist: Chamoli, Uttarakhand. The assessee has confirmed that the loans had actually been utilised for that purpose and had made the following submission:

*"The secured loans are utilized for setting up of Vishnuprayag Hydro electric project in district Chamoli of Uttarakhand. The project has an installed capacity of 400MW (4\*100MW)." (Ref. Annexure 3 to its letter dt.08.02.2013)*

*The unsecured loans were interest free and, hence, their purpose or utilization is not relevant for the present purpose.*

*1.5 Interest on loan taken for setting up a project forms part of the capital cost till the business is set up. After that, it forms part of revenue expenditure. But the fact remains that it was incurred wholly and exclusively for purpose of setting up of the project and not for earning the operational income. In this case, given the clear finding*

*that the entire amount of interest-bearing loan was utilized by the assessee for purpose of setting up of the project, it is clear that the interest also relates to that purpose only even though it may be allowed as revenue expenditure, as discussed above. This interest expenditure was a committed liability of the eligible business and had to be paid, whether it commenced or not and irrespective of how it was conducted. Even if the impugned short-term investments had not been made and impugned interest had not been received, the interest liability would remain the same. This shows clearly that the entire amount of interest expenditure was incurred wholly and exclusively for purposes of the eligible business and, hence, had to be deducted while determining profit 'derived from' the same. That being the case, no interest expenditure would be left to be deducted while determining the assessee's profit 'attributable to the business.*

*1.6 It is clear that the circulating capital of the business did not come from the interest-bearing loans. Hence, if some interest was earned by the assessee by temporary deployment of the circulating capital, such interest income had no nexus whatsoever with the interest expenditure of the assessee. Since the interest expenditure was a committed liability of the business and had to be paid irrespective of whether the interest in question had been received or not, it cannot be said to have been incurred wholly and exclusively, or even partly, for purposes of the interest receipt.*

*1.7 The distinction between the profit 'attributable to a business and that 'derived from it was explained clearly by the Hon'ble Supreme Court in the case of Liberty India v. CIT (317 ITR 218). While the former takes within its ambit income that is incidental to the conduct of the business, the latter covers only that part of the profit which arises directly from the conduct of the business and has first degree of nexus with it. As regards the interest income in question, there is no dispute about the fact that it is part of the former. As regards the question of netting of interest receipt and expenditure, ample guidance is available in the decision of the Hon. Supreme Court in that case. In that case, petitioner had claimed that its receipt by way of DEPB credit and Duty Draw Back was neutralized by the central excise and customs duty paid by it in course of the manufacture and, hence, should be netted against the same. After discussing the issue at length, the Hon'ble court held that such netting was not permissible. The relevant part of the order is reproduced below:*

*"7. The submission of the appellant(s) (assessee(s)) in nutshell was that the amount of duty drawback/DEPB was intended to neutralize the incidence of duty on inputs consumed/utilized in the manufacture of exported goods resulting into increased profits derived from the business of the industrial undertaking which profits*

qualified for deduction under section 80-IB. According to the appellant(s) since no excise duty/customs duty was payable on raw materials consumed/utilized in manufacturing goods exported out of India, the duty paid stood refunded under section 37(2)(xvii) of the Central Excise Act, 1944 and under section 75 of the Customs Act, 1962 read with Customs, Central Excise Duties and Service Tax Drawback Rules, 1995.....

22. The cost of purchase includes duties and taxes (other than those subsequently recoverable by the enterprise from taxing authorities), freight inwards and other expenditure directly attributable to the acquisition. Hence trade discounts, rebate, duty drawback, and such similar items are deducted in determining the costs of purchase. Therefore, duty drawback, rebate, etc. should not be treated as adjustment (credited) to cost of purchase or manufacture of goods. They should be treated as separate items of revenue or income and accounted for accordingly (see: page 44 of Indian Accounting Standards & GAAP by Dolfy D'souza). Therefore, for the purposes of AS-2, Cenvat credits should not be included in the cost of purchase of inventories. Even Institute of Chartered Accountants of India (ICAI) has issued Guidance Note on Accounting Treatment for Cenvat/Modvat under which the inputs consumed and the inventory of inputs should be valued on the basis of purchase cost net of specified duty on inputs (i.e., duty recoverable from the Department at later stage) arising on account of rebates, duty drawback, DEPB benefit, etc. Profit generation could be on account of cost cutting, cost rationalization, business restructuring, tax planning on sundry balances being written back, liquidation of current assets etc. Therefore, we are of the view that duty drawback, DEPB benefits rebate etc. cannot be credited against the cost of manufacture of goods debited in the Profit & Loss account for purposes of section 80-IA/80-IB as such remissions (credits) would constitute independent source of income beyond the first degree nexus between profits and the industrial undertaking." (emphasis added).

The detailed arguments and reasoning behind the decision are not reproduced here for the sake of brevity. It is an authoritative pronouncement that even receipt by way of DEPB credit and Duty Draw Back, arising directly from the operation of business, cannot be allowed to be set off against the expenditure by way of payment of customs and excise duties. That being so, there is no reason why interest receipt, representing return on investment out of circulating capital of business, may be allowed to be set off against the interest expenditure incurred wholly and exclusively for purposes of the eligible business.

1.8 The assessee has submitted that the Hon'ble ITAT, in its order mentioned above, has held that "interest expenditure should be netted in computing profits and gains of business involved" and has referred to para 6.1 of the same (reproduced above). The submission is based on incorrect appreciation of the said order. As noted above, the Hon. ITAT nowhere gave its own view that the receipt had to be netted against the expenditure. Of course, it expressed some reservation about the soundness of the decision of the CIT(A) denying the netting. But, it also clarified that the issue has to be decided afresh.

1.9 The assessee has submitted that the interest bearing fixed deposits had been made under the Trust and Retention Agreement (TRA) with the lenders and, hence, were directly and intimately connected with the borrowing agreement. Under the TRA, the lead lender monitored the cash flow of the assessee's business so as to ensure that the funds were utilized for the purposes of the business and the lenders' interest were secure. It did not have any say in the decision to make the 'permitted investment'. This is clear from a plain reading of para 17.1 of the TRA which is reproduced under for ready reference:

*"So long as the Account Bank is not notified of an Event of Default or Potential Event of Default by the Facility Agent, the Account Bank shall invest in Permitted Investments on the instructions of the Borrower, as provided in this Agreement, from such part of the amounts standing to the credit of any of the Trust and Retention Accounts, in each case with respect to those amounts next anticipated to be transferred or withdrawn, having a scheduled maturity no later than such next anticipated cash withdrawal or transfer from such Account in accordance with this Agreement. Upon the occurrence and during the continuance of an Event or Default or Potential Event of Default, investment of such funds, such investments and reinvestment shall be made by the Facility Agent. Section 20 of the Indian Trusts Act, 1882 shall not apply to investments of amounts in the Trust and Retention Accounts."*

It is clear that the investments in question had been made at the instructions of the assessee and the decision to make the investments was that of the assessee only. Making permitted investment was not an essential condition for sanction of the loans. It was a business decision of the assessee, the lead lender was merely acting as its executing agent. There was no compulsion to make or not make these investments.

1.10 It was also submitted that the loans and funds under TRA agreement were sometimes temporarily invested in FD's till deployed for project finance. Thus, an impression was sought to be given that the permitted investments had been made out of composite funds, including borrowed one. This contention is factually incorrect and hence liable to be rejected outright. As noted above, the funds had been borrowed for the purpose of setting up of the hydro-electric project and were actually utilized for that purpose. It is an admitted fact that the project had actually been set up and, in fact, there was investment in fixed assets and capital work-in-progress aggregating Rs. 1549.42 crore against borrowed secured loans of Rs. 1017.77 crore as on 31.03.2006. That being so, there is no question of any part of the secured loans being part of the circulating capital. Hence, the contention that permitted investments had been made out of composite corpus of borrowed funds and own funds is factually incorrect. Consequently, there is no justification for holding that any amount of interest expenditure had been incurred wholly and exclusively, or even partly, for the interest receipt.

1.11 The assessee, in support of its contention that the interest income and expenditure should be netted against each other, relied on the following decisions:

- i. ACG Associated Capsules (P) Ltd Vs CIT and CIT Vs Bharat Rasayan Ltd. 343 ITR 89(SC)
- ii. CIT Vs Shahi Export House 195 Taxman 163(Del)
- iii. CIT Vs Nectar Life Science Ltd. 2011-TIOL-981-HC-DEL-IT
- iv. CIT Vs Pawan Kumar Jain 298 ITR 443(Del)

These decisions have been seen. In the case of ACG Associated Capsules, the Hon'ble Supreme Court held that, for purposes of section 80HHC of the I.T.Act, 90% of the interest income, and not the receipt, should be considered. The decision is not applicable to the facts of this case. The proposition, however, that it is the income, not the receipt, that should be subjected to tax is unassailable. In this case, it is only the interest income, not the entire receipt, that has been considered for purposes of taxation. It is a different matter that it has been found as a fact that no interest expenditure was actually incurred by the assessee and, hence, the quantum of interest receipt and interest income was one and the same. In the case of Shahi Export House, there was a clear finding that interest income had a direct nexus with the interest expenditure. In this case, the finding is just the reverse. Hence, the ratio is not applicable to the facts of this case. The case of Nectar Life Science is not applicable in this case because the interest income does not have first degree of nexus with the eligible business. It is not disputed that it forms part of the profit attributable to the same. In view of the authoritative pronouncement

*by the Hon. Supreme Court in the case of Liberty India (supra), there is no scope of netting the interest income against the interest expenditure.*

*1.12 In view of the foregoing discussion, it is held that the interest expenditure was incurred wholly and exclusively for purposes of the eligible of power generation. The interest income was part of profit attributable to the business. Hence, there is no justification for netting the income against the expenditure. Secondly, no part of the interest-bearing borrowed funds formed part of the circulating capital and, hence, went into making the permitted investment. Hence, no interest was incurred by the assessee for purposes of the interest receipt. Either way, there is no case for netting of the receipt against the expenditure. The AO is directed to compute the total income accordingly.*

*In the result, appeal is dismissed.”*

This is what leaves the assessee aggrieved.

6. Both the learned representatives vehemently reiterate their respective rival stands against and in support of the lower authorities' impugned action. The assessee's first and foremost argument in this factual backdrop is that its interest income deserves to be treated under the "business" head only; which in turn, qualifies for section 80I deduction herein, since "derived" from the eligible business going by CIT v. Meghalaya Steels Ltd. (2016) 383 ITR 217 (SC) etc. The Revenue's vehement plea is that both the learned lower authorities have rightly rejected the assessee's claim in entirety as per CIT(A)'s detailed discussion.

7. We have given our thoughtful consideration to the foregoing vehement rival submissions. We make it clear first of all that this

is the “second” round of proceedings before the tribunal as the earlier learned coordinate bench’s order dated 23<sup>rd</sup> March, 2012 had restored the assessee’s appeal ITA No. 4249/Del/2011 back to the CIT(A) as extracted in para 1.1 of the lower appellate discussion. This being the clinching factual position, we are of the considered view that the said earlier findings holding the CIT(A)’s first round order as having treated the assessee’s interest income under the head “business”; must be concluded to have attained finality. The very factual position would indeed continue for the assessee’s pleadings, claiming, “netting” benefit as well as the learned coordinate bench had further held the CIT(A) to have misdirected himself on the very issue. We thus observe that the assessee’s arguments herein deserve to be accepted as the above former rounds remand directions could not be allowed to be revisited in the instant second round consequential proceedings. We thus reject the Revenue’s vehement contentions on these two clinching counts.

8. Learned counsel at this stage further reiterates the assessee’s stand that it is entitled to claim section 80IA deduction qua the impugned interest income which has already been allowed to be

treated as business income in the foregoing terms. He further seeks to buttress the point that the above interest income in fact had been “derived” from temporary FDR out of the funds under lien as per corresponding Trust & Retention Account Agreement “TRA” executed for financing of its eligible power project in light of CIT v. Meghalaya Steels Ltd. (supra). We find no merit in the assessee’s instant arguments as the hon’ble jurisdiction high court of Uttarakhand order in Conventional Fastners Vs. CIT (2018) 403 ITR 115 (Uttarakhand) has already decided the very issue in the department’s favour thereby holding that any such interest income kept as security etc. does not qualify for section 80IC deduction which contains an identical connotation “derived” as in section 80IA of the Act. Hon’ble apex court has further appears to have upheld the same in [2018] 94 taxmann.com 80 (SC). We thus conclude in these facts and circumstances that there could be hardly any fault found with the learned lower authorities’ action holding the assessee’s impugned interest as not eligible for section 80IA deduction. We reject the assessee’s instant argument/substantive ground(s) therefore. Necessary computation

shall follow as per law in very terms. This assessee's "lead" appeal ITA No.3064/Del/2013 is partly accepted.

**ITA No.3925 & 3929/Del/2012 for AY: 2008-09**

9. We first advert to the assessee's former three substantive grounds as well as its additional ground claiming its receipts of Rs. 13,97,73,866/-; derived from sale of Verified Emission Reduction "VERs" or 'carbon credits' as eligible for section 80IA deduction since representing business income; or, in the alternative, a capital receipt not liable to be taxed under the normal provisions as well as for "MAT" computation under section 115JB of the Act.

10. Both the learned representatives reiterate their respective stands during the course of hearing before us. We first of all notice that various judicial precedents i.e. CIT Vs. Subhash Kabini Power Corporation Ltd. [2016] 69 taxmann.com 394 (Karnataka) and CIT v. My Home Power Ltd. [2014] 46 taxmann.com 314 (AP) have already settled the instant issue in assessee's favour and against the department that such an income is not a revenue item being in the nature of a capital receipt.

11. The Revenue could further not dispute that the legislature has inserted section 115BBG by the Finance Act, 2017 w.e.f.

01.04.2018 holding such an income derived from transfer of carbon credits as taxable, which admittedly does not carry any retrospective effect. We reiterate that we are in assessment year 2008-09 wherein there was no such provision to tax such a receipt from sale of carbon credits etc. We conclude in these facts and circumstances that both the learned lower authorities have erred in law and on facts in rejecting assessee's claim of its income derived from sale of carbon credit as capital receipt under normal provision as well as under section 115JB MAT computation. The assessee accordingly succeeds on both these grounds in very terms.

12. The assessee's 4<sup>th</sup> to 9<sup>th</sup> substantive grounds claim section 80IA deduction interest income on bank FDRs, IPO funds, Letter of Credit (LOC) and margin money deposited for furnishing bank guarantee to various government agencies. We are of the considered view in light of our detailed discussion in the assessee's "lead" appeal hereinabove that neither of this interest income could be treated to have derived from the eligible business, and, therefore, we hereby reject all these corresponding substantive

grounds in very terms. Ordered accordingly. This assessee's appeal ITA No. 3925/Del/2012 is partly allowed.

13. So far as the Revenue's cross appeal ITA No. 3929/Del/2012 is concerned, we are very fairly informed by both the parties that it is aggrieved against the CIT(A)'s action reversing the assessment findings thereby holding the assessee's interest income derived from various bank guarantees i.e. on the above foregoing heads as falling under the head "business". The Revenue could hardly dispute that the very issue has been adjudicated in assessment year 2007-08, learned coordinate bench's first round remand direction (supra) in the assessee's favour. That being the case, we hereby adopt judicial consistency to reject the Revenue's instant sole substantive ground as well as the main appeal/cross appeal ITA No. 3929/Del/2012 in very terms.

**ITA No. 3723/Del/2013 for AY 2009-10**

14. It emerges during the course of hearing that the assessee's instant last appeal raises the first and foremost issue of taxability of its income of Rs. 56,69,52,711/- derived from sale of carbon credits (supra) as not taxable under normal provisions as well as under section 115JB MAT computation, which already stand

decided against the department in our preceding detailed discussion in assessment year 2008-09. We accordingly decide these corresponding substantive grounds in assessee's favour in very terms

15. Learned counsel next invites our attention to the assessee's identical 4<sup>th</sup> to 11<sup>th</sup> substantive grounds claiming section 80IA deduction on interest income as well as machinery hiring charges and scrap sales. We are of the considered view that apart from sale of scrap of Rs.29,14,180/-, which is already covered in its favour and against the department going by CIT Vs. Nirma Ltd. (2015) 229 Taxman 535 (Guj), all other receipts could hardly be held to have satisfied the clinching criteria of "derived" from the eligible business under section 80IA of the Act. We thus partly accept the assessee's instant last argument and direct the Assessing Officer to finalize his afresh consequential computation after verification of all the relevant facts in very terms.

Learned counsel is fair enough in not pressing for any other ground(s) raised at the assessee's behest.

16. To sum up, these assessee's three appeals ITA Nos.3064/Del/2013; 3925/Del/2012 and 3723/Del/2013 are

partly allowed and the Revenue's cross appeal ITA No. 3929/Del/2012 for AY 2008-09 is dismissed in above terms. A copy of this common order be placed in the respective case files.

***Order pronounced in the open court on 23<sup>rd</sup> May, 2025***

***Sd/-***  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

***Sd/-***  
**(SATBEER SINGH GODARA)**  
**JUDICIAL MEMBER**

Dated: 23<sup>rd</sup> May, 2025.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi