

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI SANDEEP GOSAIN (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 2911/MUM/2025
Assessment Year: 2020-21**

Anuh Pharma Ltd.,
3-A, North Wing, Shiv Sagar
Estate, Dr. A.B. Road, Worli
Mumbai-400018.

PAN NO. AAACA 4478 P
Appellant

Pr. CIT-5,
5th floor, R.No. 515, Aayakar
Bhavan,
M.K. Road,
Mumbai-400020.

Vs.

Respondent

Assessee by : Mr. Sandeip S. Nagar (Virtually
appear) a/w Mr. Vipul Jain
Revenue by : Mr. Rajesh Kumar Yadav, CIT-DR

Date of Hearing : 19/08/2025
Date of pronouncement : 30/09/2025

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against revisional order dated 19.03.2025 passed by the Ld. Principal Commissioner of Income-tax, Mumbai – 5 [in short the Ld. 'PCIT'] under section 263 of the Income-tax Act, 1961 (in short the 'Act') for assessment year 2020-21, raising following grounds:

1.0 That on the facts and in the circumstances of the case, the impugned order passed u/s 263 is grossly arbitrary and bad in



law in relation to the issues raised and adjudicated therein and needs to be summarily deleted.

1.1 That on the facts and in the circumstances of the case, the Ld. PCIT was not justified and grossly erred in initiating proceedings u/s 263 of the Act without appreciating the fact that the order u/s 143(3) passed by the Ld. AO was neither erroneous nor prejudicial to interests of the Revenue and therefore the proceedings are bad in law.

2.0 That, on the facts and in the circumstances of the case, and without prejudice to above, the Ld. PCIT was not justified and grossly erred in holding that, the assessee has wrongly claimed deduction u/s 80G on CSR expenses without appreciating the fact that the claim was fully justified and in-line with the prevailing provisions of the law, which had been duly examined by the Ld AO in assessment proceedings.

3.0 That on the facts and in the circumstances of the case and without prejudice to Ground above, the Ld. PCIT was not justified and grossly erred in holding that, the assessee has wrongly claimed deduction u/s 80-IA(4)(iv) without appreciating the fact that the claim was fully justified and in-line with the prevailing provisions of the law, which had been duly examined by the Ld AO in assessment proceedings.

4.0 That on the facts and in the circumstances of the case, the Ld. PCIT was not justified and grossly erred in holding that, the assessee has wrongly claimed deduction without appreciating that, the claim of deduction has been duly allowed by various judicial precedents on the same facts which had been duly considered by the Ld AO in assessment proceedings.

2. Briefly stated, facts of the case are that the assessee filed its return of income for the year under consideration on 10.02.2021 declaring total income under the regular provisions of Act (in short 'the Act') at Rs.11,85,07,580/- and book profit under minimum alternative tax (MAT Provision) of Rs.17,58,92,193/-. Subsequently, the assessee revised its return of income on 12.02.2021 declaring the same total income and book profit under MAT. Thereafter, the return was selected for complete scrutiny on the issues including



verification of deduction claimed for industrial undertaking u/s 80IA of the Act. The assessment was completed u/s 143(3) r.w.s. 144B of the Act on 23.09.2022, determining total income at Rs.12,14,27,357/-.

2.1 Subsequently, the Ld. PCIT called for the record and after examination, he was of the view that on two specific issues, the assessment order was erroneous in so far as prejudicial to the interest of Revenue. Firstly, deduction u/s 80IA amounting to Rs.1,62,14,945/- claimed on cooling tower for generating cooling effect was erroneously claimed by the assessee. Secondly, the assessee had debited Rs.30,20,800/- under the head 'Corporate Social Responsibility (CSR) ' activities in the profit and loss account and disallowed the said expenses while the computing of income under the head profit and gains of business, however against the said expenditure assessee claimed deduction u/s 80G of the Act amounting to Rs.18,29,265/-, which was not allowable in accordance with law .

2.2 The Ld. PCIT also noted that the inquiry on these two issues, which ought to have been carried out in the facts and circumstances of case and in law , but had not been carried out by the Assessing Officer.

2.3 Accordingly, the learned PCIT issued a show cause notice under section 263 of the Act requiring the assessee to explain as to



why the assessment order should not be treated as erroneous in so far as it is prejudicial to the interests of the Revenue. Upon due consideration of the submissions advanced on behalf of the assessee, the learned PCIT held that the claim of deduction under section 80IA of the Act had been erroneously allowed, both on account of absence of inquiry as well as on account of incorrect application of law. Likewise, with respect to the deduction claimed under section 80G of the Act amounting to Rs.18,19,265/-, the learned PCIT recorded that the Assessing Officer had failed to conduct any inquiry and that the allowance of the deduction was based on an erroneous interpretation of the statutory provision.

3. Aggrieved with the finding of the Ld. PCIT, the assessee is in appeal before us.

4. Before us, the Ld. counsel for the assessee filed a Paper Book containing pages 1 to 146.

5. In ground No. 1, the assessee has challenged the finding of the Ld. PCIT submitting that proper and detailed inquiry was conducted by the Assessing Officer before passing the assessment order on both the issues.

5.1 The Ld. counsel for the assessee referred to Paper Book page 28 to 31, which is a notice dated 31.01.2022 issued u/s 142(1) of the Act. The Ld. counsel referred to the page 30 wherein a query asking the assessee to establish the genuineness of the deduction



claimed has been made. In response the assessee vide letter dated 01.03.2022 explained about the deduction u/s 80IA claimed and its eligibility under the provisions of the Act. Further, the Ld. counsel referred to Paper Book page 48 which is a query issued by the Assessing Officer through notice u/s 142(1) of the Act dated 20.07.2022 asking the assessee to provide details of plant and machinery of the power undertaking along with copy of the bills raised by undertaking for consumption of cooling power. Before us, the Ld. counsel for the assessee referred to Paper Book page 49 to 53 which comprises note on the eligibility of power generated through cooling tower.

5.2 Regarding the CSR expenses claimed as donation u/s 80G of the Act, the Ld. counsel referred to Paper Book page 54 which is a show cause notice dated 20.09.2022 issued by the assessment unit asking the assessee as why the deduction claimed u/s 80G of the Act be disallowed in the light of legislative intent behind section 80G of the Act. The Ld. counsel referred to Paper Book page 52 to 61 of the Paper Book containing detailed reply for justification of deduction u/s 80G of the Act relying on the various decisions of the coordinate benches of Tribunal.

5.3 In the light of the above discussion, the Ld. counsel for the assessee submitted that Assessing Officer has carried out all the necessary inquiries which ought to have been carried out in the facts and circumstances in the case of the assessee and therefore,



the clause (a) of Explanation 2 to section 263 of the Act cannot be invoked in the case of the assessee. The Ld. counsel referred to the decision of the Hon'ble Supreme Court in the case of **V-con Integrate Solutions Pvt. Ltd. (2025) 173 taxmann.com 774 (SC)** wherein it is held that the assessee does not have control over the pen of the Assessing Officer and once, the Assessing Officer carried out the investigation but does not make any addition it can be taken that he accepted the plea and stand of the assessee. The Ld. counsel also relied on the decision Hon'ble High Court of Rajasthan in the case of Commissioner of Income-tax Kota v. Deepak Real Estate Developers Pvt. Ltd. reported in (2014) 52 taxmann.com 75, wherein it is held that the Assessing Officer having examined relevant material on record passed assessment order in case of assessee, the Ld. PCIT without rejecting those documents could not pass an revisional order setting aside assessment with a direction to Assessing Officer to examine material available on record afresh.

5.4 Per contra, the Ld. DR referred to the assessment order and submitted that the case was selected for scrutiny on various grounds *inter-alia* (i) for verification of certain relief or losses; (ii) stock valuation; (iii) weighted deduction for expenditure on scientific research; and (iv) deduction in respect of industrial undertaking u/s 80IA of the Act. He submitted that in the assessment order passed u/s 143(3) of the Act dated 23.09.2022, the Ld. Assessing Officer have dealt the issue of claim of other deduction under



Schedule BP of Rs.1,02,50,713/- on pages 2 to 17 wherein he disallowed the claim of deduction of cess amounting to Rs.24,16,777/-. On another issue of stock valuation, the Assessing Officer accepted the submission of the assessee and noted that no adverse interference had been drawn. On the issue of weighted deduction u/s 35(2AB) of the Act for in-house research and development, the Assessing Officer after considering submission of the assessee allowed the weighted deduction of Rs.2,88,83,000/- out of claim of Rs.3,03,90,498/- and disallowed excess amount of Rs.5,03,000/-. On the issue of taxability of business liability written off u/s 41 of the Act also, the Assessing Officer accepted the submission of the assessee and duly recorded in the assessment order that no adverse interference had been drawn.

5.6 The Id DR emphasized that on the issue of deduction claimed for industrial undertaking also the Assessing Officer considered the submission of the assessee and held that no adverse inference was drawn. The Ld. DR accordingly submitted that the Assessing Officer recorded complete submission of the assessee in the assessment order. But the submission dated 16.08.2023, which has been claimed by the assessee as filed before the AO, on the issue of eligibility of 'cooling tower' and 'power generation facility' has neither been recorded or noted in the assessment order nor there is any reference of the said letter in his order. Further, the Ld. DR submitted that no evidence in support in the form of



acknowledgement of uploading electronically of such reply dated 16.08.2023 before the 'faceless assessment unit' has been filed by the assessee and therefore, it cannot be established that assessee had filed said details justifying the deduction on cooling tower plant. Therefore, the Assessing Officer has failed in carrying out the inquiry which ought to have been carried out in the case. As process of cooling only involved variation in the thermal temperature and does not amount to production of the power which in common parlance is the electricity, the AO was required to make enquiry on this issue from the assessee.

5.7 Regarding the issue of deduction u/s 80G also, the Ld. DR submitted that the Assessing Officer has failed to carry out inquiry as how the deduction was falling in the definition of a donation in the nature of voluntarily payment. The Ld. DR submitted that assessee has incurred CSR expenses under the mandatory provisions of the Companies Act, 2013 and therefore, same loses the character of voluntariness required as primary condition for donation u/s 80G of the Act.

6. We have carefully considered the rival submissions and perused the material placed on record. The controversy to be adjudicated is whether the assessment order can be said to be "erroneous in so far as it is prejudicial to the interests of the Revenue" within the meaning of section 263 of the Act, for want of



inquiry by the Assessing Officer, as contemplated in clause (a) of Explanation 2 to section 263.

6.1 As far as issue of deduction u/s 80IA of the Act is concerned admittedly the notice u/s 142(1) of the Act dated 31.01.2022 was issued and reply of the same is also on the record. The relevant query and reply is reproduced as under:

“ Query:

5. You have claimed deduction under section 80-1/80-1A/80-IB/80-IC which is significantly high vis-is turnover of the undertaking. Please establish the genuineness of deduction claimed.

Reply:

6.0 Deduction u/s 80IA of the Act:

6.1 The Company is a listed company engaged in the business of manufacture of bulk drugs and pharmaceutical formulations and trading in pharmaceutical products and in-house Research and Development facility. The assessee from AY 2019-20 onwards has started claiming deduction u/s 80IA on the power generated in form of cooling power.

6.2 In this regard, the assessee would like to submit as under:

- i. Details of the working of section 80IA deduction is attached as Annexure – 18.*
- ii. Audited Accounts of the undertaking is attached as Annexure – 19.*
- iii. Form 10CCB uploaded certified by the CA is attached as Annexure – 20.*
- iv. It would be relevant to note that, for claiming section 80IA deduction on power, there is no condition for taking any prior approval from the government authorities, without prejudice to the same and as required by your goodself the relevant copies of*



the approval plan of the government authorities are attached as Annexure - 21 for your goodself ready reference.

v. The address of undertaking is E-17/3, E17-4, MIDC, Tarapur, Boisar, Maharashtra 401506.

vi. The assessee is not being set-up in special economic zone (SEZ). The asses

vii. The power in form the cooling power i.e. Tonnes of Refrigeration (TR) is being captively consumed by the other manufacturing units.

viii. The assessee has stated claiming the deduction from the earlier AY and the captioned AY is not the initial assessment year, thus there is no purchase of asset in the current AY.

6.3 Further, the section prescribes certain other conditions which are as follows-

Condition: The undertaking should not be formed by way of splitting up or reconstruction of a business already in existence.

Compliance: In the present case, the Assessee had started altogether new undertakings which are independent and separate from each other. Hence this condition is fulfilled.

Condition: It is not formed by the transfer to a new business of machinery or plant previously used for any other purpose.

Compliance: In the present case, the new plant and machinery has been purchased by the Assessee and no plant or machinery are transferred from existing business to new business. Hence, this condition is also fulfilled.

Condition: No deduction is admissible under section 80IA unless the accounts of the undertakings for which deduction is claimed are audited by an accountant and the assessee furnishes, along with his return of income, the report of such audit in the Form 10CCB duly signed and verified by such accountant

Compliance: The Assessee has claimed deduction u/s 80IA in return of income and also filed audit report in Form 10CCB along with return of income. Hence, the said condition is duly complied with.

6.4 Based on above and following the principle of consistency, the Assessee request your goodself to grant deduction u/s 80IA



of the Act in respect of profits and gains derived by an undertakings engaged in generation of various power.”

6.2 It is not in dispute that the assessee, in response to notice under section 142(1), furnished certain replies and documents asserting its eligibility for deduction under section 80IA of the Act on account of generation of “cooling power” from the cooling tower. However, there is a dispute between parties regarding submitting or filing of reply in response to notice u/s 142(1) of the Act dated 20.09.2022. The assessee has claimed that following reply was filed before the Assessing Officer:

Annexure 8(ii)

Submission on claiming 80IA deduction on Power generated from Cooling Tower

1.0 Anuh Pharma Limited (Company) is manufactures of bulk drugs. The Company has in Tarapur. Company has installed Cooling Tower at plant which generates cooling power. Further, Cooling Power or Refrigeration Power is measured in Tonnes of Refrigeration (TR). As per the scientific formula 1 Ton of Refrigeration (TR) power which is equal to 3.51 Kilo Watts of Power / electricity.

1.1 From perusal of the above it could be seen that deduction u/s 80IA is available in respect of profit from the business of generation of "power". Thus, the TR which also in the form of power is eligible for the section 80IA deduction. The word power in Income-tax Act implies source of energy.

1.2 Power has been defined to mean "mechanical or electrical energy or any form of energy or force available for application to work (as that of gravitation, running water, wind, steam, electricity)." It is also held that terms 'Power' and 'Energy' are synonymous and they can be in several forms, steam, mechanical, electrical, wind.

1.3 Reliance is placed on the decision of Apex Court in the case of CIT-vs.- Tanfac Industries Ltd (SLP No. 18537 of 2009) (copy of



the decision is attached as Exhibit - A) wherein it was held that steam is also form of power and assessee is entitled to deduction u/s 80-IA on the same. The rationale of eligibility of section 80IA deduction on steam and cooling power is similar and Courts are taking consistent views on the same.

1.4 Reference is invited on Hon'ble Jurisdictional Tribunal in the case of Saf Yeast Company Private Limited v. DCIT (ITA No. 1635/Mum/2015, Date of order 24-11-2017) wherein relying on Apex Court decision in the case of Tanfac Industries (supra) Tribunal also held that, power generating by Cooling Tower falls in the definition of Power and eligible for 80IA deduction. Following were the important aspects highlighted by Tribunal in allowing deduction:

i. Tribunal referred to the CIT (A) observations that the term 'Power' has not been defined to mean electrical power to the exclusion of other forms of power and the term has to be understood in its natural meaning. Tribunal further stated that legislature has clearly provided benefit of deduction u/s 80-IA of the Act for generation of any form of power generated by an undertaking.

ii. Just like steam, cooling power/Refrigeration power is also a form of power. The power generated by the Cooling Tower is known as Refrigeration Power or Cooling Power. Cooling or Refrigeration Power, as the name suggests, is used in reducing the temperature of an object, whether solid, liquid or gaseous.

iii. The temperature of the water is reduced by passing air through the apparatus, i.e. the 'Cooling Tower' in sufficient volumes, at a temperature cooler than that of the incoming hot water such that the particles of water are enveloped by the air and there is a transfer of heat from the water to the air. The air then exits the chamber at a temperature higher than its temperature at the point of entry and the water exits the apparatus at a temperature lower than its original temperature. In other words, air acts as the refrigerant to cool the temperature of water. Cooling Power or Refrigeration Power is measured in Tonnes of Refrigeration (TR). Further, electricity has direct relationship with the TR.

iv. It was also held that one Ton of Refrigeration (TR) which is equal to 3.51 Kilo Watts of Power.

1.5 In view of the above, the power generated in form of TR from the cooling tower shall be eligible for 80IA deduction.



1.6 Since 1 TR = 3.51 Kilo Watts of Power. Thus, total TR generated shall be converted into KWH and applying the rate of electricity, market value of TR generated is arrived. The said rationale has been allowed by courts. On the above legal proposition, the company has maintained separate records of the undertaking based on which it has also obtained government recognised energy auditor report.

1.7 Based on above, the assessee request your goodself to grant deduction u/s 80IA of the Act in respect of profits and gains derived by an undertakings engaged in generation of various power.”

6.3 But the Assessing Officer did not make any reference of said reply in his assessment order. The assessee also could not place on record any evidence of acknowledgement showing that the above reply relied upon was electronically filed before the faceless assessment unit. Further, without prejudice to the above observation, it is well settled that the mere filing of written submissions by the assessee does not *ipso facto* establish that the Assessing Officer carried out the inquiry mandated by law, which ought to have been carried out in the facts and circumstances of the case.

6.4 The section 80IA(1) of the Act prescribe eligibility of hundred percent deduction of profit and gains derived by an undertaking engaged in business referred in sub- section (4) of the section. The sub section (4) provides a list of businesses. The clause (i) of the subsection refers to business of development, operation, maintenance of infrastructure facility. The clause (ii) of the subsection refers to business of providing telecommunication



services. The clause (iii) refers to development, operation , maintenance of Industrial Park, Special Economic zone. The clause (iv) refers to generation, transmission, distribution etc of power. This is the clause which has been invoked by the assessee for claim of deduction u/s 80IA of the Act. Therefore, for better understanding, we feel it appropriate to reproduced as under:

(iv) an [85](#)[undertaking] which,-

(a) is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March,[86](#)[2017];

(b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on the 1st day of April, 1999 and ending on the 31st day of March,[86](#)[2017]:

Provided that the deduction under this section to an [87](#)[undertaking] under sub-clause (b) shall be allowed only in relation to the profits derived from laying of such network of new lines for transmission or distribution;

[88](#)(c) undertakes [89](#) substantial renovation and modernisation of the existing network of transmission or distribution lines at any time during the period beginning on the 1st day of April, 2004 and ending on the 31st day of March, [90](#)[2017].

Explanation.-For the purposes of this sub-clause, “substantial renovation and modernisation” means an increase in the plant and machinery in the network of transmission or distribution lines by at least fifty per cent of the book value of such plant and machinery as on the 1st day of April, 2004;]

6.5 On a plain reading of entire clause together, it refers to business of generation or distribution of “power” in the conventional sense of electricity, which can be transmitted and distributed through a network. In the case, the assessee does not fall under



the plain and simple definition of the power generation. Instead, the assessee is claiming generation of the cooling by way of the cooling tower as equivalent to power generation and claiming deduction. The claim of the assessee that cooling power measured in 'tonnes' of refrigeration is synonymous with power generation in terms of section 80IA, raised a substantial issue which required a detailed and pointed inquiry by the Assessing Officer. He should have also examined that claim of assessee as refrigeration cooling tower as separate undertaking having GST number etc. In such a scenario, it was the obligatory on the part of the Assessing Officer to carry out the inquiries to satisfy condition of business of generation of power as he is not merely adjudicator but also investigator. He could have issued commission invoking authority under section 131 of the Act to any scientific organisation like IIT, Bombay etc and referred the matter whether any power is generated in the refrigeration process employed by the assessee. The failure to conduct such inquiry renders the order of assessment vulnerable to revision under Explanation 2(a) to section 263 of the Act Thus, accordingly, under the provisions of clause (a) of Explanation 2 to section 263 of the Act, the assessment order is deemed to be erroneous in so far as prejudicial to the interest of the Revenue to the extent of the issue of deduction claimed u/s 80IA in respect of cooling tower. We, therefore, uphold the finding of the learned PCIT that the assessment order was deemed to erroneous in so far as



prejudicial to the interests of the Revenue with respect to the deduction allowed under section 80IA.

6.6 In so far as second issue of deduction u/s 80G of the Act is concerned, the Assessing officer had issued a query letter on 20.09.2022 whereas he specifically asked as why the deduction claimed u/s 80G on CSR activities in contravention of Explanation 2 to section 263 of the Act be disallowed. The assessee filed a detailed reply which is available on Paper Book page 56 to 61. For ready reference said reply is reproduced as under:

“1.0 Claim of deduction on account of CSR activities and donations made u/s 80G of the Income Tax Act, 1961 (the Act):

1.1 During the captioned year, the assessee has debited Rs. 30,23,800/- towards eligible CSR & donations in Profit & Loss Account. The said amount was already disallowed the expenses for CSR and donations u/s 37(1) of the Act by the assessee in computation of income. Thereafter under separate chapter i.e. VIA as per the provisions of section 80G, the assessee has claimed deduction of Rs. 18,29,265/- being the payment made to the trusts or organization which are eligible for the deduction.

1.2 In this regard, the assessee has submitted the tax audit report and annual report certifying the said amount of deduction u/s 80G. Further, the list of eligible trust to whom CSR and donation is being made alongwith copies of the receipt to whom CSR and donation is made is attached as Annexure 2.

1.3 In this regard, reference is made to Section 29 of the Act which is placed in Chapter IV - Computation of Business Income which is reproduce as under:

Income from profits and gains of business or profession, how computed.

29. The income referred to in section 28 shall be computed in accordance with the provisions contained in sections 30 to 43D.



1.4 Thus, the income under the head Income from business and profession has to be computed after giving effect to section 30 to 43D of the Act. Further, reference has to be drawn on section 37(1) of the Act which has been amended vide Finance Act (No. 2) 2014 w.e.f AY 2015-16 as under:

General.

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

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

1.5 Considering the above general section 37(1) of the Act, the assessee had duly disallowed the expenses of CSR / Donation in computing the Income from business and Profession which is clearly evident from the computation of income attached above.

1.6 As per the separate chapter "Chapter VIA - Deduction to be made in computing total income". Section 80A(1) which is reproduce as under:

Deductions to be made in computing total income

80A. (1) In computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of this Chapter, the deductions specified in sections 80C to 80U.

1.7 Further, section 80G of the Act which is reproduce as under:

Deduction in respect of donations to certain funds, charitable institutions, etc 80G. (1) In computing the total income of an assessee, there shall be deducted, in accordance with and subject to the provisions of this section, -



1.8 Thus, on reading of section 80A(1) and 80G(1) of the Act which state that, in computing the total income deduction shall be allowed to the assessee as per the specified section 80C to 80U of the Act.

1.9 On perusing the section 80G of the Act which nowhere state that, payment which are classified as CSR or donation shall not be allowed even after the amendment in the section 37(1) of the Act, there is no change in the section 80G of the Act. Further, in section 80G of the Act there is no such restriction of CSR expenses.

1.10 Section 37(1) of the Act falls in Chapter IV - Computation of Business Income, whereas Section 80G of the Act falls in Chapter VIA - Deduction to be made in computing total income. Both sections are placed in different chapter for specific purpose and thus cannot be imported to other chapter.

1.11 Section 37(1) of the Act states, expenses will not be allowed in computation of business income. Whereas section 80G of the Act state of deduction from the gross total income (i.e. aggregate of all five head of income). Thus, the meaning of "expenses" and "deduction" are different. Expenses are allowed from the business income. While deduction is to be allowed from the gross total income irrespective of whether the payment is made for the business purpose or not.

1.12 Further, section 37(1) of the Act being general in nature and will not override the specific section of 80G of the Act while allowing the deduction on the payment made to charitable trust or organization.

1.13 In this regard, it is pertinent to note the ratio laid down by the Hon'ble Rajasthan High Court in the case of *Jaswant Trading Co -vs.- CIT* [1996] 85 Taxman 639 (RAJ.) wherein the firm made payment to various trusts and CM relief fund and claimed as business expenses u/s 37(1) @ 100%. Revenue contested that, such payment are covered by deduction u/s 80G @ 50% instead of claiming it as business expenses. In this regard, High Court held payment made to trust / funds which are eligible for deduction are clearly covered u/s 80G and 50% deduction has to be allowed as the same doesn't falls within section 37(1) of the Act. Relevant part of the order is reproduced as under:

7. Besides the above, the provisions of section 37 are general in nature and the provisions of section 80G are specific. Applying the maxim generalia specialibus non derogant if an amount is



liable for deduction under section 80G it cannot be claimed under the general provisions of section 37(1). Section 80G provides that in computing the total income of an assessee, there shall be deducted, in accordance with and subject to the provisions of this section, an amount equal to fifty per cent of the aggregate of the sums specified in sub-section (2). If a particular amount of expenditure falls within the category of donation, then the deduction as provided under section 80G alone is applicable.

1.14 The assessee would also like to place reliance on the decision of Hon'ble Bangalore Tribunal in the case of First American (India) Pvt. Ltd. v. ACIT (ITA No. 1762/Bang/2019, dated 29-04-2020) (copy of the decision enclosed as Annexure 3) wherein AO was of opinion that claim made under section 80 G was not allowable as amount was forming part of CSR expenses debited to P & L A/c. However, Tribunal has allowed the claim of the assessee by stating that, CSR expenditure is to be disallowed by new Explanation 2 to section 37(1), while computing Income under Head 'Income from Business and Profession'. Expenditure incurred under section 30 to 36 are claimed while computing income under head, 'Income from Business and Profession', where as monies spent under section 80G are claimed while computing "Total Taxable income" in hands of assessee. Point of claim under these provisions are different. Further, intention of legislature is very clear and unambiguous, since expenditure incurred under section 30 to 36 are excluded from Explanation 2 to section 37(1) they are specifically excluded in clarification issued. There is no restriction on an expenditure being claimed under above sections to be exempt, as long as it satisfies necessary conditions under section 30 to 36 for computing income under head, "Income from Business and Profession" For claiming benefit under section 80G, deductions are considered at stage of computing "Total taxable income'. Even if any payments under section 80G forms part of CSR payments, same would already stand excluded while computing, Income under head, "Income from Business and Profession". Effect of such disallowance would lead to increase in Business income. Thereafter benefit accruing to assessee under Chapter VIA for computing "Total Taxable Income" cannot be denied to assessee, subject to fulfillment of necessary conditions therein.

1.15 The assessee further would like to place reliance on the recent decision of Hon'ble Kolkata Tribunal in case of JMS Mining (P.) Ltd v. PCIT (ITA No 146/Kol/2021, dated 22-07-2021) (copy of the decision enclosed as Annexure 4) wherein after having detailed discussion it has been held that, section 37(1) which denies deduction for CSR expenses by way of business



expenditure is applicable only to extent of computing 'business income' under Chapter IV-D and it could not be extended or imported to CSR contributions which was otherwise eligible for deduction under Chapter VI donation made by assessee company on account of corporate social responsibility to two funds/trusts which were duly registered under section 80G(5)(vi) was to be allowed as deduction under section 80G.

1.16 Reliance is also placed on the recent decision of Hon'ble Bangalore Tribunal in case of Sling Media Pvt. Ltd. Vs DCIT (ITA. No. 197/Bang/2020, dated 30.11.2021) (copy of the decision enclosed as Annexure 5) wherein it was held that assessee cannot be denied the benefit of claim under Chapter VI A, which is considered for computing 'Total Taxable Income'. If assessee is denied this benefit, merely because such payment forms part of CSR, would lead to double disallowance, which is not the intention of Legislature'.

1.17 Further, to the above decisions, the assessee relies on the following decisions wherein on consistent basis it has been held that, the CSR expenditure which are disallowed u/s 37(1) in computing the Income from business and profession are allowed as deduction u/s 80G of the Act of Chapter VIA:

i. Goldman Sachs v Jt. CIT [(2020) 117 taxmann.com 535 (ITAT Bangalore)]

ii. National Seeds Corpn. Ltd. v. Addl. CIT (ITA No. 6794/Delhi/2014, dated 04.04.2018)

iii. Allegis Services (India) (P.) Ltd. v. Asstt. CIT (ITA No. 1693/Bang/2019, dated 29.04.2020)

iv. FNF India (P.) Ltd. v. Asstt. CIT (ITA No. 1565/Bang/2019, dated 05.01.2021)

1.18 Considering the above, the assessee has correctly disallowed the CSR / donation expenses u/s 37(1) of the Act in computing the business income and claimed deduction u/s 80G of the Act which falls under different Chapter VIA wherein there is no such restriction.”

6.7 On perusal of the above notice issued by the AO and the reply by the assessee, we find that the Assessing Officer specifically issued a show cause notice dated 20.09.2022 questioning the



allowability of deduction in respect of CSR expenditure in the light of section 80G. In response, the assessee furnished a detailed submission, citing statutory provisions and judicial precedents, explaining that CSR expenditure disallowed under section 37(1) in computing business income could nevertheless qualify for deduction under Chapter VIA, particularly section 80G. The Assessing Officer, after considering the reply, made no disallowance. Thus, the Assessing Officer has duly examined the specific issue of allowability of deduction u/s 80G of the Act in respect of CSR expenditure.

6.8 On perusal of the notice and the reply, it is evident that a conscious examination of the issue was indeed carried out by the Assessing Officer, who applied his mind and accepted the explanation of the assessee. Once inquiry was conducted and a view was taken, the mere fact that the Assessing Officer did not record elaborate reasons cannot justify assumption of jurisdiction under section 263. The law as declared by the Hon'ble Supreme Court in *V-Con Integrate Solutions Pvt. Ltd.* (supra) is clear that the assessee has no control over the manner in which the Assessing Officer pens his order; if the inquiry has been made, the presumption is that the Assessing Officer was satisfied with the explanation offered.

6.9 In view of the above discussion, we hold that the assumption of jurisdiction by the learned PCIT under section 263 of the Act is justified in respect of the deduction allowed under section 80IA of



the Act, where no inquiry was carried out by the Assessing Officer. However, in respect of the deduction allowed under section 80G of the Act, the record demonstrates that the Assessing Officer had conducted due inquiry and applied his mind to the issue. Therefore, invocation of Explanation 2(a) to section 263 is not sustainable on this aspect.

6.10 The ground No. 1 of the appeal of the assessee is accordingly partly allowed.

7. Now, we come to the ground No. 2 of the appeal of the assessee wherein the assessee has specifically challenged the finding of the Ld. PCIT on the issue of deduction u/s 80G held to be erroneous in law.

7.1 We have heard rival submissions of the parties and perused the relevant materials on record. It is the PCIT's contention that the assessee was not entitled to the said deduction, citing the principle that donations must be voluntary and not made under a legal obligation. The Ld. PCIT referred to the decision of the Hon'ble Supreme Court in the case of PVG Raju, Raja Vizianagaram (1976 CSR (1) 1017] but, the ld PCIT, in his own order, acknowledged that the very issue is currently sub-judice before the jurisdictional Bombay High Court, following a contrary view taken by the co-ordinate Benches of this Tribunal, which had ruled in favor of the



assessee in similar cases. The PCIT's order expressly states: The relevant finding of the Ld. PCIT is reproduced as under:

“6.5 As regards the judicial pronouncements cited by the assessee, it is stated that appeals filed by the Department before the Hon’ ble Bombay High Court on this issue are pending for adjudication in the following cases:-

Sr. No	Name of the Assessee	PAN	ITAT Order No.	High Court Lodging No.
1.	Blue Cross Laboratories Pvt. Ltd.	AAACB1549G	1806/M um/2023	ITXAL/30782/2024
2.	Worley Services Industries Pvt. Ltd.	AAACH0456J	554/Mum/2024	ITXAL/4392/2025

Since the issue is sub-judice before the jurisdictional Bombay High Court, the contention of the assessee cannot be accepted.”

7.2 It is therefore evident that, at the time the Assessing Officer (AO) completed the assessment, two plausible interpretations of the law existed on this matter. One view, adopted by the co-ordinate Benches of this Tribunal, supported the assessee's claim, while the other, championed by the Revenue, denied it. The Hon'ble Supreme Court, in **CIT v. Max India Ltd. [295 ITR 282 (SC)]**, has definitively held that where two opinions on a point of law are available, and the Assessing Officer has adopted one of them, the Commissioner cannot invoke the revisional powers under Section 263 merely to substitute his own opinion for that of the AO. Such an assessment cannot be deemed "erroneous" and "prejudicial to the interests of the Revenue. In light of this settled legal position, we hold that the action of the Assessing Officer in allowing the



deduction under Section 80G, being based on a plausible and available interpretation of the law, was not erroneous. The ground No. 2 of the appeal of the assessee is accordingly allowed.

8. In ground No. 3, the assessee has challenged the finding of the learned PCIT in holding that the deduction allowed under section 80IA of the Act in respect of the cooling tower was erroneous. The contention of the assessee is that there was no error in the claim of deduction, as the cooling tower constituted an eligible undertaking engaged in generation of cooling power. In support of this ground, the learned counsel for the assessee drew our attention to the submissions filed before the learned PCIT, a copy whereof is placed at page 19 of the paper book. For ready reference, the relevant reply is reproduced hereunder:

“2.1 On plain reading of section 80IA(4) (iv) of the Act, it could be seen that deduction under section 80IA is available in respect of profit or gains derived from the business of generation of 'power'. The word power is not defined under Income-tax Act ('the Act'). However, in the decision of Apex Court in the case of CIT-vs.-Tanfac Industries Ltd (SLP No. 18537 of 2009) (copy of the decision is attached as Annexure-7) has laid down the ration wherein it was held that steam is also form of power and assessee is entitled to deduction u/s 80-IA on the same on captive basis. The rationale of eligibility of section 80IA deduction on steam and cooling power is similar and Courts are taking consistent views on the same.

2.2 In the notice issued under Section 263, at paragraph 2, Your Honour has stated that:

The assessee has installed a cooling Tower that generates a cooling effect at their plant and has claimed deduction u/s 80-1A(4)(iv) amounting to Rs. 1,62,14,945/- which should have been disallowed by the Assessing Officer. For claiming the deduction



assessee has relied on the decision of Hon'ble ITAT in the case Saf Yeast Company Private Limited vs. DCIT (ITA No.1635/Mum/2015, dated 24-11-2017) wherein, relying on Hon'ble Supreme Court decision in the case of Tanfac Industries (SLP No. 18537 of 2009), Hon'ble ITAT had held that steam is also form of power. On the same basis it was claimed by the assessee that cooling effect generated through Cooling Tower also falls in the definition of Power. It is also seen that the auditor who has certified Form No. 10CCB in the case of assessee for claiming the deduction u/s. 801A has qualified this fact. However, the facts of the cited case are different from those in the case of assessee. In the cited case decided by the Hon'ble Supreme Court, the question was whether the power generated through steam is eligible for 801A. Hon'ble Supreme Court while delivering the decision has held that the power generated through steam is eligible for deduction u/s. 801A. However, in the case of assessee, the assessee has installed cooling Tower at their plant which generates cooling effect through "cooling Tower" which is different from the power generated through steam.

2.3 However, basis for making the revision is factually incorrect, the assessee would like to highlight that, the Hon'ble Jurisdictional Tribunal in case of Saf Yeast Company Private Limited v. DCIT (ITA No. 1635/Mum/2015, Date of order 24-11-2017) [the copy of the order is attached as Annexure 8] has specifically held that, power generating by Cooling Tower falls in the definition of Power and is eligible for 801A deduction. In taking this view, the tribunal relied on the ratio laid down in the decision of Apex Court in the case of Tanfac Industries Ltd (Supra) and the Delhi Tribunal decision in the case of SIAL SBEC Bioenergy Ltd. vs. DCIT. Following were the important facts highlighted by Court in allowing section 80IA deduction:

Tribunal referred to the CIT (A) observations that the term 'Power' has not been defined to mean electrical power to the exclusion of other forms of power and the term has to be understood in its natural meaning. Tribunal further stated that legislature has clearly provided benefit of deduction u/s 80-IA of the Act for generation of any form of power generated by an undertaking.

Just like steam, cooling power/Refrigeration power is also a form of power. The power generated by the Cooling Tower is known as Refrigeration Power or Cooling Power. Cooling or Refrigeration Power, as the name suggests, is used in reducing the temperature of an object, whether solid, liquid or gaseous.



2.4 The issue in both these cases revolves around whether the power generated through steam, or a cooling effect generated by a cooling tower, can be eligible for deduction under section 80-IA.

2.5 While it is true that in the case of Tanfac Industries (supra), the Hon'ble Supreme Court dealt with the issue of whether steam and captively used qualifies as power for the purposes of Section 80-IA. The ratio of this decision was later reinforced by the Hon'ble ITAT in Saf Yeast Company Private Limited's (supra) case where it was held that the power generated through a cooling tower also qualifies as power and is eligible for the same deduction u/s 80-IA.

2.6 Thus, Your honour is incorrect in mentioning that, the decision of Hon'ble Mumbai Tribunal pertains to generation of steam and not cooling power and the facts of both the case are different. The assessee would like to highlight that, facts of both the case are same and squarely covered.”

8.2 The learned counsel for the assessee further placed reliance on the decision of the Co-ordinate Bench of the Mumbai Tribunal in the case of *Saf Yeast Company Pvt. Ltd. v. Dy. CIT* in ITA Nos. 1634 to 1637/Mum/2014 and ITA Nos. 1777 to 1780/Mum/2014 pertaining to assessment years 2005-06 to 2008-09. In the said decision, it was held that generation of cooling power falls within the ambit of “power generation” and is, therefore, eligible for deduction under section 80IA of the Act. The learned PCIT, however, distinguished the said decision on the ground that the ruling therein was rendered in the context of steam generation. The relevant observations of the learned PCIT are reproduced hereunder:

“5.1 On going through the provisions of Section 80- of the Act it is seen that the same applies to an undertaking which is set up in any part of India for generation or generation and distribution of power if it begins to generate power during the period 01.04.1993



to 31.03.2017. The provision clearly applies to the entities which are in the business of generation or generation and distribution of power. On going through the provisions of Section 80-IA(4) of the Act, it is clear that the intent of legislature is to provide incentive by way of deduction under section 801A of the Income Tax Act to the enterprises engaged in generation or generation and distribution of power.

5.2 On perusal of details furnished by the assessee, it is seen that the assessee has installed cooling Tower at their plant which generates cooling effect through "Cooling Tower" and which is utilized by the company on captive basis for its manufacturing processes. The generation of 'cooling power' in the case of assessee is nothing but transfer of heat through heat exchangers and not transformation of energy into power. On the contrary, actual generation of power is inherently through use of coal or water and not exchange of heat in cooling tower. It is also seen that the facts of the present case are clearly distinguishable from the facts of Tanfac Industries (SLP No. 18537 of 2009) decided by the Hon'ble Supreme Court wherein the issue involved was that of power generation through steam. The facts of the assessee's case are also distinguishable from that of Saf Yeast Company Private Limited decided by the Hon'ble ITAT, Mumbai since the manufacturing process involved in the said case is totally different from that of the assessee. Further, the Department has not accepted the said decision of Hon'ble ITAT, Mumbai and further appeal has been preferred before the Hon'ble Bombay High court which is pending adjudication. Hence the assessee is not eligible for claim of deduction u/s. 80-IA(4) of the Act. Accordingly, the deduction of Rs. 1,62,14,945/- claimed by the assessee u/s.80-IA(4) of the Act has been erroneously allowed by the Assessing Officer while passing the Assessment Order dated 23.09.2022."

8.3 We have carefully considered the rival submissions and examined the record. The central controversy pertains to the interpretation of the expression "generation of power" occurring in section 80-IA of the Act. With due respect, we are unable to subscribe to the construction canvassed on behalf of the assessee.

8.4 The term "power" has, in common commercial and statutory parlance, been understood as referring to electrical power. Section



80-IA, in express terms, refers to undertakings engaged in the business of “generation” or “generation and distribution of power,” and clause (b) of sub-section (4)(iv) speaks of “transmission or distribution by laying a network of new transmission or distribution lines.” Such language unmistakably points to electricity and its infrastructural transmission. It does not extend to mechanical or thermodynamic processes which merely regulate temperature.

8.5 A cooling tower, by its very nature, does not "generate power, it is a heat exchanger and a net Consumer of Power. The very foundation of the Assessee’s claim and the reliance placed on order of coordinate bench of ITAT in the case of Saf Yeast Compnay Private Limited (supra) is a fundamental mischaracterization of what a refrigeration cooling tower does and a gross misinterpretation of the term "power" as intended by Parliament in Section 80-IA of the Act.

8.6 To understand the meaning of ‘power’ from scientific angle, one must turn to the fundamental principles of ‘physics’ and ‘thermodynamics’, which define these terms with precision.

8.7 In physics, ‘power’ is defined as the rate at which work is done or energy is transferred. The standard unit of power is the Watt (W), which is one Joule of energy per second. In its true sense, “power generation” refers to the creation of a new, usable form of energy—such as the conversion of fuel into electricity or water’s potential



energy into mechanical and electrical output. Refrigeration, by contrast, does not generate power or create “cold,” but merely transfers heat from a colder region to a hotter one, an operation contrary to the natural direction of heat flow under the Second Law of Thermodynamics. Authoritative texts in physics and thermodynamics uniformly affirm that such transfer is possible only with external work input, thereby distinguishing refrigeration as a process of energy transfer, not energy generation.

8.8 A ‘cooling’ tower is a specific type of heat exchanger. Its sole function is to take heated water from an industrial process and reject that waste heat into the atmosphere. It achieves this primarily through evaporative cooling. To facilitate this process, it uses fans and pumps, which consume electrical power.

8.9 A refrigeration cooling tower is fundamentally a thermodynamic machine that consumes power (work input) to move heat. To describe its function as the "generation of cooling power" is a scientific misnomer and an oxymoron. It does not generate any usable energy; it dissipates unwanted energy (waste heat). The output is chilled water, a process utility, not a form of power that can be harnessed to do work on an external system.

8.10 Applying the principles of *Noscitur a Sociis* (i.e. Contextual Interpretation), the meaning of "power" in Section 80-IA(4)(iv)(a) cannot be read in isolation. It must be read alongside clause (iv)(b),



which speaks of undertakings that start "transmission or distribution by laying a network of new transmission or distribution lines." This language is uniquely and exclusively applicable to the electrical power sector. Electricity is transmitted over long distances through a grid. Chilled water, the output of a cooling tower, is piped over short distances within a factory.

8.11 The inclusion of clause (b) acts as a contextual illuminator, clarifying that Parliament's focus was on the electrical grid and its components. Interpreting "power" to include "cooling power" renders the specific language of clause (b) incongruous and out of place, violating the principle of harmonious construction.

8.12 Every tax incentive provision is enacted with a specific economic objective. The objective of Section 80-IA was to overcome the critical shortage of electrical power in the country by encouraging private investment in power plants. The Memorandum explaining the provisions of the Finance Bill, 1993, which introduced this incentive, consistently refers to boosting "power generation" in the context of the national infrastructure deficit.

8.13 To extend this benefit to a standard piece of industrial equipment like a cooling tower would be to completely divorce the provision from its intended purpose. It would transform a targeted infrastructure incentive into an unintended, general industrial subsidy for any process involving temperature regulation. This



could not have been the intent of Parliament. In this reference , it is relevant to reproduce part of budget speech of 1993-94 of Hon'ble Finance Minister on **27th February, 1993, as under:**

5 7 . Electricity is a critical input for the future growth of our economy. I therefore propose to introduce a five-year tax holiday in respect of profits and gains of new industrial undertakings set up anywhere in India for either generation or generation and distribution of power. The five-year tax holiday will begin from the year of generation of power.
5 8 . The five-year tax holiday, in both these cases, will be part of section 80- IA of the Income-tax Act. At the end of the five-year period, these units will be entitled to the existing deduction under section 80-IA for the remaining period.

8.14 Thus, the reference of power in budget speech was in relation with electrical power only.

8.15 We may further refer that in the case of North British and Mercantile Insurance Co. v. Life Insurance Corporation of India, AIR 1969 SC 221, the Supreme Court held that the meaning of a word in a statute must be understood in the context in which it is used and not in a wide or universal sense. In the landmark case of Commissioner of Income Tax v. Srivenkateswara Hatcheries (P) Ltd. [1999] 237 ITR 174 (SC):, the Hon'ble Supreme Court was tasked with interpreting "produces articles or things." It rejected the argument that a hen "produces" eggs in the industrial sense, stating that it is a natural process. The Court held:

"The word 'production' or 'produce' when used in juxtaposition with the word 'manufacture' takes in bringing



into existence new goods by a process which may or may not amount to manufacture. It also takes in all the by-products, intermediate products and residual products which emerge in the course of manufacture of goods."

8.16 The key takeaway is that the term must be understood in its commercial and industrial context. A cooling tower's operation is an intermediate step in a manufacturing process; it does not "produce" or "generate" a final, marketable commodity called "power." It merely facilitates the main production by regulating temperature.

8.17 The Hon'ble Supreme Court in the case of CIT v. N.C. Budharaja and Co. [1993] 204 ITR 412 (SC), while interpreting "industrial undertaking," emphasized that the entity must be engaged in the business of manufacturing or producing articles. By analogy, an undertaking claiming deduction for "generation of power" must be in the business of generating power. A pharma manufacturer is in the business of manufacturing medicines. The cooling tower is a tool for this business, not a separate business of power generation.

8.18 We may summarise our observation above that the term "generation of power" as used in Section 80-IA, when interpreted through the lens of scientific accuracy, statutory context, and legislative purpose, can only mean the generation of electrical power. The Assessee's claim is based on the semantic artifice of



renaming a heat rejection process as "generation of cooling power." A cooling tower is a net consumer of electricity, its function is ancillary to manufacturing, and its output is not a form of power that can be transmitted or distributed in the infrastructural sense contemplated by the Act.

8.19 Accordingly, the very foundation of the assessee's claim under section 80-IA rests upon a scientific and legal misapprehension. If such contention were to be accepted, every air-conditioner would amount to a "power-generating" device, a conclusion wholly at odds with both science and common sense.

8.20 Having observed above, in the present case, we are not required to conclusively adjudicate on the legal merits of the assessee's eligibility under section 80-IA. Our finding rests on the jurisdictional infirmity of the assessment order itself and our observations above are rendered merely academic. The Assessing Officer failed to conduct any inquiry into this claim, which he was duty-bound to examine. In terms of clause (a) of Explanation 2 to section 263, an order passed without such inquiry is deemed to be erroneous in so far as prejudicial to the interests of the Revenue. Thus, as far as deduction u/s 80IA is concerned, the assessment order stands vitiated on this ground alone. We therefore refrain from recording a conclusive finding on the substantive eligibility of the claim under section 80-IA. Ground No. 3 of the



assessee's appeal is, therefore, rendered academic and stands dismissed as infructuous.

9. As far as ground No. 4 of the appeal is concerned which is in respect of ratios laid down in various decisions, we are respectfully in agreement with the ratios laid down in above decisions of the Hon'ble Courts and to the extent applicable, we have already followed. Accordingly, the ground No. 4 of the appeal of the assessee is allowed to that extent.

10. In summation, the order passed under section 263 by the learned PCIT is upheld to the extent of deduction claimed under section 80-IA of the Act. However, in so far as it relates to deduction under section 80G, we find that due inquiry was carried out by the Assessing Officer and no error prejudicial to the Revenue is established. To that extent, the revisional order is set aside.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 30/09/2025.

**Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 30/09/2025
Rahul Sharma, Sr. P.S.



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai