

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

माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य एवं माननीय श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
HON'BLE SHRI S. R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.192/Chny/2025, A.Y.: 2017-18

आयकर अपील सं./ITA No.193/Chny/2025, A.Y.: 2018-19

Deputy Commissioner of Income Tax,
Circle-1,
Tirunelveli.

v. **M/s.Loyal Textile Mills Limited,**
New No.21, Old No.4,
Mill Street, Kovilpatti,
Tamil Nadu-628 501.
[PAN: AAACL2632C]

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by : Mr.Bhupendran, Advocate.
प्रत्यर्थी की ओर से /Respondent by : Mr.Krishna Murthy AT, JCIT
सुनवाईकीतारीख/Date of Hearing : 22.10.2025
घोषणाकीतारीख /Date of Pronouncement : 30.10.2025

आदेश / O R D E R

PER MANU KUMAR GIRI, JM:

These two appeals by the Revenue are directed against the orders of the Commissioner of Income Tax (Appeals) – 16, Chennai / National Faceless Appeal Centre, Delhi [in short, "CIT(A)"] dated 27.11.2024 and 03.12.2024, relating to the assessment years 2017–18 and 2018–19, respectively.

2. Facts in brief are that the assessee filed its return of income on 30.11.2017 declaring total income of Rs.12,72,65,320/-. A reference under section 92CA was made to the Transfer Pricing Officer (TPO) who, vide order dated 28.01.2021, proposed a downward adjustment of



Rs.22,18,09,187/- in relation to the claim of deduction under section 80IA.

The Assessing Officer (AO), in the order passed u/s 143(3) r.w.s. 144C(3) dated 29.10.2021, assessed the income at Rs.19,88,91,134/-, making two additions—(i) Rs.4,26,45,814/- towards difference in deduction u/s 80IA, and (ii) Rs.2,89,80,000/- towards disallowance u/s 40(a)(ia) for non-deduction of tax on commission paid to non-resident agents.

3. The CIT(A), after considering the submissions of the assessee, deleted both additions by giving reasons as under:

1.In respect of deduction u/s.801A, the Appellate Authority, by relying on the decisions by Supreme Court reported in 157 taxmann.com 207 and by ITAT, Chennai in IT(TP) A.NO.2/CHNY/2022 dt.30-08-2023 upheld the determination of ALP of captive consumption of power at the rate at which the assessee purchased power from the distribution company and ruled in favor of the assessee for the AY-2017-2018.

2.In respect of disallowance of Rs.2,89,80,000/-, the First Appellate Authority, by placing reliance on the decisions by the Madras High Court reported in 48 taxmann.com 48, directed the Assessing Officer to delete the additions on expenses incurred towards sales commission outside India.

The claim of the respondent for giving credit for MAT u/s.115JAA was allowed for statistical purposes.

Aggrieved, the Revenue is in appeal before us.

4. The Revenue has challenged both the issues:

a. The deletion of transfer pricing adjustment in respect of captive power valuation for the purpose of deduction u/s 80IA.



b. The deletion of disallowance u/s 40(a)(ia) on commission paid to non-resident agents.

The Id. Departmental Representative (DR) reiterated the grounds taken by the Revenue, contending that the Id.CIT(A) erred in relying upon the decision of the Hon'ble Supreme Court in *Jindal Steel & Power Ltd.* [(2022) 460 ITR 162 (SC)] without appreciating that the Explanation to section 80IA(8) inserted by the Finance Act, 2012 required determination of market value as per the arm's length price mechanism prescribed under section 92F read with Rule 10B. He also relied upon the Judgments of the following judgments:

1. The Hon'ble Supreme Court order in M/s. SAP Labs [TS-225-SC-2023-TP]
2. ITAT Hyderabad order in the case of M/s. Sanghi Industries Limited

5. Per contra, the Id. Counsel submitted as under:

In respect of deduction u/s.801A-grounds 2 to 7 by the Appellant Revenue:

The assessee submits that the order of the First Appellate Authority, while allowing the deduction claimed by the assessee respondent, is justified, as the decision was based on the binding nature of the decision by the Supreme Court reported in 297 Taxman 253 (or) 157 taxmann.com 207 and the decision by jurisdictional Chennai ITAT.

The assessee further places reliance on the decision reported in 172 taxmann.com 391 (Calcutta HC); ITA NO.1718/CHNY/2024 dt.15.12.2024 and by Delhi High Court in ITA No.566/2023 dt.21.01.2025.

In respect of disallowance of commission to Non-Resident Agents-grounds 8 to 11 by the Revenue:



The reason for deleting the disallowance by the First Appellate Authority is justified in the facts and circumstances of the case, more particularly when jurisdictional Madras High Court decision was considered and relied on.

The assessee further submits that no disallowance is warranted, as the respondent has duly complied with Sec. 195(6) r.w.Rule 37BB in respect of furnishing information in specified forms namely Form-15CA and 15CB, in fact, the respondent furnished Forms-15CA and 15CB duly as under.

The assessee filed Form-15CA numbering 194 and Form-15CB numbering 203. While Forms 15CA had been filed from 18.04.2016 to 17.03.2017, Forms-15CB from 23.04.2016 to 17.03.2017 and all are available in the portal.

The assessee further submits that failure to furnish Forms-15CA and 15CB may entail penalty proceedings u/s.271I and there cannot be any disallowance u/s.40(a)(ia). The assessee brings to the attention of this Hon'ble ITAT that while disallowing u/s.195, the Assessing Officer, in more than one place, invoked Sec.40(a)(ia) and the First Appellate Authority in the order u/s.250 dt.27.11.2024 in para-5.3, page-10, directed the Assessing Officer to delete the addition u/s.40(a)(i).

The assessee, having complied with Sec.195(6) r.w. Rule 37BB, places reliance on decisions by ITAT, Chennai and ITAT, Delhi.

6. We have considered the rival submissions and perused the material available on record. The short issue for our consideration is whether the rate at which the assessee valued power generated and captively consumed should be the rate at which the State Electricity Board sells power to consumers or any other arm's length price determined under transfer pricing provisions. We find that an identical issue has been



considered by the Hon'ble Supreme Court in *CIT vs. Jindal Steel & Power Ltd.* [(2022) 460 ITR 162 (SC)] wherein it was held that for the purpose of computing deduction under section 80IA(8), the "market value" of power captively consumed shall be taken as the rate at which the assessee purchases electricity from the distribution company.

The coordinate Bench of the Chennai Tribunal in *Eveready Spinning Mills Ltd.* has followed the above decision and held that the transfer pricing provisions do not override the computation mechanism of section 80IA(8) in the absence of any international transaction. Case relied upon by the revenue is not binding on Chennai Bench. The CIT(A) has rightly followed the binding precedent of the Hon'ble Supreme Court and the jurisdictional Tribunal. The mere insertion of Explanation to section 80IA(8) by the Finance Act, 2012 does not alter the settled position insofar as captive generation of power for self-consumption is concerned, where there is no real income element involved and the pricing is internal. The Revenue has not demonstrated any factual or legal error in the CIT(A)'s conclusion. Respectfully following the binding precedents, we uphold the CIT(A)'s order deleting the adjustment of Rs.4.26 crores.

With regard to the second issue, the AO made a disallowance of Rs.2,89,80,000/- u/s 40(a)(ia) on the ground that tax was not deducted u/s 195 on commission paid to non-resident agents. It is an admitted fact that the commission was paid to foreign agents for services rendered outside India. No part of such income accrued or arose in India, and hence it was not chargeable to tax in India. The Hon'ble Madras High Court in *CIT v. Faizan Shoes (P) Ltd.* (supra) and *CIT v. Kikani Exports (P) Ltd.* [(2014) 369 ITR 96 (Mad.)] has categorically held that where services are rendered outside India, section 195 is not attracted. It is undisputed that the assessee has duly complied with the procedural



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requirement under section 195(6) by filing Form-15CA and Form-15CB. As rightly held by the Id.CIT(A), non-deduction of tax in such circumstances does not attract disallowance u/s 40(a)(i)/(ia). We find no infirmity in the order of the CIT(A) deleting this disallowance.

In view of the foregoing discussion, we find no merit in the appeals filed by the Revenue. The Id.CIT(A) has passed a well-reasoned order after considering the facts, applicable law, and judicial precedents. We therefore uphold the impugned orders.

7. In the result, both appeals filed by the Revenue are dismissed.

Order pronounced on the 30th, day of October, 2025, in Chennai.

Sd/-
(एस.आर.रघुनाथा)
(S. R. RAGHUNATHA)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(मनु कुमार गिरि)
(MANU KUMAR GIRI)
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai, दिनांक/Dated: 30th October, 2025.

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