

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'D' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND  
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1402/Chny/2024  
निर्धारण वर्ष/Assessment Year: 2019-20

M/s. Ashok Leyland Ltd.,  
No.1, Sardar Patel Road,  
Guindy, Chennai-600 032.

v.

The DCIT,  
NCC-8(1),  
LTU-II,  
Chennai.

[PAN: AAACA 4651 L]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.1663/Chny/2024  
निर्धारण वर्ष/Assessment Year: 2019-20

The DCIT,  
NCC-8,  
Chennai.

v.

M/s. Ashok Leyland Ltd.,  
No.1, Sardar Patel Road,  
Guindy, Chennai-600 032.

[PAN: AAACA 4651 L]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Assessee by

:

Mr.R. Vijayaraghavan,  
Advocate

Department by

:

Ms.Ann Marry Baby, CIT

सुनवाईकीतारीख/Date of Hearing

:

04.06.2025

घोषणाकीतारीख /Date of Pronouncement

:

07.07.2025

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

These are cross-appeals preferred by the assessee as well as the Revenue against the order of the Learned Commissioner of Income Tax



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(Appeals)/NFAC, (hereinafter referred to as 'Ld.CIT(A)'), Delhi, dated 16.03.2024 for the Assessment Year (hereinafter referred to as 'AY') 2019-20.

2. At the outset, it is noted that the Revenue's appeal is delayed by '16' days, for which, the Ld. DR explained the reason for delay, and, the Ld. Counsel of the assessee has not raised any serious objection. Consequently, the delay of '16' days in filing of the appeal stands condoned and the appeal filed by the Revenue as well as that of assessee-company are taken up for hearing on merits. Since the issues involved in these cross appeals were inter related, both these appeals were heard together and are accordingly being disposed off by this common order.

3. We first take up the assessee's appeal in ITA No.554/Chny/2023. The grounds urged by the assessee are as follows:-

"1. The order of the Commissioner of Income-tax (Appeals) ('CIT(A)-NFAC') is contrary to law, facts and circumstances of the case.

**2. Additions @ 1% u/s 92CA(3) towards notional Corporate Guarantee fees - Rs. 1,22,93,500:**

2.1. The CIT(A)-NFAC is not justified in upholding the additions towards corporate guarantee fee @ 1% as proposed by the TPO.

2.2. The CIT(A)-NFAC ought to have appreciated that issuing of guarantees does not fall under the ambit of transfer pricing, since it does not have any bearing on profits, income, losses or assets of the assessee;

2.3. The CIT(A)-NFAC ought to have appreciated that, the corporate guarantees have been provided by the appellant as a stewardship /shareholder activity and not a business transaction that needs to be



tested for ALP, since, the appellant is not in the business of issuing guarantee for this activity to qualify as international transaction.

2.4. Without prejudice to the above, Adjustment may at the most be restricted to 0.325% (as per the letter issued by SBI, specific to your Appellant) following the principle laid down by CIT(A) -16 for AY 2010-11 (Appeal No. CIT (A), Chennai- 17/10740/2014-15) and 2011-12 (Appeal No. CIT (A), Chennai- 17/10834/2015-16) in Appellant's own case

2.5. In any case, Fees can be charged only to the extent of Guarantees utilized in the subject AY and in proportion to the number of months /days in force, which the TPO has failed to do so.

### **3. Disallowance u/s 14A r.w.r. 8D - Rs. 18,82,33,000:**

3.1. CIT(A)-NFAC erred in upholding disallowance u/s 14A despite the fact that Appellant had not earned any exempt income during the subject year, thereby ignoring decision of Apex Court in the case of CIT v. Chettinad Logistics (P.) Ltd [2018] 257 Taxman 2 (SC).

3.2. CIT(A)-NFAC Ought to have appreciated that the Explanation to section 14A is applicable prospectively from with effect from 1.4.2022 and not for the year under appeal.

3.3. Without prejudice to above grounds, even if Rule 8D is held as applicable, investments from which no dividend income is earned should not be considered while applying Rule 8D as held in Appellant's own case by CIT(A) -16 for AY 2010-11 (Appeal No. CIT (A), Chennai-17/10740/2014-15) and 2011-12 (Appeal No. CIT (A), Chennai-17/10834/2015-16).

3.4. CIT(A)-NFAC erred in incorrectly assuming that Appellant had not provided details called for and in not striking down prima facie incorrect assumptions made by the AO in regards to management of investments.

### **4. Disallowance of 100% R&D Revenue Expenditure capitalised in books of accounts - Rs. 2,34,28,46,960:**

4.1. CIT(A)-NFAC erred in disallowing 100% revenue expenditure of Rs. 2,34,28,46,960 on assumption that Appellant has failed to disallow an expenditure which has been debited to Profit and Loss account but that Appellant claimed weighted deduction @ 150% on such expenditure, without understanding that such expenditure was NEVER debited to P&L account rather it was capitalized in the Books of Accounts and hence, the question of disallowance of 100% of the expenditure does not arise.

4.2. CIT(A)-NFAC erred in ignoring the facts that expenditure such as salary. raw materials, components etc. which have been incurred on R&D projects and capitalised in books of the R&D facility as per mandatory requirement of Indian Accounting Standards (IndAS), but for tax



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purposes, the expenses have been carved out of the total capitalisation and claimed as revenue expenditure in line with DSIR guidelines.

4.3. Without prejudice, expenditure in R&D approved facility, whether Revenue or capitalised are fully allowable u/s 35(1)(i)/35(1)(iv).

**5. Weighted Deduction R&D of Capital Expenditure u/s 35(2AB) certified by DSIR but not allowed by NFAC - Rs. 40,21,77,735:**

5.1. The CIT(A)-NFAC erred in not granting deduction for Rs. 40,21,77,735 u/s 35(2AB) (being 150% of Capital expenditure of Rs. 26,81,18,490) which has been certified by the DSIR in Form 3CL dated 05.04.2023.

5.2. The Appellant having received Form 3CL dated 05.04.2023 ought to be allowed a total weighted deduction of Rs. 1,72,03,84,500 (being 150% of capital exp. of Rs. 1,14,69,23,000) as certified by DSIR in Form 3CL, but the CIT(A)-NFAC erred in restricting total deduction for capital exp. to Rs. 1,31,82,06,765, thereby disallowing a claim of Rs. 40,21,77,735.

5.3. The CIT(A)-NFAC ought to have appreciated that the CIT(A)-NFAC cannot disallow deduction claimed by the Appellant in respect of weighted deduction on R&D expenditure as approved by DSIR. Once such expenditure has been quantified by DSIR, then AO / CIT(A) - NFAC does not have any powers to intervene.

**6. Erroneous disallowance U/s. 80IC - Rs. 1,68,14,24,514:**

6.1. The CIT(A) is not justified in merely following the CIT(A) NFAC's preceding year's order i.e. for AY 2018-19 and erred in directing AO to adopt an incorrect margin of 6.09% instead of the margin of 11.51% as claimed by the appellant for the eligible unit.

6.2. The CIT(A)-NFAC is not justified in simply following the CIT(A) NFAC order for AY 2018-19, adopting profit margins of the other units of the Company (excluding the eligible unit), ignoring the provisions of sec 80IC requiring the Profits derived from the eligible unit has to be independently arrived at in accordance with the provisions of the Act.

6.3. The CIT(A)-NFAC ought to have appreciated that when the correct working of the profits for the eligible unit is available and submitted, taking into account sale consideration and all direct and indirect and common costs, he cannot adopt, without any basis, the average rate of net Profit of other non-eligible units as profit of the eligible unit also.

6.4. The CIT(A)-NFAC erred in assuming that the eligible unit can make profit only at the same rate as other units (and that too exactly on the average rate of all units taken together) ignoring the benefits and efficiency, labour costs of the Eligible unit which will go to increase the Net Profits of the Eligible unit.



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6.5. The CIT(A)-NFAC ought to have appreciated that the profits of the eligible unit was computed on the basis of sale price realized from sale of Vehicles manufactured in the eligible unit which was taken as income of the eligible unit as reduced by the costs incurred by the eligible unit consisting of both direct costs and allocated costs which have been audited. Hence there is no basis for rejecting the profit submitted by the Appellant and reworking the profit margins of the eligible unit alone and adopt an ad hoc figure without any basis which does not represent the profits derived from the undertaking.

6.6. The CIT(A)-NFAC ought to have appreciated that the AO has completely overlooked the provisions of S.80IC(5) r.w.s. 801A(8) which requires unit profitability to be based on the market value of the output. Further, the CIT(A) failed to recognize and consider the invoice value of each chassis as the most appropriate method of determining the market value.

6.7. The CIT(A)-NFAC ought to have appreciated that all direct and indirect costs, attributable to manufacture and sale of the product from every manufacturing unit, are identified and allocated based on appropriate accepted allocation keys viz, Turnover ratio, cost of production ratio, Marketing ratio etc, support function activities viz, design, procurement, production, planning, marketing, R & D are centrally located only to facilitate better management and control. The cost of these functions has been fully allocated to the manufacturing units to arrive at their profitability. Hence, reworking of profit is unwarranted.

6.8. The CIT(A)-NFAC in arriving at his prejudiced conclusion about the Pant Nagar Unit erred in completely misunderstanding the business process model of the Appellant by ignoring its detailed factual submissions about the working and benefits of the eligible undertaking.

7. The Appellant craves leave to adduce additional evidence at the time of hearing."

**4. Ground No.1** raised by the assessee is general in nature, therefore doesn't require any adjudication.

**5. Ground No.2** relates to the transfer pricing adjustment made in respect of corporate guarantee(s) issued by the assessee to its foreign AE(s). The facts as noted are that, the assessee is engaged in the business manufacture & sale of commercial vehicles. It had given corporate guarantee in relation to the loans obtained by its foreign



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subsidiaries, M/s. Optare Plc and M/s Albonair GmbH. The assessee didn't charge any fee towards such corporate guarantees issued in favour of the AEs. The TPO is noted to have made transfer pricing adjustment in relation thereto, by adopting the ALP value at 1% of the value of corporate guarantee. Aggrieved, the assessee preferred appeal before the Ld. CIT(A) which confirmed the action of the TPO. Now, the assessee is in appeal before us.

**5.1** Heard both the parties. The Ld. AR for the assessee has contended that since the corporate guarantee was provided without any cost to the AE, it didn't have any bearing of profits, income, losses of the assessee and therefore could not be regarded as an international transaction and be benchmarked under the transfer pricing provisions. We however note that the provisions of Section 92B has been amended by the Finance Act 2012, whereby, in terms of the Explanation to Section 92B, the guarantees issued by an assessee has been clarified to be in the nature of international transaction. We note that the Hon'ble Bombay High Court in the case of **CIT v. Everest Kanto Cylinders Ltd [2015] 58 taxmann.com 254/232 Taxman 307/378 ITR 57 (Bombay)** has considered identical issue in light of the provisions of Section 92B and the Explanation, came to a conclusion that the corporate guarantee issued by an entity on behalf of its AE is an international transaction. We further note that, this identical issue came up before the Hon'ble jurisdictional



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Madras High Court in the case of **Pr. CIT v. Redington (India) Ltd.** [2020] 122 taxmann.com 136/[2021] 430 ITR 298 (Madras), wherein, the Hon'ble Madras High Court held that, inherent risk cannot be ruled out in providing guarantees and hence the transaction involving issuance of corporate guarantee is covered by the definition of international transaction consequent to retrospective amendment made by the Finance Act, 2012 and, accordingly adjustments are required to be made for guarantee commission. The relevant findings taken note of by us is as follows: -

"75. The concept of Bank Guarantees and Corporate Guarantees was explained in the decision of the Hyderabad Tribunal in the case of Prolifics Corporation Limited. In the said case, the Revenue contended that the transaction of providing Corporate Guarantee is covered by the definition of international transaction after retrospective amendment made by Finance Act, 2012. The assessee argued that the Corporate Guarantee is an additional guarantee, provided by the Parent company. It does not involve any cost of risk to the shareholders. Further, the retrospective amendment of Section 92B does not enlarge the scope of the term international transaction to include the Corporate Guarantee in the nature provided by the assessee therein. The Tribunal held that in case of default, Guarantor has to fulfill the liability and therefore, there is always an inherent risk in providing guarantees and that may be a reason that Finance provider insist on non-charging any commission from Associated Enterprise as a commercial principle. Further, it has been observed that this position indicates that provision of guarantee always involves risk and there is a service provided to the Associate Enterprise in increasing its creditworthiness in obtaining loans in the market, be from Financial institutions or from others. There may not be immediate charge on P & L account, but inherent risk cannot be ruled out in providing guarantees. Ultimately, the Tribunal upheld the adjustments made on guarantee commissions both on the guarantees provided by the Bank directly and also on the guarantee provided to the erstwhile shareholders for assuring the payment of Associate Enterprise.



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76. In the light of the above decisions, we hold that the Tribunal committed an error in deleting the additions made against Corporate and Bank Guarantee and restore the order passed by the DRP.”

**5.2** In view of the above decisions (supra), we therefore hold that the transaction of corporate guarantee is an international transaction subject to transfer pricing provisions. Accordingly, the first plea of the assessee is hereby rejected.

**5.3** The next issue now to be adjudicated is the ALP value of the guarantee commission. In this regard, the Ld. AR has relied on the quote provided by Bank(s) in which they have proposed to extend bank guarantee at 0.325% and has urged that the ALP adjustment be restricted to 0.325%. We find that the Hon'ble Bombay High Court in the case of **Everest Kanto Cylinders Ltd (supra)** has observed that bank guarantees cannot be equated with corporate guarantees and accordingly discarded the rates provided by Banks. Following the same, the assessee's reliance on bank quote of 0.325% is rejected. In the same decision (supra), the Hon'ble Bombay High Court had ascertained the ALP guarantee commission at 0.5%, which was followed by the Hon'ble jurisdictional High Court in the case of **Redington (India) Ltd. (supra)** wherein also the ALP corporate guarantee commission was fixed at 0.5%. Following the same, we direct the AO to restrict adjustment to 0.5% of the guarantee value. This ground is therefore partly allowed.



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**6.** Ground No. 3 of the Revenue is against the Ld. CIT(A)'s action of confirming the disallowance of Rs.18,82,33,000/- made by the AO u/s 14A of the Act in accordance with Rule 8D.

**6.1** The facts as noted are that, during the year, the assessee had not derived any exempt income and accordingly it claimed that, no expenditure was incurred for deriving such exempt income. The AO was not agreeable to the contention of the assessee and sought to invoke Rule 8D. The AO is noted to have computed disallowance u/s 14A of Rs.18,82,33,000/- being 1% of the average value of investments held by the assessee. On appeal the Ld. CIT(A) relying on the CBDT Circular No.5/2014 confirmed the disallowance made by the AO. Aggrieved by the order of Ld. CIT(A), the assessee is in appeal before us.

**6.2** The Ld. AR submitted that sec.14A of the Act cannot be applied if there is no exempt income earned during the year. According to him, the question of disallowance of expenditure would arise only in a scenario where the assessee has earned exempt income during the year. To support his view, he relied on the following decisions of jurisdictional High Court:

- CIT vs. Chettinad Logistics (P) Ltd. [248 Taxman 55](Madras)
- Redington India Ltd. vs. Addl. CIT [TCA 520 of 2016](Madras)
- Marg Ltd. vs CIT 120 taxmann.com 84 (Madras)
- CIT vs. Celebrity Fashion Ltd [2020] 119 taxmann.com 426



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**6.3** The Id. AR for the assessee further submitted that in the case of **M/s Ramco Cements Limited Vs DCIT in ITA NO.1897/Chny/2017**, this coordinate Bench has decided this identical issue in favour of the assessee and hence is equally apply in this case also. He has also referred judgments of the Hon'ble Delhi High Court in the case of **PCIT Vs Era Infrastructure (India) Ltd. [2022] 141 taxmann.com 289 (Delhi)** and judgment of Hon'ble Calcutta High Court in the case of **PCIT (Central) v. Avantha Realty Ltd. [2024] 164 taxmann.com 376 (Calcutta)** for the proposition that, the amendment made by Finance Act, 2022 to section 14A by inserting a non-obstante clause and explanation will take from 01.04.2022 are prospective and cannot be applicable retrospective.

**6.4** We have heard both the parties and perused the material on record. We find that this issue is no longer res integra and the jurisdictional High Court, after considering the CBDT Circular No.5/2014, is noted to have consistently held that, where there is no exempt income; the provisions of Sec.14A read with Rule 8D cannot be applied. The relevant decisions and the findings rendered by the jurisdictional High Court are as under:-

(i) In **CIT v. Chettinad Logistics (P) Ltd. (supra)**, it was held that:-

"9. In our opinion Section 14 A of the Act, can only be triggered, if, the Assessee seeks to square off expenditure against income which does not form part of the total income under the Act.



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9.1 The legislature, in order to do away with the pernicious practice adopted by the Assessee, to claim expenditure, against income exempt from tax, introduced the said provision.

10. In the instant case, there is no dispute that no income i.e., dividend, which did not form part of total income of the Assessee was earned in the relevant assessment year.

10.1 Therefore, to our minds, the addition made by the Assessing Officer by relying upon Section 14 A of the Act, was completely contrary to the provisions of the said Section.

10.2 Mr.Senthil Kumar, who appears for the Revenue, submitted that the Revenue could disallow the expenditure even in such a circumstance by taking recourse to Rule 8D.

10.3 According to us, Rule 8D, only provides for a method to determine the amount of expenditure incurred in relation to income, which does not form part of the total income of the Assessee.

10.4 Rule 8D, in our view, cannot go beyond what is provided in Section 14 A of the Act."

(ii) The Hon'ble High Court in **Redington India Ltd. v. ACIT (supra)**

held that:-

" "4. The admitted position is that no exempt income has been earned by the assessee in the financial year relevant to the assessment year in issue. The order of assessment records a finding of fact to that effect. The issue to be decided thus lies within the short compass of whether a disallowance in terms of s.14A of the Act read with Rule 8D of the Rules can be contemplated even in a situation where no exempt income has admittedly been earned by the assessee in the relevant financial year.

7. Per contra, Sri. T. Ravikumar appearing on behalf of the revenue drew our attention to the marginal notes of s.14 A pointing out that the provision would apply not only where exempted income is 'included' in the total income, but also where exempt income is 'includable' in total income.

8. He relied upon a Circular issued by the Central Board of Direct taxes in Circular No.5 of 2014 dated 11.2.2014 to the effect that s.14A was intended to cover even those situations whether there is a possibility of exempt income being earned in future. The Circular, at paragraph 4, states that it is not necessary for exempt income to have been included



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in the income of a particular year for the disallowance to be triggered. According to the Learned Standing Counsel, the provisions of s.14A are made applicable, in terms of sub section (1) thereof to income 'under the act' and not 'of the year' and a disallowance under s.14A r.w.Rule 8D can thus be effected even in a situation where a tax payer has not earned any taxable income in a particular year.

9. We are unable to subscribe to the aforesaid view. The provisions of section 14A were inserted as a response to the judgments of the Supreme Court in Commissioner of Income Tax v. Maharashtra Sugar Mills Limited [1971] 82 ITR 452 and Rajasthan State Ware Housing Corporation v. Commissioner of Income-tax [2002] 242 ITR 450 in terms of which, expenditure incurred by an assessee carrying on a composite business giving rise to both taxable as well as non-taxable income, was allowable in entirety without apportionment. It was thus that s.14A was inserted providing that no deduction shall be allowable in respect of expenditure incurred in relation to the earning of income exempt from taxation. As observed by the Supreme Court in the judgment in the case of Commissioner of Income-tax v. Walfort Share and Stock Brokers (P) Ltd. [2010] 326 ITR 1

'.... The mandate of s.14A is clear. It desires to curb the practice to claim deduction of expenses incurred in relation to exempt income against taxable income and at the same time avail of the tax incentive by way of an exemption of exempt income without making any apportionment of expenses incurred in relation to exempt income.'

10. The provision this is clearly relatable to the earning of actual income and not notional or anticipated income. The submission of the Department to the effect that s.14A would be attracted even to exempt income 'includable' in total income would entail the assessment of notional income, assumed to be exempt in the future, in the present assessment year. The computation of total income in terms of s.5 of the Act is on real income and there is no sanction in law for the assessment of admittedly notional income, particularly in the context of effecting a disallowance in connection therewith.

11. The computation of disallowance in terms of Rule 8D is by way of a determination involving direct as well as indirect attribution. Thus, accepting the submission of the Revenue would result in the imposition of an artificial method of computation on notional and assumed income. We believe this would be carrying the artifice too far..”



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(iii) The above decision was followed with approval by the jurisdictional High Court in the case of **CIT v. Celebrity Fashion Ltd (supra)** wherein it was held as under:-

"17. On the first issue, we find that the Tribunal rightly understood the scope of the transaction done by the assessee. The consistent case of the assessee was that they invested a sum of Rs. 7.25 crores in SBI Magnum Insta Cash Fund, that the amount was invested on 30-3-2011, that they had not incurred any expenditure in making such investment and that at the year end, the assessee did not earn tax free income from such investments. In terms of Section 14A of the Act, the only expenditure, which was proved to be incurred in relation to earning of tax free income, could be disallowed and such provision could not be extended to disallow the expenditure, which was assumed to have been incurred for earning tax free income.

18. Therefore, to apply the provisions of Section 14A of the Act, the Assessing Officer should have recorded a finding as to how sub-Section (1) of Section 14A of the Act would stand attracted. In the absence of any such finding, the disallowance made was not justifiable. In fact, the Assessing Officer straightaway proceeded to the second limb of Section 14(2) of the Act, which is impermissible. The Tribunal rightly took note of the decision in the case of Redington India Ltd. (supra), wherein it was held that the provisions of Section 14A of the Act read with Rule 8D of the Income-tax Rules, 1962 cannot be made applicable in vacuum i.e in the absence of exempt income. Therefore, we find that the Tribunal was right in deciding the issue against the Revenue and in favour of the assessee."

(iv) The Hon'ble Madras high Court in **Marg Ltd. v. CIT (supra)** held as under in paras 20 & 21 of their order:-

"16. The contention raised on behalf of the Revenue by Mr. Karthik Ranganathan that even if the dividend income is not earned in the present year, since the investment is made for the strategic purposes to have control over the subsidiary companies, whenever in future a huge dividend can be declared, it will be earned by the Assessee and in that future year, the Assessee will not have incurred any expenditure to earn that income and therefore, a larger disallowance under rule 8D should be allowed, is only an ingenuity of argument covered by the absurdity thereof. The disallowance of expenditure incurred for the year in



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question only can be considered under section 14A of the Act and no such hypothetical earning in future as against no expenditure incurred for that, is envisaged under section 14A of the Act.

17. With respect to the learned counsel for the Revenue, we cannot accept such unfounded and imaginary situations and submissions. The nature of investment has nothing to do with section 14A of the Act. It is the exempted income in the form of dividend which forms the cap or roof limit for disallowance. Firstly, the Assessee has to apportion the expenditure incurred in the form of interest on borrowed funds if any or the expenditure incurred by him to earn such dividend income, which is exempt from tax and if at all the Assessing Authority is not satisfied with that declaration of the assessee, after recording such reasonable and cogent satisfaction only, he can resort to the computation method under Rule 8D of the Rules and compute such disallowance with a caveat that under no circumstances, the disallowance can exceed the amount of dividend income earned, received or accrued to the Assessee in the present year, which was taxable but for the exemption as per the provisions of the Act. If no dividend income is declared by the investee company or subsidiary company as the case may be, the disallowance computed under Rule 8D cannot be taxed as a "hypothetical income" of the Assessee, by providing a negative figure beyond the dividend income earned during that year, to be added to the taxable income of the Assessee. That will make the mockery of the concept of "real income" of the Assessee being taxed and it is the bedrock of the Income Tax Act itself.

....

20. Before parting, we may also note with reference to the Table of disallowance voluntarily made by the Assessee, which is part of the Paper Book before us for the four assessment years in question. In the Table quoted in the beginning of the order, shows that the Assessee himself computed and offered the disallowance beyond the exempted income in the particular year, namely AY 2009-10, as against the dividend income of Rs. 41,042/- and the Assessee himself computed disallowance under Rule 8D of the Rules to the extent of Rs. 2,38,575/-, which was increased to Rs. 98,16,104/- by the Assessing Authority. Similarly, for AY 2012-13, against Nil dividend income, the Assessee himself computed disallowance at Rs. 8,50,000/-, which was increased to Rs. 2,61,96,790/-.

21. We cannot approve even the larger disallowance proposed by the Assessee himself in the computation of disallowance under Rule 8D made by him. These facts are akin to the case of Pragati Krishna Gramin Bank (supra) decided by Karnataka High Court. The legal position, as interpreted above by various judgments and again reiterated by us in



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this judgment, remains that the disallowance of expenditure incurred to earn exempted income cannot exceed exempted income itself and neither the Assessee nor the Revenue are entitled to take a deviated view of the matter. Because as already noted by us, the negative figure of disallowance cannot amount to hypothetical taxable income in the hands of the Assessee."

**6.5** We also gainfully refer to the decision of Hon'ble Calcutta High Court in the case of **PCIT (Central) v. Avantha Realty Ltd. (supra)** wherein the amendment made to Section 14A by the Finance Act, 2022 was also considered and the new Explanation inserted in Section 14A was held to be prospectively applicable. The Hon'ble High Court accordingly held that, prior to the said amendment, in absence of any exempt income, no disallowance u/s 14A was warranted. The relevant portion of the judgment is as follows:-

"d. Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was justified in law by deleting the disallowance of Rs.11,16,14,637/- made under Section 14A by placing reliance on the judgment of Hon'ble Delhi High Court in the matter of Pr. CIT (Central) v. Era Infrastructure (India) Ltd. [2022] 141 taxmann.com 289/288 Taxman 384/448 ITR 674, wherein the Hon'ble High Court ruled that the disallowance under Section 14A cannot exceed exempt income ?

e. Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was justified in law by ignoring the CBDT circular no.5/2014 dated 11.02.2014 which has clarified that the disallowance for any assessment year may not be limited to the exempt income for the said assessment year ?

...

9. Substantial questions Nos. D & E pertain to the deletion of the disallowance made under Section 14A of the Act. The learned Tribunal took note of the decision of the High Court of Delhi in Era Infrastructure (India) Ltd. (supra), which had taken note of the decision in the case of Cheminvest Ltd. (supra), wherein it was held that amendment by the



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Finance Act, 2022 of Section 14A of the Act by inserting a non-obstante clause and explanation we take effect from 01.04.22 and cannot be presumed to have retrospective effect and, therefore, on facts the amendment cannot be applied to the assessment year under consideration. We find no error in such conclusion arrived at by the learned Tribunal.

10. Accordingly, substantial questions of law No. D & E are decided against the revenue.”

**6.6** Following the above decisions (supra), we thus hold that there cannot be any disallowance u/s.14A in the present case, as the assessee did not earn any exempt income. The AO is accordingly directed to delete the impugned disallowance made u/s 14A of the Act. This ground of appeal of the assessee is allowed.

**7. Ground Nos.4 & 5** raised by the assessee relates to the disallowance of deduction claimed in respect of both revenue & capital expenditure incurred towards scientific research u/s 35(2AB) of the act.

**7.1** Briefly stated, the facts are that, the assessee had reported to have incurred expenditure of Rs.538,76,62,852/- being revenue in nature, at its approved in-house R&D Facility, and had accordingly claimed weighted deduction being 150% of the expenditure i.e. Rs. 808,14,34,278/- u/s 35(2AB) of the Act. The assessee had also reported to have incurred R&D capital expenditure of Rs. 127,72,94,730/- as per Form 3CLA, out of which the assessee had claimed weighted deduction at 150% of sum of Rs.87,88,04,510/- amounting Rs.131,82,06,765/-. Due to absence of Form 3CL, the AO denied the weighted deduction claimed u/s 35(2AB) of



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the Act. According to AO, the assessee was entitled to normal deduction for revenue expenditure of Rs.538,76,62,852/- and accordingly disallowed the weighted component of Rs.269,38,31,426/-. In respect of capital expenditure, the AO allowed depreciation computed at 15% on Rs.131,82,06,765/- i.e. Rs.19,77,31,015/- and balance amount of Rs.112,04,75,750/- (Rs. 131,82,06,765 - Rs.19,77,31,015) was disallowed.

**7.2** Being aggrieved by the above order of AO, the assessee preferred appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee furnished the copy of Form 3CL issued by DSIR. The Ld. CIT(A) noted that the DSIR had approved revenue expenditure to the extent of Rs.529,78,40,000/- and capital expenditure to the extent of Rs.114,69,23,000/- for weighted deduction u/s 35(2AB) of the Act. Though having observed so, the Ld. CIT(A) restricted the claim for weighted deduction @ 150% for capital expenditure only to the extent of the amount of Rs.87,88,04,510/- u/s 35(2AB) of the Act. In respect of revenue expenditure, the Ld. CIT(A) observed that, as against the assessee' claim of Rs.538,76,63,000/-, the DSIR has approved only Rs.529,78,40,000/- crores and therefore disallowed the difference of Rs.8,98,23,000/-. The Ld. CIT(A) further observed from the computation of total income that, though the assessee had claimed revenue expenditure of Rs.529,78,40,000/- but while reducing the amount of such



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claim debited to P&L A/c, the assessee has considered only Rs.304,48,15,892/-. The Ld. CIT(A) thus observed that, the assessee had claimed excess deduction of Rs.225,30,24,000/-. Overall therefore, as against the disallowance of Rs.3,88,02,17,515/- made by the AO, the Ld. CIT(A) restricted the disallowance u/s 35(2AB) to Rs.234,28,47,000/-. Aggrieved by the order of Ld. CIT(A), the assessee is now in appeal before us.

**7.3** Assailing the action of Ld. CIT(A), the Ld. AR submitted that, the assessee had incurred revenue expenditure of Rs.538,76,62,852/- towards scientific research at their approved R&D facility during the year. He pointed out that, out of the said amount, since revenue expenses to the extent of Rs.234,28,46,960/- were incurred for specific ongoing R&D projects, the assessee had added & capitalized the same to R&D in the books of accounts. The balance sum of Rs.304,48,15,892/- was thus shown to have been debited to P&L A/c. The Ld. AR thus showed us that, while computing the weighted deduction allowable u/s 35(2AB) of the Act, since only sum of Rs.304,48,15,892/- had been debited and claimed in P&L A/c, the said figure was reduced while computing the weighted deduction which was to be separately claimed in the computation of income. In light of the aforesaid facts, he thus contended that, the Ld. CIT(A) had proceeded on the erroneous presumption that the entire revenue expenses must have been debited to P&L A/c and thus the



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assessee ought to have reduced the entire value as opposed to only the sum of Rs.304,48,15,892/- for arriving at the weighted deduction which was to be separately reduced in the computation of income. The Ld. AR thus contended that, the Ld. CIT(A) had wrongly quantified excess claim of revenue expenditure made by the assessee at Rs.234,28,46,960/- and urged us to delete the same.

**7.4** The Ld. AR further submitted that, the DSIR had expressly quantified and approved capital expenditure of Rs.114,69,23,000/- incurred by the assessee to be eligible for weighted deduction u/s 35(2AB) of the Act. According to him therefore, it was improper on the Ld. CIT(A)'s part to restrict the weighted deduction to the extent of capital expenditure of Rs.87,88,04,510/- claimed by the assessee. He submitted that, once the DSIR had quantified and approved the amount eligible for weighted deduction, the Ld. CIT(A) ought to have directed the AO to allow deduction u/s 35(2AB) accordingly.

**7.5** Per contra, the Ld. CIT, DR, on the other hand, opposed the claim of the assessee on the ground that the assessee itself has restricted the claim of weighted deduction for capital expenditure to the extent of Rs.87,88,04,510/- and therefore in absence of revised return, the assessee could not be allowed further deduction. In respect of



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quantification of revenue expenditure, he urged that the matter be sent to the AO for verification of the facts.

**7.6** We have heard both the parties and perused the Form 3CL issued by DSIR, which was placed before us. The admitted facts are that, the in-house R&D facility of the assessee has been approved by the prescribed authority i.e., DSIR in Form 3CM. It is also noted that, the DSIR in their prescribed Form 3CL had approved revenue expenditure of Rs.529,78,40,000/- and capital expenditure of Rs.114,69,23,000/- to be eligible for weighted deduction u/s 35(2AB) in the relevant AY 2019-20. Now, the first question which arises before us, is whether once the assessee is covered under approval granted by DSIR, then does the AO or Ld. CIT(A) has any power to question the same, when the approval granted by DSIR is in terms of the power vested under the provisions of section 35(2AB) of the Act read with Rule 6(7A) of the Income-tax Rules, 1962. In our considered opinion, the provisions of Section 35(2AB) r.w. Rule 6(7A) does not give the lower authorities the power to question the veracity of the expenses quantified and approved by DSIR for weighted deduction. Our view finds support from the decision of the Hon'ble Karnataka High Court in the case of **Tejas Networks Ltd. v. Dy. CIT [2015] 60 taxmann.com 309/233 Taxman 426**, wherein it has been held that, once a certificate has been issued by the DSIR, the AO is



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prohibited from looking into the amount of admissibility of deduction. The relevant findings are reproduced hereunder:-

"27. A plain reading of Section 35(2AB) would clearly indicate that where a company is engaged in the business of bio-technology or in any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh Schedule incurs any expenditure on scientific research (not being expenditure in the nature of cost of any land or building) or in-house research and development facility as approved by the prescribed authority, then, they shall be allowed a deduction of a sum equal to one and a half times of the expenditure so incurred. The word used 'shall' in the above said provision would ordinarily mean that it should be understood in the context in which it is used and there cannot be departure in this regard. The said provision would also indicate that such expenditure as approved by the prescribed authority would be entitled for being allowed as a weighted deduction. There being no dispute to the fact that DSIR being the prescribed authority in the instant case, had issued the report in Form No. 3CL - Annexure - M certifying the total R&D expenditure (excluding land and buildings) as prescribed under Section 35(2AB) for a sum of Rs. 4,601.9 lakhs as against the claim of Rs. 5,957 lakhs made by the assessee in the return of income and as such, neither the second respondent nor first respondent could have sat in judgment over the said certificate issued by the prescribed authority. In other words, when the prescribed authority had certified the extent of expenditure which would be allowable, the assessing officer could not have sat in appeal over such certification made by the prescribed authority. The allowability or otherwise of such expenditure cannot be the subject matter of scrutiny by the assessing officer. It would also be required to be noticed that the assessing officer would be out of bounds to examine as to whether such expenditure as certified by the prescribed authority can be allowed or disallowed under Section 35 of the Act. In other words, the assessing officer is precluded from examining the correctness or otherwise of the certificate issued by the prescribed authority on the ground that it is either being contrary to facts or contrary to the express provisions of the Act. It would not be out of context to state that when assessee files the report issued by the prescribed authority, as indicated under Section 35(2AB), before the jurisdictional assessing officer and seeks for allowability of such expenditure, the Assessing Officer would be exceeding in his jurisdiction, if he were to undertake the exercise of examining as to whether the certificate issued by the prescribed authority is within the parameters of statutory provisions of the Act or otherwise. Keeping in mind that such contingency may arise, Parliament has incorporated sub-section (3) to Section 35 of the Act which would be



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a complete answer to such situations. Thus, if any question arises as to what extent, any activity constitutes or constituted or an asset is or was being used for scientific research, then the Assessing Officer would be required to refer such question to the Board for being referred to the prescribed authority. The decision of the prescribed authority in this regard would be final, inasmuch as, the certification of such expenditure is being examined by an expert body and undisputedly, such exercise has been outsourced by the Revenue under the Act itself, since the prescribed authority being possessed of requisite expertise, it would be in a better position to certify as to whether such expenditure claimed by the assessee under Section 35(2AB) would fall within the said provision or outside. This exercise of examining the correctness of the Certificate issued by the prescribed authority is not available to the Assessing Officer as could be seen from scheme of Section 35 of the Act."

**7.7** Following the above decision (supra), in the present case, we hold that, the assessee is legally entitled to weighted deduction @ 150% in respect of the revenue expenditure of Rs.529,78,40,000/- & capital expenditure of Rs.114,69,23,000/- as approved by DSIR in Form 3CL issued by them and that the lower authorities cannot sit in judgment over the quantification of the expenditure.

**7.8** Having held so above, we now come to next issue regarding the excess revenue expenditure, which according to Ld. CIT(A), had been claimed by the assessee. It is noticed that the Ld. CIT(A) had observed that, the assessee had only debited revenue expenditure of Rs.304,48,15,892/- to P&L A/c instead of Rs.529,78,40,000/- (as approved by DSIR) and therefore such excess claim could not be allowed. To this, the Ld. AR brought to our notice that, the total revenue R&D expenses incurred during the year was Rs.538,76,62,852/-, out of which R&D expenses of Rs.304,48,15,892/- had been charged to P&L A/c. The



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balance revenue expenditure of Rs.234,28,46,960/- though incurred towards salary, raw materials, components etc. at the in-house R&D facility, which were evidently revenue in nature, but since they pertained to specific ongoing R&D projects, the assessee was required capitalized the same in books under the head R&D in accordance with the applicable Ind-AS standards. However, for tax purposes, as the nature of said expenditure was revenue, the assessee had reported the aggregate sum of Rs.538,76,62,852/- by way of revenue expenditure incurred at its in-house R&D facility and claimed weighted deduction in Form 3CLA. Out of the said claim, the DSIR, after verification, is noted to have approved expenditure of Rs.529,78,40,000/- for weighted deduction u/s 35(2AB) of the Act. Having verified the averments made by the Ld. AR in light of the material placed before us, we are in agreement with the assessee that, the actual quantum of revenue expenses incurred during the year was Rs.538,76,62,852/- out of which Rs.304,48,15,892/- was debited to P&L A/c and therefore rightly considered and reduced while computing the further deduction u/s 35(2AB) of the Act in the return of income. Since the balance revenue expenditure of Rs.234,28,46,960/- was not charged to P&L A/c, in our considered opinion, the assessee had rightly considered the entire sum separately in the computation of income. We therefore do not find any excess claim having been made by the assessee, as alleged by the Ld. CIT(A) and thus direct the AO to delete the same.



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**7.9** This may be yet be viewed from another angle as well. According to us, irrespective whether the total revenue expenditure of Rs.538,76,62,852/- was debited to P&L A/c or not, since the amount to the extent of Rs.529,78,40,000/- has been approved by DSIR for weighted deduction u/s 35(2AB), the assessee is legally entitled to corresponding weighted deduction of Rs.794,67,60,000/- [529,78,40,000 X 150%]. The remaining expenditure of Rs.8,98,22,852/- [538,76,62,852 - 529,78,40,000], which was not approved by DSIR, in our considered opinion, is otherwise eligible for normal deduction u/s 35(1) of the Act. We accordingly direct the AO to re-compute and allow the deduction u/s 35(2AB) & 35(1) in respect of revenue expenditure to the assessee, in light of the aforesaid directions.

**7.10** We now proceed to examine the issue regarding the allowability of weighted deduction for the remaining capital expenditure of Rs.26,81,18,490/- [Rs.114,69,23,000 - Rs.87,88,04,510], which though approved by DSIR for weighted deduction u/s 35(2AB) but was not claimed by the assessee in return of income. We are in agreement with the Ld. AR that, this Tribunal has wide powers to entertain additional or fresh claim raised by the assessee which was not made in the return of income. In this regard, we gainfully refer to the decision of the Hon'ble Apex Court in the case of **NTPC v. CIT (229 ITR 383)** wherein it was held that, if a claim is available in law which had not been raised



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inadvertently or on account of erroneous plea of complex comp legal position, then such relief cannot be shut for all times to come and that the appellate authority are vested with the powers to entertain new or fresh claim made by the assessee, which was not made in the return of income. Our view is further supported by the decision of Hon'ble jurisdictional High Court in the case of **CIT v. Perlo Telecommunication and Electronic Components India Pvt Ltd (TC No. 413 of 2014) dated 20.09.2021** wherein one of the question of law before the Hon'ble High Court was as follows:-

"1. Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that assessing officer should have considered rectified computation of income submitted the assessee during the course of assessment proceedings and allowed the claim for deduction expenditure made through such revised computation and not through a revised return of income?

2. Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee did not claim additional deduction or exemption or made a fresh claim for deduction, by filing a revised computation and claiming deduction under section 37(1)?"

**7.11** The Hon'ble High Court is noted to have answered the above question in favour of the assessee, by holding as under:-

"8. In fact, the Tribunal took note of these decisions and had placed reliance on the decision in Commissioner of Income Tax Vs. Pruthvi Brokers & Shareholders Pvt. Ltd., reported in [2012] 349 ITR 336 (Bombay) and noted that even if a claim is not made before the Assessing Officer, it can be made before the appellate authorities and the jurisdiction of the appellate authorities to entertain such a claim has not been negated by the Hon'ble Supreme Court in Goetze Goetz India Limited Vs. CIT and in fact, the Supreme Court made it clear that the issue in the said case was limited to the power of the assessing



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authority and that the judgment does not impinge on the power of the Tribunal under Section 254 of the Act.

9. Thus, us, the power of the Tribunal cannot be curtailed, based upon the dictum of the Hon'ble Supreme Court in Goetze India Limited Vs. CIT. After noting this legal position, the examination is as to whether the Tribunal has recorded a factual finding that claim made by the assessee, when the case was discussed by the Assessing Officer during the scrutiny assessment by filing a computation, which is not a fresh claim. Further, the Tribunal held that the assessee is only claiming expenditure, which was left out at the time of filing of original income tax return and in any event, the Assessing Officer has power to make upward or downward adjustments in the income returned filed by the assessee and when the assessee had not claimed certain expenditures clearly evident from the records and it comes to the knowledge of the Assessing Officer at the time of assessment proceedings, the Assessing Officer should grant relief to the assessee.

10. The Tribunal took note of the Circular issued by CBDT dated 11.04.1955, wherein the Board ordered that the officers of the Income Tax should not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist the taxpayers in every reasonable way, particularly in the matter of claiming and securing reliefs reliefs and in this regard, the officer should take the initiative in guiding a taxpayer, where proceedings or other particulars before them indicate that some refund or relief is due to him.

11. Further, the Circular states that department should freely advise adv the assessee, when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs. It may be true that the Circular is of the year 1955. Nevertheless, as per the recent notification issued by the Income Tax Department as to how the department has to approach the assessee, the Board has been consistent to state that the department should adopt an assessee friendly approach. In any event, on facts, the Tribunal was convinced that the claim made by the assessee towards expenditure was not a fresh claim. Therefore, the Tribunal had exercised its powers conferred under Section 254 of the Act, which cannot be found fault with."

**7.12** In view of the above decisions (supra) and having regard to the Form 3CL issued by DSIR, we accordingly direct the AO to allow weighted deduction for the remaining capital expenditure of Rs.26,81,18,490/-



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[Rs.114,69,23,000 - Rs.87,88,04,510] as well, which would work out to Rs. 40,21,77,735/-.

**7.13** Overall therefore, we accordingly direct the AO to re-compute the weighted deduction allowable u/s 35(2AB) of the Act and the balance deduction allowable u/s 35(1)(i)/35(1)(iv) in light of the directions given above. These grounds are accordingly allowed for statistical purposes.

**8.** Ground No. 6 of the assessee's appeal and Ground No. 1 of the Revenue's appeal relates to the partial disallowance of deduction claimed u/s 80IC of the Act in respect of the profits derived by the eligible unit at Pantnagar.

**8.1** The facts as noted are that, the assessee operates a manufacturing facility for production of commercial vehicles in Pantnagar, Uttarakhand, which is eligible for deduction u/s 80-IC of the Act. The said unit had commenced its operations in the year 2010 and the relevant AY 2019-20 is the tenth year for the eligible unit. The assessee is noted to have claimed deduction of Rs.371,73,37,546/- u/s 80-IC of the Act in the return of income, which was accompanied with the audit report obtained from Chartered Accountant in Form 10CCB. The AO, following the assessment order passed by his predecessor for AY 2018-19, on the identical line of reasoning held that, the profits of 11.51% reported by the eligible unit of the assessee was excessive and restricted the same to 3%.



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The AO accordingly worked out the excess claim of deduction u/s 80IC at Rs.303,22,16,976/- and disallowed the same.

**8.2** Aggrieved by the assessment order, the assessee is noted to have preferred an appeal before the Ld. CIT(A). It is noted that, the Ld. CIT(A) also followed the appellate order passed by his predecessor for AY 2018-19 in which the profits of the eligible unit was estimated at 6.09% instead of 3% adopted by the AO and thus partly allowed the claim raised by the assessee, and restricted the disallowance to Rs.168,14,24,514/-. Aggrieved by this order of the Ld. CIT(A), both the parties are in appeal before us.

**8.3** Heard both the parties. It is noted that the findings and reasoning given by the AO for estimating the profits of the eligible unit at 3% is similar to the findings rendered by his predecessor in the assessment order passed u/s 143(3) for the preceding AY 2018-19. Even the Ld. CIT(A) has followed the findings rendered by his predecessor in the appellate order for AY 2018-19. Likewise, the submissions made by both the parties are noted to be the same as made before this Tribunal in assessee's own case for AY 2018-19. It is noted that this Tribunal had dealt with this issue in detail in assessee's own case in ITA Nos.554 & 561/Chny/2023 for AY 2018-19 and held that, the profits reported by the assessee in its stand-alone audited financials of the eligible unit, as



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certified in Form 10CCB, was based on sound accounting principles which did not warrant any interference, and accordingly deleted the disallowance made u/s 80-IC of the Act, by holding as under:-

**5.9** We have heard the rival submissions and perused the material placed on our record. The AO in the impugned order is noted to have observed that, the assessee operates an eligible manufacturing undertaking in Pantnagar and the profits of this eligible unit has been computed by the assessee at Rs.360,05,58,183/-. According to the AO, the books of account of the eligible unit have been done in a manner to create higher profits than other units, which in his view was nothing but diversion of profits. For holding so, the AO is noted to have majorly disputed the correctness of the revenues booked by the eligible unit, which according to him did not have any basis. The AO also observed that the designs, sketches for the products and marketing activities weren't conducted by the eligible unit whereas, the assessee booked the entire turnover in the eligible unit. According to him, the eligible unit was a cost center only and hence, only a minimum margin of 3% was permissible, which we find was based on his earlier predecessor's estimation done in AY 2016-17.

**5.10** On a perusal of the facts placed before us, it is noted that, the assessee had set-up a commercial vehicle manufacturing facility in the year 2009 with an aggregate capex of Rs.2250 crores at Pantnagar, Uttarakhand. The assessee had placed on record the relevant Notification No. 177/2004 dated 28.06.2004 issued by the CBDT notifying the said location as a designated area eligible for deduction u/s 80-IC of the Act. The assessee is noted to be involved in manufacture of Commercial heavy vehicles, *inter alia*, chassis/products and integrated facility for assembling Axle, Gear-box, vehicle, cab-welding etc. Upon completion of manufacture, the assessee transfers these completed chassis/products from sales-yard to their nodal point located at warehouses termed as regional sales office ('RSO')/Warehouse; and therefrom, the heavy-vehicles/goods/products are sold and sent to the ultimate consumers. It was brought to our notice that, the sales-yard is generally within the same premises as that of the manufacturing units to accommodate storage of the manufactured chassis etc, as they cannot be kept inside the plant for operational efficiency reasons and thereafter transferred to RSO/warehouse, from where the goods are sent to the ultimate customers. However, according to AO, there was no linkage between the goods sold from the RSO with the goods manufactured by the eligible unit and therefore he alleged that, the revenues credited in the stand-alone financials were shown to be higher, to shift profits. In this regard, we find that the Ld. CIT(A) had rightly taken note of the assessee's explanation that, the products manufactured by the eligible unit was identifiable from the chassis/product number which *inter alia* included a unique 11<sup>th</sup> alphabet from which the place of manufacture *i.e.* Pantnagar Unit was identifiable. The assessee had placed before us sample invoices to show that, they contained the chassis numbers from which the place of manufacture *i.e.* Pantnagar,



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was discernible from the eleventh character in chassis 'P' which indicated the Pantnagar unit. We thus find ourselves in agreement with the assessee that, the sales out of the products manufactured at the eligible unit were clearly identifiable and hence the revenues booked in the stand-alone financials of the eligible unit indeed had clear linkage with the production. According to us therefore, the presumptuous inference drawn by the AO that the revenues credited in the stand-alone accounts had no linkage with production at the eligible unit is factually erroneous.

**5.11** It is noted that the next observation made by the AO for disputing the correctness of the stand-alone accounts was *qua* the price at which the sales were recorded in the stand-alone financials of the eligible unit. Before advertent to the facts of the present case, let us first have a look at the relevant provisions of the Act. In this regard, it would first be relevant to examine the provisions of sub-section (8) of section 80-IA of the Act which stands incorporated by sub-section (6) of section 80-IC, by virtue of which, sub-section (5) and sub-sections (7) to (12) of section 80-IA is brought into Section 80-IC of the Act. Section 80-IA(8) of the Act mandates that, the profits of the eligible business shall be computed on the basis that transfer of goods are recorded at the market value of goods. The relevant extracts of the provision of section 80-IA(8) of the Act is as follows:

....

**5.12** From the above it is clear that, the sale price shall be the price which such goods fetch in the open market. We note that, the sales recorded in the stand-alone accounts are based on the price at which the goods manufactured were sold to the customers *viz.*, based on the invoices raised upon the third parties. According to us therefore, this basis of revenue recognition followed by the assessee is in line with Section 80-IC(6) read with Section 80-IA(8) of the Act. We therefore see no reason to tinker with the figure of revenues recognized in the standalone accounts of the eligible unit.

**5.13** We find that the Revenue's case is that, the assessee is discharging GST at the manufacturing point (when transferring to RSO/Warehouse) whereas booking sales at the retail point (sale to customers from the RSO) and due to this timing mismatch, the Revenue is disputing the correctness of the sales value credited in the stand-alone books of account for income-tax purposes. We find this particular observation to be misplaced. Firstly, as noted above, the revenues have been rightly recognized in accordance with the mandate laid down in section 80-IC(6) read with Section 80-IA(8) of the Act and hence does not warrant interference. Secondly, the Ld. AR has rightly brought to our notice that, under the GST laws, the levy of GST gets triggered upon transfer of goods from one point to another, even if it involves transfer from the manufacturing facility to the sales office of the same assessee. He showed us that, the levy of GST is not dependent upon ultimate sale, but is required to be discharged based on movement of goods from one place to another. It is for this reason that the GST is discharged at the manufacturing point, whereas the sales is recognized in the books when



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the goods are actually sold to customers and the ultimate risk, reward, possession and ownership is transferred. In light of the foregoing therefore, we are in agreement with the assessee that the recording of revenues of the eligible unit with reference to the prices at which they were sold to the third parties in the open market, was based on sound accounting principles as well as the relevant provisions of law.

**5.14** Apart from the above, the Ld. AR additionally brought to our notice that, this manner of revenue recognition has been consistently followed by the assessee in all the earlier years and that this AY 2018-19 was their 9<sup>th</sup> year of claim. He showed us that, there were substantial inter-unit transfers in the preceding AY 2017-18 and that, the revenues therefrom were benchmarked to the prices at which same products were sold in market to the customers. These transactions being in the nature of specified domestic transactions u/s 92BA of the Act were referred for transfer pricing scrutiny and the TPO in the order passed u/s 92CA(3) of the Act had found these specified domestic transactions to be at arm's length and no adverse inference was drawn u/s 80-IA(8) of the Act. Having regard to these contemporaneous facts, we find merit in the plea of the Ld. AR of the assessee that, when the manner of revenue recognition for recording inter-unit transfers *i.e.*, market value at which goods were sold to ultimate customers, has been accepted to be sound & reasonable basis by the TPO in the earlier AY 2017-18, then applying the principle of consistency, and in absence of change of any facts and in position of law in the relevant AY 2018-19, the basis of recognizing revenues in the relevant year could not have been disputed by the AO.

**5.15** It is further noted that, much ado has been made by the lower authorities that, a manufacturing unit is a cost center and therefore have no role in profit generation. We find this observation to lack any cogent logic. The Ld. AR has rightly pointed out that, the benefit of deduction u/s 80-IC of the Act is available only to such a unit which is engaged in manufacture of any article or thing and therefore the logic propounded by the lower authorities that, a manufacturing unit is a cost center having no/limited role in profit generation is contrary to the intention of the Legislature and the very purpose of bringing in this profit-linked deduction *i.e.* Section 80-IC of the Act. Also, in our considered view, normally a profit center is that segment of the business organization which has a profit base or is responsible for generating company's profits. Without a doubt, a manufacturing plant is both a source of revenues & profits and is in fact the main engine of the business function and, hence a profit center. It is noted that, Human resources department, R&D center, administration office etc. are regarded as cost centers and they are not a source of any revenue or profits. Accordingly, this particular observation made by the lower authorities ascribing manufacturing unit to be a cost center to limit the profit attributable to the eligible unit, is found to be erroneous and unjustified.

**5.16** The lower authorities are noted to have also laid much emphasis on the R&D efforts and sales/marketing efforts undertaken by the assessee outside the eligible unit, which according to them, were the major contributing factors to the revenues of the company. According to the Ld. CIT, DR, the profits reported by the eligible unit was inclusive of



these efforts which should not form part of the stand-alone accounts of the eligible unit. By not segregating the profits attributable to the R&D efforts and sales/marketing efforts, according to the Revenue, the assessee had artificially reported higher profits in the accounts of eligible unit. Having considered the entire gamut of facts show to us, we find these observations to be not only be factually erroneous but also outlandish. As noted above, sales planning, marketing, R&D etc. cannot be considered as profit generators and are subservient to the manufacturing activity. These efforts only aid the manufacturing unit in the course of business. Moreover, the Ld. AR has brought to our notice that all the relevant sales, marketing, R&D costs etc. incurred by the company at a centralized level had been allocated amongst all the units including the eligible unit by applying appropriate cost allocation parameters for arriving at the profits. The relevant cost allocation principles adopted by the assessee, as taken note of by us is as follows:-

Nature of cost	Cost Center Area	Unit-wise Allocation principle
Employee cost	Corporate	Cost of Production ratio
	R&D	Cost of Production ratio
	Marketing	Domestic / Exports / Total Turnover ratio
Finance Cost		Based on purpose of loan, the following type of allocation principles are adopted. - Unsecured Loan Ratio - Working Capital Ratio - Cost of Production Ratio - Exports Turnover Ratio
Corporate General OH costs including Consultancy, Rent, Admin etc.		Cost of Production ratio
Research, Design & Product Development cost incurred in R&D center		Cost of Production ratio
Selling and Distribution costs including Advertisement, Aftermarkets / Spares cost, Service cost, Travel cost, Commission, etc.		Domestic / Exports / Total Turnover ratio

**5.17** Having gone through the above, we therefore note that, all the common costs had indeed been allocated by the assessee to the eligible unit based on sound parameters. We agree with the Ld. AR that, all the costs attributable to the R&D efforts and sales/marketing efforts towards the sales of goods manufactured by the eligible unit, were already captured and debited in the audited stand-alone accounts and therefore there was no further cost left to be attributed thereto. It is noted that



the lower authorities have not pointed out any infirmity or falsity in the above cost allocation parameters adopted by the assessee. It is also not the Revenue's case that, the assessee had not allocated any particular cost/expense, which was otherwise required to be allocated, by which higher profits were reported. Accordingly, when the Revenue had accepted the total cost base, which included the expenditure/costs incurred towards R&D efforts and sales/marketing efforts, to be the costs incurred at the eligible unit, then it was improper for them to turn around and contrarily allege that the revenues attributable to such efforts ought to be excluded.

**5.18** In view of our above findings therefore, we find that the revenue of the eligible unit was booked on prudent accounting principles and in accordance with provisions of Section 80-IA(8) of the Act. It is noted that, there is no dispute regarding the direct costs debited in the audited stand-alone accounts of the eligible unit. The assessee has further demonstrated that the common/indirect costs have been allocated on sound and reasonable parameters. According to us therefore, the resultant profits relatable to the manufacturing unit as reported in the audited financial statements did not suffer from any infirmity, as wrongly alleged by the lower authorities inasmuch as there was no excess or higher profits reported by the assessee in its eligible unit at Pantnagar.

**5.19** We further note that, the case of the lower authorities is also that, the profits derived by the assessee from the eligible business are more than the ordinary profits of other business and therefore he estimated at what could be a reasonable profit from such eligible business and such profit be taken as reasonably deemed to have been derived from the eligible business for the purposes of computing the deduction u/s 80-IC of the Act. We find that both the AO and the Ld. CIT(A) did not bring on record any material or evidence on the basis of which they could say that the accounts of the business of the eligible unit have been so arranged that it has produced to the assessee more than the ordinary profits. Instead, both the lower authorities are noted to have proceeded only on surmises and conjectures. On the other hand, the assessee has placed before us the unit-wise profitability of the eligible unit as well as the non-eligible units. Having perused the same, we find that functionally, asset-wise and risk-wise, the eligible unit at Pantnagar is comparable with the non-eligible unit at Ennore and we also note that the profitability of both these units are also comparable. Moreover, in our considered opinion, when the assessee has placed the audited standalone accounts of the eligible unit at Pantnagar and still if the AO was of the view that the profits of the unit set up in backward area should be lower than other units, then the onus lay on the AO to establish the same with cogent material and corroborative evidence or at least, find specific fault or infirmity in the books produced by the assessee. We however note that the AO clearly failed to do so. Nothing tangible was brought on record to support such allegation or reasoning. As noted above, both the revenues recognized in the stand-alone accounts as well as the costs debited in the stand-alone accounts were based on fair & reasonable parameters and sound accounting principles. The AO has not pointed out any specific defect in the manner of



preparation of the stand-alone accounts, with corroborative evidence. Instead, the disallowance is noted to have made on mere suspicion and unfounded, baseless observations, as already discussed above.

**5.20** According to us, the fact that high profits were earned by the eligible unit in comparison to other units by itself cannot lead to conclusion that the deduction claimed u/s 80-IC was excessive. It is well known that higher or lower profit of a business in comparison to other units can be as a result of the cumulative effect of several factors. For instance, from the facts of the present case, it is noted that unlike the other non-eligible units, the eligible unit at Pantnagar had received grant of Rs.207.16 crores by way of incentive/subsidy from the government. We further note that the product profile manufactured by the eligible unit was also different. It was brought to our notice that, the eligible unit manufactured higher tonnage vehicles which had a better margin, whereas other units manufactured the lower tonnage vehicles which had comparatively lower margins. Due to difference in nature of products manufactured, the margins varied. It was also brought to our notice that, the employee costs at the Pantnagar Unit was comparatively lower to other eligible units due to the high level automation at this new plant whereas other plants were still labor-intensive. Having regard to these factors, we thus note that the assessee had also substantiated on facts that the eligible unit enjoyed benefit of subsidies, better margins and savings in costs in comparison to other units, which contributed to its higher profitability. The aforesaid facts lend credence to our view that the mere higher profit earned by eligible unit cannot be the reason to conclude that the assessee transacted in such an 'arranged' manner so as to produce more profits to it. In this regard, we find merit in the Ld. AR's reliance on the judgment of the Hon'ble Bombay High Court in *CIT v. Schmetz India (P.) Ltd* [2012] 26 taxmann.com 336/211 Taxman 59 (Bom) (Mag.) in which it has been held that merely because an assessee makes extraordinary profit, it would not lead to the conclusion that the same was organized/arranged for the purpose of claiming higher deduction u/s 10A of the Act. The case of the assessee is further supported by the decisions of the coordinate Benches of this Tribunal in *A.T. Kearney India (P.) Ltd v. Addl. CIT* [2014] 50 taxmann.com 26/153 ITD 693/66 SOT 140 (Delhi - Trib.) (URO) and *Zavata India (P.) Ltd. v. ITO* [2013] 31 taxmann.com 147/141 ITD 456 (Hyd -Trib.)

**5.21** Coming to the argument of the Ld. CIT, DR that, the AO was legally empowered to estimate the profits, we find the same to be fundamentally flawed. The Ld. AR brought to our attention that, the AO could have legally interfered with the stand-alone profits of the eligible unit only if he could first point out, (a) as to whether he was of the view that the transactions conducted by the eligible unit were not at fair market value in terms of section 80-IA(8) of the Act, or that (b) there was any arrangement with AEs in terms of Section 80-IA(10) of the Act which led to higher profits. As already noted by us above, the revenues recognized in the stand-alone accounts was in accordance with Section 80-IA(8) of the Act and therefore the first option (a) was not applicable in the present case. Further, it is not the AO's case that there was any such arrangement as set out in Section 80-IA(10), basis which it could



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be alleged that the profits had been shifted out of non-eligible unit to the eligible unit. According to us, the AO has failed to show that there existed any arrangement between the assessee and its connected persons or other ineligible units, by which the transactions were so arranged as to produce more than the ordinary profits in the hands of the assessee. Since the AO was also unable to show that there was any 'arrangement' in terms of Section 80-IA(10) of the Act, in our view, the AO could not have invoked the deeming provision and then estimated and scaled down the profits of the eligible unit of the assessee. Thus, according to us, even legally, the AO had erred in estimating the profit of the eligible unit without satisfying the condition precedent as prescribed in section 80-IA(6) read with section 80I-A(8) & (10) of the Act. In this regard, we find that, the reliance placed by the Ld. AR on the decision of the Hon'ble Delhi High Court in the case of *Pr. CIT v. Harpreet Kaur* [2017] 88 taxmann.com 641/397 ITR 125 (Delhi) against which the SLP preferred by the Revenue has been dismissed by the Hon'ble Apex Court, to be relevant. In the decided case, the AO observed that the profit of the eligible unit of the Assessee located at Baddi was abnormally high when compared to the profits of other units located in Delhi, although the business in these units was the same and all other variables in the business of cosmetics was also similar. The AO accordingly rejected the stand-alone accounts reporting profit of 38.05% and instead adopted 23% for working out the amount eligible for deduction u/s 80-IC of the Act. On appeal, the Hon'ble Delhi High Court held that, without pointing out the specific error in the accounts or disturbing the figures of sales or purchases in terms of Section 80-IA(8) / (10) of the Act, the AO could not have estimated lower profits by comparing the results with other units. The relevant findings taken note of by us, is as under:-

"9. Having heard Mr. Asheesh Jain, learned the Senior Standing counsel for the Revenue and Mr. Gautam Jain, learned counsel for the Assessee, the Court is of the view that the orders of the CIT(A) and the ITAT suffer from no legal infirmity. The reasons for this conclusion follow.

10. Under Section 80-IA(8) of the Act, one of the pre-requisites for the AO to not grant the deduction as claimed by the Assessee in his return is where the AO finds that the consideration at which transfers were made of goods and services of the eligible business as recorded in its accounts "does not correspond to the market values of such goods." The Proviso to Section 80-IA(8) further states:

"that where, in the opinion of the Assessing Officer, the computation of the profits and gains of the eligible business in the manner hereinbefore specified presents exceptional difficulties, the Assessing Officer may compute such profits and gains on such reasonable basis as he may deem fit." (emphasis supplied)

11. The expression "such reasonable basis" pre-supposes that the AO has to explain with sufficient clarity why the AO is rejecting the profit figures as put forth by the Assessee which emerges from the audited accounts of the Assessee. In the present case, for



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instance, the AO had to explain why he was rejecting for AY 2006-07 the GP ratio of 38.05% and substituting it with a rate of 23%. What the AO appears to have done in the present case is to reject an explanation given by an Assessee as to the difference in the selling price of the products manufactured by it at its Baddi unit compared to that at Delhi unit. The AO proceeded on the basis that the sales were to related parties thus giving an unfair advantage to the Assessee.

12. The above approach of the AO was rightly found by the CIT(A) to be not justified. Without pointing out the error, if any, in the accounts or disturbing the figures of sales or purchases, to compare the trading results of business of two units and simply reject was clearly not a "reasonable basis", as contemplated by the proviso to Section 80-IA (8) of the Act. The AO's order does not explain the basis for determining the GP ratio of 23% instead of 38.05% for AY 2006-07 and 25% instead of 43.07% for AY 2007-08. In the circumstances, the ITAT's conclusion that the AO's order was passed on conjectures and surmises cannot be said to be erroneous."

**5.22** In view of the above, we thus find substance in the argument of the Ld. AR that, the AO's action of estimating the profit of eligible unit was erroneous and therefore we reject this contention of the Ld. CIT, DR. Also, the basis of adopting margin of 3% and 6.09% by the AO and Ld. CIT(A) respectively, is found to be *ad hoc*, lacking any rational basis and is *per se* arbitrary and whimsical and so, is rejected. Moreover, we also note that, it is not a case where the AO had invoked section 145(3) of the Act and rejected the book results and has passed the order u/s 144 of the Act. We thus find merit in the Ld. AR's alternate plea as well that, the AO could not have legally ventured into estimation of profits without rejecting the books of account u/s 145(3) of the Act.

**5.23** In support of our above findings, we also gainfully refer to the decision of this Tribunal at Ahmedabad in the case of *Cadila Healthcare Ltd v. Addl. CIT* [2012] 21 taxmann.com 483/[2015] 67 SOT 110 (Ahd - Trib.) (URO) wherein this Tribunal, on similar facts & circumstances, had negated the Revenue's contention that the profit attributable to the marketing and R&D activities, which was carried outside the eligible unit, should be demarcated and excluded from the computation of the profits of the eligible unit. In the decided case also, the assessee was carrying out manufacturing operations at its eligible units and that the marketing efforts were being conducted outside the unit and therefore the AO had demarcated and assigned profits of the eligible unit to the marketing division and thereby reduced the figure of profits allowable as deduction u/s 80-IC of the Act. The relevant findings of the AO taken note of by this Tribunal, was as under:-

"6.6....The AO's main thrust after the elaborate discussion was that only the manufacturing profit of the Baddi Unit is the profit which alone is eligible for deduction u/s.80-IC. The assessee-company was generating substantial profit on account of its brand value and marketing network on those products when



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acquired/purchased on P2P basis. The ultimate sale price, on that point of time, as per AO, for those products consisted the (i) profit from manufacturing of the product which was taken by P2P supplier, (ii) profit derived from brand value of the product and (iii) profit derived from marketing network of those products. The AO has then invited attention on the provisions of section 80-IC and opined that the profits and gains of an eligible business is the only source of income of the assessee. He has referred section 80-IC(7) r.w.s.80-IA(5), so that the profits of the eligible undertaking is to be computed as if such eligible business is the only source of income. His conclusion was that the sale price of the products manufactured at the Baddi Unit should be the cost of the production plus a reasonable amount of profit which should have been charged, however, the average sale price was escalated by claiming profit derived on sale of products manufactured by Baddi Unit which according to him, the alleged huge profit was not correct for the purpose of claiming the deduction u/s.80-IC of the IT Act.

6.8 He has given an another reasoning and wanted to analyze the issue from yet an another angle. According to him, the assets, such as, brand value and marketing network are the assets owned by the assessee-company as a whole organization. Those assets were not owned by the said Undertaking, i.e. Baddi Unit. Those brands were acquired prior to the setting up of Baddi Unit. The profits of the assessee-company were on account of three reasons; viz. (i) manufacturing assets, (ii) brand assets and (iii) marketing assets. Out of the three, only the manufacturing assets was owned by the said Undertaking, i.e. Baddi Unit. Hence the profit only to the extent of the "manufacturing profit" could be said to be derived from the Baddi Undertaking, which according to AO, was eligible for deduction u/s.80-IC of IT Act.....

**5.24** After taking cognizance of the above observations made by the AO, the Tribunal is noted to have firstly examined the provisions of Section 80-IC of the Act and the meaning of the term 'profits' from the eligible business. It held that, the term 'profit' implies the gain made by the business. The calculation of 'profit' was held to be a function of the price received upon sale less the total cost. It was noted that, the total cost not only includes manufacturing costs but all other costs including R&D, marketing, common overheads to make the sale possible. The Tribunal thus noted that the assessee's eligible unit had debited all direct and indirect costs in the stand-alone accounts and reduced it from the sales figure to arrive at the profits eligible for deduction u/s 80-IC of the Act. We concur with this analogy of the Tribunal as discussed and the relevant findings taken note of, are as follows:-

"Firstly, the term "Profit" implies a comparison between the stage of a business at two specific dates separated by an interval of a year. Thus fundamentally the meaning is that the amount of gain made by the business during the year. This can be ascertained by a comparison of the assets of the business at the two dates. To determine the "profit" of a manufacturing Unit the accounting



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standard has given certain guidelines, enumerated in short. In the accounting the "profit" is the difference between the purchase price and the cost of bringing the product to market. A "gross profit" is equal to sales revenue minus cost of goods sold or the expenses that can be traced directly to the production of the goods. Rather, the "operating profit" is also defined as equal to sales revenue minus cost of goods plus all expenses, except interest and taxes. Most of the manufacturing companies have 'Total Cost' based pricing method. Total Cost has, broadly speaking, two components; *i.e.* raw-material plus value addition (it includes all overheads). Therefore, profit margin is price minus total cost. In manufacturing Unit, thus cost of conversion is production overheads, such as, direct labour cost and inextricably linked expenditure of production. In general, every manufacturing concern has fixed manufacturing capacity. So the objective of such concern ought to be to maximize the profit. Now the problem, as posed, is that let us assume that the said manufacturing unit is producing two products; *viz.* "A" & "B". For production of "A" product, let us say, there is less working hours, but fetching more value for less money. However, in the production of product "B" due to complex process of manufacturing it requires more working hours. For pricing product "B" the situation is that more money expenditure and may fetch less value. Therefore, in the processing department it is not possible to segregate the two components to determine the segregated margins. Keeping this accounting principle in mind, we revert back to the language of section 80-IC which says that a deduction is permissible of such profits of a specified Undertaking engaged in manufacturing of certain article or thing. The business of the said enterprise/concern should be manufacturing of article or thing and the profit therefrom is eligible for deduction u/s.80-IC if that profit is part and parcel of the gross total income. As noted hereinabove, profit is the difference between the purchase price and the cost of production along with the cost of bringing the product to market. This basic principle of accountancy, as appeared, have been adopted by Baddi Unit because as per Profit & Loss account, cost of material, personal cost and general expenses, corporate expenses were reduced from the sale price to arrive at the "profit before tax" *i.e.* Rs. 116,82,91,400/-."

**5.25** Like in the present case before us, in the above decided case (*supra*) also, the AO had not pin-pointed any defect in the working of the "profit" of the eligible Unit and had instead estimated the margin of the eligible at 10% of cost basis. The Tribunal is noted to have held that, there was no cogent basis to the purported segregation and the assumption of the AO that, the major portion of the profit would be attributed to other functions and that only a nominal profit was to be attributed to the eligible manufacturing unit. The relevant findings are as under:-

"10.3 It is not in dispute that for Baddi Unit the assessee has maintained separate books of account and therefore drawn a separate profit and loss account. In such a situation, whether the



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AO is empowered to disturb the computation of profit, is always a subject matter of controversy. From the side of the assessee, reliance was placed on *Addl. CIT v. Delhi Press Patra Prakashan [2006] 10 SOT 74 (Delhi)* (URO). In this case, the assessee was claiming deduction u/s.80-IA in respect of a Unit No.4. The said Unit was showing profit @ 62%. As against that, AO has noticed that a margin of profit shown by the assessee as a whole was only to the extent of 10%. The AO has therefore recomputed the profit of the said Unit by applying sub-section (10) of section 80-IA and restricted the profit of the said Unit to 10% only. While dealing this issue, the Respected Coordinate Bench has concluded that it was not justified to disturb the working of profit merely because the profit rate of eligible unit was substantially higher than overall rate of profit of other Units of the assessee, more so when separate books were maintained by the assessee in respect of the said eligible Unit. In the present case as well the AO has proceeded to disturb the profit of the Baddi Unit and held that only 6% profit is eligible for deduction u/s 80-IC. While doing so, identically, the AO has not pin-pointed any defect in the working of the "profit" of the Baddi Unit. In such a situation, we can say that the legal proposition as laid down by Delhi Bench can also be applied in the present appeal as well.

10.4 The AO has also concluded that only the incremental profit, representing the difference between the profits earned earlier when the products were procured on P2P basis and the profits earned by the Baddi Unit, should be treated as a manufacturing profit. The AO has then said that earlier the assessee was procuring the products on P2P basis and showing the average profit at 80%, however, on the basis of average selling rate of the produces manufactured by Baddi Unit the average profit was gone up to 86%. The AO has therefore restricted the deduction only at 6%. He has placed reliance on *Rolls Royce Plc (supra)*. In that case, the assessee was a UK based company carrying on marketing and sales activities in India through a subsidiary. The subsidiary was also rendering support services to the assessee, a UK based company. The assessee was carrying out manufacturing operations. It was held that 35% of its profits could be attributed to the marketing activities carried out in India and, therefore, chargeable to tax in India. The facts of that case were altogether different and there was a finding that undisputedly there was a PE in India and as per Indo-UK DTAA the income has to be taxed in India. An another fact was that there was no separate account of the assessee's India operation and the AO had found that on the basis of global accounts the profits were determined on sales. In that case, marketing was said to be the primary activity for earning profit. The profit was directly due to operation in India. In that context the word "attributable" was considered and then it was held that such part of the income as it was reasonably attributable to the operations carried out in India is taxable. The expression "business connection" was also considered and then it was found that it will include a person acting on behalf of a non-resident and carried on certain activities is having business



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connection. A business connection has to be real and intimate and through which income must accrue or arise whether directly or indirectly to the non-resident. On those facts, since it was found that R&D activities were carried out by the assessee, therefore, 15% of the profit was allocated to the R&D activities and balance of the profit was attributable to the marketing activities in India. The said decision was entirely based upon the connectivity of the marketing operations with the profits. The CBDT Circular No.23 of 1969 dated 23/07/1969 was also taken into account wherein it was opined that where a non-resident's sales to Indian customers are secured through the services of an agent in India then that profit is attributable to the agent's services. Meaning thereby because of the close connection of the agent's marketing activity the proportionate profit was attributed to the said activity. Contrary to this, there was no finding that upto the extent of 80%, the profit was attributed to the assessee-company. The segregation between 80% and 6% was not on account of any evidence through which it could independently be established that the major portion of the profit could be attributed to the assessee-company and rest of the profit could only be attributed to the Baddi Unit."

**5.26** In the decided case (*supra*) also, the Tribunal also noted that the AO had not disputed the allocation of common expenses amongst the units including the eligible unit and the fact that the costs incurred on R&D, marketing, brand promotion etc. had already been allocated on sound allocation parameters while computing the profits of the eligible unit as well. Accordingly, when the cost base of the eligible unit was held to be correctly worked out, the Tribunal held it to be improper to segregate and allocate the profits of the eligible unit to the R&D, marketing, brand promotion activities, when all the related costs had already been considered in the stand-alone accounts of the eligible unit, by holding as under:-

"10.5 The AO has also made out a case that the book profit percentage of Baddi Unit was 58.67%, whereas the profit of the assessee-company as a whole was 11.88%. If we further elaborate this aspect, then the AO has also given a working through which the average selling rate was 86.36% of the Baddi Unit. Meaning thereby if we presume for example that the assessee has gross profit of 86%, then the net profit was disclosed at 58%. A question thus arises that what beneficial purpose could be served for the reduction of gross profit to a lower percentage of net profit, specially when the allegation of the A.O. was that there was an attempt to declare higher profit of Baddi unit to get more advantage of deduction. On perusal of the P&L account, it is an admitted factual position that the assessee has in fact debited certain expenses which have included head office expenses, such as, marketing expenses and corporate expenses. Meaning thereby the net profit of the Baddi Unit was not merely production cost minus sale price, but the difference of sale price minus all general expenses which were attributable to the sales. Therefore, it is not reasonable to say that unreasonably the profit was escalated. The



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difference between the two percentages of profit, *i.e.* about 28% (G.P. - N.P.) thus represented the expenditure which could be said to be in respect of marketing network and brand of the product related expenses. The AO has not complained about the allocation of expenditure as made by the assessee while computing the profit of the Baddi Unit. Once the assessee has itself taken into account the related expenses to arrive at the net profit, then it was not reasonable on the part of the Revenue Department to further reallocate those expenses by curtailing the percentage of eligible profit.

**5.27** We find that the identical factual situation is involved in the present case also. As already noted above, the assessee has already allocated all the indirect costs including expenses incurred on R&D, sales, marketing etc. in the audited stand-alone accounts of the eligible unit, a fact which has not been disputed by the lower authorities. Therefore, in light of the above decision (*supra*), the lower authorities' action of further ascribing profits of the eligible unit towards R&D, sales, marketing efforts is held to be wholly improper.

**5.28** According to us, the entire action of the lower authorities of segmentation of eligible profit of the manufacturing unit was meaningless having no sanction in law. As rightly pointed out by the Ld. AR, there is no line of demarcation to determine the sale price of a product, apart from its market price, as prescribed in Section 80-IA(8) of the Act. According to us, the sale price cannot further be segregated by imputing price attributable to marketing and R&D efforts for the simple reason that there is no such provision contained in law. We agree with the Ld. AR that, the method of computation to be adopted by the assessee, in line with Section 80-IA(8) of the Act and the relevant jurisprudence on this subject is that, on one side of the P&L A/c the sale price *i.e.* market value of products is to be credited and on the other side, the production cost plus overheads including common & indirect costs allocable to turnover is to be debited to compute the profit. We find that, this is what has been done by the assessee and certified by the auditor as well in Form 10CCB. Accordingly, we see no reason to tinker with the eligible profits as computed by the assessee, particularly when, the lower authorities have not pointed out any specific infirmity in the calculation, basis of allocation etc. In support of the foregoing, we further rely on the following findings made by this Tribunal in the case of *Cadilla Health Care Ltd. (supra)*;

"10.6 From the side of the Revenue, Id. Special Counsel has argued that in terms of the provisions of section 80-IA(5) the deduction is to be computed as if such eligible business is the only source of income of the assessee. According to him, the manufacturing profit was the only source of income and that alone should be accounted for in the P&L account to claim the deduction u/s.80-IC of the Act. Ld. DR has explained that as per the view of the A.O. up-to 80% of the profit was the result of efficient marketing network plus due to the brand name of the company. Only 6% was the manufacturing profit, per A.O. It is true that section 80-IC does recognized the provisions of section 80-IA.



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Refer, Sub-section (7) of section 80-IC which prescribes as follows:—

"Section 80-IC(7) : The provisions contained in sub-section (5) and sub-sections (7) to (12) of section 80-IA shall, so far as may be, apply to the eligible undertaking or enterprise under this section."

Due to this reason, our attention was drawn on the provisions of section 80-IA(5) of IT Act; reads as under:—

....

As per this section, the profits of an eligible undertaking shall be computed as if such eligible business is the only source of income of the assessee. In this section again, the Statute has used three terms, *i.e.* "profit", "business" and "income". As narrated hereinabove an 'income' has a wider expression than the 'profit'. Likewise, 'business' has also a wider meaning than the word 'income'. In the present case, manufacturing of pharmaceutical products is declared as "eligible business". Then the question is that what is the profit of such an eligible business? On careful reading of this sub-section, it transpires that the said eligible profit should be the only source of income. If we examine the separate profit & loss account of Baddi Unit, then it is apparent that the only source of income was the sales of the qualified products. In the said P&L A/c there was no component of any other sources of income except the sale price and otherwise also the assessee has confined the claim only in respect of the eligible profit which was derived from the sales of the pharmaceutical products. This section do not suggest that the eligible profit should be computed first by transferring the product at an imaginary sale price to the head office and then the head office should sale the product in the open market. There is no such concept of segregation of profit. Rather, we have seen that the profit of an undertaking is always computed as a whole by taking into account the sale price of the product in the market.

10.7 The Ld. AO has suggested that the assessee should have passed entries in its books of account by recording internal transfer of the product from Baddi Unit to the head office marketing unit and that too at arm's length price. From the side of the appellant an argument was raised that what should be the arm's length price in a situation when a product is ultimately to be sold in the open market. Whether the AO is suggesting that an imaginary line be drawn to determine the profit of the Baddi Unit at a particular stage of transfer of products. Definitely a difficulty will arise to arrive at the sale price as suggested by AO on transfer of product from Baddi to head office. What could be the reasonable profit which is to be charged by the Baddi Unit will then be a subject of dispute and shall be an issue of controversy. On the contrary, if the sale price is recorded at the market price, which is easily ascertainable, that was recorded in the Baddi Unit account, the scope of controversy gets minimal. Rather, the intense contention of the Ld.AR is that the facts of the case have explicitly demonstrated that the goods manufactured at Baddi Unit were transported to various C&F agents across the country for sale



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purpose. Therefore, the eligible business is the manufacturing of pharmaceutical products and the only source of income was the profit earned on sale of the products.

10.8 An interesting argument was raised by Id. Special Counsel that the provisions of section 80-IA(8) prescribes the segregation of profit in case of transfer of goods from one Unit to another Unit. But section 80-IA(8) reads as follows:—

.....

Where any goods held for the purpose of the eligible business are transferred to any other business carried on by the assessee, then if the consideration for such transfer as recorded in the accounts of the eligible business do not correspond to the market value of such goods, then for the purposes of the deduction the profits and gains of such eligible business shall be computed as if the transfer has been made at the market value of such goods as on that date. Though the section has its own importance but the area under which this section operates is that where one eligible business is transferred to any other business. We again want to emphasis that the word used in this section is "business" and not the word "profit". We can hence draw an inference by describing these two words and thus have precisely noted that 'eligible business' has a different connotation which is not at par or identical with the "eligible profit". The matter we are dealing is not the case where business as a whole is transferred. This is a case where manufacturing products were sold through C&F in the market. Even this is not the case that first sales were made by the Baddi Unit in favour of the head office or the marketing unit and thereupon the sales were executed by the head office to the open market. Once it was not so, then the fixation of market value of such good is out of the ambits of this section. If there is no intercorporate transfer, then the AO has no right to determine the fair market value of such goods or to compute the arm's length price of such goods. The AO has suggested two things; first that there must be inter-corporate transfer, and second that the transfer should be as per the market price determined by the AO. Both these suggestions are not practicable. If these two suggestions are to be implemented, then a Pandora box shall be opened in respect of the determination of arm's length price *vis-a-vis* a fair market and then to arrive at reasonable profit. Rather a very complex situation shall emerge. Specially when the Statute do not subscribe such deemed inter-corporate transfer but subscribe actual earning of profit, then the impugned suggestion of the AO do not have legal sanctity in the eyes of law.

10.9 A very pertinent question has been raised by Id.AR Mr. Patel that what should be the line of demarcation to determine the sale price of a product if not the market price. As far as the present system of fixation of sale price of the product is concerned, a consistent method was adopted keeping in mind the several factors, depending upon the market situation, we have been informed. But if the assessee is compelled to deviate from the consistent method of pricing, then any other suggestion shall not



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be workable because no imaginary line of profit can be drawn, precisely pleaded before us. So the uncertainty is that on the production cost what should be the reasonable mark-up which shall cover up the margin of profit of a manufacturing unit. And why at all this complex working of computation be adopted by this assessee when a very simple method is adopted that on one side of the P&L A/c the production cost plus overheads were debited and on the other side of the P&L A/c sale price was credited to compute the profit. There are certain expenditure which are notional expenditure and there are certain expenditure which are self-generated to create the brand value of a product. Naturally, the allocation of notional expenditure particularly in respect of self-generated brand is a matter of hypothesis and not a matter of reality. Logically it is not realistic to set apart a value of a self-generated brand which had grown in number of years.

10.10 The segment reporting of profit is although in practice but the purpose of such reporting is altogether different. Such segment information is particularly useful for financial analysis, so that the management may keep a close watch on the performance of the diversified business lines. The areas of demarcation are business segment, geographical segment, etc. But as far as the Revenue of an enterprise is concerned while segmentation is required, then Revenue from sales to external customers are reported in the segmented statement of profit and loss. In an accounting system, an intra-company sale between divisions or units is not regarded as Revenue for the purpose of such financial reporting. As per the Accounting Standards an Enterprise Revenue ignores in-house sales that represent Revenue to one segment and Expense to another. In this connection, the AO has discussed the Hon'ble Supreme Court decision pronounced in the case of *Liberty India (supra)*. The AO wanted to justify his attempt of segmentation on the basis of the theory that only the profits derived due to manufacturing activity can be said to be derived from eligible undertaking. It was contested by AR before us that the "segment reporting" is about the segregation of business and not about the segregation of any specific activity. In the case of *Liberty India (supra)* it was observed that the IT Act broadly provides two types of tax incentives, namely, investment linked incentives and profit linked incentives. The Court was discussing Chapter VIA which provides incentive in the form of tax deductions to the category of "profit linked incentives". The incentive is linked with generation of 'operational profit'. Therefore, the respected Parliament has confined the grant of deductions only derived from eligible business. Each eligible business constitutes a stand alone item in the matter of computation of profit. The Court has said that because of this reason the concept of "segment reporting" was introduced in Indian Accounting Standards. Ld. Counsel Mr. Srivastava has argued that the deduction u/s.80-IC is a profit linked incentive. Only the Operational Profit has to be claimed for u/s. 80-IC deduction. According to him, each of the eligible business constitutes a stand alone item in the matter of computation of profit. For the computation of profit of an eligible



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business the word used is "derived" in section 80-IC which is a narrower connotation, as compared to the word "attributable". In other words, by using the expression "profits derived by an undertaking", Parliament intended to cover such sources not beyond the first degree, i.e. the first degree of manufacturing activity. The law pronounced by the Hon'ble Supreme Court is final and should not be disputed. However, a judgment is to be correctly interpreted.

10.13...But at present, when the method of accounting as applicable under the Statute, do not suggest such segregation or bifurcation, then it is not fair to draw an imaginary line to compute a separate profit of the Baddi Unit. The Baddi Unit has in fact computed its profit as per a separately maintained books of account of the eligible manufacturing activity. To implement the method of the computation at stand alone basis, as conveyed by the AO, the manufacturing unit has prepared a profit & loss account of its manufacturing-cum-sale business activity. If the Statute wanted to draw such line of segregation between the manufacturing activity and the sale activity, then the Statute should have made a specific provision of such demarcation. But at present the legal status is that the Statute has only chosen to give the benefit to "any business of drug manufacturing activity" which is incurring expenditure on research activity is eligible for this prescribed weighted deduction. The segregation as suggested by the AO has first to be brought into the Statute and then to be implemented. Without such law, in our considered opinion, it was not fair as also not justifiable on the part of the AO to disturb the method of accounting of the assessee regularly followed in the normal course of business. It is true that otherwise no fallacy or mistake was detected in the books of account of Baddi Unit prepared on stand alone basis through which the only source of income/profit was the manufacturing of the specified products. We therefore hold that the AO's action of segregation was merely based upon a hypothesis, hence hereby rejected. These two grounds Nos.6 & 7 are allowed."

**5.29** In view of the above, we therefore hold that the action of the lower authorities in assuming that the profits of the eligible unit was artificially higher because the other units or company as a whole had a lower profitability without any relevant evidence or material, was baseless and unjustified. We also disapprove their observations for segregating and estimating profits of the eligible unit on pure hypothesis, for the reasons discussed above. Before parting on this issue, it is noted that, the AO has used the expression 'tax evasion' and adoption of 'colorable device' by the assessee in several places in the assessment order, for making the impugned disallowance. We find such usage to be uncalled for as the allegations of 'tax evasion' is a very serious allegation and therefore, the AO should have desisted from using such expression when he never made out such a case in the impugned order. We note that, such allegation, for the reasons discussed above, were unfounded and that the decisions relied upon by the AO for stating so, was completely distinguishable having no relevance in the factum of



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the present case. It is not in dispute that the assessee had indeed invested and set-up a manufacturing facility in industrially designated backward area in Pantnagar, Uttarakhand, in which it has investment more than Rs.2250 crores. The said unit has been in operation for more than nine years and in none of the prior years the authorities are noted to have doubted its existence. It is also not the Revenue's case that the assessee has not fulfilled the conditions precedent in Section 80-IC to avail deduction in respect of profits derived by this eligible unit. We are in agreement with the Ld. AR of the assessee that the assessee is free and entitled to arrange its affairs within the four corners of law to avail tax benefits, which the law permits it to claim. According to us therefore, the AO grossly erred in alleging tax evasion in the present case.

**5.30** For the reasons set out above, we thus hold that the profits reported in the stand-alone audited financials of the eligible unit as certified in Form 10CCB issued by the auditor was based on sound accounting principles which does not warrant any interference. Accordingly, the AO is directed to allow the deduction u/s 80-IC as claimed by the assessee in the return of income and therefore delete the disallowance of Rs.2,90,64,71,673/-. Hence, the Ground Nos. 7 to 15 of the assessee stands allowed and Ground No. 3 of the Revenue is dismissed."

**8.4** The facts involved in the relevant year are noted to be similar to the above decision (supra) and no distinguishable facts were pointed out by the Ld. CIT, DR appearing for the Revenue. Following the above decision (supra), we accordingly hold that the lower authorities were unjustified in rejecting the audited stand-alone financials of the eligible unit of the assessee at Pantnagar and direct the AO to allow the deduction u/s 80IC of the Act as claimed by the assessee in the return of income. Accordingly the AO is directed to delete the impugned disallowance. Hence, Ground No. 6 raised by the assessee is allowed and Ground No. 1 of the Revenue's appeal is dismissed.

**9.** Now we take up the remaining grounds in the **Revenue's appeal in ITA No. 1664/Chny/2024.**



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**10. Ground No.2** of the Revenue is against the Ld. CIT(A)'s deleting the disallowance of deduction u/s 80G of the Act. The facts of the case as noted by us are that, during the year the assessee had incurred expenditure of Rs.34.06 crores towards its CSR obligations. It is noted that the said CSR expenditure inter alia comprised of donations made to registered charitable trusts and though the assessee had disallowed the said expenditure in terms of Explanation (2) to Section 37 of the Act, the assessee had alternatively claimed deduction eligible u/s 80G of the Act which worked out to Rs.4,32,97,964/-. Apart from the foregoing, the assessee had made regular donations to registered charitable trusts (non-CSR) whose deduction u/s 80G claimed was Rs.5,15,18,611/- and therefore the aggregate deduction was Rs.9,48,16,576/-. Before the AO, complete details in support of the deduction claimed u/s 80G of the Act was provided. The AO is noted to have disallowed the deduction to the extent of Rs.4,32,97,964/- claimed u/s 80G in respect of CSR donations made to charitable trusts. According to the AO, the intention of the legislature was not to allow deduction of CSR expenditure and therefore allowing the alternate claim u/s 80G would result into subsidizing the CSR expenditure. The AO further observed that, the CSR donations are not made voluntarily but pursuant to the obligation imposed under Section 135 of the Companies Act, 2013 and therefore, the element of charity was



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also missing. On appeal, the Ld. CIT(A) is noted to have deleted the impugned disallowance, by holding as under:-

"I have gone through the order of the AO as well as the submissions by the appellant. It is not in dispute that CSR expenses are not allowable as deduction u/s 37 of the Income Tax Act, in this regards perusal of explanation to section 37 reads as under:

Explanation 2.-For the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession."

Plain reading of the explanation only refers to the disallowance with regards to profit and gains of business and profession. However there is no embargo in so far as section 80G is concerned. And therefore I am in agreement with the appellant that benefit of deduction u/s 80G should be allowed on donation made to approved institution.

In this regards Bangalore ITAT in case of First American (India) (P.) Ltd v. ACIT [IT Appeal No.1762 (Bang.) [2019] has held that -

"Assessee could not be denied benefit of claim under Chapter VI-A, which was considered for computing 'total taxable income', merely because such payment forms part of CSR, as it would lead to double disallowance, which was not intention of Legislature"

Respectfully following the judgment of ITAT Bangalore, the AO is directed to allow the deduction u/s 80G after due verification of fulfillment of conditions applicable u/s 80G of the Act. Thus, this ground of appeal is allowed."

**10.1** Aggrieved by the above order, the Revenue is now in appeal before us.

**10.2** Assailing the action of the Ld. CIT(A), the Ld. CIT, DR appearing for the Revenue has filed written submission in support of the AO's order, which has been taken on record. The Ld. DR emphasized on the definition of term 'donation' and its voluntariness, which according to him, is absent



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in CSR donations and therefore he submitted that the AO had rightly disallowed the deduction claimed u/s 80G of the Act.

**10.3** Heard both the parties. It is noted that the provisions of Section 37 of the Act, which deals with allowability of expenses incurred in the course of and for the purposes of business, is applicable only to the extent of computation of 'Business Income' under Chapter IV-C of the Act. In our view, therefore, the Explanation (2) to Section 37 of the Act which denies deduction for the expenses incurred on CSR initiative by way of deduction from computation of 'Business Income' cannot be read into Chapter VI of the Act, which is applicable for arriving at taxable income from the Gross Total Income. It is also noted that wherever the Legislature intended that CSR contributions to any specific charitable trusts should be denied deduction, necessary provisions were incorporated in the specified sub-clauses, viz. sub-clauses (iihk) and (iihi). It is noted that no such debar has been set out by the Legislature in any other sub-clauses of Section 80G of the Act. We find the reliance placed by the Ld. AR of the appellant on the decision of this Tribunal at Kolkata in the case of **JMS Mining Pvt. Ltd. v. PCIT (190 ITD 702)** to be relevant, wherein this Tribunal after considering the provisions of Explanation (2) to Section 37 of the Act and Section 80G of the Act, observed that the Parliament intended restrictions to CSR expenditure spent by way of donations to only two funds/trusts i.e. Swachh Bharat Kosh and Clean Ganga Fund. The Tribunal accordingly



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held that, the fact that specific prohibition/restriction has been made for CSR contributions only to two eligible charitable organizations, it automatically implies that there is no prohibition/restriction in respect of claim of CSR expenses, in any other cases, which are otherwise eligible under Section 80G of the Act.

**10.4** As far as the arguments made by the Ld. DR and the decisions cited by him is concerned, we find that similar arguments were raised before the coordinate bench of this Tribunal at Mumbai in the case of **ACIT v. Sikka Ports & Terminals Ltd in ITA Nos. 3047/Mum/2024 & 3755/Mum/2023 dated 30.12.2014** wherein after elaborately discussing the allowability of CSR spend as a deduction under section 80G of the Act, the Tribunal answered the question in favour of the assessee, by holding as under:-

"5. We heard the parties and perused the material on records. The assessee during the year disallowed a sum of Rs.33,85,00,000 under section 37 of the Act towards the CSR Spend in compliance with section 135 of the Act. Since the institutions to which the said amounts are given are registered under section 80G of the Act, the assessee claimed 50% i.e.16,92,50,000 of the same as deduction. The argument of the revenue is that the payment are made to comply with the mandate under the Companies Act, and therefore it cannot be treated as donations which are "voluntary" payments. The further argument of the revenue is that when the statute has denied the direct claim of the CSR spend under section 37, the assessee claiming the deduction indirectly under section 80G is against the intention of the legislature and cannot be allowed. The assessee's contention is that there is no restriction under section 80G to the effect that the contribution should be voluntary and that the CSR spend is an application of income which is eligible for deduction from the gross total income of the assessee as per the provisions of section 80G.

6. The word "donation" has not been defined under the Act. However the Hon'ble Supreme Court in the context of Expenditure Tax Act in the case of



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P.V.G. Raju (*supra*) has described the meaning of the word "donation" in the following words

When a person gives money to another without any material return, he donates that sum. An act by which the owner of a thing voluntarily transfers the title and possession of the same from himself to another, without any consideration, is a donation. We do not require lexicographic learning nor precedential erudition to understand the meaning of what many people do every day, *viz.*, giving donations to some fund or other, or to some person or other.' Indeed, many rich people out of diverse motives make donations to political parties. The hope of spiritual benefit or political goodwill, the spontaneous affection that benefaction brings, the popularization of a good cause or the prestige that publicized bounty fetches -these and other myriad consequences or feelings may not mar a donation to make it a grant for a quid pro quo. Wholly motiveless donation is rare, but material return alone negates a gift or donation.'

7. Therefore to examine if CSR spending of the assessee would be a donation it is essential to examine whether the donations given by the assessee to M/s. Reliance Foundation and M/s Shyam Kothari Foundation without any material return and without any consideration and whether it was a grant for quid pro quo. It is not the case of the revenue that the assessee has made contributions to these institutions with an intention get something in return. The only contention of the revenue is that the contributions are made as part of a mandate and not voluntary. However, the Hon'ble Supreme Court in the above case has laid down the basic principle that a payment made without any material return and without any consideration and not for quid pro quo is a donation. Therefore in our considered view, the payment made whether voluntarily or as part of a mandate does not negate the intention of the contribution made. The reliance placed by the Id DR on the decision of Agilent Technologies (International) Pvt. Ltd (*supra*) is factually distinguishable. The DRP whose order was upheld in the said case, had placed reliance on the decision of the Hon'ble High Court in the case of DCIT v. Hindustan Darr Oliver Ltd (1994) 45 TTJ Mumbai 552 where the payment made was held as not a donation since it was found that the intention behind making the donation was to get reserved seats in the college run by the institute to whom the payments are made as part of CSR spending. As already mentioned, the revenue is not contending that the assessee in the present case has made payments to get something material in return.

8. Now coming to the intention of legislature while amending the provisions of section 37 whereby the CSR spend are not allowed to be claimed as a deduction under the said section. Finance (No.2) Act, 2014 brought in the amendment to section 37 by inserting Explanation 2 to the said section w.e.f.01.04.2015. It is relevant to look at the provisions of section 37 of the said Act which read as under

"37. (1)Any expenditure (not being expenditure of the nature described in sections 30 to 36 [\* \* \*] and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".



Explanation 2.—For the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession. "

9. The "Explanatory Notes to the provisions of Finance (No.2) Act, 2014" issued by the Central Board of Direct Taxes *vide* its Circular No.01/2015 dated 21.1.2015 explaining the aforesaid amendment, read as under:

"13. Corporate Social Responsibility (CSR)

13.1 Corporate Social Responsibility (CSR) Under the Companies Act, 2013 certain companies (which have net worth of Rs.500 crore or more, or turnover of Rs.1000 crore or more, or a net profit of Rs. 5 crore or more during any financial year) are required to spend certain percentage of their profit on activities relating to Corporate Social Responsibility (CSR). Under the existing provisions of the Act expenditure incurred wholly and exclusively for the purposes of the business is only allowed as a deduction for computing taxable business income.

13.2 CSR expenditure, being an application of income, is not incurred wholly and exclusively for the purposes of carrying on business. As the application of income is not allowed as deduction for the purposes of computing taxable income of a company, amount spent on CSR cannot be allowed as deduction for computing the taxable income of the company. Moreover, the objective of CSR is to share burden of the Government in providing social services by companies having net worth turnover profit above a threshold. If such expenses are allowed as tax deduction, this would result in subsidizing of around one-third of such expenses by the Government by way of tax expenditure.

13.3 The provisions of section 37(1) of the Income-tax Act provide that deduction for any expenditure, which is not mentioned specifically in section 30 to section 36 of the Income-tax Act, shall be allowed if the same is incurred wholly and exclusively for the purposes of carrying on business or profession. As the CSR expenditure (being an application of income) is not incurred for the purposes of carrying on business, such expenditures cannot be allowed under the existing provisions of section 37 of the Income-tax Act. Therefore, in order to provide certainty on this issue, it is proposed to clarify that for the purposes of section 37(1) any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence shall not be allowed as deduction under section 37. However, the CSR expenditure which is of the nature described in section 30 to section 36 of the Income-tax Act shall be allowed deduction under those sections subject to fulfilment of conditions, if any, specified therein.

13.4 Applicability:-This amendment will take effect from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent years."

10. The intention behind insertion of the explanation as explained above is that the objective of CSR is to share burden of the Government in providing social



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services by companies having net worth/turnover/profit above a threshold and that if such expenses are allowed as tax deduction, this would result in subsidizing of around one-third of such expenses by the Government by way of tax expenditure. However, it is pertinent to note that in para 13.3 above, it has been mentioned that though, the expenditure incurred towards CSRs is not an expenditure incurred for the purpose of business, if the spend is of the nature described in section 30 to section 36 of the Act deduction shall be allowed under those sections subject to fulfilment of conditions, specified therein. For example if the contribution is made to a scientific research association, or to a university or to a college or other institution to be used for scientific research etc., which are approved under section 35 of the Act as part of CSR spending then deduction can be allowed subject to the fulfilment of conditions prescribed under section 35 of the Act. This explanatory note though self-contradictory *i.e.* denying deduction under section 37 but allowing the assessee to claim deduction under section 30 to 36, also makes it clear that there is no bar regarding the admissibility of CSR expenditure under any other provision of the Act, except under section 37(1) of the Act. In other words, the intention of the legislature is not to restrict the right of the assessee to claim deduction towards the CSR spend if the payment is otherwise allowable under a specific provision of the Act. Further wherever the intention is to restrict the claim of deduction under any other provisions of the Act the same is explicitly provided for to that effect by the legislature. This view is supported by the Explanatory Memorandum Finance Bill 2015 which brought in the specific restriction for claiming deduction under section 80G of the Act towards the CSR spend towards donation to Swachh Bharat Kosh and Clean Ganga Fund. Therefore we are unable to appreciate the contention that the CSR spend being claimed as a deduction under section 80G of the Act is against the intention of the legislature which restricts the same to be claimed as a deduction under section 37 of the Act.

11. The next issue is whether the impugned payments are otherwise eligible for deduction under section 80G of the Act. We have already established that the payments made by the assessee are donations and therefore if the other conditions for the deduction under section 80G are fulfilled then there should not be any restriction for the assessee to claim the deduction. Before holding so we will address the contention of the revenue that the payments made towards CSR spend are monitored and controlled by the assessee and are not voluntary. In this regard it is relevant to note that though there is a statutory obligation of CSR expenditure under section 135 of Companies Act 2013, there are many prescribed modes and activities under Schedule VII of the Companies Act for spending the CSR expenditure, (the list is not exhaustive but inclusive). Further neither section 135 of the Companies Act nor Schedule VII to the Companies Act nor the CSR Rules, mandates donations to the institutes/funds prescribed under section 80G of the Act. Therefore, in our considered view there is merit in the submission of the Id AR that though the quantum of CSR spend is mandatory there is no mandate on how amount is to be spent or to whom the contribution is to be made. Accordingly the act of the assessee to choose to M/s. Reliance Foundation and M/s Shyam Kothari Foundation which are eligible to accept donations under section 80G of the Act is voluntary and is not mandated by section 135 of the Companies Act 2013. Further from the perusal of CSR Rules as applicable in assessee's case, we notice that the monitoring of



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the CSR spend is to ensure that the same is as per the CSR policy of the company and it does not provide for monitoring the utilization of the funds by the third party donees. In any case the donations made for a specific cause does not result denial of deduction which is otherwise allowable as per the provisions of section 80G of the Act. The Kolkata Bench of the Tribunal in the case of L&T Finance Ltd v. DCIT [2024] 167 taxmann.com 503 (Kolkata - Trib.), has elaborately discussed the allowability of CSR spend as a deduction under section 80G of the Act and it is relevant to take note of the following observations made regarding monitoring of CSR spend by the donor i.e. assessee -

12.2. The contribution made by a company toward the discharge of it's CSR to a registered charitable institution, in our view, is akin to corpus donations. Section 11(1)(d) of the Income Tax Act speaks of the specific or corpus, donations, although it has not been defined under Income Tax Act, 1961. Corpus donations are donations wherein, the donor makes the donations to the donee for a specific purpose or object. Prior to the amendment made by amended CSR Rules of 2021, Rule 7 of the erstwhile CSR Rules permitted corpus contributions to charitable institutions as eligible CSR expenditure. Further, the Ministry of Corporate Affairs *vide* Circular No.21/2014 dated 18th June 2014 had also clarified that contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure, if such a donee institution or the said corpus has been created exclusively for a purpose related to the activities provided under the CSR framework. However, under the old rules, the mechanism to monitor and ensure that such donation has been actually spent on CSR activity was missing. The donor company would get absolved of its liability of CSR by just donating to the eligible trust/society/company, without ensuring that the amount has been actually spent by the donee on such specific object or purpose (CSR activity) for which it was donated. Therefore, Rule 7 of the CSR Rules, which permitted corpus contributions as eligible CSR expenditure, has been substituted and under the amended CSR Rules of 2021, corpus contributions to any entity shall not be admissible as CSR expenditure. The object and purpose of the aforesaid amendment is to ensure that the expenditure made is actually utilised towards CSR activities.

12. One more point that needs to be considered while deciding the deduction under section 80G for CSR spend is that the restriction on the allowability of the said spend as provided in Explanation 2 to section 37 is for computing the business income under the provision of Section 28-44DB whereas the deduction under section 80G is claimed under Chapter VIA *i.e.* after computing the Gross Total Income. The provisions of section 80G does not impose any condition that the contribution should be voluntary and therefore when the CSR spend is evaluated independently under the provisions of the Act, in our considered view there is no restriction for the assessee to claim deduction under section 80G provided the CSR spend meets the conditions specified therein. In other words, the provisions of section 37 computation provision whereas section 80G is a beneficial provision which allows deduction towards payments made by the assessee for charitable purposes and therefore these two sections are independent of each other. Let us assume a situation when a company which is not required to comply with the provisions of section 135 of the Companies Act 2013 makes a donation or a company makes donations in excess of 2%



even then the payment may get disallowed under section 37 but in that case the revenue would not impose any restriction to evaluate the payment for claiming deduction under section 80G. If the same analogy is applied to the CSR spend in our view the assessee should be able to claim deduction under section 80G if the other conditions are fulfilled. Denying the claim for the reason that there is a specific mention under section 37 for disallowance and that the payments are made in compliance with section 135 of the Companies Act in our view is not legally tenable unless there is an explicit provision for e.g. contributions towards 'Swacha Bharat Kosh' and 'Clean Ganga Fund'. This view of ours is supported by the decision of the coordinate bench of the Tribunal in the case of *Blue Dart Express Limited v. PCIT* (ITA No.1101/Mum/2024 dated 03.09.2024) where in the context of revision under section 263 of the Act, the bench has considered the issue of allowing deduction under section 80G towards CSR spend and held that -

10. On merits also, we find that view of Id. AO is correct in law. Claiming a deduction from computation of business income as provided from sections 28 to 44DB is different from claiming a deduction under chapter VIA of the Act which is allowed from Total Income. As per Explanation 2 to Section 37, CSR expenditure is not allowable as deduction while computing the business income under the provision of Section 28-44DB, whereas deduction u/s.80G is allowed while computing the total income under Chapter VIA. There is no precondition that claim for deduction u/s.80G on a donation should be voluntary. It is independent of computation of business income as it is allowed from Gross Total Income. The assessee had disallowed the CSR expenses while computing business income. Further, there is no dispute that the assessee has filed complete details of donation and also filed the certificate u/s.80G which was enclosed before the AO. Section 80G (1) of the Act provides that in computing total income of the assessee, they shall be deducted in accordance with the provision of Section, such sum paid by the assessee in the previous year as a donation. Deduction under Chapter VIA provides deduction from the gross total income which is computed after making necessary allowances / disallowances in accordance with Section 28-44BB of the Act including Explanation to Section 37(1). Thus, Section 37(1) and Section 80G of the Act are independent and the principles governing what is not allowable u/s. 37(1) have been provided in the section itself. Even in section 80G also, what is not allowable has also been provided under the Act. For instance, Section 80G specifically mentions two clauses, viz., section 80G(2)(a)(iihk) and (iiihl), i.e., contributions towards 'Swacha Bharat Kosh' and 'Clean Ganga Fund', where donation in the nature of CSR Expenditure is not allowable as deduction under section 80G of the Act. Therefore, the disallowances for deduction under section 80G vis-a-vis CSR can be restricted to contributions made to these Funds mentioned in Section 80G(2)(a)(iiihk) and (iiihl) only. It is an undisputed fact that the assessee has not claimed any deduction against the aforesaid clauses of 80G (2)(a) of the Act and as such entire donation claimed by the assessee is allowable u/s 80G. The Ministry of Corporate Affairs ("MCA") has issued "FAQs" through General circular no. 01/2016 dated January 12, 2016 (FAQ No. 6) and has clarified on the issue as follows: "Question No. 6: What tax benefits can be availed under CSR? Answer: No specific tax exemptions have been extended to CSR expenditure per se. The Finance Act, 2014 also clarifies that expenditure on CSR does not form part of business expenditure. While no specific tax exemptions have been



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extended to expenditure incurred on CSR, spending on several activities like Prime Minister's Relief Fund, scientific research, rural development projects, skill development projects, agriculture extension projects etc, which fund place in Schedule VII, already enjoys exemptions under different sections of the Income-tax Act, 1961."

11. This clarification being issued by the Ministry of Corporate Affairs, Government of India clarifies that donation covered under CSR Expenses which not are eligible for the deduction under section 80G of the Income-tax Act, 1961, but are allowed under different sections. Ergo, there is nothing that if any expenditure is disallowable u/s 37 the same cannot be allowed under other provisions of Act, if the conditions of allowability are satisfied. Thus, allowing the claim of deduction u/s.80G by the Id. AO cannot be held to be unsustainable in law or amounts to erroneous and prejudicial to the interest of the Revenue. Thus order of the Ld. PCIT is reversed on this point.

12. Thus, we hold that Id. PCIT is not correct in law in cancelling the assessment order by the Id. AO on this issue. Accordingly, the order of the Id. PCIT is quashed. Consequently, the appeal of the assessee is allowed.

13. In view these discussions and considering the judicial precedence in this regard, we are of the view that there is no infirmity in the order of the CIT(A) in allowing the deduction under section 80G to the assessee towards donations made to M/s.Reliance Foundation and M/s.Shyam Kothari Foundation by placing reliance on the decision of the coordinate bench in the case of *M/s. Naik Seafoods Pvt Ltd v. Pr.CIT* (ITA No.490/MUM/2021). Accordingly the grounds raised by the revenue are dismissed."

**10.5** Following the above decision (supra), we see no reason to interfere with the order of Ld. CIT(A) deleting the impugned disallowance and thus dismiss this ground of the Revenue.

**11.** In the result, appeal filed by the assessee is partly allowed and the appeal filed by the Revenue is dismissed.

Order pronounced on the 07<sup>th</sup> day of July, 2025, in Chennai.

**Sd/-**  
(अमिताभ शुक्ला)  
**(AMITABH SHUKLA)**  
लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**  
(एबी टी. वर्की)  
**(ABY T. VARKEY)**  
न्यायिक सदस्य/**JUDICIAL MEMBER**



ITA Nos.1402 & 1663/Chny/2024 (AY 2019-20)  
M/s. Ashok Leyland Ltd.

:: 57 ::

चेन्नई/Chennai,  
दिनांक/Dated: 07<sup>th</sup> July, 2025.

**TLN**

आदेश की प्रतिलिपि अग्रेषित /Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF