

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT**

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 247 to 250 & 260/RJT/2024
निर्धारण वर्ष /Assessment Years: 2012-13, 2013-14, 2017-18
2018-19 & 2010-11

Assistant Commissioner of Income-tax, Cicle-2(1), Rajkot, Room No.311, 3 rd Floor, Aaykar Bhawan, Race Course Ring Road, Rajkot-360 001	बनाम/ Vs.	Bhawani Industries India LLP C/1-B, 236/3 GIDC, Aji Industrial Estate, Rajkot-36 003
स्थायी लेखा सं./जीआइआरसं./PAN/GIR No.: AACFB 8046 R		
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.254 to 256/RJT/2024
निर्धारण वर्ष /Assessment Years: 2010-11, 2012-13 & 2013-14

Bhawani Industries India LLP C/1-B, 236/3 GIDC, Aji Industrial Estate, Rajkot-36 003	बनाम/ Vs.	Assistant Commissioner of Income- tax, Cicle-2(1), Rajkot, Room No.311, 3 rd Floor, Aaykar Bhawan, Race Course Ring Road, Rajkot-360 001
स्थायी लेखा सं./जीआइआरसं./PAN/GIR No.: AACFB 8046 R		
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri Mehul Ranpura, Id.AR
राजस्व की ओर से/Revenue by : Shri Sanjay Punglia, Ld. CIT-DR &
Shri Abhimanyu Singh Yadav, Sr-DR

सुनवाई की तारीख/Date of Hearing : 02/07/2025
घोषणा की तारीख/Date of Pronouncement : 27/08/2025

आदेश/Order

Per Bench,



This is bunch of eight appeals, consisting six cross-appeals file by the Revenue and assessee in ITA Nos.260 & 254/RJT/2024 for Assessment Years (AY) 2010-11, ITA Nos.247 & 255/RJT/2024 A.Y. 2012-13, ITA Nos. 248 & 256/RJT/2024 for AY 2013-14 and remaining two appeals by Revenue in ITA Nos.249-250/RJT/2024 for AYs 2017-18 and 2018-19 are directed against the separate orders under section 250 of the Income-tax Act, 1961 (hereinafter referred to as ‘the Act’) passed by the National Faceless Appeal Centre, Delhi [in short ‘Ld.CIT(A)/NFAC’], which in turns arise out of separate assessment orders passed by the Assessing Officer, under section 143(3)/143(3A) r.w.s. 143(3B) r.w.s.263 of the Act.

2. Since, the issues involved in all the appeals of Revenue and Assessee are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the facts narrated in ITA No. 260/Rjt/2024 for Assessment Year 2010-11, have been taken into consideration for deciding the above appeals *en masse*.

3. Although, these appeals filed by the Revenue and Assessee contain multiple ground of appeals. However, at the time of hearing we have carefully perused all the grounds raised by the Revenue as well as raised by the Assessee. Most of the grounds raised by the Revenue as well as Assessee, are either academic in nature or contentious in nature. However, to meet the end of justice, we confine ourselves to the core of the controversy and main grievances of Revenue and the Assessee as well. With this background, we summarize and concise the grounds raised by the Revenue as well as Assessee, as follows:

(1) The Ld. CIT(Appeals), NFAC, Delhi has erred in law and on facts in directing to allow deduction claimed by the assessee u/s 80IC of the I.T. Act amounting to Rs. 2,88,50,633/-, on the Rudrapur Unit despite the fact that no books of accounts of either Rudrapur unit or Rajkot unit were produced for verification, and also without appreciating the fact that, the



Rudrapur unit on which huge deduction has been claimed, does not have any manufacturing capacity but is only capable to process semi-finished goods sent by the Rajkot Unit.

[This is Ground No.1 of Revenue's appeal in ITA No.260/RJT/2024 for A.Y.2010-11, Ground No.1 in ITA No.247/RJT/2024 for A.Y.2012-13, Ground No.1 in ITA No.248/RJT/2024 for A.Y.2013-14, Ground No.1 in ITA No.250/RJT/2024 for A.Y.2018-19]

(2) The Ld. CIT(Appeals), NFAC, Delhi has erred in law and on facts in not appreciating the fact that the conditions stipulated under section 80IC has not been fulfilled in as much as the Rudrapur Unit neither produces nor manufactures any items and that there is no increase in the investment in Plant and Machinery by at least 50% of the book value as on the first day of the previous year.

[This is Ground No.2 of Revenue's appeal in ITA No.260/RJT/2024 for A.Y.2010-11, Ground No.2 in ITA No.247/RJT/2024 for A.Y.2012-13, Ground No.2 in ITA No.248/RJT/2024 for A.Y.2013-14, Ground No.2 in ITA No.250/RJT/2024 for A.Y.2018-19]

(3) The Ld. CIT(Appeals), NFAC, Delhi has erred in law and on facts in directing to allow deduction claimed in during the course of assessment, by the assessee u/s 80-1A of the I.T. Act, amounting to Rs. 1,02,46,156/-, which was not claimed in original return of income.

[This is Ground No.3 of Revenue's appeal in ITA No.260/RJT/2024 for A.Y.2010-11, Ground No.3 in ITA No.247/RJT/2024 for A.Y.2012-13, Ground No.3 in ITA No.248/RJT/2024 for A.Y.2013-14]

(4) The Ld. CIT(Appeals), NFAC, Delhi has erred in law and on facts in deleting to disallowance of deduction u/s 80IC of the I.T. Act of Rs.28,21,215/-, made by the AO after apportion of various expenses of Rajkot Unit between Rajkot unit and Rudrapur Unit.

[This is Ground No.4 of Revenue's appeal in ITA No.260/RJT/2024 for A.Y.2010-11, Ground No.4 in ITA No.247/RJT/2024 for A.Y.2012-13, Ground No.4 in ITA No.248/RJT/2024 for A.Y.2013-14]

(5) The Ld. CIT(Appeals), NFAC, Delhi has erred in law and on facts in deleting to disallowance of deduction u/s 80IC of the I.T. Act of Rs.40,17,063/- made by the AO after set off the loss of Rs.40,17,063/-, of Rudrapur unit-11, against the profit of unit-1, Rudrapur.

[This is ground No.5 in Revenue's appeal in ITA No.247/RJT/2024 for A.Y.2012-13]

4. The Revenue has raised additional grounds of appeal in ITA No.260/RJT/2024, which is reproduced below:



"The CIT(A)'s order for AY 2010-11 is based on the ITAT's decision for AY 2011-12, which erroneously relied on the non-existent assessment order for AY 2010-11 (assessment order for AY 2010-11 was overturned by the order of Ld. CIT-2, Rajkot vide their order u/s 263 passed on 19.01.2015). Since the ITAT's order itself is flawed, the validity of the CIT(A)'s order for AY 2010-11 is also in question, necessitating appropriate rectification."

5. Summarised and concise grounds of appeal in assessee's appeals are as follows:

(1)The ld. CIT(A) erred on facts as also in law, in confirming action of assessing officer in restricting disallowance of deduction under section 80-IC of Rs.1,18,45,693/-, on protective basis, on the alleged ground of inflated profit of Rudrapur unit, being sale by Rajkot unit, in respect of item code 235F and 236F to Rudrapur unit-1. The disallowance made by the assessing officer and retained by CIT(A), is totally unjustified, uncalled for and deserves to be deleted, may kindly be deleted.

[This is ground No.2 in assessee's appeal in ITA No.254/RJT/2024, for assessment year 2010-11, ground No.2 in assessee's appeal in ITA No.255/RJT/2024, for assessment year 2012-13, ground No.2 in assessee's appeal in ITA No.256/RJT/2024, for assessment year 2013-14]

(2) (i) The ld. CIT(A) erred in upholding the addition of Rs. 59,241/- made by the assessing officer on account of late payment of PF and ESI.

(ii). The ld. CIT(A) erred in not directing the assessing officer to allow the claim of deduction under section 80- IC of the Act for and amount of Rs.59,241/-, after sustaining the disallowance of said amount made by the assessing officer on account of late payment of PF and ESI. The assessing officer may be directed to allow deduction under section 80-IC of the Act for the amount of addition sustained.

[This is ground Nos. 3 and 4 of assessee appeal in ITA No. 256/RJT/ 2024, for assessment year 2013-14]

6. Now we shall adjudicate these concise and summarised grounds of appeal, one by one as follows:

7. Following concise and summarised grounds of appeal of the revenue, as well as assessee, are interconnected and mix, therefore, we shall adjudicate them together. These interconnected and mix ground of appeal, of revenue and



assessee and additional ground of revenue, are reproduced below for ready reference:

Revenue's grounds

(1) The Ld. CIT(Appeals), NFAC, Delhi has erred in law and on facts in directing to allow deduction claimed by the assessee u/s 80IC of the I.T. Act amounting to Rs.2,88,50,633/-, on the Rudrapur Unit despite the fact that no books of accounts of either Rudrapur unit or Rajkot unit were produced for verification, and also without appreciating the fact that, the Rudrapur unit on which huge deduction has been claimed, does not have any manufacturing capacity but is only capable to process semi-finished goods sent by the Rajkot Unit.

[This is Ground No.1 of Revenue's appeal in ITA No.260/RJT/2024 for A.Y.2010-11, Ground No.1 in ITA No.247/RJT/2024 for A.Y.2012-13, Ground No.1 in ITA No.248/RJT/2024 for A.Y.2013-14, Ground No.1 in ITA No.249/RJT/2024 for A.Y.2017-18, Ground No.1 in ITA No.250/RJT/2024 for A.Y.2018-19]

(2) The Ld. CIT(Appeals), NFAC, Delhi has erred in law and on facts in not appreciating the fact that the conditions stipulated under section 80IC has not been fulfilled in as much as the Rudrapur Unit neither produces nor manufactures any items and that there is no increase in the investment in Plant and Machinery by at least 50% of the book value as on the first day of the previous year.

[This is Ground No.2 of Revenue's appeal in ITA No.260/RJT/2024 for A.Y.2010-11, Ground No.2 in ITA No.247/RJT/2024 for A.Y.2012-13, Ground No.2 in ITA No.248/RJT/2024 for A.Y.2013-14, Ground No.2 in ITA No.249/RJT/2024 for A.Y.2017-18, Ground No.2 in ITA No.250/RJT/2024 for A.Y.2018-19]

The Revenue has raised additional grounds of appeal in ITA No.260/RJT/2024, which is reproduced below:

"The CIT(A)'s order for AY 2010-11 is based on the ITAT's decision for AY 2011-12, which erroneously relied on the non-existent assessment order for AY 2010-11 (assessment order for AY 2010-11 was overturned by the order of Ld. CIT-2, Rajkot vide their order u/s 263 passed on 19.01.2015). Since the ITAT's order itself is flawed, the validity of the CIT(A)'s order for AY 2010-11 is also in question, necessitating appropriate rectification."

Summarised and concise grounds of appeal in assessee's appeals are as follows:

(1)The ld. CIT(A) erred on facts as also in law, in confirming action of assessing officer in restricting disallowance of deduction under section 80-IC of Rs.1,18,45,693/-, on protective basis, on the alleged ground of inflated profit of Rudrapur unit, being sale by Rajkot unit, in respect of item code 235F and 236F to Rudrapur unit-1. The disallowance made by the assessing officer and retained by CIT(A), is totally unjustified, uncalled for and deserves to be deleted, may kindly be deleted.

[This is ground No.2 in assessee's appeal in ITA No.254/RJT/2024, for assessment year 2010-11, ground No.2 in assessee's appeal in ITA No.255/RJT/2024, for assessment year



2012–13, ground No.2 in assessee`s appeal in ITA No.256/RJT/2024, for assessment year 2013–14]

8. At the outset, learned DR for the revenue submitted that appeal filed by the Revenue in ITA No. 249/RJT/ 2024, dated 25th April 2024, comes in the ambit of tax effect. Therefore, it should be dismissed. The ld DR for the Revenue in this regard, submitted a letter before the Bench, which is reproduced below:

“2. In this regard, it is submitted that in the case of Bhawani Industries India LLP PAN: AACFB5046R AY 2017-18, appeal in pending before the Hon'ble ITAT, Rajkot bench in ITA NO. 249/RJT/2024 which was filed on 25.04.2024.

2.1 The CBDT vide Circular No. 9 of 2024 dated 17.09.2024 has raised the monetary limits to Rs. 60 lakhs for filing appeal before the ITAT, while in the instant case, the tax effect involved is Rs. 53,80,099/-, which is below the enhanced threshold limit prescribed by CBDT vide the above circular.

3. In view of the above, and directions of the Hon'ble Member (A&J), CBDT, vide dated 08.08.2025, the appeals consequent to the enhancement of monetary limits of filing appeals need to be withdrawn immediately.

4. Therefore, it is prayed that the Hon'ble Tribunal may kindly allow withdrawal of the present appeal in the case of BHAWANI Industries India LLP, PAN: AACFB8046R (AY 2017-18).”

9. We have heard both the parties, and noted that Revenue`s appeal in ITA No. 249/RJT/ 2024, dated 25th April 2024, comes in the ambit of tax effect of CBDT circular, therefore, we dismiss Revenue`s appeal in ITA No. 249/RJT/ 2024.

10. First, we shall take summarised ground No.1 and 2 and additional ground raised by the revenue. The relevant material facts, as culled out from the material on record, are as follows. The return of income showing total income of Rs. 16,13,21,007/- was filed by assessee on 25-09-2010. The return of income was processed u/s. 143(1) of the I.T. Act, 1961. The case was selected



for scrutiny and assessment finalized u/s 143(3) vide order dated 25-03-2013 at the income of Rs. 16,15,40,460/-.

11. Later on, the assessee`s case was reviewed by CIT-2, Rajkot, u/s 263 of the Income Tax Act 1961, and order u/s 263 was passed on 19/01/2015. The CIT-II Rajkot after considering the facts on records, set aside the original order u/s 143(3) of the Act, being erroneous and prejudicial to the interest of revenue on the following grounds and observations:

"As seen from the records the assessee has claimed a deduction u/s. 80IC of the I.T. Act. in respect of its Rudrapur unit in Uttarakhand. The unit was started in April 2008, however, the deduction has been claimed for the first time during the A.Y. 2010-11. As mentioned above, the AO did not raise any question about the eligibility of this unit for claiming deduction u/s. 80-IC of the I.T. Act.As discussed above, the order is both erroneous and prejudicial to the interest of revenue, and the same is set aside. The assessing officer is directed to conduct a proper inquiry and verification of the fact relating to:

- (i) Eligibility of the claim of assessee, in respect of profits of Rudrapur unit u/s 80IC and*
- (ii). The correct profits of the two units after proper allocation of costs/arm length price of inter unit transactions and*
- (iii).Allocation of common expenses to the two units.*

12. Therefore, the case of the assessee was reopened, by the assessing officer, after the order u/s 263 of the Act, passed by CIT-2, Rajkot and a notice u/s 143(2) r.w.s. 263 was issued on 14/12/2015. Subsequently, a notice u/s 142(1) of the Act was issued and assessing officer called various details. In response of the above notices, AR of the assessee appeared and submitted the various details as asked in above notices. The AR of the assessee appeared from time to time and submitted his replies, before the assessing officer.

13. During the year under consideration, the assessee was engaged in the business of manufacturing of Auto parts. The assessee is one of the major supplier to TATA Motors and Maruti Suzuki and currently it has units located



at Rajkot, Rudrapur (Utranchal), Sanand and Gurgaon. The assessee is claiming deduction u/s 80-IC in the Rudrapur Unit. On verification of the audit reports, the details of gross turnover and gross profit for all the units is under:

	Turnover	Gross profit	GP ratio
Rajkot	1,19,34,35,481	10,30,67,450	33.46%
Sanand	N.A.	N.A.	N.A.
Rudrapur-I	14,46,11,771	6,06,72,651	41.96%
Rudrapur-II	N.A.	N.A.	N.A.
Gurgaon	7,12,88,777	48,11,266	6.75%

The Rudrapur unit showed net profit of Rs. 3,32,20,406/- and claimed deduction u/s 80-IC of the Act of Rs.2,88,50,633/-, after reducing loss of Rs.43,69,773/-. In support of its claim, assessee filed audit report in form No. 10CCB and form No. 3CB & 3CD. The separate audit reports u/s 44AB of the Act, for Rajkot Unit and Rudrapur Unit were called for, by the assessing officer, and assessee submitted the same before the assessing officer.

14. The assessing officer observed that the assessee has claimed deduction of Rs.2,88,50,633/-, u/s 80-IC of the Income tax Act, 1961, in respect of profit of Rudrapur unit. The assessee has shown profit of Rs. 3,32,20,406/-. The assessee was asked to justify its claim of deduction u/s 80- IC of the Act with reference to the provisions of section 80-IC of the Act. During the assessment proceedings, the assessing officer asked the assessee, to submit the justification of the deduction claimed 80-IC of the Act, to the tune of Rs.2,88,50,633/-.

15. In response to the notice of the assessing officer, the assessee submitted its reply before the assessing officer, with documentary evidences. The assessee submitted that profit for the year was of Rs. 3,32,56,106/- and after reducing loss of Rs. 43,69,773/- for A.Y.2010-11, the assessee has claimed deduction u/s 80-IC of the Act at Rs. 2,88,50,633/-. The assessee submitted that it is manufacturing auto parts for Tata Motors Ltd and other vehicle manufacturing industries, at Rajkot, as well as Rudrapur at Tata Vendor Park, which is duly



approved, vide notification No. 283/2006. At Rudrapur undertaking of the assessee is also manufacturing transmission parts and Gear Box, components etc, and supply to O.E.M.s, Tata Motors Ltd. As regard forging work it was clarified that for auto parts manufacturing at Rajkot also no forging work is carried out by assessee's undertaking. It is carried out by outside parties at Rajkot also. Precision processes are carried out at Rajkot. As regard evidences for manufacturing activity carried out at Rudrapur unit, it was clarified that assessee is having various governments registrations, licenses, approvals, certificates, etc, obtained for carrying out manufacturing activity. The Central Excise Registration certificate, VAT Registration, Service Tax Registration MSME Registration for manufacturing activity, P.F., E.S.IC., other Labour Laws, Pollution Board Certificate, Methanol (Chemical) utilization certificate etc. As Rudrapur unit is carrying out manufacturing activity, it is liable for central excise and VAT and it can be verified from copy of sales bills submitted by assessee. Some of the processes carried out at Rajkot unit/outside parties, as at that time in Rudrapur there were no availability of infrastructural capabilities for procurement of raw materials, forgings, heat treatments, like such capex oriented capabilities. Therefore, so far as, basic raw material and its forgings are concerned assessee have to obtain from outside the Rudrapur Territory. Hence, assessee has to procure the same from its unit at Rajkot. However, assessee would have option for obtaining from other sources outside the Rudrapur Territory. But, due to quality and competitiveness issues assessee has sourced from its unit at Rajkot at Arm-Length Price. And the transfer price was also verified and audited by excise authorities, copy of cost sheet of every part as required by assessing officer were submitted by the assessee.

16. Therefore, assessee submitted before the assessing officer that the Rudrapur industrial undertaking is an independent unit/undertaking and not an extension or splitting of existing unit satisfying the meaning mentioned u/s 80-IC. Further,



the assessee submitted evidences of new undertaking at Rudrapur i.e. An invitation letter from TATA to set-up new undertaking at Pantnagar, Rudrapur under approved vendor park, Allotment letter of land of SIDC Utranchal Ltd., Post verification certificate of Excise Department, Pollution Department Certificate etc, were submitted by the assessee. The assessee also cited the judgement of the Hon`ble Supreme Court in Textile Machinery Corporation, where in it was held that such a new industrially recognizable unit of an assessee cannot be said to be reconstruction of his old business since there is no transfer of any assets of the old business to the new undertaking, which takes place when there is reconstruction of the old business. The assessee submitted that for the purpose of section 80-1, the industrial units set-up must be new in the sense that new plant and machinery are erected for producing either the same commodities or some distinct commodities. In order to deny the benefit of section 80-1, the new undertaking must be formed by reconstruction of the old business. In the present case, there is no formation of any industrial undertaking out of the existing business since that can take place only when the assets of the old business are transfer substantially to the new undertaking. Just because the new undertaking is dependent to a certain extent on the existing undertaking should not deprive the new undertaking of the status of integrated unit by itself wherein articles are produced and at least a minimum of 10 persons with the aid of the power and a minimum of 20 persons without the aid of the power have been employed. The aspect has been well-explained by the Supreme Court in Textile Machinery Corporation, laying down the requisite tests for an undertaking to be entitled to the Benefit under section 15C of the Act of 1922 (now section 80-1 of the Act of 1961). The Supreme Court has held that in order to be entitled to the benefit under section 15C, the following facts have to be established by the assessee, subject always to time-schedule in the section, viz:

- (1). investment of substantial fresh capital in the industrial undertaking set up,



(2). employment of requisite labour therein, (3). manufacture or production of articles in the said undertaking, (4). earning of profits clearly attributable to the said new undertaking, and (5) above all, a separate and distinct identity of the industrial unit set up. The Court is of the view that so far as the fifth test is concerned, that is, a separate and distinct identity, only because to a certain extent the new undertaking is dependent on the existing unit, will not deprive the new undertaking the status of a separate and distinct identity.

17. Therefore, assessee submitted, before the assessing officer that deduction/relief under Section 80-IC of the Act, would be allowed to the assessee, under consideration, in view of the following:

(i). The undertaking has obtained lease hold land for manufacturing from SIDCUL. And paid the development charge to TATA MOTORS LTD for development of the land at assessee's cost.

(ii). The undertaking has separate Central Excise Registration certificate, VAT Registration, Service Tax Registration, MSME Registration for manufacturing activity, P.F., E.S.I.C., Pollution Board Certificate, Methanol (Chemical) utilization certificate and like registration for manufacturing purpose.

(iii). The assessee spent over up to 31/03/2010 of Rs. 983.31 lacs (WDV) and original investment of Rs. 1134.97 lacs and in plant and machineries of Rs. 410.31 lacs (WDV) original investment of Rs. 510.80 lacs.

(iv). It is not formed by splitting up, or reconstruction of a business already in existence.

(v). It is not formed by Transfer to a new business of Machinery or Plant previously used for any purpose.

(vi). It manufactures articles, not being any article or thing specified in the list in Eleventh Schedule.



(vii). The Undertaking employs more than ten workers in a manufacturing process carried on with aid of power.

(viii). The said Industrial Undertaking is not formed as a result of reconstruction or revival of the business.

(ix). The production capacity of undertaking increased.

(x). Production and Profit of the New industrial Undertaking is ascertainable.

(xi). The undertaking is managed by independent managerial personnel.

Hence, the assessee submitted, before the assessing officer that an interpretation to the words 'New Industrial Undertaking' in Section 15C of the Income-tax Act, so that in all bona fide cases, the concession would be admissible. The question is largely one of facts of each particular case. The broad principle which will, however, be borne in mind in this connection that which are calculated to make a substantial addition to the existing output. Minor extensions of the existing undertaking and replacements of the existing installed capacity would be of course, not be eligible for the concession. In support of the above submissions, the assessee placed reliance on the following decisions.

(1). Textile Machinery Corporation Ltd. Vs. CIT (1977) 107 ITR 195 (SC);

(2). CIT v. Indian Aluminium Co. Ltd. (1977) 108 ITR 367 (SC);

(3). CIT v. Shree Digvijay Cement Co. Ltd. (1983) 144 ITR 532 (Guj);

(4). CIT v. Shri Digvijay Cement Co. Ltd. (1986) 159 ITR 253 (Guj);

(5). Saurashtra Cement and Chemical Industries Ltd. v. CIT (1980) 123 ITR 669,

(6). Bajaj Tempo Ltd. v. Commissioner of Income Tax (1992) 196 ITR 188 (SC);



(7). Broach District Cooperative Cotton Sales, Ginning and Pressing Society Ltd, Vs. Commissioner of Income Tax (1989) 177 ITR 418 (SC).

(8). Commissioner of Income Tax v. Gwalior Rayon Silk Manufacturing Co. Ltd. (1992) 196 ITR 149 (SC)

(9). In Textile Machinery Corporation Limited v. CIT (1977) 107 ITR 195 (SC).

18. The assessee further submitted before the assessing officer that just because the new undertaking is dependent to a certain extent on the existing undertaking should not deprive the new undertaking of the status of integrated unit by itself wherein articles are produced. Rudrapur unit of the assessee firm is a separate unit and all the conditions required under sub-section 4 of section 80IC is fulfilled. There is no splitting up or reconstruction of the business already in existence at all. All other requirement-conditions also fulfilled, totally new location, totally new machineries were installed. From the audit report submitted above for Rudrapur Unit for the year under consideration as well as for earlier years, if one can refer to various manufacturing expenses, which include huge electricity expenses, wages, job-work expenses, contract salary etc, have been incurred. It will also be clear that the assessee- firm has invested huge amount in land, building, machinery etc, and also have its own administrative staff and also having own vehicles and other equipments etc. Summary of the same is as under:



Manufacturing Sales, Job Work Income and Material Consumption at Rudrapur Unit:

No.	Particulars	F.Y. 2008-09	F.Y. 2009-10
1	Sales	47926914	144611771
2	Jobwork Income	0	659264
	Total	47926914	145271035
3	Total Material Cost	21054639	72667292

Direct Manufacturing Expenses at Rudrapur Unit:

No.	Particulars	F.Y. 2008-09	F.Y. 2009-10
1	Job Work	1364082	4096657
2	Electricity	1583260	5013311
3	Wages, Bonus & other allowances	2169111	2654049
4	Job Work Contract Salary	0	0
5	Freight and other Direct Expenses	99612	167075
	Total	5216065	11931092
6	Provident Fund Contribution	78393	115255
7	ESIC Contribution	36125	84658

iv. As stated above and in the following various judgments deduction was allowed

Therefore, assessee stated that deduction under section 80-IC should be allowed.

19. Further, assessee has also submitted the reason for higher Gross profit (GP), net profit (NP) ratio of Rudrapur Unit as compared to Rajkot Unit, stating that assessee has started Rudrapur unit-1 for Tata Motors Limited. In Rudrapur Tata motors limited have their plant for manufacturing of various types of vehicles, that is, mainly TATA ACE Mini Truck i.e. popularly known as Chhota Hathi. Tata motors limited is enjoying various fiscal benefits/incentives by the government of India i.e. no excise duty, VAT and many other government benefit thereto. Hence, they are saving about 25-30% at Rudrapur. They have invited their parts supplier like assessee and many others to manufacture their parts there and supply to them, but there are huge investments in land, factory



building and plant and machinery, at such remote places, no body ready to invest there. Hence, they offered to share their above tax benefits between supplier of parts and themselves, that is, offering attractive pricing of its parts and it resulting in more profit about 10 to 15% by parts suppliers. With these intention to optimize assessee`s profitability, the assessee had planned to set up dedicated unit-1, at Rudrapur exclusively for Tata Motors Ltd, Rudrapur and assessee`s investment in land, factory building and plant machinery etc, are of Rs. 9,83,31,638/- (W.D.V. as at 30/03/2010).The assessee is manufacturing many parts of Tata Vehicles, there list, was submitted before the assessing officer on 16/12/2015. The assessee is manufacturing 235F REVGEAR SHIFTER SLEEVE and 236F SHIFTER SLLEVE (3RS/4 TH SPEED), which is manufactured at Rudrapur as well as Rajkot and supplying to Tata Motors Limited. Further all other parts as per list of Rudrapur which, are manufactured at Rudrapur only and supplied to Tata Motors Limited-Rudrapur. The Rate of 235F REVGEAR SHIFTER SLEEVE, which is finished product and its average price comes to Rs. 299.04 per piece and Rajkot 235C REVGEAR SHIFTER SLEEVE, which is semi- finished product and average price of said item comes to Rs. 152.42 and supplied to Tata Motors Limited-Pune. In the same manner Rate of 236F SHIFTER SLLEVE (3RS/4 TH SPEED), which is finished product, average price comes to Rs. 192.91 per piece and Rajkot 236F SHIFTER SLLEVE (3RS/4 TH SPEED), which is also finished product and rate of said item average price comes to Rs. 154.88 and supplied to Tata Motors Limited- Puna, copy of no. of items supplied and average rate, total amount of items sold etc., copy of list as well as copy of relevant bills of both the products, were submitted before the assessing officer.

20. The assessee also submitted before the assessing officer that that 236F SHIFTER SLLEVE (3RS/4 TH SPEED), there is price difference of Rs. 38.03 at Rudrapur unit-1, as compare to Rajkot unit, that is, 24.55% higher than



Rajkot unit. In the same manner, 235C REVGEAR SHIFTER SLEEVE part which is supplied semi- finished and remaining some operation to be carried out by Tata Motors -Puna, at Rs. 152.42 and if assessee add 50% other overhead charges incurred by Tata Motors Ltd, that is, 50% of Rs. 152.42, which is Rs. 76.21 it comes to Rs. 228.63 (Rs. 152.42 + Rs. 76.21). Hence there price difference of Rs. 70.41, that is, 30.80%. The total sales turnover of these two items are of Rs. 694.89 lacs (414.72 + 280.17) and total turnover of Rudrapur unit-1 are of Rs. 1453.28 lacs. Hence total turnover of these two items are 47.81%. In the same manner there is difference of prices i.e. 15-20% for other items, which manufactured at Rudrapur unit and supplied to Tato Motors Ltd., Rudrapur. Hence, there is more G.P. margin that is, of 41.96%, as compare to Rajkot unit of 35.71% and accordingly assessee claimed deduction u/s. 80IC for Rudrapur unit-1. Further in there are other benefits offered by the state government as well as central government i.e. in cheap power tariff rate etc.

21. In addition to that the assessee was asked in the notice of AO dated 14.12.2015 to give item-wise and consignment wise details of transfer of goods from one unit/ premises to another unit/premises in the tabular format. Similar details regarding components transferred to Rudrapur Unit is being asked in the above notice. In response to that the assessee has submitted the following details.

(a) The item-wise details of all the components which are transferred from Rajkot unit to Rudrapur Unit. The detail contains list of items there manufacturing cost to the Rajkot unit and the price at which it is transferred to the Rudrapur unit.

(b) Item-wise list of all the finished components which are finally sold to TATA Motors by the Rudrapur Unit.



(c) Item-wise details of the products which are transferred from Rajkot Unit to Sanand Unit. And similarly the list containing details of the products transferred from Sanand unit to TATA Motors.

(d) Item-wise details of the products and components which are transferred from Rajkot unit to Gurgaon unit and thereafter from Gurgaon unit to Maruti Suzuki. These details were submitted by the assessee, before the assessing officer.

22. However, the assessing officer rejected the above details, documents and evidences and explanations of the assessee and observed that the assessee has mainly claimed deduction u/s 80- IC of the Act, on the following grounds:

(a) The assessee is manufacturing auto parts for Tata Motors Ltd and other vehicle manufacturing industries at Rajkot as well as Rudrapur at Tata Vendor Park which is duly approved vide notification No. 283/2006.

(b) At Rudrapur undertaking, the assessee is also manufacturing transmission parts and Gear Box components etc, to supply as O.E. to Tata Motors Ltd.

(c) As regard evidences for manufacturing activity carried out at Rudrapur unit-1, the assessee submitted that they are having various governments certificate for the same, copy of the said certificates were submitted, these were, Central Excise Registration certificate, VAT Registration, Service Tax Registration, MSME Registration for manufacturing activity, P.F., E.S.I.C., Pollution Board Certificate, Methanol (Chemical) utilization certificate, Allotment letter of land of SIDC Utranchal Ltd., Post verification certificate of Excise Department, Pollution Department Certificate etc., Form 10CCB with point wise reply of clauses of section 80- IC as per Annexure 3.

23. The assessing officer, having gone through the above details and documents noticed that Rudrapur Unit is not independent unit, the activity at Rudrapur Unit



would not fall within the ambit of definition of manufacturing. Therefore, assessing officer held that the assessee has neither manufactured nor produced articles or things at Rudrapur unit, therefore, the claim of the assessee u/s 80IC of the Act was disallowed, and the corresponding amount of Rs 2,88,50,633/- which was added to the total income of the assessee.

24. Aggrieved by the order of the assessing officer, the assessee carried the matter, in appeal before learned CIT (A), who has allowed the reduction under section 80-IC of the Act. The Id.CIT(A) considered the AO's findings and submission made by the assessee and also followed Hon'ble ITAT's order in assessee's own case, which was passed by the ITAT, on merit, wherein facts and law position is similar for this assessment year, under consideration. The Id.CIT(A) held that AO was not justified in denying deduction u/s 801C of the Act and directed the assessing officer to delete the addition.

25. Aggrieved by the order of the Ld.CIT(A), the Revenue is in appeal before us and assessee has also filed cross appeals, in respect of protective addition and various disallowances made by the assessing officer, which are connected with the deduction under section 80-IC of the Act.

26. Learned CIT-DR for the Revenue and Ld. Sr. D.R. for the Revenue, both have argued that assessee's appeal for Assessment Year 2011-12, was allowed by the Id.CIT(A) holding that Tribunal has allowed the appeal of the assessee in Assessment Year 2010-11 on same facts and law. However, Assessment Year 2010-11, was subjected to revision proceedings u/s. 263 of the Act, that is, later on, the revision proceedings were started in respect of Assessment Year 2010-11 by the Id.PCIT under section 263 of the Act. Therefore, the findings of the Tribunal, in assessee's own case should be relooked, because learned PCIT revised the assessment order of the assessing officer, pertaining to assessment year 2010-11, under section 263 of the Act. The Ld. D.R. for the Revenue,



again submitted that Asst. Year 2010-11 was reviewed by Ld. PCIT u/s 263 of the Act and thereafter the consequential order was passed u/s 143(3) r.w.s. 263 of the Act, in which disallowance was made by the Assessing Officer. Since the Asst. Year 2011-12, was decided based on Asst. Year 2010-11, however in Asst. Year 2010-11, the PCIT has revised the assessment order, therefor Asst. Year 2010-11 cannot be taken as a base to allow the appeal of the assessee.

27. The Ld. CIT-D.R. further submitted that the assessee is not engaged in production of manufacture in Rudrapur unit, as the assessee purchased the semi-finished goods from Rajkot unit and sends it to Rudrapur unit, and the Rudrapur unit, does not have facility of manufacturing or production. Therefore, these two units of Rudrapur are only processing the semi-finished goods, therefore the assessee is not eligible for deduction u/s. 80-IC and u/s 80-IB of the Act. The ld. CIT-DR argued the assessee has to furnish the proof of certificate from Government authorities as per Section 2(29BA) of the Act. Since the assessee is not having IC number for Rudrapur unit, therefore it cannot manufacture the goods in Rudrapur unit.

28. The Ld. CIT-D.R. for the Revenue argued that since section 80-IC of the Act came into operation from 1st April 2004 wherein it has been stated three conditions i.e. (i) units should be in specified area and (ii) there should be manufacture and (iii) it should not produce the items which is not specified in Section 80IC of the Act. The Learned DR for the revenue contended that by and large, these conditions were not satisfied by the assessee, under consideration.

29. The Ld. CIT-D.R. for the Revenue also submitted written submissions before the Bench, on the terminology and definition of the term “Manufacture”



which we have gone through. The sum and substance of the written submission of the ld. CIT-DR for the revenue is that since the goods retain the same name, character, and use, the process does not meet the definition of "manufacture" under Section 2(29BA)(a) of the Act. The lack of transformation into a new and distinct object with different properties means the activity is not manufacturing for tax exemption purposes. The definition of "manufacture" under Section 2(29BA)(a) is exclusive and requires a cumulative change in name, character, and use. Legal precedents support the interpretation that all three elements must undergo transformation for an activity to qualify as manufacturing. In the given scenario, since the goods retain the same name, character, and use, the process does not constitute manufacturing under the Income Tax Act.

30. The Ld. CIT-DR for the Revenue also submitted that protective addition made by the assessing officer to the tune of Rs.1,18,45,693/-, for which the assessee is in appeal before this Tribunal, should be sustained. The said addition of Rs.1,18,45,693/-, was made by the assessing officer, on account of transfer of products from non-eligible unit Rajkot to eligible unit Rudrapur. The learned CIT(A) in fact, has confirmed the action of the assessing officer so far this addition is concerned.

31. On the other hand, the ld. Counsel for the assessee, argued that during the course of assessment proceedings, the assessee -firm submitted that Rudrapur unit is totally new and independent unit having separate registration numbers and licenses required under various Act, for manufacturing. It was submitted by ld. Counsel that there is no forging facility at Rajkot unit or Rudrapur unit of the assessee-firm. Therefore, unit situated at Rudrapur have to obtain forged parts for manufacturing the auto parts from outsider. After obtaining forged parts, it



undergoes various further manufacturing processes. So forging part would be raw material for Rudrapur Unit, which onward manufactures the final ready to fit auto parts, hence, this activity falls in the definition of “manufacture”. However, without looking to these facts of assessee- firm, the assessing officer has proceeded to disallow the claim of deduction under section 80-IC mainly on following basis viz: (1) Rudrapur Unit is not an independent Unit, (2) Activity at Rudrapur Unit would not fall within the ambit of definition of manufacturing and Production and (3) Transfer of products from non-eligible unit at Rajkot to eligible unit at Rudrapur Unit is not at market price. The Id.Counsel, in this regard submitted that the issue involved in assessee appeal is squarely covered by the order of the Hon'ble Tribunal vide its order dated 03/10/2022, wherein the Tribunal has dismissed the appeal of the department, on merit. In Rudrapur unit, the assessee- firm has invested huge amount in land, building, machinery etc, and also have its own administrative staff and also having own vehicles and other equipment etc. The cost of Investments in Fixed assets at Rudrapur Unit, were submitted by the assessee and it was clarified that investment in plant and machinery are more than 9.83 crore W.D.V. value at the year ended 31-03-2012. Regarding the observation of the AO in para 5.3 of the assessment order that 99% of the products are transferred from Rajkot Unit, therefore, Rudrapur Unit is not independent Unit. In this regard, it was submitted that Rudrapur is underdeveloped area where capex oriented infrastructural facilities are not developed hence such facilities are not available. In such situation it is required to get the raw material and getting carried out other process from out siders. As consistent quality is prime object of the assessee- firm therefore, it is decided to purchase Raw Material and get it forged in Rajkot through Rajkot Unit. Therefore, purchasing most of Raw Material from Rajkot Unit does not mean that Rudrapur Unit is not an independent Unit.



32. The Id. Counsel for the assessee, further stated that activity at Rudrapur Unit falls within the ambit of definition of manufacturing and Production. The Id Counsel submitted the List of machineries installed, and various process carried out by the Rudrapur Unit. The Id. Counsel also submitted that the details manufacturing expenses incurred by the assessee- firm at Rudrapur Unit. Further the details manufacturing process carried out at Rudrapur Unit, on each part was submitted by the assessee, before the assessing officer. Further, while granting the Registration under Central Excise Act, Excise department has specifically mentioned in the registration certificate that it is manufacturing Unit. Similarly in the report of Service Tax department it is also stated that Rudrapur Unit is carried out manufacturing activities. In support a copy of Excise Registration and Service tax report were submitted before the assessing officer.

33. The Ld. Counsel also submitted that the order passed by the PCIT u/s. 263 of the Act for assessment year 2010–11, is not signed by the Ld. PCIT. Therefore, order passed by the PCIT is itself wrong and it should be quashed. Besides, the Tribunal has allowed the appeal of the assessee, on merit, therefore, it does not matter, if the learned PCIT exercised his jurisdiction under section 263 of the Act, in respect of assessment year 2010–11.

34. The Ld. Counsel also submitted about assessee`s appeal that restricting disallowance of deduction under section 80-IC of Rs.1,18,45,693/-, on protective basis, on the alleged ground of inflated profit of Rudrapur unit, being sale by Rajkot unit, in respect of item code 235F and 236F to Rudrapur unit-1, is bad in law. The sale by Rajkot unit is on arm`s length price, and this position has been accepted by the transfer pricing officer, in the subsequent assessment years, in the assessee`s case, having same facts and circumstances, and no addition were made in the hands of the assessee. Besides, with help of



documentary evidences, the assessee has demonstrated, before the assessing officer that sale by Rajkot unit, is on arm's length price, hence, no addition should be made in the hands of the assessee.

35. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that assessee-firm has started its business of manufacture of auto parts at Rajkot in 1976 and supplying the auto parts in various automobile manufacturing companies, such as Tata motors Ltd, Maruti Udyog Ltd., Mahendra and Mahendra and likewise other reputed OEM's etc. as well as exporting the same to various countries. The Rudrapur Tata Motors Ltd has, started its manufacturing Plant for manufacturing of various types of vehicles, that is, mainly TATA ACE mini truck which is popularly known, as Chhota Hathi. At Rudrapur Tata motors Ltd is enjoying various fiscal benefits/incentives by the government of India as well as by Uttaranchal state government, that is, excise duty exemption, subsidy, and many other government benefit and incentive. Hence, Tata Motors is saving approx. 25-30% manufacturing cost at Rudrapur compared with their manufacturing units situated at other parts of India. Hence, Tata Motors has invited their parts suppliers like assessee -firm and many others to manufacture their parts at Rudrapur and to supply them at Rudrapur. But to start a manufacturing unit at Rudrapur a very remote place. As huge investments in land, factory building, and plant and machinery are required, hence no one were ready to invest there. So, Tata Motors offered to share their tax and other benefits/ incentives etc. between supplier of parts and themselves, that is, offering attractive pricing of its parts. In view of the same assessee also decided to start a separate unit at Rudrapur and Tata Motors has given a lease land from



its Tata Vendor Park to the assessee. The assessee- firm has started construction on that land and has installed various machineries. The Rudrapur Unit of assessee started manufacturing from 15-04-2008. The said unit is located at TATA Vendor Park Industrial Area, which is duly approved as a notified area u/s. SOIC(2)(a)(ii) vide Notification No. 283/2006. In the first year that is, assessment year (A.Y.) 2009-10, the assessee- firm had not made any claim under section 80-IC, being loss year but started to claim under section 80-IC of the Act, from assessment year (AY) 2010-11 and since then assessee - firm is claiming deduction u/s 80-IC of the I.T. Act. The assessee- firm has maintained separate books of accounts for Rudrapur Unit and also of Rajkot unit and other units and submitted the same to the Department. The assessee also submitted copy of audited accounts of Rudrapur Unit, and Rajkot Unit for assessment year (AY) 2010-11, and copy of Audit Report obtained in form 10CCB for making claim under section 80-IC of Rudrapur Unit for the year under consideration, were submitted before the assessing officer.

36. The Id.Counsel submitted before us that Rudrapur unit is totally a new and independent unit having separate registration numbers and licenses required under various Act, for manufacturing. It is also submitted that there is no forging facility at Rudrapur unit of the assessee firm. So, unit situated at Rudrapur have to obtain forged parts for manufacturing the auto parts from outsider. After obtaining forged part it undergoes various further manufacturing processes. So forging part would be raw material for Rudrapur Unit which onward manufactures the final ready to fit auto parts. We note that similar additions have been made in the immediate succeeding year that is, assessment year (AY) 2011-12 and the assessee -firm had challenged the same before the Hon'ble CIT(A) who has allowed the appeal of the assessee vide its order dated 17/01/2016. Against the order of the CIT(A), department had filed the appeal before the Hon'ble Rajkot Tribunal. The Hon'ble Tribunal vide its order dated



03/10/2022, in assessee`s own case, in ITA No.108/RJT/2016, has dismissed the appeal of the department. We have gone through the order of the Tribunal vide its order dated 03/10/2022, in assessee`s own case, in ITA No.108/RJT/2016, and noticed that all findings are on merit, and only a reference was given for assessment year 2010-11.

37. We note that assessee- firm is having following separate registration numbers and licenses for Rudrapur Unit. The Rudrapur Unit has made huge investments in fixed assets, and in plant and machinery, and it has incurred direct or indirect expenses for manufacturing activities, therefore, we find that Rudrapur unit falls in the definition of “manufacture” and it is an independent unit. The various data mentioned below explain this position.



Appellant firm having following separate registration numbers and licenses for Rudrapur Unit.

No	Particulars	Rajkot unit	Rudrapur unit
01	Factory Reg. No.	485/34328/2800	USN 1223
02	Excise Regl. No.	AACFB8046RXM0094	AACFB8046RXM005
03	Service Tax Regl. No.	AACFB8046RST002	AACFB8046RST001
04	VAT Regl. No.	24951100018	05006493603
05	CEST Regl. No.	24591100016	RJ-3043555
06	EMP. PENS. No.	2107/SOA/IMO/2004	3479/SIA/IMO/2006
07	IAN No.	RKTB005350	MRT031265F
08	P.F. Regl. No.	GJRAJ0019774000	UKHL00034727000
09	FCI Regl. No.	37000031110000699	6100000976000799
10	Pollution Control License No.	AWH-45470	AWH-32474
11	Contract Labour License No.	Obtained by contractor	Under own power supply
12	Drug License No.	M.A. LICENSE NO. 11	Under Form M.A. 04
13	ISO 9001	2491002632	Not Obtained
14	ET Connection No.	35089	3874
15	Est. Vendor Code No.	804260	866690
16	Land Allotment No.	GIIC Gujarat	3576/AGW/SIDCU/L/66

Financials submitted that the appellant firm has invested huge amount in land, building, machinery etc. and also have its own administrative staff and also having own vehicles and other equipment etc. Summary of the same is as under:

Cost of Investments in Fixed assets at Rudrapur Unit (Without Depreciation): WDV

No	Particulars	FY 08-09	FY 09-10
1	Land & Development	83,19,191	83,24,991
2	Building & staff quarters	4,27,63,445	5,11,25,648
3	Plant & machinery	4,09,85,763	6,48,10,075
4	Electrical fittings	31,91,778	34,27,206



	Total	9,64,13,416	13,13,79,252
	<i>Cum Dep claimed</i>	<i>1,78,82,307</i>	<i>3,30,47,414</i>
	WDV	7,85,31,109	9,83,31,838

Overall Depreciation Chart of Rudrapur Unit:

No	Particulars	FY 08-09	FY 09-10
1	WDV	4,14,64,138	7,85,31,109
2	Addition to fixed asset	5,49,29,277	3,49,65,836
3	Total	9,64,13,416	11,34,96,945
4	Depreciation claimed	1,78,82,307	1,51,65,107
5	WDV	7,85,31,109	9,83,31,838

Manufacturing Sales, Job Work Income and Material Consumption at Rudrapur Unit:

No	Particulars	FY 08-09	FY 09-10
1	Sales	4,79,26,914	14,46,11,771
2	Jobwork Income	0	6,59,264
	Total Manufacturing income	4,79,26,914	14,52,71,035



Direct Manufacturing Expenses at Rudrapur Unit:

No	Particulars	FY 08-09	FY 09-10
1	Job Work	13,84,082	40,96,657
2	Freight	99,612	167075
3	Power & Fuel	15,83,260	5013311
4	Wages & Bonus	21,69,111	2654049
5	Jobwork contract salary	0	0
6	Special compensatory allowance	1,14,518	1,99,913
7	Factory Expenses	2,58,140	0

38.It is to be noted that investment in plant and machinery are more than 9.83 Crore W.D.V. value at the year ended 31-03-2012.In view of the above there is no doubt that it is independent Unit. Further, Report of Auditor in Form No. 10CCB, for satisfying all the conditions laid down u/s. 80-IC has been satisfied by assessee and therefore eligible for deduction u/s. 80-IC of the Act.

39. We note that activity at Rudrapur- Unit falls within the ambit of definition of manufacturing and Production, as is evident from the List of machineries installed, and various process carried out by the Rudrapur Unit. The details manufacturing expenses incurred by the assessee- firm at Rudrapur Unit are as follows:



Direct Manufacturing Expenses at Rudrapur Unit:

No	Particulars	FY 08-09	FY 09-10
1	Job Work	13,84,082	40,96,657
2	Freight	99,612	167075
3	Power & Fuel	15,83,260	5013311
4	Wages & Bonus	21,69,111	2654049
5	Jobwork contract salary	0	0
6	Special compensatory allowance	1,14,518	1,99,913
7	Factory Expenses	2,58,140	0

40. From the above manufacturing expenses, it may be noted that expenditure like electric expenses, labour expenses etc, which is required for manufacturing the goods are incurred by Rudrapur Unit. Further the details of manufacturing process carried out at Rudrapur Unit on each part is submitted by the assessee. Besides, the reason for nomenclature of the goods supplied by Rajkot Unit to Rudrapur unit is same that of finished goods supplied by Rudrapur Unit to Tata Motors, which is meant for identification of the finished parts corresponding to Purchase order of the customer i.e. TML. In other words to identify the raw material and parts with respect to finished goods similar nomenclature has been used and accepted by the customer TML and others. It is submitted that one should go with process carried out instead nomenclature of the goods. We note that raw goods (ram material) received from Rajkot- Unit, thereafter many process are being carried out at Rudrapur Unit and there is substantial value addition in the goods. Therefore, there is price difference between Rajkot Unit



charged for raw material and Rudrapur Unit Charged for finished goods. We note that after getting the raw material from Rajkot unit, further substantial process is required to be carried out at Rudrapur Unit before selling the same to Tata Motors. Hence, it falls in the definition of manufacture.

41. We note that while granting the Registration under Central Excise Act, Excise department has specifically mentioned in the registration certificate that it is manufacturing Unit. Similarly in the report of Service Tax department it is also stated that Rudrapur Unit is carried out manufacturing activities. We note that similar addition was made in assessment year (AY) 2011-12. In that case also the AO has raised all the above contentions. However, the CIT(A) as well as the Hon'ble ITAT have dealt with all these contentions of the AO and held that there is no expenditure of Rudrapur Unit is accounted for in the books of account Rajkot Unit. Relevant para of ITAT order in assessee's own case in ITA No.108/RJT/2016 for assessment year 2011-12, order dated 03.10.2022, is reproduced hereunder:

"17. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that it was alleged by the AO that the assessee to claim higher deduction under section 80 -IC of the Act with respect to its eligible unit has shown less expenses in the eligible unit. As such the assessee has diverted more expenses to the non-eligible unit in order to show less profit in order to avoid the income tax liability. First of all we note that the AO himself in the assessment order has observed as under:

"In support of claim assessee filed audit report in form No. 10 CCB and form No. 3 CB & 3CD Separate audit reports u/s 44AB of the Income Tax Act, for Rajkot Unit and Rudrapur Unit were called for, obtained and Record.

17.1 Besides, the assessee has also contended before the AO that eligible unit was getting the benefits of tax incentive which has resulted more gross profit by 10 to 15%. The relevant submission before the AO vide letter dated 11 March 2014 reads as under.

"Your assessee has started Rudrapur unit for Tata Motors Limited. In Rudrapur Tata motors limited have their plant for manufacturing of various types of vehicles i.e. mainly TATA ACE MINI truck i.e. popularly known as Chhota Hathi, Tata motors limited is enjoying various



fiscal benefit/incentives by the government of India i.e no excise duty, VAT and many other government benefit thereto. Hence they are saving about 25-30% at Rudrapur. They have invited their parts supplier like us and many other to manufacture their parts there are supply to them, but there are huge investment in land, factory building and plant and machinery at such remote places no manufacturar are ready to invest there. Hence they offered to share their above tax benefits between supplier of part and themselves i.e offering attractive pricing of its part and it resulting in more profit about 10 to 15% by parts suppliers. With these intention to optimize our profitability. We had planned to set up dedicated unit at Rudrapur exclusively for Tata Motors Ltd Rudrapur and our investment in land factory building and plant machinery etc are of Rs. 12,92,60,168/-(W.D. V as at 30/03/2011).”

17.2 The assessee has also made available to the AO the copies of the sales bills and other supporting evidences to justify the higher amount of gross profit. Such details can be verified from pages 24 to 25 of the paper book.

17.3 All the above details were available but the same was not doubted by the AO during the assessment proceedings. Furthermore, we find that the AO was supplied with the audited financial statements of the eligible units pertaining to different financial years which are placed on pages 50 to 80 of the paper book for the purpose of the comparison of the gross profit ratio but there was no adverse comment by the AO. Meaning thereby, the revenue has accepted the profit of the eligible unit in the earlier years. Therefore, the same cannot be disturbed in the year under consideration keeping in view of the principles of consistency.

17.4 We also note that the AO was supplied with the computation of cost per unit with respect to the products manufactured at eligible unit which are placed on pages 159 to 160 of the paper book. But no defect was pointed out by the AO during the assessment proceedings.

17.5 With respect to the remuneration to the partners, we find that as per the deed of partnership, the partners were entitled for the remuneration only with respect to the profit of non-eligible unit subject to the maximum of 6 crores. The available profit of the non-eligible unit was 26.79 crores and the allowable remuneration was worked out at 16.08 crores but it was limited to the maximum of 6 crores only. Furthermore, it was also explained that none of the partner was taking active participation in the affairs of eligible unit. Moreover, there was no loss to the revenue for the reason that the amount of remuneration received by the partners is taxable in their hands subject to the provisions of section 40(b) of the Act.

17.6 As regards the allocation of factory overhead, transportation expenses, admin and selling expenses of Rs. 11,11,38,030/- it was contended by the assessee before the AO that all the expenses pertaining to different units were booked respectively. The assessee to buttress its argument has also filed the chart of manufacturing expenses. Likewise, there was not much outward freight expenses in respect of eligible unit for the reason that goods were supplied within Rudrapur Unit but it was not so in case of Rajkot unit. It was also submitted by the assessee that except audit expenses which were born by the non-eligible unit in the entirety, there was no other expense which was shifted from eligible unit to non-eligible unit.

17.7 There were term loans taken by both the units for acquiring the machineries and the corresponding interest and depreciation was accounted for in the respective units. All these submissions were made available during the assessment proceedings which can be verified



from the paper book. However the AO has not pointed out any defect in the submission filed by the assessee.

17.8 At the time of hearing, the learned DR has not pointed out any infirmity in the finding of the learned CIT-A. Thus in view of the above and after considering the facts in totality, we do not find any reason to interfere the finding of the learned CIT-A. Accordingly, we uphold the same. Hence, the ground of appeal of the revenue is hereby dismissed."

42. We find that above findings of the Tribunal, in assessee`s case is on merit, and not by a covered case, and following ITAT's order in assessee's own case as discussed above, wherein facts and law position is similar for this assessment year under consideration, the learned CIT(A) deleted the disallowance of deduction u/s 80-1C of the Act, to the tune of Rs. 2,88,50,633/-. Besides, we have examined the assessee`s facts independently, on merit, and noticed that disallowance made by the assessing officer, deserve to be deleted. On a careful reading of the Ld.CIT(A) order and the findings thereon, we do not find any valid reason to interfere with the decision and findings of the Ld.CIT(A) in holding that the assessee is entitled for deduction under section 80-1C of the Act. Hence we sustain the order of the Ld.CIT(A) and reject the summarised and concise grounds Nos. 1, and 2 and additional ground raised by the Revenue.

43. Now coming to the assessee`s summarised and concise ground No.1 of appeal, which relate to restricting the disallowance of deduction under section 80-1C of Rs.1,18,45,693/-, on protective basis, on the alleged ground of inflated profit of Rudrapur unit, being sale by Rajkot unit, in respect of item code 235F and 236F to Rudrapur unit-1. We have already recorded the arguments of learned Counsel for the assessee and learned DR for the revenue, in respect of this ground. We note that Assessing Officer has disallowed the deduction claimed by the assessee u/s 80-1C of the Act, to the tune of Rs.2,88,50,633/-, solely on the reason that Rajkot unit sold the raw goods to Rudrapur unit, therefore, Rudrapur unit is not an independent unit. The Assessing officer also



noticed that Rudrapur unit does not fall in the definition of “manufacture” and it is not manufacturing any goods/articles which are defined in section 80-IC of the Act. The Assessing Officer was of the view that Rudrapur unit only processes the semi- finished goods/raw goods, which are received from Rajkot unit. Therefore, it does not fall in “manufacture” of any article or things, which are defined in section 80-IC of the Act. Therefore, deduction u/s 80-IC of the Act was not allowed by the assessing officer.

44. The assessee, is in appeal, before us, against the addition of Rs.1,18,45,693/- which was made by the Assessing Officer, stating that there is transfer of products from non-eligible unit Rajkot to eligible unit Rudrapur, and after getting the raw-products/raw-articles/semi-finished goods from the Rajkot unit, the Rudrapur unit does not do the value addition. Therefore, the Assessing Office made the addition to the tune of Rs.1,18,45,693/- and stated that to that extent the deduction claimed by the assessee to the tune of Rs.2,88,50,633/- will get reduce. Therefore, we find that Assessing Officer has disallowed the deduction u/s 80-IC of the Act to the tune of Rs.2,88,50,633/- and simultaneously, the Assessing Officer has also disallowed the amount which pertains to transfer of raw-products/articles from non-eligible unit Rajkot to eligible Rudrapur unit of Rs.1,18,45,693/-. Therefore, the amount of Rs.1,18,45,693/-, is a part of the deduction claimed by the assessee to the tune of Rs.2,88,50,633/-. The Assessee, as well as Revenue, are not claiming that it is a separate disallowance of Rs.1,18,45,693/-, u/s 80-IC of the Act. Since the Assessing Officer has disallowed this amount on the view that there is transfer of raw-products/articles from non-eligible unit Rajkot to eligible unit Rudrapur to the extent of Rs.1,18,45,693/- and therefore the Assessing Officer wants to reduce the deduction of the assessee, which is claimed by the assessee to the tune of Rs.2,88,50,633/-. Therefore, we find that the disallowance of Rs.1,18,45,693/- is in real sense, is not a protective addition made by the



Assessing Officer, in fact, it is part of the main disallowance of deduction to the tune of Rs.2,88,50,633/-. Therefore, both the issues are inter-connected and mix and hence, if the Id.CIT(A) deleted the main disallowance of Rs. 2,88,50,633/-, then separate disallowance of Rs. 1,18,45,693/-, which is very much connected with 80-IC deduction, will go, and gets deleted automatically.

45.As we have pointed out that the addition made by the Assessing Officer to the tune of Rs.1,18,45,693/- is on account of transfer of raw-products/articles from non-eligible unit Rajkot to eligible unit Rudrapur- unit and because of this reason, we find that Assessing Officer was of the view that Rudrapur unit does not fall in the definition of “manufacture” as the goods are transferred from non-eligible unit Rajkot to eligible Rudrapur- unit. Therefore, Assessing Officer was of the view that Rudrapur unit is not an independent unit and it does not do any manufacturing activities. Therefore, Assessing Officer disallowed the deduction claimed by assessee to the tune of Rs.2,88,50,633/- and simultaneously also made the addition on account of transfer of raw-products from non-eligible unit Rajkot to eligible unit Rudrapur to the tune of Rs.1,18,45,693/-. We find that since the Ld.CIT(A) has deleted the main addition or disallowance of deduction u/s 80-IC of the Act, which was claimed by the assessee to the tune of Rs.2,88,50,633/-, holding that Rudrapur- unit falls in the definition of “manufacture” and Rudrapur unit is an independent unit. Therefore, we find that the separate disallowance made by the Assessing Officer on account of transfer of raw-products/goods from non-eligible unit Rajkot to eligible unit Rudrapur to the tune of Rs.1,18,45,693/- is very much part of the main deduction claimed by the assessee to the tune of Rs.2,88,50,633/-. Since, Ld.CIT(A) has deleted the disallowance of deduction u/s 80-IC of the Act of Rs.2,88,50,633/-, therefore the transfer of raw-goods/articles from non-eligible unit Rajkot to eligible unit Rudrapur amounting



to Rs.1,18,45,693/-, which is part and parcel of the main deduction of Rs.2,88,50,633/-, should also be deleted, however, Id.CIT(A) retained the said disallowance, which is not acceptable. Therefore, the disallowance to the tune of Rs.1,18,45,693/- which is part and parcel of the main disallowance of Rs.2,88,50,633/- should also be deleted because Assessing Officer disallowed the deduction of Rs.2,88,50,633/- mainly on the reasons that Rudrapur unit does not fall in the definition of “manufacture” and it is not an independent unit because there is a transfer of raw-products/articles from non-eligible unit Rajkot to eligible unit Rudrapur. Therefore, we find that the amount of Rs.1,18,45,693/- is part and parcel of the main deduction claimed by the assessee to the tune of Rs.2,88,50,633/-. Since the main disallowance of the deduction of Rs.2,88,50,633/- has been deleted by Ld.CIT(A), therefore, Ld.CIT(A) ought to have deleted the said addition of Rs.1,18,45,693/-.

46. However, as we have noted earlier, in this order that assessee is manufacturing 235F REVGEAR SHIFTER SLEEVE and 236F SHIFTER SLLEVE (3RS/4 TH SPEED), which is manufactured at Rudrapur as well as Rajkot and supplying to Tata Motors Limited. Further all other parts as per list of Rudrapur which, are manufactured at Rudrapur only and supplied to Tata Motors Limited-Rudrapur. The Rate of 235F REVGEAR SHIFTER SLEEVE, which is finished product and its average price comes to Rs. 299.04 per piece and Rajkot 235C REVGEAR SHIFTER SLEEVE, which is semi- finished product and average price of said item comes to Rs. 152.42 and supplied to Tata Motors Limited-Pune. In the same manner Rate of 236F SHIFTER SLLEVE (3RS/4 TH SPEED), which is finished product, average price comes to Rs. 192.91 per piece and Rajkot 236F SHIFTER SLLEVE (3RS/4 TH SPEED), which is also finished product and rate of said item average price comes to Rs. 154.88 and supplied to Tata Motors Limited- Puna, copy of no. of items supplied



and average rate, total amount of items sold etc., copy of list as well as copy of relevant bills of both the products, were submitted before the assessing officer. The assessee also submitted before the assessing officer that that 236F SHIFTER SLLEVE (3RS/4 TH SPEED), there is price difference of Rs. 38.03 at Rudrapur unit-1, as compare to Rajkot unit, that is, 24.55% higher than Rajkot unit. In the same manner, 235C REVGEAR SHIFTER SLEEVE part which is supplied semi- finished and remaining some operation to be carried out by Tata Motors -Puna, at Rs. 152.42 and if assessee add 50% other overhead charges incurred by Tata Motors Ltd, that is, 50% of Rs. 152.42, which is Rs. 76.21 it comes to Rs. 228.63 (Rs. 152.42 + Rs. 76.21). Hence there price difference of Rs. 70.41, that is, 30.80%. The total sales turnover of these two items are of Rs. 694.89 lacs (414.72 + 280.17) and total turnover of Rudrapur unit-1 are of Rs. 1453.28 lacs. Hence total turnover of these two items are 47.81%. In the same manner there is difference of prices i.e. 15-20% for other items, which manufactured at Rudrapur unit and supplied to Tato Motors Ltd., Rudrapur. Hence, there is more G.P. margin that is, of 41.96%, as compare to Rajkot unit of 35.71% and accordingly assessee claimed deduction u/s. 80IC for Rudrapur unit-1. Further there are other benefits offered by the state government as well as central government i.e. in cheap power tariff rate etc. In addition to that the assessee was asked in the notice of AO dated 14.12.2015 to give item-wise and consignment wise details of transfer of goods from one unit/ premises to another unit/premises in the tabular format. Similar details regarding components transferred to Rudrapur Unit is being asked in the above notice. In response to that the assessee has submitted the following details.

(a) The item-wise details of all the components which are transferred from Rajkot unit to Rudrapur Unit. The detail contains list of items there



manufacturing cost to the Rajkot unit and the price at which it is transferred to the Rudrapur unit.

(b) Item-wise list of all the finished components which are finally sold to TATA Motors by the Rudrapur Unit.

(c) Item-wise details of the products which are transferred from Rajkot Unit to Sanand Unit. And similarly the list containing details of the products transferred from Sanand unit to TATA Motors.

(d) Item-wise details of the products and components which are transferred from Rajkot unit to Gurgaon unit and thereafter from Gurgaon unit to Maruti Suzuki. These details were submitted by the assessee, before the assessing officer.

47. Further, we also find that in subsequent assessment years, the assessing officer/ transfer pricing officer, has accepted the above price at arm's length price, based on the same facts and circumstances, and did not make any addition in the hands of the assessee. Therefore, taking into account this factual position also, the disallowance restricted by the learned CIT(A) to the tune of Rs.1,18,45,693/- should be deleted, accordingly, we delete the same.

48. In the result, following grounds of the assessee, are allowed.

(i) Ground No.2 in assessee's appeal in ITA No.254/RJT/2024, for assessment year 2010-11,

(ii) Ground No.2 in assessee's appeal in ITA No.255/RJT/2024, for assessment year 2012-13,

(iii) Ground No.2 in assessee's appeal in ITA No.256/RJT/2024, for assessment year 2013-14.



49. Summarised and concise ground No.2, raised by the assessee, in ITA No. 256/RJT/ 2024, for assessment year 2013–14, reads as follows.

“(2) (i) The ld. CIT(A) erred in upholding the addition of Rs. 59,241/- made by the assessing officer on account of late payment of PF and ESI.

(ii). The ld. CIT(A) erred in not directing the assessing officer to allow the claim of deduction under section 80- IC of the Act for and amount of Rs.59,241/-, after sustaining the disallowance of said amount made by the assessing officer on account of late payment of PF and ESI. The assessing officer may be directed to allow deduction under section 80-IC of the Act for the amount of addition sustained.

[This is ground Nos. 3 and 4 of assessee appeal in ITA No. 256/RJT/ 2024, for assessment year 2013–14]”

50. We have heard both the parties. We note that learned Counsel for the assessee fairly agreed that the above grounds raised by the assessee are squarely covered, against the assessee, by the judgement of the Hon`ble Supreme Court in the case of CHECKMATE SERVICES P. LTD, CIVIL APPEAL NO. 2833 OF 2016, therefore, these grounds raised by the assessee, may be dismissed. Learned DR for the Revenue, has also agreed with the arguments of learned Counsel for the assessee. Therefore, we dismiss the above two grounds raised by the assessee.

51. In the result, Ground Nos. 3 and 4 of assessee`s appeal in ITA No. 256/RJT/ 2024, for assessment year 2013–14, are dismissed.

52. Summarised and concise ground No.3, raised by the revenue is reproduced below for ready reference:

(3) The Ld. CIT(Appeals), NFAC, Delhi has erred in law and on facts in directing to allow deduction claimed in during the course of assessment, by the assessee u/s 80-1A of the I.T. Act, amounting to Rs. 1,02,46,156/-, which was not claimed in original return of income.

[This is Ground No.3 of Revenue`s appeal in ITA No.260/RJT/2024 for A.Y.2010-11, Ground No.3 in ITA No.247/RJT/2024 for A.Y.2012-13, Ground No.3 in ITA No.248/RJT/2024 for A.Y.2013-14]



53. Succinct facts qua the above issue are that the assessee had made claim of deduction u/s 80-IA in his letter dated 11/01/2016, during the assessment proceedings, which is reproduced below:

“Additional claim of deduction u/s 801A for various wind mill units, our clarifications are as under:

Our above assessee have various wind mill units since last A.Y. 2005-06, as per section 801A, they were not claiming deduction on the basis that:

Losses of pertaining to period earlier to initial assessment year have been set off against brought forward losses notionally from the respective profit of the year while computing deduction u/s 801A. Hence, above named assessee have not claimed deduction u/s 80 IA for various wind mill units during the year under consideration. As held in judgment of Madras High Court in the case of Velayudhswami Spg. Mills v Asst. CIT (2012) 340 ITR 477, It was held that losses already set off pertaining to period earlier to initial assessment year cannot again brought back notionally while computing deduction u/s. 801A.

Assessee has claimed deduction u/s. 801A, relying on judgment of Madras High Court in the case of Velayudhswami Spg. Mills v Asst. CIT (2012) 340 ITR 477 and opinion on the basis of Saurabh N. Soparkar, Advocate for various units, for claiming amount of deduction u/s 801A for various wind mill units, copy of Audit Report in Form 10 CCB, as per Annexure 4, are as under:

*S.N. Details of Wind mill unit Wind
Farm Site at Lamba, Tal. Kalyanpur, Dist. Jamnagar Amt. Rs. 1,02,46,156/-*

Our above named assessee has not claimed above deduction i.e. 80 IA of Rs. 1,02,46,156/-, while filing the return of income.

Hence, you are requested to grant above deduction i.e 80 -IA of Rs. 1,02,46,156/- from total taxable income and reduce tax liability accordingly, considering facts and legal judgments and opinion of learned advocate and oblige.”

54. However, the assessing officer rejected the above contention/claim of the assessee and noticed that the assessee has not claimed deduction u/s 80-IA of the Act, in the return of the income but the claim is made by way of submitting letter during the assessment proceeding. This claim has been made on apprehension that the assessee's claim u/s 80-IC would be disallowed. The alternate claim u/s 80-1A of the Act is not tenable because as discussed in earlier paras of this order, the assessee is neither manufacture or produces things



or articles at Rudrapur unit. The same is held by the Apex court in the case of GOETZE (INDIA) LTD. Vs. CIT 284 ITR 323 (S.C) that if any deduction is required to be claimed after filing of the return, it can be claimed through revised return only, not by way of letter. Therefore, the deduction under section 80-IA of Rs. 1,02,46,156/-, was rejected by the assessing officer.

55. On appeal, by the assessee, the learned CIT(A) allowed the claim of the assessee stating that various court authorities have held that appellate authorities can entertain claim of the assessee even though same is not claimed in the original return of income filed. This claim of deduction is made by assessee on the basis of decision of Hon'ble High Court, as mentioned, above (*Velayudhswami Spg. Mills*). This decision is sustained till the stage of Hon'ble Supreme Court. In view of above analysis and judicial decision, the ld.CIT(A) allowed the deduction.

56. Aggrieved by the order of the learned CIT(A), the revenue is in appeal before us.

57. We have heard both the parties. The facts relating to this group have already been narrated above, therefore we do not repeat them for the sake of brevity. The learned Counsel for the assessee, in respect of this issue, relied on the findings of the learned CIT(A). On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity. We note that assessee is eligible for deduction u/s 80-1A for windmill and for that copy of Audit Report in Form 10 CCB were submitted by the assessee during the course of assessment proceedings. We note that ld.CIT(A) has already held that assessee is engaged in manufacture and production activities at the eligible units. We also find merit in the conclusion reached by



the learned CIT(A) to the effect that appellate authorities can entertain claim of the assessee, even though, same is not claimed in the original return of income filed. That being so, we decline to interfere with the order of Id. CIT(A) in allowing the deduction. His order on this issue is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

58. In the result, summarised and concise ground No.3, raised by the revenue, is dismissed, in the following years:

- (i)Ground No.3 in ITA No.260/RJT/2024 for A.Y.2010-11,
- (ii)Ground No.3 in ITA No.247/RJT/2024 for A.Y.2012-13,
- (iii)Ground No.3 in ITA No.248/RJT/2024 for A.Y.2013-14.

59. Summarised and concise ground No.4, raised by the revenue, is reproduced below for ready reference:

(4) The Ld. CIT(Appeals), NFAC, Delhi has erred in law and on facts in deleting to disallowance of deduction u/s 80IC of the I.T. Act of Rs.28,21,215/-, made by the AO after apportionment of various expenses of Rajkot Unit between Rajkot unit and Rudrapur Unit.

[This is Ground No.4 of Revenue's appeal in ITA No.260/RJT/2024 for A.Y.2010-11, Ground No.4 in ITA No.247/RJT/2024 for A.Y.2012-13, Ground No.4 in ITA No.248/RJT/2024 for A.Y.2013-14]

60. Succinct facts qua the above issue are that during the assessment proceedings, the assessee was asked, regarding expenses, which are related to Rudrapur Unit but not debited in the Profit and Loss account of the Rudrapur unit on proportionate basis thereby, boosting its profits, as compared to the Rajkot Unit, thus inflating the deduction claimed by the assessee u/s 80IC of the Act.

61. In response to this, the assessee replied, vide assessee's letter dated 16/01/2016, in which assessee has given the following reasoning in support of



the claim of the assessee that these expense should not be apportioned between the two units.

"As regard your point for allocation of proportionate various expenses etc. our clarifications are as under:

Remuneration to partners:

Income only and paid as per clause of partnership deed. Further as per clause and I.T. Rules Book Profit comes to Rs. 21,28,16,629/- from which profit of Rudrapur unit of deduction u/s. 80IC at Rs. 2,88,50,633/- (Profit for the year of Rs. 3,32,56,106/- after reducing loss of Rs. 43,69,773/- for A.Y.2010-11) available profit for remuneration comes to Rs. 18,39,65,996/- and as per that allowable remuneration comes to Rs. 11,04,69,598/-. However, as per clause maximum remuneration allowable comes to the Rs. 1,50,00,000/-. Hence, remuneration paid Rs. 1,50,00,000/- and it is from profit of Rajkot unit only. It is further clarified that no partners is looking after day to day affairs or managing the affairs industrial undertaking of Rudrapur and no partners has frequently visited industrial undertaking of Rudrapur during the year under consideration. As partners are not looking after day to day affairs or managing the affairs industrial undertaking of Rudrapur, the undertaking is wholly managed by independent appointed managerial personal, hence no proportionate remuneration to partners are allocated to the said unit, as per I.T. Rules of the Act.

Further, plant head has been appointed with all the powers like day to day affairs and to appear against all the government authorities and power to sign bank cheques for Industrial undertaking of Rudrapur, copy of Letter of mandate, Letter of Authority etc. are attached as per Annexure 4.

Despite of the same, if your good- self calculate proportionate remuneration to partners for industrial undertaking at Rudrapur, it will be exempted in the hands of partners. For the said our clarifications are as under:

(a) Prior to 01.04.93.

(1) Section 40(b): As per above section in case of the firm, any payment of Interest, Salary, Bonus, Commission or remuneration made by the firm to any partner of the firm shall not be deducted in computing the income chargeable under the head Profit and gains of business of profession.

Thus interest/remuneration paid to partners in case of firm were added to the total income of the firm.

(ii) Section 67: As per section 67 interest/remuneration etc paid to partner shall be deducted from the total income of the firm and balance ascertained and apportioned amongst the partner. Further the share of firm has to apportioned under the various heads of income in the same manner in which the income or loss of the firm has been determined under each head of income.

(c) Section 80A(3)

(3) Where, in computing the total income of firm, association of persons or body of individuals, any deduction is admissible under section 80G or section 80GGA or section 80HH or section 80HHA or section 80HHC or section 80HHD or section 80-I or section 80JJ, no deduction under the same section shall be made in computing the total income of a



Partner of the firm or, as the case may be, of a member of the association of persons or body of individuals in relation to the share of such partner in the income of the firm or the share of such member in the income of the association of persons or body of individuals.

Thus as per section 40(b) mentioned above interest/remuneration etc. paid to partner has been added to the total income of the firm and as per section 80A(3) no further deduction U/s. 80G, 80GGA, 80HH, 80HHA or section 80I or section 80I or 80JJA were allowable in case of the partner.

(b) After 01.04.93: As per Finance Act 1992 w.e.f. 01.04.93, the whole scheme of assessing firm has been changed and as per section 40(b) any Interest remuneration paid to partners as per limit prescribed under that section is an allowable deduction in case of the firm.

Section 67: has been omitted whereas Section 80A(3)

(3) Where, in computing the total income of an association of persons body of individuals, any deduction is admissible under section 80G or section 80 GGA or section 80HH or section 80HHA or section 80HHC or section 80HHD or section 80-1 or section 80-1A or section 80I or section 80JJ, no deduction under the same section shall be made in computing the total income of a member of the association of persons or body of individuals in relation to the share of such member in the income of the association of persons or body of individuals.

Thus, the words 'of a partner of the firm" has been omitted from section 80A(3) of the Act is that means the effect after 01.04.93 the deductions admissible under section 80G or section 80GGA or section 80HH or section 80HHA or section 80HHB or section 80HHC or section 80HHD or section 80I or section 80IA or section 80J or section 80JJ are allowable in case of the partner also. Which prior to 01.04.1993 were not allowable.

Further two new sections has been inserted into the Act. i.e. section 10(2A) and section 28(v) of the Act.

As per section 10(2A) of the Act share of profit of the firm has been exempt in case of the partner.

Whereas as per section 28(v) of the Act any interest/remuneration etc. paid to partner and allowed u/s 40(b) of the Act as deduction in case of the firm has to be assessed under the head of business and profession of the Act.

Thus after 01.04.93 as per new scheme of assessment of the firm interest remuneration etc. paid to partner has to be allowed as deduction allowable up to the allowable limit laid down in section 40(b) of the Act in case of the firm whereas share of profit received is exempted in case of the partner and interest/remuneration received by the partner is assessable as business and/or professional income in case of the partner.

Thus, prior to 01.04.93 there was a double taxation inclusive of interest & remuneration etc. paid to partner in case of firm has been taxed in case of firm after allowing deduction under chapter VI-A and again in case of partner from the allocation of total income computed in case of firm amongst partner as per provision of section 67 of the Act. Whereas after 01.04.93 there is only a single taxation of income i.e. in case of the firm interest/remuneration in accordance with the provision of section 40(b) has been deducted from the income of firm and on balance income of the firm deduction under chapter VI-A is to be allowed and balance income is taxed in case of the firm where as share of profit in hands of the partners are exempt as per section 10(2A) of the Act, Whereas interest/remuneration



paid to partners etc. allowed as deduction as per provision of section 40(b) of the Act are taxable in case of the partner as per newly introduce/inserted section 28(v) of the Act under the head business and profession of the Act. But at the same time there is a further amendment in section 80A(3) of the Act and restriction Chapter VI-A in case of the partner has been removed, means after 01.04.93 these deduction are allowable in case of the partners also out of business income of the partners i.e interest/remuneration etc taxed u/s. 28(v) of the Act and only after allowing those deduction on a balance total income the partners are liable to pay taxes.

(iv) Following example will further clear the provisions prior to 01.04.93 and amendments made and position after 01.04.93

section 80A(3) of the Act and restriction Chapter VI-A in case of the partner has been removed means after 01.04.93 these deduction are allowable in case of the partners also out of business income of the partners i.e. interest/remuneration etc taxed U/s. 28(v) of the Act and only after allowing those deduction on a balance total income the partners are liable to pay taxes.

(iv) Following example will further clear the provisions prior to 01.04.93 and amendments made and position after 01.04.93 :

Say there is a total income of Rs. 50000/- after payment of interest/remuneration to partners Rs.50000/- (each Rs.25000/- between two partners A & B) (Which is also within permissible limit U/s.40(b) after 01.04.93 also.) in case of the firm and the firm is also eligible for deduction U/s. 80A of the Act @ 25% of the profit, than

(a) Position & Computation prior to 01.04.93 :

Profit of the firm	Rs. 50000/-
Add: Interest/remuneration etc. as per section 40(b)	Rs. 50000/-
Gross Total Income	Rs.100000/-
Less: Deduction U/s. 80A @ 25%	Rs. 25000/-
Total Income	Rs. 75000/-

U/s. 67 :

Allocation amongst partners from	Rs. 75000/-
Less: Interest/Remuneration	Rs. 50000/-
	Rs. 25000/-

Particulars	Partner A	Partner B
Share of profit 50%	12500/-	12500/-
Int./Remun.to partner	25000/-	25000/-
Each partner Income	37500/-	37500/-

And partner were not eligible for any further deduction under chapter VI-A of the Act. in view of section 80A(3) of the Act.

(b) Position & Computation after 01.04.93.

Profit of the firm	Rs. 50000/-
Add: Interest/remuneration etc.	Rs. 50000/-
	Rs.100000/-
Less: Interest/Remuneration to partner	Rs. 50000/-

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as per section 40(b)

Gross Total Income	Rs. 50000/-
Less: Deduction U/s.80IA @ 25%	Rs. 12500
Total Income of firm	Rs. 37500/-

Thus the firm has to pay Income Tax on above Rs. 37500/- and share of profit of each partner Rs. 18750/- is except in hands of the partners.
 And computation in case of partners will be as under

Particulars	Partner A	Partner B	Total
Share of profit Rs. 18750/- U/s.10(2A)	NIL	NIL	
Interest/Remuneration of partner under the head of business & Profession	25000/-	25000/-	
Gross Total Income	25000/-	25000/-	50000/-
Less: Deduction U/s. 80IA @ 25%	6250/-	6250/-	12500/-
Total Income of Partner	18750/-	18750/-	37500/-

Thus the partner has to pay Income tax on above Rs. 18,750/- whereas total deduction u/s 80IA remain the same at Rs. 25000/- prior to 01.04.93 and after 01.04.93 (Rs.12,500/- Firm +6250+6250 partner) by way of deleting words "a partner of a firm" from section 80A(3) of the Act. Likewise firm & partners total income 37500+37500=75000 also remains the same as per prior 01.04.93 firm's income. Thus by new scheme of taxation of firm only single point tax system has been adopted as against dual tax system prior to 01.04.93.

(4a) The Assessing Officer per para 3 of the assessment order has disallowed the claim of deduction u/s 80IA of the Appellant on the ground that 'Interest and Remuneration received by the partner cannot be said to have been derived from the business of an industrial undertaking

(a) But it is a very well settled law that a firm is not a legal person even though it has same attributes of personality. In Income Tax law a firm is a unit of assessment by special provision but, it is not a full person. These cannot be a contract of service, in contract law between a firm and one or more of its partners. Thus the payment of salary to a partner would represent a special share of profit and would retain the same character of the income of the firm. Likewise interest, salary, bonus, commission or remuneration due to or received by a partner of a firm etc. also represent a special share of profit and would represent a same character of the income of the firm.



(b) *Therefore, all above allocation between partners are assessable under the head of "business and profession" even when there was no specific provision prior to 01.04.93 in section 28 of the Act and after 01.04.93 by virtue of section 28(v) now specifically brought the interest/remuneration paid to partner as income under the head of business & profession up to the extent allowed u/s 40(b) of the Act in case of firm. And the character of the said interest/remains the same as that of the firm.*

(d) *We rely on the following judgements*

(i) *CIT Vs. R.M. Chidambaram Pillai etc. 1977 CTR (SC) 71/(1977)106ITR 292(SC)*

In the above case it has held that the firm is not a legal person even though it has some attributes of personally. In Income Tax law a firm is a unit of assessment by special provision but it is not a full person. In the above case the partnership firm was deriving income from considered as partly agricultural and partly non- agricultural. And on the above fact it has been further held that the salary paid to a partner by the firm was exempt from tax under rule 24 of the Indian IT Rules, 1922 to the extent of 60% thereof representing agricultural income and was liable to tax only to the extent of 40%. Thus, it is clear that the character of salary paid to the partner has the same character of the income of the firm.

(ii) *CIT Vs. Ramniklal Kothari (1969) 74 ITR 57 (SC)*

In the above matter the supreme court has held that business carried on by a firm is business carried on by the partners and profit of the firm are profits earned by all the partners in carrying on the business. Their lordship also has clearly held that the share of the partners is business income in their hands and being business income expenditure necessary for the purpose of earning that income and appropriate allowances were deductible there from in determining the taxable income of the partner.

(iii) *Motichand Rawat Vs. ACIT (1993) 46TTJ (JP)452*

In the above matter the Assessment year is 1989-90 i.e. prior to amendment made to scheme of taxing firm and partners income. The firm has paid interest to partners. The Income of the firm was from export and totally exempt u/s 80HHC of the I. T. Act, 1961. The partner in their return of income has not included interest received from the above firm from their capital invested in the firm. The Assessing Officer has taxed the above interest on the ground that the benefit of exemption from tax under section 80HHC, which once been extended to the partnership firm could not be available to the partners in the computation of their income even though the partners urged before the ITO that their interest incomes from the partnership firm which had the character of business income being part of their share income and as such exempt from tax u/s.80HHC of the Act.

The members of the ITAT applying the above two Supreme court judgments and also relying on the following High Court judgments have held that

(a) *Chhotalal Keshavram Vs. CIT (1978) CTR (MP) 118/ (1998) 115 ITR 347(MP)*

(b) *CIT VS. Maharani Lalita Raiya Laxmi Sahe(1979) CTR (PAT) 215/(1980) 121 ITR1012 (PAT)*



and also relying on the CBDT circular/letter No F.178/152/91-ITA-1 dated 31st July, 1992 i.e. after amendment made per Finance Act 1992 w.e.f. 1st April 1993 and also considering various sections of the Act as above mentioned has held that

Interest received from firm by partner had the chartered of business income being the allotted share of profit by the firm interest received by partners from firm was not liable to be taxed in their hand.

Deduction allowed to the firm would be available to partners in computing their income. Considering above facts and various judgments, if your good- self calculate, proportionate remuneration to partners for industrial undertaking at Rudrapur, it will be exempted in the hands of partners. Hence, your good self are requested to give consequential effect for the same i.e. to consider exempt income i.e. remuneration in the hands of the partners.

Liaison Expenses

As regard liaison expenses of Rs. 38,06,690/-, it is to be clarified that for looking after domestic market i.e. Mahendra & Mahendra, Mumbai, Maruti Udyog Ltd. Gurugaon, Force Motors, Pune, Tata Motors LTd., Jamshedpur & Pune, Maruti Udyog Ltd., Gurfaon. And from Rudrapur Unit all items sold to Tata Motrs Limited, Rudrapur only. Hence, there is no apportionment of liaison expenses is required. Copy of account of Liaison expenses and copy of various bills are attached as per Annexure 5.

Travelling Expenses

As regard Travelling Expenses, total local travelling expenses are of Rs. 27,20,238/-out of which of Rajkot unit are of Rs. 25,67,631/-, Rudrapur unit of Rs. 1,52,607/- and foreign travelling expenses are of Rs. 11,42,099/-incurred by Rajkot unit for their export turnover of Rs. 17,76,24,987/-. As all travelling expenses of respective units borne by itself, there is no requirement of apportionment of travelling expenses. Copy of accounts as well as various bills are attached as per Annexure 5.

Technical Consultancy

As regard technical consultancy expenses of Rs. 20,30,300/- at Rajkot and Rs 5,40,385/- at Rudrapur unit, it is included in legal and professional fees. It is clarified that all expenses are incurred by Rajkot unit for advisory services and technical services provided for metallurgy, heat treatment, NOC for pollution control board, software engineering etc. As all technical consultancy expenses of respective units borne by itself, there is no requirement of apportionment of travelling expenses. Copy of accounts as well as various bills, are attached as per Annexure 5.

Advertisement Expenses

As regard advertisement expenses, total advertisement expenses are of Rs. 2,06,870/-. All advertisement expenses of respective units borne by itself, there is no requirement of apportionment of expenses. Copy of accounts submitted in our earlier submission dated. 16/12/2015.

Depreciation car



As regard depreciation on motor car of Rs. 11,97,617/-, it is clarified that all the cars are used at Rajkot unit only. In Rudrapur unit 1, depreciation on motor care of 1,54,016/- (1,04,546 + 49,470) and those cars at Rudrapur unit 1 only. As all motor car depreciation expenses of respective units borne by, itself there is no requirement of apportionment of motor car depreciation expenses. Copy of accounts submitted in our earlier submission Dtd. 16/12/2015.

In notice u/s. 142(1) of the Act dated 27.05.2015 the assessee was asked vide question number 7 which is reproduced below:

"The units in Rudrapur are managed, controlled and financed by the management sitting at Rajkot. The units are also under the same PAN number which is assessed at Circle-2(1) Rajkot. In view of this you are requested to submit why the "Administrative Staff Expenses" should not be allocated to Rudrapur Units also on proportionate basis?"

In response to which the assessee submitted that

"It is clarified that the Rudrapur unit of Bhavani Industries is located at Rudrapur and independent unit for manufacturing of automobile parts for TATA ACE being managed by independent duly appointed plant head and key managerial personnel as well administrative personnel. The unit has also appointed consultant for looking after the affairs of Pollution control, Provident Fund, ESI, Electricity board, and other government department etc. The branch has separate sanction of term loan of Rs.439 lacs from the Andhra Bank as per sanction letter for purchase of plant and machinery.

All the expenses related to the above i.e. Salary, wages, Bonous, consulting charges, interest on bank loan etc, are incurred at the unit/branch location therefore there is no matter of allocation/apportionment of the HO administrative/finance overheads to the unit/branch.

Expense Head	Incurred at Rajkot(Rs.)	at Incurred at Rudrapur(Rs.)	Remarks
Remuneration to partner	15000000	Nil	Refer note in the letter
Liasioning Expenses	38,06,691	Nil	Refer working note 1 Below
Travelling Expenses(Foreign)	11,42,099	Nil	Only for Export Business
Travelling	25,67,631	1,52,607	-



Expenses(inland)			
Technical Consultancy	20,30,300	5,40,385	Refer note in the letter
Advertisement	2,06,870	Nil	-
Depreciation of Cars	11,97,617	1,04,546	-

Working Note1:
Total Liasioning expenses incurred at Rajkot unit for Rs.3806691/- for F.Y. 2009-10 comprised of the following concerns:

Sr. no.	Particulars	Liasioning work by	Liasioning for the customers
1	Foreign liaison	Foreign person	For export business only
2	--do--	Kedar Mate	Force Motor, Pune
3	--do--	G.Bonjour	TATA Motors Ltd, Jamshedpur
4	--do--	Anant Enterprise	TATA Motors Ltd, Pune
5	--do--	Anilkumar Mishra	Maruti Udhog Ltd, Gurgaon

62. However, the assessing officer rejected the above contention of the assessee and observed that the unit of Rudrapur is managed, controlled and financed by the same, Management i.e. Bhavani Industries, therefore, these expenses under the following head were apportioned on the basis of the turnover of the Rajkot Unit and Rudrapur Unit by the assessing officer:

Turnover of Rudrapur-I Unit	:	Rs 14,46,11,771/-
Turnover of Rajkot Unit	:	Rs 1,19,34,35,481/-

Expense Head	Amount	Portion of Rajkot Unit	Portion of Rudrapur Unit
Remuneration to	15000000	13378849	1621151

partners		3395276	411415
Liaison Expenses	3806691	1018665	123434
Travelling Expenses	1142099 foreign 2720238 inland	2426244	293994
Technical Consultancy	2030300	1810872	219428
Advertisement	206870	184512	22358
Depreciation of cars	1197617	1068182	129435
Total	26103815	23282600	2821215



63. Therefore, assessing officer disallowed the deduction u/s 80-IC of the Act, to the extent of Rs. 28,21,215/-. As the assessing officer had already disallowed the entire deduction u/s 80-IC of the Act, therefore this disallowance was without prejudice to the same.

64. On appeal, by the assessee, the learned CIT(A) allowed the claim of the assessee, by following the ITAT's order in assessee's own case.

65. Aggrieved by the order of the learned CIT(A), the revenue is in appeal before us.

66. We have heard both the parties. The facts relating to this group have already been narrated above, therefore we do not repeat them for the sake of brevity. The learned Counsel for the assessee, in respect of this issue, relied on the findings of the learned CIT(A). On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity. We note that assessee -firm maintains the books of account of each unit separately. The assessee, accounts for the expenses of each unit in their respective books of account. There is no expenditure which are incurred for one unit is accounted for in the books of another unit except the Audit fees of Rs. 45,000, no other expenditure which are incurred common for more than one unit. The Rudrapur Unit is situated at distance of 1350 Kms from Rajkot Unit. Hence, logically also there is no expenditure which are incurred common for both the units. We have also gone through the reply given by the assessee during the assessment proceedings, by explaining, each and every expense, which is reproduced above, and we find merit in the said reply of the assessee, given by it, during the assessment proceedings. Hence, the conclusions arrived



at by the CIT(A), on this issue, are, therefore, correct and admit no interference by us. We, approve and confirm the order of the CIT(A) and dismiss the ground raised by the revenue.

67. In the result, summarised and concise ground No.4, raised by the revenue, is dismissed, and year -wise, following appeals of the revenue, are dismissed:

(i)Ground No.4 in ITA No.260/RJT/2024 for A.Y.2010-11,

(ii)Ground No.4 in ITA No.247/RJT/2024 for A.Y.2012-13,

(iii)Ground No.4 in ITA No.248/RJT/2024 for A.Y.2013-14.

68. Summarised and concise ground No.5, raised by the revenue, is reproduced below for ready reference:

(5) The Ld. CIT(Appeals), NFAC, Delhi has erred in law and on facts in deleting to disallowance of deduction u/s 80IC of the I.T. Act of Rs.40,17,063/- made by the AO after set off the loss of Rs.40,17,063/-, of Rudrapur unit-11, against the profit of unit-1, Rudrapur.

[This is ground No.5 in Revenue's appeal in ITA No.247/RJT/2024 for A.Y.2012-13]

69. Succinct facts qua the above issue are that during the assessment proceedings, assessing officer has held that the appellant has two units at Rudrapur on which the deduction u/s 80-IC is claimed. For the relevant year the turnover GP and NP of the units is as tabulated below:

	Turnover	Gross profit	Net profit
Rudrapur-1	366027048	141080137	102885833
Rudrapur-II	77928	-123718	-4017063
Deduction claimed u/s 80-IC			102885833

The assessee did not set off the loss of Rudrapur unit-II against the profit of unit-1, Rudrapur. Therefore, the deduction u/s 80IC was reworked after set off of the loss of unit- II against the profit of Unit-1, Rudrapur. This deduction worked out was also without prejudice to disallowance of entire claim u/s 80IC of the Act as done by assessing officer. The assessing officer did not allow the



set -off of losses, therefore, the assessee carried the matter in appeal before the learned CIT(A), who has allowed the set- off of losses, therefore, the revenue is in appeal before this Tribunal.

70. We have heard both the parties. The facts relating to this group have already been narrated above, therefore we do not repeat them for the sake of brevity. The learned Counsel for the assessee, in respect of this issue, relied on the findings of the learned CIT(A). On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity. We note that assessee, during the appellate proceedings, submitted before the learned CIT(A) that assessee- firm has another independent unit-II, at Rudrapur, which started function during the year under consideration. In the year under consideration another Unit has incurred the loss of Rs. 40,17,063/-. The learned AO has set off the said loss of Rs. 40,17,063/- against the profit of Rudrapur Unit-1. In this regard, it is submitted that each unit is different undertaking. Eligible unit for the year under consideration was Rudrapur Unit -I and not Unit II. Therefore, while calculating the deduction under section 80-IC only profit or loss of eligible unit to be considered. The, ld.CIT(A), relying on the decision of ITAT Chandigarh, in the case of Milestone Gears Private Limited Vs ACIT has hold that for the purpose of calculating deduction u/s 80IC, profit of each undertaking should be treated separately and losses from other eligible undertaking should be ignored. The Profit and losses of all the eligible undertaking could not be netted off. On this factual position, the learned CIT(A) directed the assessing officer to delete the addition, and allowed the ground of appeal the assessee. For the foregoing reasons, it is not possible to state that the impugned order passed by the ld.CIT(A) suffers from any legal



infirmity. Therefore, we confirm the findings of the learned CIT(A) and dismiss the ground raised by the revenue.

71. In the result, summarised and concise ground No.5, raised by the revenue, (in ITA No.247/RJT/2024 for A.Y.2012-13) is dismissed.

72. In the combined result, appeals filed by the assessee, are partly allowed, to the extent indicated above, and all appeals filed by the revenue are dismissed.

Order is pronounced in the open court on 27/08/2025

Sd/-

(DINESH MOHAN SINHA)
न्यायिक सदस्य/**JUDICIAL MEMBER**

राजकोट /Rajkot

दिनांक/ Date: 27/08/2025

DKP Outsourcing Sr.P.S

Sd/-

(DR.ARJUNLAL SAINI)
लेखा सदस्य/**ACCOUNTANT MEMBER**

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

- अपीलार्थी/ The Assessee
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्ड फाईल/ Guard File

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण ,राजकोट