

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER
&
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos. 15 & 16/Ahd/2020
(निर्धारण वर्ष / Assessment Years : 2012-13 & 2013-14)

M/s. Sahajanand Laser Technology Ltd. E-30, GIDC Electronics Estate, Sector-26, Gandhinagar, Gujarat - 382028	बनाम/ Vs.	Income Tax Officer Ward-4(1)(1), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGCS1983B		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से / Appellant by :	Ms. Arti N Shah, AR
प्रत्यर्थी की ओर से/ Respondent by :	Shri Praveen Verma, CIT. DR

Date of Hearing	25/11/2025
Date of Pronouncement	01/01/2026

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

These two appeals are filed by the assessee against the separate orders of the Commissioner of Income Tax (Appeals)-8, Ahmedabad, (in short ‘the CIT(A)’), both dated 13.11.2019 for the A.Ys. 2012-13 & 2013-14; respectively in the proceedings under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the “Act”).

2. As the facts and issues involved in the two appeals are common, both the matters were heard together and are being disposed of vide this consolidated order for the sake of

convenience. We shall first take up the appeal in ITA No.15/Ahd/2020 for A.Y. 2012-13.

ITA No.15/Ahd/2020 (A.Y. 2012-13)

3. The assessee has taken following grounds in this appeal:

- “1. *The Learned Commissioner of Income Tax (Appeals)-8, Ahmedabad has erred in law and on facts of the case in confirming the disallowance of the claim of Appellant company amounting to Rs.5,75,75,376/-under the head of deduction u/s.10AA.*
2. *The Learned Commissioner of Income Tax (Appeals)-8, Ahmedabad has erred in law and on facts of the case in confirming the disallowance of the claim of Appellant company amounting to Rs.3,23,18,236/-under the head of deduction u/s.35(2AB).*
3. *The Learned Commissioner of Income Tax (Appeals)-8, Ahmedabad has erred in law and on facts of the case in confirming the disallowance of the claim of Appellant company amounting to Rs.24,77,999/-under the head of disallowance u/s.14A.*
4. *The Learned Commissioner of Income Tax (Appeals)-8, Ahmedabad has erred in law and on facts of the case in confirming the disallowance of the claim of Appellant company amounting to Rs.17.43.239 under the head of disallowance out of interest expenses.*
5. *The Learned Commissioner of Income Tax (Appeals)-8, Ahmedabad has erred in law and on facts of the case in confirming the disallowance of the claim of Appellant company amounting to Rs.4,35,032 /-under the head of Employees Contribution to Provident Fund, ESI, etc.*
6. *The Learned Commissioner of Income Tax (Appeals)-8, Ahmedabad has erred in law and on facts of the case in confirming the disallowance of the claim of Appellant company amounting to Rs.2,22,220 /-under the head of prior period income.*
7. *The Learned Commissioner of Income Tax (Appeals)-8, Ahmedabad has erred in law and on facts of the case in*

confirming the disallowance of the claim of Appellant company amounting to Rs.7.94,933 /-under the head of Bad Debts.

8. *The Learned Commissioner of Income Tax (Appeals)-8, Ahmedabad has erred in law and on facts of the case in confirming the disallowance of the claim of Appellant company amounting to Rs.2,48,078 /-under the head of capital loss due to fire.*
9. *The Learned Commissioner of Income Tax (Appeals)-8, Ahmedabad has erred in law and on facts of the case in confirming the disallowance of the claim of Appellant company amounting to Rs. 12,00,000/-under the head of provision for Pre-clinical Test expenditure.*
10. *The Learned Commissioner of Income Tax (Appeals)-8, Ahmedabad has erred in law and on facts of the case in confirming the disallowance of the claim of Appellant company under the head of carry forward of losses.”*

We have extensively heard Ms. Arti N Shah, the Ld. AR as well as Shri Praveen Verma, Ld. CIT-DR on all the grounds as taken in this appeal.

4. Ground No.1 : Deduction u/s.10AA of the Act

4.1 The assessee had claimed deduction of Rs.5,75,75,376/- u/s.10A of the Act in the return of income, which was disallowed by the AO. The alternative claim of the assessee that the deduction be allowed u/s.10AA of the Act, was also not accepted by the AO. Ms. Arti N Shah, Ld. AR of the assessee submitted that the assessee had set up a unit in Special Economic Zone ('SEZ'), Surat vide initial registration dated 20.10.2003, issued by Assistant Development Commissioner, Surat SEZ, a copy of which has been brought on record. The assessee had started manufacturing activity on 01.02.2004 and claimed deduction u/s.10A of the Act for the A.Ys. 2004-05 to

2011-12, which was allowed by the Department. However, the deduction claimed u/s.10A of the Act was not allowed for A.Ys. 2012-13 and 2013-14 in view of the specific proviso to Section 10A of the Act, which debarred allowing of any deduction under the Section for the assessment year beginning 1st April, 2012 and subsequent years. The Ld. AR submitted that as per provision of Section 10A of the Act, the assessee was entitled to claim deduction in respect of its export profit for a period of ten consecutive assessment years beginning with the assessment year in which the manufacturing had commenced. She contended that the legislature's intent cannot be to restrict the deduction for the unexpired period to the assessee. In this regard, she had drawn our attention to provision of Section 10A(7B) of the Act and Proviso to Section 10AA of the Act, as per which the assessee was entitled to claim deduction u/s.10AA of the Act for the unexpired period. She explained that both the provisions were introduced by the SEZ Act 2005, which had an overriding effect of all other laws. She also relied upon the decision of Co-ordinate Bench of Chennai Tribunal in the case of *Classic Linens International (P.) Ltd. vs. DCIT*, [2020] 113 taxmann.com 590 (Chennai-Trib.) in this regard.

4.2 Ld. AR has drawn our attention to the findings given by the AO in the assessment order, wherein he had considered the alternate claim of the assessee for deduction u/s.10AA of the Act. While rejecting the claim for deduction u/s.10A of the Act, the AO had worked out the admissible deduction u/s 10AA of the Act at Rs.45,54,312/- only. The AO did not consider the EPCG sales, EOU sales and Zone to Zone sales as part of the

“export sales” for the purposes of working out the deduction u/s.10AA of the Act. The Ld. AR submitted that the assessee had all along claimed deduction u/s.10A of the Act in respect of EPCG sales, EOU sales, zone to zone sales and 100% export sales, which was allowed in the earlier years. Considering this fact, the AO was not correct in excluding EPCG, SEZ, within Zone sales from export sales, as the claim of the assessee was only an alternate claim for deduction u/s.10AA of the Act in place of the original deduction u/s.10A of the Act. The Ld. AR further clarified that the claim for deduction u/s.10AA of the Act was made in the course of assessment proceeding on realizing that the deduction claimed u/s.10A of the Act in the return of income was not admissible for this year. She further clarified that the claim for deduction u/s.10AA of the Act was in respect of only two unexpired years i.e. A.Ys. 2012-13 & 2013-14 pertaining to Surat SEZ unit. For the A.Y. 2017-18 onwards, the assessee had claimed deduction u/s.10AA of the Act in respect of a new unit in SEZ, Gandhinagar.

4.3 Per contra, Shri Praveen Verma, Ld. CIT. DR submitted that in accordance with Proviso to Section 10A of the Act, the assessee was not entitled for deduction u/s.10A of the Act w.e.f. A.Y. 2012-13. On the issue of alternative deduction u/s.10AA of the Act, he supported the order of the lower authorities. The Ld. CIT. DR submitted that even if the assessee is considered as eligible for deduction u/s.10AA of the Act, the AO had rightly quantified the deduction by excluding EPCG, SEZ, within Zone and EOU sales. He submitted that the explanation to Section 10AA of the Act categorically stipulated that the export in

relation to SEZ is defined as taking goods or providing services out of India from a SEZ. Therefore, any local sale made by the assessee could not be part of “export turnover” for the purpose of deduction u/s.10AA of the Act.

4.4 We have considered the rival submissions. So far as deduction u/s.10A of the Act is concerned, there is no dispute. The Proviso to Section 10A of the Act categorically debars deduction u/s.10A of the Act w.e.f. A.Y. 2012-13 onwards. The said Proviso reads as under:

Provided also that no deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April, 2012 and subsequent years.

4.5 The fact that the assessee had set up a unit in SEZ, Surat and had commenced manufacturing from A.Y. 2004-05 is not under dispute. Accordingly, the assessee was allowed deduction u/s.10A of the Act for A.Ys. 2004-05 to 2011-12 for eight years. As per provisions of Section 10A of the Act, the assessee was entitled for deduction for ten consecutive assessment years. Accordingly, the assessee had claimed alternative deduction u/s.10AA of the Act in respect of the two unexpired years i.e. for A.Ys. 2012-13 & 2013-14. The assessee has relied upon the provisions of Section 10A(7B) of the Act and Section 10AA of the Act for the alternative deduction u/s.10AA of the Act. These provisions are reproduced below:

(7B) The provisions of this section shall not apply to any undertaking, being a Unit referred to in clause (zc) of section 2 of the Special Economic Zones Act, 2005, which has begun or begins to manufacture or produce articles or things or computer software during the previous year relevant to the assessment year commencing on or after the 1st day of April, 2006 in any Special Economic Zone.

Special provisions in respect of newly established Units in Special Economic Zones.

10AA. (1) Subject to the provisions of this section, in computing the total income of an assessee, being an entrepreneur as referred to in clause (j) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005), from his Unit, who begins to manufacture or produce articles or things or provide any services during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2006, but before the first day of April, 2021, the following deduction shall be allowed—

- (i) hundred per cent of profits and gains derived from the export, of such articles or things or from services for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which the Unit begins to manufacture or produce such articles or things or provide services, as the case may be, and fifty per cent of such profits and gains for further five assessment years and thereafter;
- (ii) for the next five consecutive assessment years, so much of the amount not exceeding fifty per cent of the profit as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account (to be called the "Special Economic Zone Re-investment Reserve Account") to be created and utilized for the purposes of the business of the assessee in the manner laid down in sub-section (2):

⁷⁴[**Provided** that no such deduction shall be allowed to an assessee who does not furnish a return of income on or before the due date specified under sub-section (1) of section 139.]

Explanation.—For the removal of doubts, it is hereby declared that the amount of deduction under this section shall be allowed from the total income of the assessee computed in accordance with the provisions of this Act, before giving effect to the provisions of this section and the deduction under this section shall not exceed such total income of the assessee.

(2) The deduction under clause (ii) of sub-section (1) shall be allowed only if the following conditions are fulfilled, namely :—

- (a) the amount credited to the Special Economic Zone Re-investment Reserve Account is to be utilised—
 - (i) for the purposes of acquiring machinery or plant which is first put to use before the expiry of a period of three years following the previous year in which the reserve was created; and
 - (ii) until the acquisition of the machinery or plant as aforesaid, for the

purposes of the business of the undertaking other than for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any asset outside India;

- (b) the particulars, as may be specified by the Central Board of Direct Taxes in this behalf, under clause (b) of sub-section (1B) of section 10A have been furnished by the assessee in respect of machinery or plant along with the return of income for the assessment year relevant to the previous year in which such plant or machinery was first put to use.

(3) Where any amount credited to the Special Economic Zone Re-investment Reserve Account under clause (ii) of sub-section (1),—

- (a) has been utilised for any purpose other than those referred to in sub-section (2), the amount so utilised; or
(b) has not been utilised before the expiry of the period specified in sub-clause (i) of clause (a) of sub-section (2), the amount not so utilised,

shall be deemed to be the profits,—

- (i) in a case referred to in clause (a), in the year in which the amount was so utilised; or
(ii) in a case referred to in clause (b), in the year immediately following the period of three years specified in sub-clause (i) of clause (a) of sub-section (2),

and shall be charged to tax accordingly:

Provided that where in computing the total income of the Unit for any assessment year, its profits and gains had not been included by application of the provisions of sub-section (7B) of section 10A, the undertaking, being the Unit shall be entitled to deduction referred to in this sub-section only for the unexpired period of ten consecutive assessment years and thereafter it shall be eligible for deduction from income as provided in clause (ii) of sub-section (1).

Explanation.—For the removal of doubts, it is hereby declared that an undertaking, being the Unit, which had already availed, before the commencement of the Special Economic Zones Act, 2005 (28 of 2005), the deductions referred to in section 10A for ten consecutive assessment years, such Unit shall not be eligible for deduction from income under this section :

Provided further that where a Unit initially located in any free trade zone or export processing zone is subsequently located in a Special Economic Zone by reason of conversion of such free trade zone or export processing zone into a Special Economic Zone, the period of ten consecutive assessment years referred to above shall be reckoned from the assessment year relevant to the previous year in which the Unit began to manufacture, or produce or process such articles or things or services in such free trade zone or export processing zone :

Provided also that where a Unit initially located in any free trade zone or export processing zone is subsequently located in a Special Economic Zone by reason of conversion of such free trade zone or export processing zone into a Special Economic Zone and has completed the period of ten consecutive assessment years referred to above, it shall not be eligible for deduction from income as provided in clause (ii) of sub-section (1) with effect from the 1st day of April, 2006.

.....

4.6 Both Section 10A(7B) as well as Section 10AA of the Act was introduced by the SEZ Act, 2005 w.e.f. 10.02.2026. Section 10A(7B) mandates that provision of Section 10A shall not apply to any undertaking being a unit referred to in Section 2(zc) of the SEZ Act, 2005, which has **begun** or begins to manufacture or produce articles or things or computer software during the previous year relevant to the assessment year commencing on or after 01.04.2006, in any Special Economic Zone. The unit referred in Clause (zc) of Section 2 of SEZ Act, 2005 is defined as under:

(zc) "**Unit**" means a Unit set up by an entrepreneur in a Special Economic Zone and includes an existing Unit, an Offshore Banking Unit and a Unit in an International Financial Services Centre, **whether established before or established after commencement of this Act**; [Emphasis supplied.]

4.7 As per this definition, any unit located in SEZ whether established before or established after the commencement of the SEZ Act is covered as an eligible unit. Thus, **the assessee's unit located in SEZ Surat, which was established before the commencement of SEZ Act, 2005 is found covered in the definition of Unit in Section 2(zc) of SEZ Act and thereby also covered in the provision of Section 10A(7B) of the Act.** The first Proviso to Section 10AA(3) of the Act provides that unit located in SEZ and covered in the provision of Section

10A(7B) of the Act shall be entitled to deduction u/s.10AA of the Act for the unexpired period of ten consecutive assessment years. The assessee's case is found covered under this provision and accordingly it was entitled for deduction u/s.10AA of the Act in respect of the unexpired period of ten consecutive assessment years i.e. for A.Ys. 2012-13 & 2013-14.

4.8 The assessee has relied upon the decision of co-ordinate Bench of Chennai Tribunal in the case of *Classic Linens International (P.) Ltd. (supra)*. In that case the assessee had availed deduction u/s 10A of the Act for ten consecutive assessment years (till A.Y.2010-11) and thereafter claimed deduction u/s 10AA of the Act for five additional years. The Tribunal had held that the assessee was entitled to additional deduction for five years under the provision of section 10AA(1)(ii) of the Act, subject to fulfillment of other conditions. The finding given in that case is found to be as under:

7.12 As could be seen from above that aforesaid SEZ Act, 2005 was brought into statute to promote exports, bring in large foreign investments in India and to make SEZ as an engine for economic growth supported by quality infrastructure and complemented by an attractive fiscal package both by Central and state Governments. The objective was to instill confidence in investors and signal Government Commitment to a stable SEZ policy with a view to achieve greater economic activity and employment through establishment of SEZ's. Preamble to SEZ Act, 2005 provides that it is an Act to provide for establishment, development and management of the SEZ for the promotion of exports and for matters connected therewith or incidental thereto. The SEZ Act, 2005 *vide* section 2(za) read with section 2(k) while defining SEZ also included existing SEZ's which were in existence on or before commencement of the 2005 Act. The SEZ Act, 2005 *vide* section 2(zc) read with section 2(l) while defining Unit in SEZ also included Units in SEZ which was set up on or before commencement of this Act. Thus this Act of 2005 brought within its fold not only newly set up SEZ's or units in SEZ which are set up post commencement of

this Act of 2005 but also bring within its fold existing SEZ's or Units in SEZ which were in existence at the time when this new Act of 2005 came into force. Section 51 of the Act of 2005 stipulates that the provisions of the 2005 Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. Section 44 of the 2005 Act stipulates that all the provisions of this Act (except section 3 and 4) shall, as far as may be apply, to every existing Special Economic Zones. Section 27 of the 2005 Act stipulates that the provisions of the 1961 Act, as in force for the time being, shall apply to, or in relation to, the Developer or entrepreneur for carrying on the authorized operations in a Special Economic Zone or Units subject to the modification specified in the Second Schedule. Section 10AA was incorporated in Second Schedule to the 2005 Act and through it got included in the 1961 Act effective from 10.02.2006 and simultaneously sub-section 7B was inserted in Section 10A of the 1961 Act through insertion in Second Schedule to the 2005 Act.

7.13 The section 10AA(1) of the 1961 Act, inter-alia, stipulates that subject to provisions of section 10AA, its applicability is limited to units in SEZ which begins to manufacture or produce articles or things or computer software in SEZ during the previous year relevant to assessment year commencing on or after 1st April, 2006. Similarly section 7B simultaneously excludes allowability of deduction under section 10A of the 1961 Act to undertakings being units referred to in section 2(zc) of the 2005 Act which has begun or begins to manufacture or produce article or thing during the previous year relevant to assessment year commencing on or after 1st April 2006 in any SEZ. Careful perusal of sub-section 7B of the 1961 Act which was inserted in section 10A of the 1961 Act by SEZ Act, 2005 w.e.f. 10.02.2006, clearly reveals that it excludes applicability of entire section 10A to any undertaking, being a Unit referred to in clause (zc) of section 2 of the SEZ Act, 2005 which has begun to manufacture or produce articles or things or computer software in SEZ or begins to manufacture or produce articles or things or computer software commencing on or after the 1st day of April 2006. Thus, the objective of using the word 'begun' is to exclude applicability of section 10A to all the units in SEZ effective from insertion of section 10AA of the 1961 Act and henceforth provisions of section 10AA shall be applicable to units in SEZ, even if these units are existing units in SEZ on or before commencement of SEZ Act, 2005. We have already seen that SEZ Act, 2005 is a beneficial legislation with objective to promote exports, encourage large foreign investments, generate higher employment, develop quality infrastructure development etc and to provide fiscal incentive and stable policy regime to encourage setting up of SEZ and units in SEZ. As could be seen, section 10AA of the 1961 Act which was inserted effective from 10.02.2006, has three proviso which are placed after sub-section (3) to section 10AA of the 1961 Act. The first proviso states that while computing the total income of the unit in SEZ for any assessment year, its profits and gains had not been included by application of provisions of sub-section 7B of section 10A, the

undertaking being unit shall be entitled to deduction referred to in this sub-section only for the unexpired period of ten consecutive assessment years and thereafter it shall be eligible for deduction from income as provided in clause (ii) of Sub-section (1) of section 10AA of the 1961 Act. We have already seen that provisions of section 10AA(1) of the 1961 Act is subject to provisions of other sub-sections of section 10AA of the 1961 Act. The section 10AA(1) provides for deduction for a total period of 15 years, first 5 years deduction is provided @100% of profits derived from exports, while for rest ten years deduction is provided @50% of profits derived from exports subject to fulfilment of conditions as are stipulated u/s 10AA of the 1961 Act. As we have observed that by insertion of sub-section 7B to section 10A, the entire units in SEZ which were existing on or before commencement of SEZ Act were taken out from applicability of section 10A and new regime of section 10AA was made applicable even to existing units in SEZ. The first proviso clearly stipulates that the existing SEZ units which begun to produce or manufacture articles or things in old regime will be entitled for deduction u/s 10A of the 1961 Act only for unexpired period of consecutive ten years and thereafter they will be entitled for a further deduction for a period of five years under newly enacted provisions of section 10AA(1)(ii) of the 1961 Act. It is also pertinent to mention that provisions of Section 10A of the 1961 Act refers to grant of deduction for a period of ten consecutive assessment years and section 10AA for a newly set up SEZ units did not uses the terminology 'ten consecutive assessment years', which further strengthen the belief that section 10AA shall be applicable to all SEZ whether these were established under old regime or under newly enacted SEZ Act, 2005. The Second proviso which is placed after sub-section 10AA(3) also provides that in case of units initially located in EPZ or FTZ but subsequently located in SEZ by reasons of conversion of such FTZ or EPZ into SEZ, the period of ten consecutive assessment years referred to above shall be reckoned from the assessment year relevant to the previous year in which the unit begins to manufacture or produce or process such articles or things or service in such FTZ or EPZ, which is in fact the case of the assessee, the assessee thus will be entitled for deduction for unexpired period of ten consecutive assessment years beginning from ay: 2006-07 u/s 10A of the 1961 Act which ended on ay: 2010-11 and thereafter further deduction of 50% of profits derived from exports for further period of five years under the provisions of section 10AA of the 1961 Act beginning with impugned assessment year 2011-12. The third proviso contains embargo that in case of conversion of EPZ or FTZ units into an SEZ unit which has already completed period of ten consecutive assessment years referred to above before the commencement of SEZ Act, 2005 and simultaneous insertion of sub-section 7B to section 10A of the 1961 Act, wef 10.02.2006 shall not be entitled for additional period of deduction for five years as is allowed to SEZ units by provisions of section 10AA(1)(ii) of the 1961 Act. These three provisos inserted after section 10AA(3) of the 1961 Act read with sub-section 7B to section 10A of the 1961 Act inserted by SEZ Act, 2005 effective from

10.02.2006 are in-fact saving clauses which have made applicable provisions of newly inserted section 10AA to existing SEZ units under old regime which have not exhausted deduction for ten consecutive assessment years on the date of introduction of section 10AA, as was available to them u/s 10A of the 1961 Act on commencement of SEZ Act, 2005 and thus these SEZ units shall be entitled for deduction for further period of 5 years beyond period of ten consecutive assessment years owing to newly inserted section 10AA of the 1961 Act keeping in view provisions of section 10AA(1)(ii) of the 1961 Act. Thus, *vide* our detailed discussions above, we hold that the assessee is entitled for deduction u/s 10AA(1)(ii) of the 1961 Act for the impugned assessment year, subject to fulfilment of other conditions for grant of deduction u/s 10AA of the 1961 Act. We order accordingly.

4.9 The facts of the present case is found to be slightly different than the facts as adjudicated by the Tribunal in the case of *Classic Linens International (P.) Ltd. (supra)*. In that case the assessee had already claimed deduction u/s 10A for ten consecutive years whereas in the present case the issue is regarding deduction u/s 10A/10AA for the last two years of the ten consecutive years. As already discussed earlier the assessee was prohibited from claiming deduction u/s 10A of the Act by virtue of sub-clause (7B) of section 10A introduced with effect from 10.02.2006 by the SEZ Act, 2005. At the same time the proviso to section 10AA(3) of the Act stipulated that the unit in SEZ hit by the mischief of section 10A(7B) of the Act, will be eligible for deduction u/s 10AA(1)(i) of the Act for the unexpired period of ten consecutive assessment years and thereafter it shall be eligible for deduction u/s 10AA(1)(ii) of the Act for next five consecutive years, subject to fulfilment of other conditions. A conjoint reading of sections makes it evident that by insertion of sub-section (7B) to section 10A, the units in SEZ which were existing on or before commencement of SEZ Act were taken out from applicability of section 10A of the Act and the new regime of section 10AA was made applicable even to existing units in SEZ.

Therefore, section 10AA was applicable to all SEZ units, whether they were established under the old regime or under newly enacted SEZ Act, 2005. However, we don't concur with the finding of the Tribunal that the existing SEZ units which had begun to produce or manufacture articles or things in old regime will be entitled for deduction u/s 10A of the 1961 Act only for unexpired period of consecutive ten years and thereafter they will be entitled for further deduction for a period of five years under newly enacted provisions of section 10AA(1)(ii) of the 1961 Act. In our opinion the assessee was entitled for deduction u/s 10AA of the Act only, for the unexpired period of consecutive ten years, after the introduction of section 10A(7B) and section 10AA of the Act on the statute. Considering the provisions of the Act as discussed above and the decision of the Co-ordinate Bench of Chennai Tribunal referred above, we hold that the assessee was eligible for deduction u/s.10AA of the Act for the unexpired period of ten consecutive assessment years. Accordingly, **the assessee was entitled for deduction u/s 10AA(1)(i) of the Act for the A.Y. 2012-13, subject to fulfilment of other conditions as stipulated in that section.**

4.10 The other grievance of the assessee is that deduction u/s.10AA of the Act should be allowed on EPCG sales, zone-to-zone sales and EOU sales as well. The contention of the assessee is that the provision of SEZ Act shall have overriding effect notwithstanding anything inconsistent with any other law. The Ld. AR submitted that as per definition of export given in Section 2(m) of SEZ Act, export means not only taking goods or providing services outside of India but also includes providing it to domestic tariff area or to another unit in SEZ. The Ld. AR contended that considering the inclusive definition of export

under SEZ Act, the assessee was eligible for deduction u/s.10AA of the Act in respect of EPCG sales, Zone-to-Zone sales and EOU sales as well.

4.11 On the contrary, the Ld. CIT-DR has relied upon the definition of export as given in Section 10AA of the Act and supported the order of the AO.

4.12 We have considered the rival contentions. As per Section 2(m) of SEZ Act, the export is defined as under:

- (m) “**export**” means –
 - (i) taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode, whether physical or otherwise; or
 - (ii) supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer; or
 - (iii) supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or different Special Economic Zone;

4.13 The contention of the assessee is that this definition has an overriding effect over the definition of “export” as given in the Income Tax Act. The provision of Section 51 of the SEZ Act stipulates the overriding effect as under:

- 51.** (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

4.14 The provision of Section 27 of the SEZ Act stipulates that the provision of Income Tax Act shall apply with certain modifications in relation to developers and entrepreneurs. The said Section is reproduced below:

- 27. The provisions of the Income-tax Act, 1961, as in force for the time being, shall apply to, or in relation to, the Developer or entrepreneur for carrying on the authorised operations in a Special Economic Zone or Unit subject to the modifications specified in the Second Schedule.

4.15 The modifications to the Income Tax Act were specified in **Second Schedule of SEZ Act**, whereby the provision of Section 10A(7B) of the Act as well as the provision of Section 10AA of the Act was introduced in the Income Tax Act. It is, thus, evident that the provision of Section 10AA of the Act was brought on the statute in accordance with the modification as stipulated in Section 27 of SEZ Act, 2005. The word 'export' is defined Explanation (1) to Section 10AA of the Act as under:

- (ii) "export in relation to the Special Economic Zones" means taking goods or providing services out of India from a Special Economic Zone by land, sea, air, or by any other mode, whether physical or otherwise;

4.16 As per definition of export given in Section 10AA of the Act the export in relation to SEZ means taking goods or providing services **out of India** from SEZ by land, sea, air or by any other mode whether physical or otherwise. It is, thus, evident that only sub-clause (i) of Section 2(m) of SEZ Act defining export is included in the definition of export as provided in Section 10AA of the Income Tax Act. **Considering the fact that Section 10AA of the Act was introduced under the provision of Section 27 of SEZ Act, only the restrictive definition of "export" as given in Explanation-1 to Section 10AA of the Act has to be taken into consideration while working out the deduction u/s.10AA of the Act.**

4.17 In view of this position of law, the contention of the assessee that the goods supplied or services rendered to domestic tariffs area or to another unit in SEZ is also covered in the definition of "export" for the purposes of working out the

deduction u/s.10AA of the Act, is not found correct and is, therefore, rejected. At the same time, we deem it proper to set aside the matter to the file of Jurisdictional AO with a direction to allow the deduction for the A.Y. 2012-13 in accordance with the “export” as defined u/s.10AA of the Act, after allowing an opportunity of being heard to the assessee.

4.18 The ground no.1 taken by the assessee is partly allowed for statistical purpose.

5. Ground No.2 : Disallowance u/s.35(2AB) of the Act

5.1 The assessee had claimed deduction of Rs.3,23,18,236/- u/s.35(2AB) of the Act. In the course of assessment, the assessee had produced evidence in Form No.3CL that the research work was approved by DSIR. However, no certificate in Form No.3CL from DSIR was produced, which was a mandatory requirement for allowing the claim for deduction. Therefore, the AO had disallowed the claim of the assessee, which was upheld by the Ld. CIT(A). The Ld. AR of the assessee submitted that the assessee had made a request to the Secretary, Department of Scientific and Industrial Research for providing the certificate in Form No.3CL. However, the said certificate was received only after the assessment was completed by the AO. She explained that the AO had completed the assessment on 24.03.2015 whereas the certificate in Form No.3CL was received on 26.03.2015. The Ld. AR submitted that the Hon’ble Gujarat High Court has held in the case of *PCIT vs. Schaeffler India Ltd.*, 155 taxmann.com 651 (Guj)(HC) that

merely because the prescribed authority did not send Form No.3CL in time, the deduction claimed u/s.35(2AB) of the Act cannot be denied. She, therefore, requested that the matter may be set aside to the file of the AO to verify the certificate obtained from the competent authority and, thereafter, allow the claim of the assessee. She further submitted that alternative claim to allow deduction of one half amount u/s.37 of the Act was also not considered by the AO.

5.2 Per contra, Ld. CIT. DR supported the order of the lower authorities.

5.3 We have considered the facts of the case and the materials brought on record. The AO had disallowed the claim of deduction u/s.35(2AB) of the Act only for the reason that necessary certificate in Form No.3CL from the Department of Scientific & Industrial Research, was not brought on record. According to the assessee, this form was received from the competent authority two days after the completion of assessment. Hon'ble Gujarat High Court has held in the case of *Schaeffler India Ltd. (supra)* that the assessee had filed Form No.3CM in the course of assessment certifying that its R&D facility was approved by the prescribed authority and merely because the Competent Authority had failed to send the intimation in Form 3CL during the course of assessment proceedings, it could not be a reason for denying the claim of deduction u/s.35(2AB) of the Act. The facts involved in the present case are identical as the certificate in Form No.3CL was received two days after completion of assessment. In the

interest of justice, we, therefore, deem it proper to set aside the matter to the file of the AO with a direction to verify the certificate in Form No.3CL issued by the prescribed authority. If the same is found to be in order, then the deduction as claimed by the assessee u/s.35(2AB) of the Act should be allowed. The contention of the assessee regarding alternative deduction u/s.37(1) of the Act, was rightly rejected by the AO as the assessee did not forgo its claim of deduction u/s.35(2AB) of the Act while making this alternate claim.

5.4 Ground No.2 taken by the assessee is allowed for statistical purposes.

6. Ground No.3: Disallowance u/s.14A of the Act

6.1 In the course of assessment, the AO noticed that the assessee had made investment of Rs.7,06,92,857/- in shares of foreign subsidiaries and Rs.86,39,984/- in the shares of Indian subsidiaries. However, no disallowance u/s.14A of the Act was made by the assessee. It was also noticed that the assessee had paid interest of Rs.3,13,51,142/- during the year. The AO, therefore, made disallowance in respect of interest on funds deployed towards investment in shares of subsidiaries and also worked out half percent of average investment as per Rule 8D of IT Rules towards administrative expense. Accordingly, addition of Rs.24,77,999/- was made u/s.14A r.w. Rule 8D of the IT Rules.

6.2 The Ld. AR submitted that no fresh investment in the shares of subsidiaries was made during the year. Further, the assessee had own interest free funds to make those investments and no interest bearing funds was utilized for this purpose. She explained that no fresh loan was provided to the subsidiaries during the year. Ld. AR contended that no exempt income was earned by the assessee during the year and, therefore, no disallowance u/s.14A of the Act was called for. In this regard, she relied upon the following judgments:

- i. *CIT vs. Chettinad Logistics (P.) Ltd.*, [2018] 95 taxmann.com 250 (SC)
- ii. *CIT vs. Corrttech Energy (P.) Ltd.*, [2014] 45 taxmann.com 116 (Gujarat)
- iii. *PCIT vs. Sintex Industries Ltd.*, [2017] 82 taxmann.com 428 (Gujarat)
- iv. *PCIT vs. UTI Bank Ltd.*, [2018] 99 taxmann.com 392 (Gujarat)

6.3 Ld. CIT-DR, on the other hand, relied upon the order of the lower authorities on this issue.

6.4 We have considered the submissions of the assessee. There is no dispute to the fact that no exempt income was earned by the assessee during the year. Hon'ble Supreme Court has upheld the decision of Hon'ble Delhi High Court in the case of *Chettinad Logistics (P.) Ltd. (supra)* that where no exempt income was earned in the relevant assessment year by the assessee, the provision of Section 14A of the Act could not be invoked. Further, Hon'ble Gujarat High Court in the case of *Corrttech Energy (P.) Ltd. (supra)* has held that if the assessee did not make any claim for exemption of any income,

disallowance u/s.14A of the Act could not be made. In the case of *Sintex Industries Ltd. (supra)*, the Hon'ble Gujarat High Court had upheld the principle that if the assessee was having own surplus fund in excess of the investment made in the mutual fund with growth option, then there was no question of making disallowance of expenditure in respect of interest u/s.14A of the Act. In the case of *UTI Bank Ltd. (supra)* also Hon'ble Gujarat High Court had held that no disallowance could be made u/s.14A of the Act where assessee's interest free funds far exceeded its interest free investments. In the present case, the assessee had sufficient interest free funds to explain the investment in the shares of subsidiaries companies. In view of this fact and also considering that no exempt income was earned by the assessee during the year, no disallowance u/s.14A of the Act on account of interest expenses and management fee was called for. Accordingly, the addition as made by the AO is deleted.

6.5 The ground taken by the assessee is allowed.

7. Ground No.4 : Disallowance of interest

7.1 In the course of assessment, the AO noticed that the assessee had given interest free loans and advances to the tune of Rs. 1,45,27,001/- to Sahajanand Laser Technology Ltd., USA and SLT Energy Ltd. It was also found that the assessee had paid interest of Rs.3,49,07,372/- to the banking institutions and others for the loans obtained from them. According to the AO, the assessee could not prove the nexus between the interest free

funds available and the interest free loans and advances. Therefore, the interest of Rs.17,43,239/- @ 12% in respect of interest free loans and advances made by the assessee was disallowed u/s.36(1)(iii) of the Act.

7.2 The Ld.AR submitted that the fact that the assessee had own funds far in excess of the interest free loans and advances was not considered by the AO. She further submitted that this issue was covered by the decision of the Hon'ble Gujarat High Court in assessee's own case, a copy of which was placed before us. On the other hand, the Ld. CIT-DR supported the order of the lower authorities.

7.3 We have considered the rival submissions. The AO had disallowed the interest expense on the presumption that interest bearing funds were utilized for advancing interest free loan to Sahajanand Laser Technology Ltd., USA & SLT Energy Ltd. However, no evidence was on brought record to establish the nexus between the interest-bearing funds and the interest free advances made by the assessee. Thus, the addition is found to be on based on mere presumption. The fact that the assessee had its own surplus funds has not been controverted by the revenue. This issue was also involved in the earlier year and the Hon'ble Gujarat High Court in the case of *PCIT vs. M/s. Sahajanand Laser Technology Ltd. in Tax Appeal No.1025 of 2017, dated 29.01.2018* had held as under:

"14. From the facts as emerging from the record, it is evident that while the assessee has paid interest on the loans taken from banking and other institutions, it had sufficient surplus funds of its

own, out of which it had given interest-free loans and advances to the tune of Rs.1,26,80,993/- to seven parties. The breakup of the funds available with the assessee has been furnished before the Commissioner (Appeals) by the assessee. A perusal thereof clearly reveals that the assessee had obtained secured loans of Rs.2,20,80,792/-, whereas it had reserve surplus of Rs. 9,63,57,283/-, share capital of Rs. 10,30,45,000/- and share application money of Rs. 2,17,75,000/-. Thus, the assessee had considerable surplus funds in proportion to the secured loans. Under the circumstances, since the assessee had advanced interest-free loans out of its surplus funds, the question of disallowing the expenditure in respect of interest incurred on the borrowed funds did not arise, inasmuch as, no part of the borrowed funds had been advanced by the assessee to the concerned parties. Under the circumstances, the Tribunal was wholly justified in upholding the deletion of disallowance of interest expenses of Rs.15,21,790/-."

7.4 An identical decision was taken by the Co-ordinate Bench of this Tribunal in the assessee's own case in *ITA No.3342/Ahd/2010, dated 22.03.2016*. Respectively following the above referred decisions in the assessee's own case and also the fact the assessee had own funds far in excess of the interest free advances given to the two parties, we are of the view that no disallowance u/s.36(1)(iii) of the Act was called for. Accordingly, the addition of Rs.17,43,239/- made u/s.36(1)(iii) of the Act is deleted.

7.5 The ground No.4 of the assessee is allowed.

8. Ground No.5 : Employees Contribution to PF & ESIC

8.1 The AO had made addition of Rs.4,35,032/- on account of belated payment of employee's contribution to PF & ESIC. The Ld. AR submitted that for the month of July 2011, the due date of payment was 15.08.2011, which was a closed holiday. The

assessee had made payment on next working day i.e. on 16.08.2011. Therefore, the payment of Rs.96,236/- made on 16.08.2011 cannot be held as belated payment. Regarding the balance amount, the Ld. AR fairly conceded that the issue is covered against the assessee by the decision of Hon'ble Supreme Court in the case of *Checkmate Services Private Limited vs CIT (143 taxmann.com 178)*.

8.2 We have considered the submissions of the assessee. As rightly pointed out, the payment for the month of July 2011 made on 16th August cannot be held as belated payment, as the due date of 15th August was a closed holiday. Accordingly, the assessee is allowed relief to the extent of Rs.96,236/- and the balance addition stands confirmed.

8.3 The ground of the assessee is partly allowed.

9. Ground No.6 : Prior period income

9.1 In the course of assessment, the AO had made addition of Rs.2,22,220/- for the reason that the prior period income of the assessee was reduced twice by an amount of Rs.1,11,110/-. The Ld. AR submitted that there was no mistake in the computation and the addition was made due to wrong understanding. She explained that both the prior period income and prior period expenses were taken out of computation for the current year, the details of which was as under:

Prior Period Income - Rs.3,44,604/-

Prior Period Expense -	<u>Rs.2,33,494/-</u>
Excess (Income)-	<u>Rs,1,11,110/-</u>

The Ld. AR explained that since income of prior period Rs.1,11,110/- was excess, the same was rightly reduced in the computation of income for the current year. The Ld. CIT-DR, on the other hand, relied upon the order of the AO.

9.2 We have considered the explanation of the assessee. In Note 19 of the Financial Statement, the details of prior period items is found appearing. It is found therefrom that the assessee had prior period income of Rs.3,44,604/- and prior period expense of Rs.2,33,494/-, resulting in net prior period income of Rs.1,11,110/-. This net prior period income of Rs.1,11,110/- was appearing as part of other income of Rs.83,23,940/- in the P&L account. In the computation of income, the net prior period income of Rs.1,11,110/- was reduced from income for the current year. The contention of the assessee is that if the prior period expenses are not admissible as deduction in the current year, following the same principle the prior period income also cannot be considered as income for the current year. Accordingly, the assessee had rightly reduced the net prior period income of Rs.1,11,110/- in the computation of income for the current year. We do not find any mistake or arithmetical error in the computation of assessee. There was no double reduction of net prior period income as contended by the AO. Therefore, the addition of Rs.2,22,220/- as made by the AO is deleted.

9.3 The Ground No.6 of the assessee is allowed.

10. Ground No.7: Bad debts

10.1 The assessee had debited bad debt of Rs.1,92,32,447/- in the P&L account. In the course of assessment, the AO had called for the details of this bad debt claim. The assessee could furnish the details of bad debt to the extent of Rs.1,86,38,014/- only and the details of balance amount Rs.7,94,933/- was not furnished. In the absence of any detail, the AO had disallowed the bad debt claim to the extent of Rs.7,94,933/-.

10.2 The Ld. AR submitted that the matter being old the assessee could not furnish the details in respect of bad debts of Rs.7,94,933/- before the AO. She submitted that the details of this amount have since been retrieved and the same was furnished in the paper book filed before us. In view of the fresh evidences as filed by the assessee, the Ld. AR requested that the matter may be set aside to the AO for verification thereof and, thereafter, allowing the claim of the assessee. The Ld. CIR-DR had no objection to the proposal of the assessee.

10.3 We have considered the request of the assessee. The AO had disallowed this claim only for the reason that the details of bad debts of Rs.7,94,933/- was not furnished. The assessee has now filed fresh evidence in this regard. We, therefore, deem it proper to set aside this matter to the file of the AO with the direction to verify the fresh evidence brought on record in respect of bad debt claim of Rs.7,94,933/- and, thereafter,

decide the allowability of the claim in accordance with the provisions of the Act.

10.4 The ground taken by the assessee is allowed for statistical purposes.

11. Ground No.8: Capital loss due to fire

11.1 This ground was not pressed by the Ld. AR in the course of hearing. Hence, the ground is dismissed.

12. Ground No.9 : Provision for pre-clinical test expense

12.1 The assessee had claimed provision for pre-clinical test expenditure on the basis of proforma invoice of Rs.60 Lakhs from Shriram Institute for Industrial Research, as per which 50% of the payment was required to be made before the commencement of pre-clinical test. The assessee had, however, submitted bills for Rs.48 Lakhs only. In the absence of the balance bill for Rs.12 Lakhs, the claim of the assessee was disallowed to that extent. The Ld. AR submitted that bills for Rs.12 lakh were not readily available but the same has now been filed as fresh evidence in the paper book. Considering the fresh evidence filed by the assessee, we deem it proper to set aside the matter to the file of the AO with a direction to verify the fresh evidence and, thereafter, decide the claim of the assessee in accordance with law.

12.2 The ground taken by the assessee is allowed for statistical purposes.

13. Ground No.10: Disallowance of carry forward loss

13.1 This Ground was not pressed by the Ld. AR in the course of hearing. Hence, the ground is dismissed.

14. In the result, the appeal filed by the assessee for A.Y.2012-13 is partly allowed.

ITA No.16/Ahd/2020 – A.Y. 2013-14

15. The assessee has taken following grounds in this appeal:

- “1. *The Learned Commissioner of Income Tax (Appeals)-8, Ahmedabad has erred in law and on facts of the case in confirming the disallowance amounting to of claim of deduction Rs.4,70,86,739 u/s.10A/10AA of the IT Act, 1961 as claimed in the revised return of income filed by the Appellant*
2. *The Learned Commissioner of Income Tax (Appeals)-8, Ahmedabad has erred in law and on facts of the case in confirming the disallowance of the claim of interest expenses of Rs.21,70,137/- u/s.14A of the IT Act, 1961 observing that the investment made in subsidiary are from borrowed funds.*
3. *The Learned Commissioner of Income Tax (Appeals)-8, Ahmedabad has erred in law and on facts of the case by confirming the order of the Assessing Officer by considering the addition of Rs.66.425 u/s.36(1)(va) of the Act towards late payment of Employees contribution.”*

All the grounds taken by the assessee in this appeal are identical to the grounds in ITA No.15/Ahd//2020 for A.Y. 2012-13.

16. Ground No.1 pertains to deduction u/s.10A/10AA of the Act. The decision taken in respect of this ground in ITA No.15/Ahd/2020 for A.Y. 2012-13 is applicable mutatis mutandis to this year as well. Accordingly, this ground is partly allowed for statistical purposes.

17. Ground No.2 pertains to disallowance of Rs.21,70,137/- u/s.14A of the Act. In this year also, no exempt income was earned by the assessee. Accordingly, the decision taken by us in respect of this ground in ITA No.15/Ahd/2020 for A.Y. 2012-13 is applicable mutatis mutandis to this year too. The addition of Rs.21,70,137/- made u/s.14A of the Act is deleted and the ground of the assessee is allowed.

18. Ground No.3 pertains to addition of Rs.66,425/- made u/s.36(1)(va) of the Act. Following the decision taken in ITA No.15/Ahd/2020 for A.Y. 2012-13, the addition is confirmed and the ground is dismissed.

19. In the result, the appeal of the assessee for A.Y.2013-14 is partly allowed.

20. In the combined result, both the appeals filed by the assessee are partly allowed.

This Order pronounced on 01/01/2026

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

(True Copy)

Ahmedabad; Dated 01/01/2026
S. K. SINHA

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad